



# Interviewing children throughout the legal proceedings

## Handbook

---

**Coordinators**

**Mona-Maria Pivniceru, Cătălin Luca**

---

Sofia Luca  
Mariana Haralambe  
Claudia-Antoanela Susanu  
Daniel-Constantin Horodniceanu

Editura  
**Famangiu**  
2011

**THE ALTERNATIVE SOCIALE ASSOCIATION  
THE NATIONAL INSTITUTE FOR MAGISTRATES**

**Interviewing children throughout  
the legal proceedings  
Handbook**

**Copyright © by the Alternative Sociale Association**

No part of this paper may be reproduced in any manner whatsoever without the written permission of the **Alternative Sociale Association**.

**Hamangiu SRL Publishing House**

**A publishing house certified by CNCSIS** – the National Council for Scientific Research in Higher Education.

**Descrierea CIP a Bibliotecii Naționale a României**

**PIVNICERU, MONA MARIA**

**Interviewing children throughout the legal proceedings :**

**handbook** / Mona Maria Pivniceru, Cătălin Luca. - București :

Editura Hamangiu, 2011

ISBN 978-606-522-432-2

I. Luca, Cătălin

347.939(498):3-053.2

**MONA-MARIA PIVNICERU    CĂTĂLIN LUCA**  
(coordinators)

**Sofia Luca**  
**Mariana Haralambe**  
**Claudia-Antoanela Susanu**  
**Daniel-Constantin Horodniceanu**

**Interviewing children throughout  
the legal proceedings**  
**Handbook**

**Translation: Mihaela-Eugenia Statescu**

**HAMANGIU PUBLISHING HOUSE**  
2011



*Any child is like a mirror that makes one a bit  
dizzy.  
Or like a window.  
A child will continue to amaze one at all times as  
if he knew the meaning of all things.*

**Antoine de Saint-Exupéry**



# Table of contents

Foreword _____	XV
----------------	----

<b>Chapter I. International documents in the matter of the rights of the child</b> _____	<b>1</b>
<b>1. Universal framework for the protection of the rights of the child</b> _____	<b>1</b>
<b>2. Main European documents for the protection of the rights of the child</b> _____	<b>6</b>
<b>3. General principles related to the safeguard and promotion of the rights of the child</b> _____	<b>8</b>
I. The principle of the best interest of the child _____	8
II. The principle of equal opportunities and non-discrimination _____	9
III. The principle related to the parents' empowerment to observe and safeguard the rights and fulfill their parental responsibilities _____	10
IV. The principle of the prevalence of the parents' responsibility in connection with the observance and safeguard of the rights of the child _____	11
V. The principle of decentralization applied to child protection services, the multisectoral intervention and the partnership between the public institutions and the authorized private bodies _____	11
VI. The principle of providing individual and customized care for each child _____	12
VII. The principle of observing the dignity of the child _____	12
VIII. The principle of interviewing a child's view and taking it into consideration bearing in mind the child's age and development stage _____	13
IX. The principle of ensuring stability and continuity in the care, raising and education of a child, taking into account their	

ethnic, religious, cultural and linguistic background in the case when taking a protection measure _____	13
X. The principle of celerity in taking any decision involving children _____	14
XI. The principle of ensuring protection against child exploitation and abuse _____	14
XII. The principle of interpreting any legal document related to the rights of the child in connection with the set of regulations applicable in the matter _____	15
<b>References</b> _____	<b>15</b>

## Chapter II. A psychological approach concerning the child

<b>interview stages</b> _____	<b>17</b>
<b>I. Interview stages</b> _____	<b>17</b>
<i>I.1. Preparing the interview</i> _____	17
1.1.1. Establishing the trust between the child and the magistrate who must interview the child _____	17
1.1.2. Distinguishing between truth and deception _____	18
1.1.3. Active listening _____	20
1.1.4. Breaks during the interview _____	21
<i>I.2. The interview</i> _____	22
<i>I.3. Questions</i> _____	23
1.3.1. Types of questions _____	24
1.3.1.1. Open questions _____	24
1.3.1.2. Specific questions _____	25
1.3.1.3. Closed questions _____	25
1.3.1.4. Leading questions _____	26
<i>I.4. Suggestions on how to investigate child victims</i> _____	26
<i>I.5. Conclusion of the interview</i> _____	28
<i>I.6. Evaluation of the interview</i> _____	28
<i>I.7. Ten ethical Commandments to conduct child interviews</i> _____	29
<b>II. Psychological approach</b> _____	<b>30</b>
<i>II.1. Psychological benchmarks in interviewing a child victim</i> _____	30
<i>II.2. Types of deception used by children</i> _____	33
11.2.1. The defense lie _____	33
11.2.2. The compensation lie _____	34
11.2.3. The seduction lie _____	35
11.2.4. The aggressive lie _____	35

<i>II.3. Child development psychological elements useful for the interview</i>	36
II.3.1. Early childhood (1- 3 years)	36
II.3.2. Preschool period (3- 6/7 years)	37
II.3.2.1. Specific traits	37
II.3.2.2. Strategic guidelines to build up morality	40
II.3.3. Early school (6/7 – 10 years)	41
II.3.3.1. Specific traits	41
II.3.3.2. Interviewing rules	42
II.3.4. Puberty (10-14 years)	43
II.3.4.1. Specific traits	44
II.3.4.2. Interviewing rules	44
II.3.5. Adolescence (14-18 years)	45
II.3.5.1. Specific traits	45
II.3.5.2. Interviewing rules	46
II.4. Useful suggestions on how to interview a child victim	47
II.4.1. Ten useful Commandments to interview child victims	47
<b>References</b>	<b>49</b>
<b>Chapter III. General interviewing principles</b>	<b>51</b>
<b><i>I. Introductory notions</i></b>	<b>51</b>
<b><i>II. General interviewing principles</i></b>	<b>52</b>
II.1. <i>The principle of the best interests of the child</i>	52
II.2. <i>The principle of the magistrate's specialization</i>	57
II.3. <i>The principle of differentiated interviewing</i>	59
II.4. <i>The principle of the magistrate's prior preparation from the perspective of making contact with the child</i>	61
<b><i>III. Intertwined principles</i></b>	<b>62</b>
<b>References</b>	<b>63</b>
<b>Chapter IV. Interviewing the child during the civil process</b>	<b>65</b>
<b><i>I. Introductory notions</i></b>	<b>65</b>
<b><i>II. Child Interview Stages</i></b>	<b>72</b>
II.1. <i>Interview preparation</i>	72
II.2. <i>Prior information provided to the child</i>	73
II.2.1. <i>Applicable to the process when the child is a subject – an active participant or a party</i>	74
II.2.2. <i>Applicable to the process when the child is a witness</i>	76

<i>II.3. Place of the interview</i>	77
II.3.1. Applicable to the process when the child is a subject – an active participant or a party	79
II.3.2. Applicable to the process when the child is a witness	79
<i>II.4. Interviewing time</i>	80
<i>II.5. Other persons present during the interview</i>	81
II.5.1. Applicable to the process when the child is a subject – an active participant or a party	81
1.5.2. Applicable to the process when the child is a witness	89
<i>II.6. Prior preparation of the child</i>	91
II.6.1. Applicable to the process when the child is a subject – an active participant or a party	91
II.6.2. Applicable to the process when the child is a witness	95
<b><i>III. Prior preparation of the magistrate</i></b>	<b>95</b>
<i>III.1. The magistrate gathers the relevant information             for the interview</i>	95
<i>III.2. The magistrate must enter a special mental framework             in order to conduct the interview</i>	97
<b><i>IV. The interviewing stage</i></b>	<b>98</b>
<i>IV.1. Bonding with the child</i>	102
IV.1.1. Applicable to the process when the child is a subject – an active participant or a party	102
IV.1.2. Applicable to the process when the child is a witness	104
<i>IV.2. Supplying information concerning procedural rights</i>	105
IV.2.1. Applicable to the process when the child is a subject – an active participant or a party	105
IV.2.2. Applicable to the process when the child is a witness	106
<i>IV.3. Free speech</i>	107
IV.3.1. Applicable to the process when the child is a subject – an active participant or a party	107
IV.3.2. Applicable to the process when the child is a witness	109
<i>IV.4. Asking questions</i>	110
IV.4.1. Applicable to the process when the child is a subject – an active participant or a party	110
IV.4.2. Applicable to the process when the child is a witness	113
<i>IV.5. Encouragement, empowerment and axiological             leading of the child</i>	115

IV.5.1. Applicable to the process when the child is a subject – an active participant or a party _____	115
IV.5.2. Applicable to the process when the child is a witness _____	115
IV.6. <i>Interviewing conclusion</i> _____	115
<b>V. Interview evaluation stage</b> _____	<b>116</b>
V.1. <i>Applicable to the process when the child is a subject – an active participant or a party</i> _____	116
V.2. <i>Applicable to the process when the child is a witness</i> _____	120
<b>VI. Final remarks</b> _____	<b>121</b>
<b>References</b> _____	<b>123</b>

## Chapter V. Interviewing a juvenile offender and a child witness

<b>throughout the criminal process</b> _____	<b>126</b>
<b><i>I. Interviewing a juvenile offender in court</i></b> _____	<b>126</b>
<i>I.1. Legal framework applicable to the interview of a juvenile offender</i> _____	126
I.1.1. General considerations _____	126
I.1.2. Age of criminal liability _____	127
I.1.2.1. Domestic legislation _____	127
I.1.2.2. International legal framework _____	128
<i>I.2. Stages of the juvenile offender interview</i> _____	129
I.2.1. Special procedural provisions applicable to juvenile offender trials _____	129
I.2.1.1. Need for special regulations in the domestic law _____	130
I.2.1.2. Mandatory minimal procedure _____	130
I.2.2. Preparing the juvenile offender interview _____	131
I.2.2.1. Selection of the interview time _____	131
I.2.2.2. Background data collection concerning the case and the child _____	132
I.2.2.3. The preparation of the magistrate for the interview _____	136
I.2.2.4. Relationship between the juvenile offender interview and the various age brackets _____	136
I.2.2.4.1. The juvenile offender under 14 _____	136
I.2.2.4.2. The juvenile offender aged between 14-16 and 16-18 _____	137
I.2.2.5. Place of the juvenile offender interview _____	138
I.2.2.5.1. During the criminal investigation _____	138
I.2.2.5.2. During the court investigation _____	138

1.2.2.6. Other persons present during the juvenile offender interview _____	140
1.2.2.6.1. Practical difficulties _____	140
1.2.2.6.2. Actual duality _____	140
1.2.2.6.3. Rule of the matter _____	141
1.2.2.6.4. International legal framework _____	142
1.2.3. The juvenile offender interview _____	143
1.2.3.1. Building up the trust between the magistrate and the juvenile offender _____	143
1.2.3.2. Strategy concerning the juvenile offender interview _____	144
1.2.3.3. Supplying information concerning procedural rights _____	146
1.2.3.4. Main safeguards throughout the process _____	146
1.2.3.5. The offender's right not to say anything and the right not to self-incriminate _____	147
1.2.3.6. The juvenile offender interview _____	148
1.2.3.6.1. No difference with respect to the adult offender interview _____	148
1.2.3.6.1.1. Identification _____	149
1.2.3.6.1.2. Free speech _____	150
1.2.3.6.2. General strategic procedures _____	150
1.2.3.6.3. Division of questions into categories _____	152
1.2.3.7. How appropriate is the confrontation _____	153
<b>II. Child witness interview throughout the criminal process _____</b>	<b>154</b>
<i>II.1. Preparing the child witness for the interview _____</i>	<i>154</i>
II.1.1. Summoning the child witness _____	155
II.1.2. The time of the child witness interview _____	156
II.1.3. The place of the child witness interview _____	156
II.1.3.1. Selection of the interviewing place throughout the criminal investigation _____	156
II.1.3.2. Selection of the interviewing place throughout the trial in court _____	157
II.1.4. Features that characterize child witness personality _____	157
<i>II.2. Child witness interview _____</i>	<i>158</i>
II.2.1 Strategic rules for the child witness interview _____	158
II.2.2. Witness identification and swearing-in _____	159
II.2.3. Listening for the free speech of the child witness _____	161
II.2.4. Asking questions for the interviewee and hearing the answers _____	162

II.2.5 The magistrate's empathetic attitude _____	164
<b>III. Recording and evaluating the juvenile offender interview or the child witness interview _____</b>	<b>166</b>
III.1. Developing the court report concerning the child witness or the juvenile offender interview _____	166
III.2. Child interview assessment _____	170
III.2.1. Assessment of the juvenile offender statement _____	170
III.2.2. Aspects to clarify throughout the child interview _____	170
III.2.3. Check and assess the child witnesses' statements _____	172
<b>References _____</b>	<b>173</b>

## Chapter VI. Child victim interview throughout the criminal

justice process _____	175
<b>I. Preparing the child victim interview _____</b>	<b>175</b>
I.1. The need for a preliminary stage of the interview _____	175
I.2. Persons summoned to witness the child interview _____	176
I.3. Legal aid _____	182
I.4. Preparing the child victim for the interview _____	186
I.5. The magistrate's preparation for the interview _____	190
I.5.1. The professional training of the child interviewer _____	190
I.5.2. Development of the victim interviewing plan _____	191
I.6. Interviewing place _____	194
I.6.1. During the criminal investigation _____	194
I.6.2. In court _____	195
<b>II. The child victim interview _____</b>	<b>199</b>
II.1. Applicable legal framework _____	199
II.2. The child victim interviewing stages _____	201
II.2.1. Explanatory and preliminary questions stage _____	202
II.2.2. The Free speech stage _____	205
II.2.3. The stage of the questions _____	206
II.3. Types of questions used for the molested child interviews _____	210
II.3.1. Types of questions used to investigate molestation _____	211
II.4. Evidentiary value of the child victim statement _____	214
II.5. Disadvantages related to the repeated child victim interview _____	217
<b>References _____</b>	<b>220</b>

<b>Chapter VII. Practical exercises in the civil matter</b>	<b>223</b>
<b><i>I. Practical exercise 1. Exercise of child visitation rights</i></b>	<b>223</b>
<i>I.1. Interviewing a child in connection with the visitation rights of the parent without custody</i>	225
<b><i>II. Practical exercise 2. Child custody in a case of divorce, as granted in the appeal procedure</i></b>	<b>234</b>
<i>II.1. Interviewing a child a second time during an appeal procedure related to custody</i>	238
<b><i>III. Practical exercise 3. Child placement in an emergency case</i></b>	<b>247</b>
<i>III.1. Interviewing a child in an emergency placement case</i>	248

# Foreword

This guidebook concerning the child interview throughout the legal proceedings is a practical application of an interdisciplinary set of psychological concepts and practices and domestic and international laws aimed to add value and observe the rights of the child in all the legal contexts in which they might find themselves.

According to the very principle of the rights of the child, these rights should be enjoyed between paternalism and self-determination, the major imperative being to enforce the principle of the best interest of the child in all actions related to children involved in legal proceedings, intrinsically tied to the principle of consulting the children and respect their opinion.

Added to this is the adequate legal protection, as well as the special measures of care, because of the lack of physical and intellectual development of the child.

Because of this child-specific psycho-legal matrix, the guidelines are aimed at enabling the magistrate to adopt the best approach in the cases they are confronted with (when the child is a party, a witness, an offender or a victim etc.), to avoid the subsequent traumatization of the child throughout the legal proceedings.

To this purpose, the guidebook is thus structured to include a psychological approach to reflect the essential features of the child, in connection with the latter's age, of interest for the court proceedings, asking for the adequate treatment in terms of child interview/ interview. That is why the technical procedure of the interview is relevant, since it is aimed at facilitating the communication between the child and the magistrate, with a view to discerning the reality of the statement, to distinguishing between fabrication/ deception – truth, questions/ attitudes which facilitate, block or deviate the child's possible answers.

The guidelines also dwell on the trust on which the relationship between the child and the magistrate must be based, since the interview technique is essentially aimed at observing the general principles related

to the protection and promotion of the rights of the child, in close connection with the principle of finding the truth by the magistrate.

To cover the range of legal contexts in which a child may be placed throughout the legal proceedings, the guidelines took into account the civil law and civil procedural law, the criminal law and the criminal procedural law to provide a context based on the international regulatory framework in the matter of the rights of the child.

The notions developed in the guidelines may be viewed as a working instrument of the magistrate, irrespective of the nature of the legal framework in which the contact with the child will take place.

These complex legal contexts have been developed based on specific rules applicable to each one of them and the guidebook sought to distinguish, based on the nature of the proceedings, the conduct of the magistrate in connection with the child, so as to protect and care for the child throughout the legal proceedings.

Observance of the suggestions inserted in these guidelines is likely to lead to the development of a responsible environment for the child, irrespective of the legal field in which they find a concrete shape.

**Mona-Maria Pivniceru**  
**Cătălin Luca**

# Chapter I

## International documents in the matter of the rights of the child

*Mona-Maria Pivniceru\**  
*Catalin Luca\*\**

*General considerations* International regulations acknowledge children all the rights in connection with their status as individual human beings and not as mere extensions of their parents, emphasizing their biological, psychological and social features, likely to limit their legal standing in certain contexts. This calls for an intervention to assist, protect and care for the children, according to their level of ontogenetic development. This latter feature makes the rights of the child vulnerable, as, even if they are formally identical in content and implementation, they differ based on the development process of the child and they imperatively claim for the implementation of the best interest of the child principle.<sup>1</sup>

### 1. Universal framework for the protection of the rights of the child

*Framework convention* The United Nations Organization adopted in 1989 the Convention on the Rights of the Child<sup>2</sup>, an international

---

\* Mona-Maria Pivniceru Ph.D. is a University Professor and a judge at the High Court of Cassation and Justice – Romania.

\*\* Catalin Luca Ph.D. is a psychologist specialized in clinical psychology and an executive director of the Alternative Sociale Association.

<sup>1</sup> Philip Alston, Stephen Parker, John Seymour, *Children Rights and Law*, Oxford, Clarendon Press, 1992, p. 5.

<sup>2</sup> Adopted by the General Assembly of the United Nations on 29 November, 1989 and in force since 2 September 1990. Romania ratified the Convention through Law No. 109 of 18 September 1990 for the ratification of the Convention on the

document which summarizes the whole set of civil, political, economic, social and cultural-educational rights of the child in a global document called the International Charter of the Rights of the Child.

*Typology of the rights of the child*

As structured by the Committee on the Rights of the Child, the typology of the rights of the child is as follows:

1. *Civil rights and political freedoms.*

- a. The right to a name and nationality (Article 7);
- b. The right to the preservation of personal identity (Article 8);
- c. Freedom of expression (Article 13);
- d. Free access to information (Article 17);
- e. Freedom of thought, conscience and religion (Article 14);
- f. Freedom of association and freedom of peaceful assembly (Article 15);
- g. Protection of private life, honor and reputation (Article 16);
- h. The right not to be subject to torture, inhuman or degrading treatment or punishment (Article 37 letter a);

2. *The right to protection and care in the family environment, the right to alternative assistance and the protection of the best interest of the child:*

- a. The right to parental care (Article 5);
- b. The parents' obligations to raise and develop a child (Article 18 paragraphs 1 and 2);
- c. Separation from parents (Article 9);
- d. Family reunification (Article 10);
- e. The obligation of maintenance (Article 27 paragraph 4);
- f. Alternative assistance for children deprived of family environment (Article 20);
- g. Adoption (Article 21);

---

Rights of the Child, published in the Romanian Official Gazette No. 199/28 September 1990. The Convention adopted the following optional Protocols: the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

h. Transfer and non-return of children abroad (Article 11);  
i. Protection against abuse and negligence or maltreatments (Article 19), as well as the right to assistance and the physical and psychological recovery with a view to the social reintegration of the abused and neglected children (Article 39);

j. The right to a periodical review of the placement measures (Article 25);

*3. The right to health and welfare:*

a. The right to survival and development (Article 6 paragraph 2);

b. The right of disabled children to a decent life and special care (Article 23);

c. The right to health and medical services (Article 24);

d. The right to social security, as well as social assistance services (Article 26 and Article 18 paragraph 3);

e. The right to a decent life standard (Article 27);

*4. The right to education, leisure and cultural activities:*

a. The right to education, including general and vocational education (Article 28);

b. Education goals (Article 29);

c. The right to spare time, leisure and cultural activities (Article 31);

*5. Special measures to protect the rights of the child:*

a. Protection of children in distress:

i. Refugee children (Article 22);

ii. Children in armed conflict (Article 38), including physical and psychological recovery with a view to their social reintegration (Article 39);

b. Protection of juvenile offenders:

i. Administration of juvenile justice (Article 40);

ii. Children deprived of liberty by any means of detention, in jail or placement in special centers (Article 37 letters b, c and d);

iii. Conviction of minors, and especially the repeal of the capital punishment and life imprisonment (Article 37 letters b, c and d);

iv. Physical and psychological recovery with a view to

their social reintegration (Article 39);

c. Protection of children subject to exploitation:

i. economic exploitation, including through forced child labor (Article 32);

ii. Drug use (Article 33);

iii. Sexual exploitation and sexual abuse (Article 34);

iv. Other forms of exploitation (Article 36);

v. sale, traffic and abduction (Article 35);

d. The rights of the children from ethnic minorities or indigenous groups

The Convention also identifies the obligations of the states in connection with the education, protection of child development, determining the family and social factors likely to implement all these desiderates.

### *Other international instruments*

Other universal international instruments have an active approach on juvenile delinquency and took a concrete shape in two resolutions of the United Nations Organization:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules adopted in 1985 through Resolution No. 40/33 of the General Assembly)<sup>3</sup>;
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines adopted in 1990 through Resolution No. 45/112 of the General Assembly)<sup>4</sup>;
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted in 1990 through Resolution No. 45/113 of the General Assembly)<sup>5</sup>;

---

<sup>3</sup> [http://child-abuse.com/childhouse/childrens\\_rights/dci\\_be27.html](http://child-abuse.com/childhouse/childrens_rights/dci_be27.html) accessed on 01 September 2009.

<sup>4</sup> <http://www.un.org/documents/ga/res/45/a45r112.htm> accessed on 01 September 2009.

<sup>5</sup> <http://www2.ohchr.org/english/law/juvenile.htm> accessed on 01 September 2009.

- The Guidelines for Action on Children in the Criminal Justice System (adopted through Resolution No. 30/1997 of the Economic and Social Committee)<sup>6</sup>;
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules 1990)<sup>7</sup>.

### *Main ideas*

#### *Two elements of structure*

International documents in the matter of children cover in reality the whole set of human rights and stipulate various major innovations, such as the right to participation, which means that the children must be informed on their rights. On the other hand, the Convention introduces two new elements of structure, with impact on the whole set of regulations: the best interest of the child (Article 3), which filters all actions related to the child and the principle according to which parents or any other legal guardian must guide and safeguard the exercise of the rights of children based on their individual development. (Article 5).

#### *Child specific rules*

International regulations also provide child specific rules, irrespective of the legal situation in which they may find themselves, including the case when children shall be deemed offenders.

---

<sup>6</sup> [http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf) accessed on 25 September 2009.

<sup>7</sup> [http://209.85.129.132/search?q=cache:VdH5g8tE6A8J:www.dejure.md/library\\_upld/d234.doc+Regulile+Minimale+ale+Na%C5%A3iunilor+Unite+pentru+elaborarea+m%C4%83surilor+neprivative+de+libertate+\(Regulile+de+la+Tokyo+1990\)&cd=1&hl=ro&ct=clnk&gl=ro](http://209.85.129.132/search?q=cache:VdH5g8tE6A8J:www.dejure.md/library_upld/d234.doc+Regulile+Minimale+ale+Na%C5%A3iunilor+Unite+pentru+elaborarea+m%C4%83surilor+neprivative+de+libertate+(Regulile+de+la+Tokyo+1990)&cd=1&hl=ro&ct=clnk&gl=ro) accessed on 09 September 2009.

## 2. Main European documents for the protection of the rights of the child

*Rights of the child provided at European level* At European level the constant concerns related to the matter of the rights of the child became fulfilled with the adoption of conventions and recommendations which make substantial the fundamental rights of the child, covering the whole person of the child, who, as a human being, has sufficient title to claim and exercise these rights.

*European Union level* The Charter of Fundamental Rights of the European Union<sup>8</sup> places the child at the core of its concerns, as indicated in Article 24 of the Charter, called *The Rights of the Child*.

*Council of Europe level* *European Convention on the Exercise of Children's Rights*<sup>9</sup> The European Convention on the Exercise of Children's Rights is the instrument that defined the specific procedures related to the concrete exercise of the children's rights, who must be given a way to exercise their rights especially in connection with the family procedure that affects them; to be informed in connection with their rights and to be allowed to express their opinion, being acknowledged the importance of parents in protecting and promoting the children's rights and interests that needs the involvement of the Member States in their protection and promotion.

*Convention of 15/05/2003 on Contact concerning Children*<sup>10</sup> whose aim is to set the general principles that must be applied to decisions concerning the personal contacts, the adequate safeguards and guarantees to ensure the normal exercise of personal contacts and the

---

<sup>8</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) accessed on 01 September 2009.

<sup>9</sup> Adopted by the Council of Europe in 1996 <http://www.coe.int/t/transversal/projects/children/Defaultfr.asp>

<sup>10</sup> Published in the Romanian Official Gazette No. 257 of 17. 04.2007 and entered into force on 17 April 2007.

immediate return of children when the visitation period is over, as well as the establishment of cooperation among all central authorities and all the other competent bodies to improve personal relationships between children and their parents, as well as with the other persons who have family contacts with these children.

*Recommendations of the Committee of Ministers*

The Committee of Ministers of the Council of Europe adopted several recommendations in the area of juvenile delinquency. These recommendations are based on the principle of the absolute supremacy of prevention, the decreased intervention of the criminal justice, as well as the need for community participation in the development of the criminal policy.

Main recommendations in the matter: Recommendation R (85)11 on the position of the victim in the framework of criminal law and procedure<sup>11</sup>; Recommendation R (85) 4 on violence in the family<sup>12</sup>; Recommendation 1065 (1987) of the Parliamentary Assembly of the Council of Europe on the traffic in children and other forms of child exploitation<sup>13</sup>; Recommendation R (87) 19 on the organization of

---

<sup>11</sup> Adopted by the Committee of Ministers of the Council of Europe on 28 June 1985 on the 387th meeting of the Ministers' Deputies

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605227&SecMode=1&DocId=686736&Usage=2>;

[http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf) accessed on 25 September 2009.

<sup>12</sup> Adopted by the Committee of Ministers of the Council of Europe on 26 March 1985 on the 382nd meeting of the Ministers' Deputies

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=604990&SecMode=1&DocId=686100&Usage=2>;

[http://www.coe.int/t/e/social\\_cohesion/soc-sp/D%C3%A9cl%20politique%20Roumain.pdf](http://www.coe.int/t/e/social_cohesion/soc-sp/D%C3%A9cl%20politique%20Roumain.pdf) accessed on 25 September 2009.

<sup>13</sup>[http://209.85.135.132/search?q=cache:z\\_JOpaYkqocJ:www.coe.ro/down\\_pdf.php%3Fabs\\_path%3Ddocumente\\_traduceri/documente/cj2.pdf+Recomandarea+1065+a+Adun%C4%83rii+Parlamentare+a+Consiliul+Europei+referitoare+la+comer%C8%99Bul+%C8%99i+alte+forme+de+exploatare+a+copiilor&cd=1&hl=ro&ct=clnk&gl=ro](http://209.85.135.132/search?q=cache:z_JOpaYkqocJ:www.coe.ro/down_pdf.php%3Fabs_path%3Ddocumente_traduceri/documente/cj2.pdf+Recomandarea+1065+a+Adun%C4%83rii+Parlamentare+a+Consiliul+Europei+referitoare+la+comer%C8%99Bul+%C8%99i+alte+forme+de+exploatare+a+copiilor&cd=1&hl=ro&ct=clnk&gl=ro) accessed on 25 September 2009.

crime prevention<sup>14</sup>; Recommendation R (87) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content<sup>15</sup>; Recommendation R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in children and adults<sup>16</sup>; Recommendation R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families<sup>17</sup>.

### 3. General principles related to the safeguard and promotion of the rights of the child

#### *1. The principle of the best interest of the child*

*Background* This principle is provided in Article 3 of the Convention on the Rights of the Child and covers in scope both the non-patrimonial, as well as the patrimonial rights of the child<sup>18</sup> and requires that any decision process connected to a child should address the following mandatory elements: to identify all possible options to solve a problematic situation; to evaluate the predictable outcome of the options found for a given individual

---

<sup>14</sup> Adopted by the Committee of Ministers of the Council of Europe on 17 September 1987 on the 410th meeting of the Ministers' Deputies

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=608119&SecMode=1&DocId=694410&Usage=2>.

<sup>15</sup> Adopted by the Committee of Ministers of the Council of Europe on 20 March 1987 on the 405th meeting of the Ministers' Deputies

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=607693&SecMode=1&DocId=693320&Usage=2>.

<sup>16</sup> Adopted by the Committee of Ministers of the Council of Europe on 09 September 1991 on the 461st meeting of the Ministers' Deputies,

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=572467&SecMode=1&DocId=597998&Usage=2>.

<sup>17</sup> Adopted by the Committee of Ministers of the Council of Europe on 18 April 1988 on the 416th meeting of the Ministers' Deputies

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=608962&SecMode=1&DocId=696974&Usage=2>.

<sup>18</sup> Also see in this respect Article 6 of the European Convention on the Exercise of Children's Rights.

situation; to forecast the opportunities for the predicted outcome to occur in each of the possible scenarios; to determine the specific value for each analyzed result<sup>19</sup>.

*Principle flexibility*

All these feature characterize the principle of the best interest of the child<sup>20</sup> as a flexible principle, adjusted to each individual situation in which children may find themselves; the decision concerning the probability of the various results is taken based on the specific circumstances in which children may find themselves and the protective intention to provide them with the best standard of living<sup>21</sup>.

*Variability of the contents of the principle*

The content of the principle is not predetermined, but it is adjustable based on the child's development stage and it favors the unity and the coherence in connection with the rights of the child, meaning that it reconciles the universality of the children's rights with the variety of the socio-cultural traditions.

*II. The principle of equal opportunities and non-discrimination*

*Social and legal framework*

The social and legal framework as shaped by the international documents provides the principle of equal opportunities and non-discrimination, and any discrimination is perceived as unequal opportunities<sup>22</sup>.

*Content*

Discrimination means any distinction, exclusion, restriction or preference which is aimed at or results in a limitation or cancellation of the acknowledgement to use

<sup>19</sup> Doina Balahur, *Protecția drepturilor copilului ca principiu al asistenței sociale*, Bucharest, All Beck Publishing House, 2001, p.95.

<sup>20</sup> Article 6, letter.a) of the Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette Part I No. 557 of 23 June 2004.

<sup>21</sup> Emese Florian, *Protecția drepturilor copilului*, Bucharest, C.H. Beck Publishing House, 2007, p.8.

<sup>22</sup> Article 2 of the United Nations Convention on the Rights of the Child, published in the Romanian Official Gazette No. 109, 28 September 1990.

or exercise fundamental rights and liberties in equal conditions<sup>23</sup>.

Consequently, equal legal treatment must correspond to equal situations, and different legal treatment must correspond to different situations<sup>24</sup>. The principle of equal opportunities and non-discrimination<sup>25</sup> also aims at supporting children with disabilities as it provides for them the possibilities for the establishment of an adequate standard of living for them.

### *III. The principle related to the parents' empowerment to observe and safeguard the rights and fulfill their parental responsibilities*

*Content* According to this principle<sup>26</sup>, the parents are the main managers of the rights for their children, as their legal representatives, and, consequently, they are the holders of a complex set of related obligations<sup>27</sup>, supplemented by the specialized system of assistance, likely to increase their capacity to nurture and care for the children.

---

<sup>23</sup> Article 1 of the International Convention on the elimination of all forms of racial discrimination, adopted and open for signature by the General Assembly of the United Nations through Resolution 2106 (XX) of 21 December 1965. It entered into force on 4 January 1969, according to the provisions of Article 19. Romania signed the Convention on 14 July 1970 by Decree No. 345, published in the Romanian Official Bulletin, Part I, No. 92 of 28 July 1970. Through Law No. 144/1998, published in the Romanian Official Gazette, Part I, No. 261 of 13 July 1998, Romania withdrew its reservation regarding Article 22 and Article 1 of the Convention on the elimination of all forms of discrimination against women, adopted through UN Resolution No. 34/180 of 18 December 1979, which entered into force on 3 September 1981, ratified by Romania through Decree No. 342/1981, published in the Romanian Official Bulletin No. 94 of 1981.

<sup>24</sup> Ion Deleanu, *Instituții și proceduri constituționale*, Arad, Servo-Sat Publishing House, 2003, p. 400.

<sup>25</sup> Article 6, letter b) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>26</sup> Article 6, letter b) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>27</sup> Emese Florian, *op. cit.*, p.13.

*IV. The principle of the prevalence of the parents' responsibility in connection with the observance and safeguard of the rights of the child*

*Parents' responsibility* The responsibility to raise and support children's development lies mainly on the shoulders of the parents who must get involved in all decisions, actions and measures in connection with the child, taken by the public authorities, the authorized private bodies or ordered by the courts. The responsibility in connection with the observance and safeguard of the rights of the child<sup>28</sup> lies equally with the two parents, irrespective whether the child belongs to a married couple, is born out of wedlock or adopted<sup>29</sup>.

*Community responsibility* A supplementary responsibility concerning the protection and assistance of children lies with the local community, which must support the parents or any other legal representative of the child and which must develop diversified services, appropriate for the needs of the child.

*V. The principle of decentralization applied to child protection services, the multisectoral intervention and the partnership between the public institutions and the authorized private bodies<sup>30</sup>*

*Content* Monitoring how the principles and the rights acknowledged for the children are observed, as well as control of the activities to protect and promote the rights of the child must be done not only at the central level, but also at the local level by specialized bodies.

---

<sup>28</sup> Article 6, letter. d) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>29</sup> Article 16 paragraph 1 of the Constitution of Romania, Article 31 paragraph 1 of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>30</sup> Article 6, letter e) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

## VI. *The principle of providing individual and customized care for each child*

*Content* This principle provides consistency to the principle of promoting the best interest of the child<sup>31</sup>.

The implementation of this principle<sup>32</sup> must take place not only within the normal coordinates of the family framework, but also at the level of the additional intervention forms, by the specialists in the field of child protection, aimed at supporting the parental care or replacing it in the case of children temporarily or permanently deprived of parental care.

According to this principle, special care is needed in the case of children with disabilities.

## VII. *The principle of observing the dignity of the child*<sup>33</sup>

*Content* The principle of observing the dignity of a child refers to the right of a child to be perceived under analysis as a unique and distinctive human being, taking into account the vulnerability of their age and their development stage<sup>34</sup>.

This means that children cannot be applied physical punishments or any other humiliating or degrading treatments<sup>35</sup>, cannot be affected their public image, nor their private and family life and cannot be subject to any form of exploitation<sup>36</sup>.

---

<sup>31</sup> Emese Florian, *op. cit.*, p.19.

<sup>32</sup> Article 6, letter f) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>33</sup> Article 6, letter g) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>34</sup> Article 37, letter c) of the UN Convention on the Rights of the Child, published in the the Romanian Official Gazette No. 109, 28 September 1990.

<sup>35</sup> Article 37 letter a) of the UN Convention on the Rights of the Child, published in the the Romanian Official Gazette No. 109, 28 September 1990.

<sup>36</sup> Emese Florian, *op. cit.*, p.19.

*VIII. The principle of interviewing a child's view and taking it into consideration bearing in mind the child's age and development stage*

*Content* The action of this principle is general<sup>37</sup> and accompanies the fundamental right of the child to self-expression, not only in relation with the legal or administrative authorities, but also in relation with the parents. There is a correspondence between the right of the child to be interviewed and the extent in which their views are attached value. Children's views are shaped by their age and development stage, however, the best interest of the child has supremacy, therefore a distinction must be made between the consultation of the child and taking the child's consent<sup>38</sup>.

*Back-ground* In this matter, Article 12 paragraph 2 of the UN Convention on the Rights of the Child provides that: "For this purpose, the child shall in particular be provided the opportunity to be interviewed in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

*IX. The principle of ensuring stability and continuity in the care, raising and education of a child, taking into account their ethnic, religious, cultural and linguistic background in the case when taking a protection measure*

*Scope of the principle* The scope of the principle includes those situations when certain measures of protection (guardianship etc.), certain measures of special protection (emergency placement, adoption etc.) must be taken, and it also includes provisions with respect to ensuring stability, continuity, care, raising and education of the child, which make of

---

<sup>37</sup> Article 6, letter h) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>38</sup> Decision No. 82/2003 of the Constitutional Court, published in the Romanian Official Gazette No. 89 of 26 March 2003.

the decision to separate the child from a family a measure of last resort<sup>39</sup>.

This principle<sup>40</sup> also applies in a situation of preventing the separation of a child in distress from his family, when it is mandatory to supply services and benefits based on the psycho-social evaluation of the child and his family, to provide information and counseling for the parents, as well as to provide access to therapy and mediation services.

#### *X. The principle of celerity in taking any decision involving children*<sup>41</sup>

**Maximum speed** Any measure, decision or procedure that involves children must be taken with the maximum of speed, not to deprive them of assistance and protection at any moment, irrespective of the special circumstances in which they may find themselves.

#### *XI. The principle of ensuring protection against child exploitation and abuse*<sup>42</sup>

**Definition** Abuse is the voluntary action of a person in a relationship of responsibility, trust or authority with a child, and which endangers the life, physical, mental, spiritual, moral or social development of the child, affects the bodily welfare, physical or mental health of the child<sup>43</sup>, and exploitation bears the additional element of the profit of any nature for its author.

---

<sup>39</sup> Emese Florian, *op. cit.*, p.23.

<sup>40</sup> Art. 6, lit. i) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>41</sup> Art. 6, lit. j) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>42</sup> Art. 6, lit. k) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>43</sup> Art. 89, par. 2, of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

*XII. The principle of interpreting any legal document related to the rights of the child in connection with the set of regulations applicable in the matter*<sup>44</sup>

*Interpretive correlations*      The regulatory completeness in connection with the rights of the child requires the interpretive correlation with all the other legal provisions containing provisions in the area of the children, as well as the international regulations in the matter, as provides Article 20 par. 2 of the Constitution of Romania<sup>45</sup>.

## References

1. Alston P., Parker J., Seymour A., *Children, Rights and Law*, Clarendon Press, Oxford, 1992;
2. Balahur Doina, *Protecția drepturilor copilului ca principiu al asistenței sociale*, All Beck Publishing House, 2001;
3. Emese Florian, *Protecția drepturilor copilului*, C.H. Beck Publishing House, Bucharest 2007;
4. Deleanu Ion, *Instituții și proceduri constituționale*, Servo-Sat Publishing House, Arad, 2003;
5. United Nations Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, published in the Romanian Official Gazette No. 109 of 28 September 1990.
6. International Convention on the elimination of all forms of racial discrimination, adopted and open for signature by the

---

<sup>44</sup> Art. 6, lit. l) of Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004.

<sup>45</sup> "Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions."

UN General Assembly through Resolution No. 2106 (XX) on 21 December 1965.

7. Convention of 17.07.2006 on contact concerning children, published in the Romanian Official Gazette, Part I, No. 257 of 17.04.2007 and entered into force on 17 April 2007.
8. Law No. 272/2004 concerning the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I, No. 557 of 23 June 2004
9. Decision No. 82/2003 of the Constitutional Court, published in the Romanian Official Gazette No. 89 of 26 March 2003.

# Chapter II

## A psychological approach concerning the child interview stages

*Mona-Maria Pivniceru\**  
*Catalin Luca\*\**

### I. Interview stages

#### *1.1. Preparing the interview*

##### *1.1.1. Establishing the trust between the child and the magistrate who must interview the child*

*Goal of making contact*            It is aimed to prepare the child for the following stages of the interview, remove barriers in the way of the direct communication between the child and the person who must interview him, establish a climate of trust, likely to persuade the child to give complete statements.

*Means of strengthening the relationship*            The trust between the child and the magistrate who must interview the child may be strengthened by getting closer to the child (use the first name, invite the child to speak about his own impressions, feelings: name of the closest friend, movie/ story he liked best, information about the pre-school/ school life etc.), which decreases the stress, the fear of unknown, elements which associate with the interview which is about to take place. Setting this stage is also a matter of the experience of the magistrate who must interview the child or his/her

---

\* Mona-Maria Pivniceru Ph.D. is a University Professor and a judge at the High Court of Cassation and Justice – Romania.

\*\* Catalin Luca Ph.D. is a psychologist specialized in clinical psychology and an executive director of the Alternative Sociale Association.

specialty with respect to those procedures which involve children.

*Content of the relationship*

At this stage, the child is informed about the goal of his interview, about how the interview will take place and about how important are the details included in his story, as well as the fact that he has the right to remain silent in special situations.

*How it is done*

All these goals pursued may be achieved with the use of the introductory questions, aimed at guiding the conversation to the problems of the child. For example: *Can you tell me why we must talk today? Has anyone told you why you came to me to talk?* Teenagers may be quite likely to say that they are not aware of the reason of the interview even if they have been informed thereupon by the adult accompanying them, while smaller children may acknowledge the reason and give answers along the following lines: *Shall I tell you about the bad things?; Shall I tell you what my father did to me?*<sup>1</sup>

### *1.1.2. Distinguishing between truth and deception*

*Determining the capacity of the child to distinguish between truth and deception*

Before the interview per se, the person who must interview the child must determine his capacity to distinguish between truth and lie, between the consequences of a lie told by him and his commitment to tell the truth during the interview<sup>2</sup>. Full understanding of the moral obligation of the child to tell the truth may develop around 9-10 years of age.<sup>3</sup> Here are a few questions which may be used:

---

<sup>1</sup> Sofia Luca et.al., „Protecția minorului victimă în cursul cercetării judecătorești ” in the *Practici instituționale în instrumentarea cauzelor cu minori*, Iași, Alternative Sociale Association, 2005, pp. 43-66.

<sup>2</sup> Lindsay E. Cronch, Jodi L.Viljoen, David J.Hansen, *Forensic Interviewing in child sexual abuses cases: Current techniques and future directions*, USA, Elsevier, University of Nebraska-Lincoln, 2005, p. 200.

<sup>3</sup> Paul Ekman, *De ce mint copiii? Cum pot încuraja păriții sinceritatea*, Bucharest, Trei Publishing House, 2009, p.108.

*Mihai, do you know what the difference between truth and lie is? If I tell you that the sun is shining (it is actually raining), is that a truth or a lie? What's best to tell, truth or lies? What happens if you tell the truth? What happens if you tell lies? What do the others around you say (peers, brothers etc.) about you? Do they call you a liar? Or do they say that you tell the truth? How can anybody realize when you are lying and if you are lying?*

*We are going to talk, you will tell me about the things you did/ situations you were involved in. Are you ready to tell me the truth?*

*Relativity of the output*

The expressed commitment of a child to tell the truth during the interview is not an absolute guarantee that he will clearly, precisely and completely relay the events that occurred, but it may be interpreted as the child's availability to cooperate with the magistrate who must interview him, as well as to tell what he knows. Even if the child says that those around him tell that he is lying, the child must be interviewed. Before moving on to the following stages of the interview, the child will have to be explored with questions, when the others around him say that he is lying, he should give examples; if he has really lied, he must be asked why he chose to lie, what he stood to gain or avoid by lying.

*When the child does not distinguish between truth and deception*

When the child does not succeed in distinguishing between truth and deception, even if it can be seen out of the window that it is raining, but the child says that the sun is shining, he is either under extreme emotion (suggestibility), owing to the new situation he is in, fear, threats, or he is likely to have mental health problems. In both instances, a specialist in child protection must be seen (psychologist or pedopsychiatrist).

### 1.1.3. Active listening

*Definition* Active listening<sup>4</sup> is a communication skill which can support the magistrate who must interview a child and which can be useful especially during the free speech concerning the facts. Active listening presupposes a series of attitudes and behaviors aimed to support open communication, to encourage the interlocutor to communicate, it allows for learning as many necessary information as possible, it does not produce negative feelings and sensations, it facilitates a good understanding of those whom one gets contact with, it improves the climate of the talk and it minimizes problems of understanding.

*Means to enforce it* The following suggestions may facilitate active listening in the case of a child who is being interviewed:

- Listen the entire speech, even if you intend to deny it;
- Be patient while you listen;
- Mirror the main ideas in the child's speech;
- Be flexible and objective, do not criticize and do not enter into useless arguments;
- Do not rush to provide advice;
- Be empathetic<sup>5</sup>.

This approach allows the magistrate to be perceived as having a welcoming, friendly and understanding attitude towards the child. To approach the child in a formalized and authoritarian fashion may lead to him being afraid or complacent, instead of being trustful and cooperative.

---

<sup>4</sup> Kathrin Robertson, „Active listening. More than just paying attention“ in *Australian Family Physician*, Vol. 34, No 12, December 2005, pp.1053-1055.

<sup>5</sup> According to the Larousse, *Marele dicționar al psihologiei*, Trei Publishing House, 2006: Empathy is the way in which one can intuitively experience the other, based on the capacity to share and even explore other's feelings.

#### 1.1.4. Breaks during the interview

*The break from the narrative*      The need for breaks from the narrative during the child's interview occurs primarily when the magistrate must interview a child victim. While the physical, mental and sexual abuse which the child victim was subject to are recounted, it is very likely that the child could experience feelings and emotions as a consequence of remembering the painful events.

*Feelings and emotions of the child victims*      The literature pinpoints the following feelings and emotions of the child victims: anger, sadness, anxiety, apathy, block, shame, prostration, confusion, antagonizing, stiffness, mental exhaustion, tension, disorientated, concern, demoralized, pessimistic, detached, exasperation, lack of defense, restlessness, powerlessness, irritation<sup>6</sup> etc.

Any time the victim asks for recess because of the high level of anxiety or stress, as a result of the painful memories, the magistrate should realize whether it is to the child's interest to continue investigating that area, to move on to another area of the interview or to postpone the interview, to give the child the time to recover. If the child interview takes place with a psychologist present, then the latter's opinion should also be sought.

*Psychologist present*      A psychologist must be present during the interview, as the psychologist can explain the magistrate how far can the exploration of the abuse the child was subject to, for example, and when a break is needed<sup>7</sup>. This is a way to prevent the risk of a secondary traumatization of the

---

<sup>6</sup> Gary B. Melton et. al., *Psychological Evaluations for the Courts. A Handbook for Mental Health Professionals and Lawyers*, Second Edition, New York, The Guilford Press, 1997, pp. 454-468.

<sup>7</sup> Lindsay E. Cronch, Jodi L. Viljoen, David J. Hansen, *op. cit*, USA, Elsevier, University of Nebraska-Lincoln, 2005, p. 201.

child. The principle *Do not cause harm!*<sup>8</sup> should be the priority of this type of interviews.

## 1.2. The interview

### *Free recollection of facts*

This stage means the free speech of the child, without any interruption wherein he spontaneously recounts the event in his own language. The free recollection of facts provides the most accurate information and the intervention of the person interviewing the child who narrates the event freely must be limited.

It must be guided only when during the free recollection of facts, the child moves away from the subject of the investigation or when his free narration, although in connection with the subject of the investigation, is insignificant.

### *Showing interest towards the statement of the child*

The attitude of the magistrate interviewing the child must show his interest in the statements made by the child, including through the magistrate's body language: keeping an eye contact with the child, without giving the latter the feeling of a stare, that is why the look must regularly move sideways, to remove the feeling of distrust and hostility or that of a stare towards the interlocutor.

The interest towards the statements of the child may also show in words of encouragement urging the child to continue his speech: *...so, ....yes, ... continue* etc.<sup>9</sup> The dialogue between the magistrate and the child should use a relatively slow and clear speech to remove any barriers in understanding, especially when the age of the child is less than 8 – 10 years.

---

<sup>8</sup> The principle *Do not cause harm!* means to avoid inflicting harm to the interviewee, not to cause a secondary trauma, not to affect his safety and mental health.

<sup>9</sup> Lindsay E. Cronch, Jodi L. Viljoen, David J. Hansen, *op. cit.*, USA, Elsevier, University of Nebraska-Lincoln, 2005, p. 197.

*Factors which impact on the information* The likelihood to gather accurate information from the children depends on several factors: the quality of their memory, the way in which the questions are addressed and a whole array of other emotional, cultural and social factors.<sup>10</sup>

The child victims may very well have been threatened, it is quite likely that there have been agreements to keep the secret or the children may have ambivalent feelings towards the person who abused them, especially when the latter is a member of their family, a teacher or any other person close to them. In this case, to be able to tell what happened to them, the children need multiple reassurances that it was not their fault and no bad things will happen<sup>11</sup>.

*The need for questions* Even if the children's free recollection of facts may be accurate, it may often be incomplete, which is a reason why questions must be used.

### 1.3. Questions

*Suggestions on how to ask questions*<sup>12</sup>

1. The language used must be simple and adjusted to the child's level of understanding;
2. The questions must be asked in a supportive tone, in the adequate tone (to avoid the critical or distrusting overtones etc.);
3. The pace of the questions must allow the child to understand what he is asked to do and give him the necessary time to retrieve the information from his memory and formulate his answer;
4. Each question must be relevant and focused;
5. Questions must be brief, clear, one should avoid

---

<sup>10</sup> *Ibidem*, p. 202.

<sup>11</sup> Ellen Bass, Laura Davis, *Beginning to heal. A first book for survivors of child sexual abuse*, California, Harper Perennial, 1993, p.48.

<sup>12</sup> Adaptation after the conference material „Victim identification, and treatment, co-operation between law enforcement and the governmental organizations and non-governmental organizations, witness protection, physical and judicial“, 27-29 September, 2004, Roma, organized by IOM Italy.

insert two questions in one sentence or in a complex grammatical construction;

6. Professional jargon that may create misunderstanding or confusion must be avoided;

7. If the child who is interviewed is the victim of a crime, then questions must be asked so as to avoid the secondary traumatization of the child;

If a child is repeated a question several times, he will change the answer which he has initially given, because he may think that his first answer was wrong or that the magistrate who was interviewing him did not like the first answer or because of the suggestions made by the persons who had provided him with advice or who had interviewed him previously.

### 1.3.1. Types of questions

*Form* During the child interview throughout the criminal and civil court proceedings, four types of questions<sup>13</sup> may be used, based on the age of the child, his level of understanding, his socio-cultural background etc.

#### 1.3.1.1. Open questions

*Goal* Their goal is to gather precise data from the child, through their free speech, minimizing the possibility for subjective interpretation. Open questions are neutral and give the child a possibility to focus on the event he is about to describe, on what happened, thus facilitating the completeness of the information supplied. Examples of open questions: *Can you tell me more about ...? Can you explain me more about ...? You mentioned that ....., do you still remember something about this event?* Open questions are recommended with children older than 10 years old<sup>14</sup>.

---

<sup>13</sup> Thomas D. Lyon, *Speaking with children: Advice from investigative interviewers*, Denver, National Association of Counsel for Children, 2005, pp. 4-7.

<sup>14</sup> *Ibidem*.

### 1.3.1.2. Specific questions

*Goal* Use of specific questions is likely to supplement the typology of the open questions, with the aim to accurately determine the circumstances; it is focused on particularly significant aspects in the speech of the child and clarifies the distorted elements, by distinguishing between free recollection and recognition<sup>15</sup>. During the free recollection of facts, the magistrate invites the child to tell *what happened*, whereas during the recognition, the magistrate supplies the child with options and the child chooses the correct version. From this stage onward, the child affirms or denies what the magistrate tells him. Examples: *Where? When? What? Who? Why?* It is recommended to use the specific question *Why?* on a neutral tone to suppress the risk of stimulating guilt, blame or accusing feelings in the child. These are recommended for smaller children, under 10 years old<sup>16</sup>.

### 1.3.1.3. Closed questions

*Failure of the first two categories* They may be used when the first two types of questions have failed in the clarification or recognition of significant elements in the statement of the child. Their use must be limited owing to their low potential to stimulate the gathering of additional information and the associated risk of distorting the information because of the artificial limitation of the options to answer.

*Likely risk* Using this type of question comes with the risk of having the answer *yes* or *no* not reflecting the reality, as the child may be tempted to guess the answer he cannot recall exactly or which he believes to be the answer that the magistrate expects. The research mentions small

---

<sup>15</sup> Thomas D. Lyon, *op. cit.*, National Association of Counsel for Children, Denver, 2005, pp. 4-5.

<sup>16</sup> Lindsay E. Cronch, Jodi L. Viljoen, David J. Hansen, *op. cit.*, Elsevier, University of Nebraska-Lincoln, USA, 2005, p. 197.

children feel compelled to choose one of the answers and have the tendency to choose the last option.<sup>17</sup>

#### 1.3.1.4. Leading questions

*Background and aim* This type of question must be used when all the other types of questions did not highlight the elements of the contents of the statement. Their use must be avoided since their answer is an implicit one, therefore, arguable. Example: *You want to stay with your mother, isn't it? You stole the cassette recorder from the car, didn't you? He would beat you up often, wouldn't he?*

#### 1.4. Suggestions on how to investigate child victims

*Facilitate the children's speech* These suggestions of investigation are easy to apply and will facilitate the narration of facts by the children throughout the interview. They are much more efficient when they are applied to the older children and, in general, minimize the children's suggestibility.<sup>18</sup>

1. Tell the child you do not know anything and ask him to tell you what happened. According to the research, children often think that the person who interviews them knows what happened and, consequently, already knows the answers to the questions about to be asked. Because of it, their suggestibility is increased<sup>19</sup>. If you tell the child at the beginning of the interview that you do not know what happened, then his suggestibility to the misleading questions will decrease.<sup>20</sup> This is not a recommendation for children younger than three since they do not have the capacity to understand and relay information about others.

---

<sup>17</sup> Walker & Lunning, 1998, *apud* Thomas D. Lyon, *op. cit.*, Denver, National Association of Counsel for Children, 2005, pp. 4-5.

<sup>18</sup> *Ibidem*, p.10.

<sup>19</sup> Ceci, Ross & Toglia, 1987 *apud* Thomas D. Lyon, *op. cit.*, Denver, National Association of Counsel for Children, 2005, p.8.

<sup>20</sup> *Ibidem*.

2. Tell the child that there is no problem if he says *I don't know*, but that it is important for him to answer the questions whose answer he knows. The recommendation for the magistrate is to say: *If I ask you something and you do not know the answer, say "I don't know", but if you know the answer, please tell it to me.* Children are often reluctant to answer *I don't know*, especially when they are asked closed questions, which they have to answer with *yes* or *no* or when they are asked specific questions.<sup>21</sup> According to the research<sup>22</sup>, this convention with the child during the interview decreases his suggestibility to misleading questions. However, if the child feels comfortable to answer with *I don't know*, this convention agreed with him may be unproductive. Children may say *I don't know* without having received the magistrate's instruction when the interview takes place in a comfortable atmosphere.<sup>23</sup>

3. Tell the child that he may say *I don't understand* when he does not understand the question because he does not know what a particular word means. Provide assurances to the child that if he says *I don't understand*, you will rephrase the question by using simpler words so that they can be understood by him. The children will ask very rarely to be explained a word when they do not understand it and are less concerned than adults to follow up whether they have correctly grasped the meaning of the word.<sup>24</sup> This consensus will diminish the likelihood of the child answering questions which he does not understand, a situation which could create confusion.

---

<sup>21</sup> *Ibidem*, p.9.

<sup>22</sup> Thomas D. Lyon., Martha Matthews, *Questioning of Child Witnesses*, 2006.  
<http://works.bepress.com/cgi/viewcontent.cgi?article=1037&context=thomaslyon>  
accessed on August 6, 2009.

<sup>23</sup> D.A. Poole, S. Lindsay, „Children's suggestibility in the Forensic Context" in Eisen L.M., Quas A.J., Goodman G.S. (editors), *Memory and suggestibility in the Forensic Context*, New Jersey, Lawrence Erlbaum Associates Inc., 2002, p. 331.

<sup>24</sup> *Ibidem*.

4. Secure the child's promise that he will tell the truth. You may tell the child: *Will you promise that you will tell me the truth?* Then ask him, *Do you plan to tell me any lie?* Children are not familiar with the depth of the oath sworn into by the adult, whereas they do know what a promise means since they are 6 or 7 years old.

### *1.5. Conclusion of the interview*

#### *Conclusion of the interview*

This stage marks the conclusion of the interview and takes place when the child has told you about all the elements he was aware of or was willing to share. This stage includes the summary of the essential tenets in the testimony of the child, by using his own words, to check the span of understanding the information gathered from the child's interview by the person interviewing him.

#### *Specific activities*

Also at this stage, the child must be asked if he understood everything that was debated or if there are any problems he wants clarified, if he has any questions eventually for the magistrate. This stage concludes by thanking the child for the interview, highlighting its importance for the solution to the problem at hand and by explaining, if the child is in agreement, the subsequent steps of the civil and/ or criminal proceedings in which the child has been involved.

### *1.6. Evaluation of the interview*

#### *Evaluation of the interview*

At this stage, the person doing the interview shall mainly determine the following: if and to what extent the goals of the interview have been accomplished; if and to what extent the appropriate types of questions have been used in connection with the interview outcome; if and to what extent relevant and useful information was gathered to find a solution to the proceedings which involve the child; if the information gathered through the child interview will supplement the amount of

already existing evidence or highlight the need for new evidence in the light of the new elements submitted by the child in his interview; if and to what extent the interview outcome corroborates with other evidence administered during the civil and/or criminal proceedings which involved the child and is likely to lay the foundation for a sentence; if and to what extent the child interview needed the intervention of the psycho-social services.

### *1.7. Ten ethical Commandments to conduct child interviews<sup>25</sup>*

1. To inform the child since the first stage of the goal of the interview, how it will take place and how important the details of his story are for the interview;
2. To build a relaxed relationship based on trust during the interview;
3. To highlight to the child when needed that his participation in the interview is voluntary;
4. To inform the child if his interview is tape recorded and about the purpose thereof;
5. Not to exercise any type of pressure, bullying or violence of any kind on the child;
6. Not to bestow on the child his own needs, principles or values, not to blame nor persuade the child victim that he is guilty;
7. Not to transfer on the child his own needs, principles or values, nor manipulate the child into believing in the reality of situations other than those exposed by him;
8. To avoid any inappropriate relationship with the child;
9. To ask for child protection specialized assistance during the extrajudicial proceedings if he cannot manage adequately the relationship with the child towards an efficient interview;
10. Throughout the extrajudicial proceedings, it is recommended that the gender of the interviewer should be the same as the interviewed child.

---

<sup>25</sup> Adapted after Gerald Corey, *Groups – process and Practice*, California, Books/Cole Publishing, Corey, L., Company, 1988

## II. Psychological approach

### II.1. Psychological benchmarks in interviewing a child victim

*The need to be aware of the child development psychology elements*

The awareness by the magistrate involved in the child proceedings of the child development psychology elements, as well as the social, psychological, behavioral consequences of the trauma, may have as benefits the facilitation of the communication between the magistrate and the child, the understanding of the child's "inappropriate" behavior as a consequence of the trauma or the abuse he was subject to.

For instance, one feature that characterizes children in their early school years is the tendency to lie easily<sup>26</sup>. Taking into account this particular feature when interviewing children, the questions must be asked in a very clear, mild and non-aggressive tone, and it should be pointed out to them from the beginning that they should not lie, that they should be trustful and not ashamed or afraid to tell the truth.

*Dissociation*

On the other hand, there are many consequences of traumas with the children<sup>27</sup>, and one of them is *dissociation*. It is manifest in a series of attitudes and behaviors which could come as a surprise for the magistrate interviewing the child. For instance, the emotional numbness may be translated in practice into the fact that the child does not feel the pain those around expected him to feel, so the child does not manifest any emotion regarding the traumatic event and its consequences on him. Temporary amnesia may be another symptom of the traumatic dissociation. In general, the child victim in general does not remember certain elements of the traumatic episode, even if at

---

<sup>26</sup> Gary B., Melton, et al., *Psychological Evaluations for the Courts. A Handbook for a Mental Health Professionals and Lawyers*, London, Second Edition, The Guilford Press, 1997, p. 454.

<sup>27</sup> Gary B. Melton et. al., *op. cit.*, p. 446.

times, the child has very vivid and emotionally loaded images from during the traumatic incident<sup>28</sup>.

*Determining the age when the child understands what a lie is*

To determine the age when the children may understand what a lie is, one has to address the following: how suggestible a smaller child is towards an elder child, how influenced the children are towards the beliefs and the way in which questions are put by an adult, a 4-year old child is likely to be “self-suggestible” towards an elder child, that is to believe in his own lies<sup>29</sup>.

*The age of 4*

Since they turn 4 or since they are even smaller, children know that the intention to mislead somebody is wrong, at this stage in their lives, the children blame lies more than elder children or adults. It is for these reasons that children at this age have been called “truth fanatics”<sup>30</sup>.

*Until the age of 8*

Until they are 8, children consider that lie is any false statement, irrespective whether the person who told it knew or did not know that it was false. This proves that the intention must not be taken into consideration, but only the value of truth of the information<sup>31</sup>. Since they are 8, most of the children, as well as the adults, do not consider that a person is a liar if they are aware that the person is giving false information without being aware<sup>32</sup>.

---

<sup>28</sup> Frank Parkinson, *Post-Trauma Stress*, Los Angeles, Sheldon Press, 1993, pp. 38-55.

<sup>29</sup> Paul Ekman, *De ce mint copiii? Cum pot încuraja părinții sinceritatea*, Bucharest, Trei Publishing House, 2009, p. 107

<sup>30</sup> Gary T. Marx, 1986, „When a Child Informs Parents”, *New York Times*, 22 August 1986 *apud* Paul Ekman, 2009, *De ce mint copiii? Cum pot încuraja părinții sinceritatea*, Bucharest, Trei Publishing House, 2009

<sup>31</sup> Paul Ekman, *op. cit.*, Bucharest, Trei Publishing House, 2009, p. 108.

<sup>32</sup> *Ibidem*, p. 108.

*Scientific research*

According to a survey<sup>33</sup>, 92% of the 5-year old children said that it was always wrong to lie. This figure dropped to 28% as the age of the children grew up to 11. It is interesting that in the same survey, 75% of the 5-year old children said that they had never lied, while none of the children under 11 asserted such virtue for themselves.

In another survey<sup>34</sup>, children were asked if there were types of lies which were wrong. All age groups, from 5 to 11 said that lies to avoid punishments (for instance, not to admit having spilt water on the computer keyboard) were far worse than white lies (for instance, tell a child you like his haircut, when you don't). Altruistic lies (for instance, not to tell a bullying child who wants to hit another where the latter is, when you actually know) have not been condemned by most of the age groups<sup>35</sup>.

*Age and deception*

Until they are 12 years old, or may be even earlier, children do not always consider deception as something wrong, they become more "flexible", while the preadolescents or the teenagers understand that deception is wrong because it makes people stop trusting in you<sup>36</sup>.

*Features betraying deception*

Starting with pre-adolescence and early adolescence, most children become quite capable to lie, they are not always betrayed by the sound of their voice, their face expression, other obvious discrepancies between what they say or strange alibis<sup>37</sup>.

---

<sup>33</sup> *Ibidem*, p. 111.

<sup>34</sup> Thomas D. Lyon, *Child witnesses and the oath: empirical evidence*, <http://www-rcf.usc.edu/~usclrev/pdf/073502.pdf>, accessed on 6 August 2009.

<sup>35</sup> *Ibidem*.

<sup>36</sup> Paul Ekman, *op. cit.*, p.113.

<sup>37</sup> *Ibidem*, p.118.

*Distinction between lying and be lied to*      The more they grow up, children become more capable to tell lies to other people, but they also become more capable to realize when they are lied to.

*Deception reason: protecting friends*      Also with the pre-adolescents and teenagers, the reason for the deception is to protect their friends from problems. According to research studies<sup>38</sup> teenagers who take part in the commission of a crime have a higher tendency than those who did not take part to protect their friends and accomplices; therefore they lie with respect to the crime.

*Higher likelihood to determine the truth*      The children who did not take part in the commission of a crime, when interviewed alone, have higher rates of telling the truth unlike when they are interviewed in pairs or collectively<sup>39</sup>.

## *II.2. Types of deception used by children*

*Taxonomy criteria*      There are several types of lies used by children which may be divided based on reason and aim<sup>40</sup>:

### *II.2.1. The defense lie*

*Reason*      The defense lie arises from the fear of the child that he will be punished<sup>41</sup>. Those who lie to avoid punishments do it without taking into consideration the moral aspect: if they have to lie or not; if the lie will have more negative consequences if they are revealed. The lie is just part of what they will have to do to avoid the

---

<sup>38</sup> H. Harri, J.W. McDavid, 1969 „Situational Influence on Moral Justice: A Study of Finking” in *Journal of Personality and Social Psychology* 11, No. 3 , pp. 240-244 *apud* Paul Ekman, 2009, *De ce mint copiii? Cum pot încuraja părinții sinceritatea*, Bucharest Trei Publishing House, 2009

<sup>39</sup> Tudorel B. Butoi, Ioana T. Butoi, *Psihologia interogatoriului judiciar. Invaziune mentală, manipulare coerciție, intervenție psihanalitică, direcții comportamentale duplicitate (simulate)*, Bucharest, Enmar Publishing House, 2002, pp. 19-23.

<sup>40</sup> A. Berge, „Profesiunea de părinte”, *apud* Anca Munteanu, *Psihologia copilului și a adolescentului*, Timișoara, Eurobit Publishing House, 2007.

<sup>41</sup> Paul Ekman, *op. cit.*, pp.88-94.

punishment. The success with any type of lie will remove the punishment<sup>42</sup>.

*Significance* This type of lie may highlight a parental education system which is too harsh, severe, tough and inflexible. To avoid this type of lie, the adults (parents, grandparents, trainers etc.) around the child must stimulate, gratify the honesty of child, any time possible, by increasing the child's conviction that an acknowledged error is half-forgiven. In addition, the adults around the child must understand that it is much strongly recommended, from the educational point of view, to "acquit the offender rather than punish the innocent."

### *11.2.2. The compensation lie*

*Reason* The compensation lie feeds on the child's wish to get out of a uncomfortable, traumatic situation or status<sup>43</sup>. Consequently, the child will boast in front of their parents or any other persons (usually children) with fictitious performances, qualities, merits, to valorize himself and raise admiration. Usually, an isolated child rejected in kindergarten by his colleagues will take refuge in any sort of fabulation, recounting at home the multiple experiences he had that day together with the other colleagues.

*Significance* In this situation, the reason for the lie is to get a reward or a benefit which he could not have obtained otherwise, the parents, or the guardian would not have given it to him. In this situation, the parents must get involved discreetly, but efficiently, to provide their child with real compensation, to gradually substitute the imaginary ones<sup>44</sup>.

---

<sup>42</sup> Paul Ekman, *op. cit.* pp. 88-94.

<sup>43</sup> Anca Munteanu, *Psihologia copilului și a adolescentului*, Timișoara, Eurobit Publishing House, 2007, p. 214.

<sup>44</sup> *Ibidem*.

### 11.2.3. *The seduction lie*

*Reasons*            The child lies because he wants to make a good impression and to attract affection at all costs<sup>45</sup>. This type of lie occurs frequently in separated, disorganized families or following the divorce of the parents, when the child plays the role of a “double agent” between the two households, recounting each parent invented acts, but obviously less commendable about the other, to test his love and loyalty to the first parent.

*Significance*        The appropriate attitude for the parents is to give up stimulating the child’s gossip<sup>46</sup>.

### 11.2.4. *The aggressive lie*

*Reason*              The aggressive lie has the purpose to shift towards oneself the parental care and affection.<sup>47</sup> This type of lie occurs frequently with the birth of another child in the family, and when the parents gravitate only around the new-born, the other child experiences feelings of marginalization and abandonment.

*The need for a psychologist*    Because of the specific features of this age (memory, will, attention etc.), the interview is recommended to take place with a psychologist or a social worker specialized in child development. Emphasis will be laid on the spontaneous recollection of facts, the child will get the questions in a language he can understand, the questions will be direct, in a kind, short and precise tone<sup>48</sup>.

We will further present, without any claim to being all

---

<sup>45</sup> *Ibidem.*

<sup>46</sup> *Ibidem.*

<sup>47</sup> *Ibidem.*

<sup>48</sup> Radu Moisescu, Lucian Mursa, „Protecția drepturilor copilului victimă în legislația internă” in the *Ghid de practici instituționale în instrumentarea cauzelor cu minori*, Iași, Alternative Sociale Association, 2005, p. 34.

encompassing, several aspects in connection with the child development which could support the magistrate in understanding and approaching children during the interview.

## II.3. Child development psychological elements useful for the interview

### II.3.1. Early childhood (1- 3 years)

*The quality of the relationship between the mother and the child* One characteristic feature of the first year of life is the establishment of trust or mistrust, respectively, caused by the quality of the relationship between the mother and the child (the person who provides the care)<sup>49</sup>. A human presence which is warm, tonic and receptive to the child's needs may stimulate in the latter the feeling of optimism and assertiveness<sup>50</sup>.

*Development of the potential of the child aged 2-3* At 2-3 years old, the potential of the child develops considerably. If these innate skills are stimulated by the parents, the feeling of autonomy may become established. If, on the contrary, the parents will be hyper-protective, inhibiting or too demanding, they will erode the trust of the child in his own forces and will cause the appearance of doubt and shame<sup>51</sup>.

*Negativism* One characteristic feature of a 2-3 years old child is the negativism, that is the tendency to repeatedly say "no"<sup>52</sup>. At this stage, it is practically impossible to interview a child, because of the psychological development level (language, memory, thinking, attention) of the child. The information supplied verbally, behav-

---

<sup>49</sup> Rudolph H. Schaffer, *Introducere în psihologia copilului*, Cluj Napoca, ASCR, 2005, pp.101-111.

<sup>50</sup> Anca Munteanu, *Psihologia copilului și a adolescentului*, Timișoara, Eurobit Publishing House, 2007, p. 61.

<sup>51</sup> *Ibidem*.

<sup>52</sup> Anca Munteanu, *op.cit.* p. 179.

orally or through drawings by the children at this age cannot have legal meaning, they have only an indicative value as evidence.

### II.3.2. Preschool period (3- 6/7 years)

*Definition* This period is also called the childhood's "golden age"<sup>53</sup>.

*Pre-school period and stages* The pre-school period includes the following stages<sup>54</sup>:  
 - small pre-school child (3-4 years old);  
 - middle pre-school child (4 years old);  
 - big pre-school child (5 – 6/7 years old).

#### II.3.2.1. Specific traits

*Voluntary remembrance of information subsequent to being 4* Only subsequent to being 4 years old, the child will voluntarily remember information, until he is 4, the memory is mechanic and involuntary<sup>55</sup>.

*Accuracy of statements* The accuracy of a child's statements does not vary with the age, at 6, children can supply statements as accurate as the statements of a 10-year old. In other words, smaller children supply less information than the older children, but just as accurate<sup>56</sup>.

*Variability of the amount of* The amount of information which children can remember in their free recollection of the facts varies based on age, usually, smaller children supply less

---

<sup>53</sup> Ursula Șchiopu, Emil Verza, *Psihologia vârstelor, ciclurile vieții*, Bucharest, Didactică și Pedagogică Publishing House, 1997, p.67.

<sup>54</sup> Anca Munteanu, *op.cit.* p. 191.

<sup>55</sup> *Ibidem*, pp. 195-197.

<sup>56</sup> J. M. Schaff, K. W. Alexander, & G.S. Goodman, „Children's false memory and true disclosure in the face of repeated questions”, *Journal of Experimental Child Psychology*, pp. 157-185.

<i>information with the age</i>	<p>information, since they get around 5, this quantity will suddenly increase<sup>57</sup>.</p> <p>With respect to the accuracy of the children' recalled information, surprisingly, there are few age differences, starting with the age of 6, at least in connection with important events of personal significance, the information supplied is almost similar to that which provided by adults<sup>58</sup>.</p>
<i>Emotional load of the memory</i>	<p>At this age, memory has a strong emotional load, the child remembers what it moved him a lot, whether positively or negatively. Information illustrated with plastic images is remembered much easier<sup>59</sup>.</p>
<i>High level of suggestibility</i>	<p>This period is marked by a high degree of suggestibility, meaning that children are much more easier to be persuaded by persons around them. According to the research, under the pressure of persons perceived as authoritarian, children will often change their statements<sup>60</sup>.</p>
<i>The gradual acquisition of the notion of time</i>	<p>The child gradually acquires the notion of time, for instance, the child develops his capacity to tell the time when he is around 6-7 years old, and when he is around 8 years old, he becomes aware of the current day of the week<sup>61</sup>. Until they are 8, children have difficulties in telling how long an event was and if a past event took place before or subsequent to other past event<sup>62</sup>.</p> <p>Another means to locate the incident in time may be to</p>

---

<sup>57</sup> Rudolph H. Schaffer, *Introducere în psihologia copilului*, Cluj-Napoca, ASCR, 2005, p. 257.

<sup>58</sup> *Ibidem*.

<sup>59</sup> Anca Munteanu, *op. cit.* p. 163.

<sup>60</sup> Thomas D. Lyon, *Speaking with children: Advice from investigative interviewers*, Denver, National Association of Counsel for Children, 2005, pp. 65-82.

<sup>61</sup> Anca Munteanu, *op. cit.* p. 121.

<sup>62</sup> *Ibidem*.

use an event from the life of the child which took place that day as reference, for instance, it took place before or after dinner.<sup>63</sup>

*Lack of separation between the level of stress perceived by the child and the amount of updated information*

The surveys could not highlight any relationship between the stress level perceived by the child and the amount of updated information<sup>64</sup>, however, it was proven that the accuracy and the amount of information deteriorated in time<sup>65</sup>. Also, smaller children seem to forget much quicker than older children or adults.<sup>66</sup>

*Improvement of the attention span*

At this age, the attention span registers successive improvements, thus, with the small pre-school child is of 5-7 minutes, with the middle pre-school child, 20-25 minutes and with the big pre-school child, 40-45 minutes<sup>67</sup>.

*Unstable affectivity depending of the age*

In general terms, the affectivity of the pre-school child is explosive and unstable. This period is characterized by emotional instability, the child will quickly move from positive, pleasant, happy to negative moods, crying episodes, fear, anger, sadness and the vice versa<sup>68</sup>.

---

<sup>63</sup> Sandra Shrimpton, Kim Oates & Susan Hayes, „Children`s memory of events: effects of stress, age, time delay and location of interview”, in *Applied Cognitive Psychology*, Volume 12, Issue 2, 1999, pp. 133-143.

<sup>64</sup> *Ibidem*.

<sup>65</sup> D.A. Poole & L.T. White, „Effects of questions repetition on the eyewitness testimony of children and adults” in *Developmental Psychology*, No. 27, 1995, p. 975-986.

<sup>66</sup> Sandra Shrimpton, Kim Oates & Susan Hayes, „Children`s memory of events: effects of stress, age, time delay and location of interview”, in *Applied Cognitive Psychology*, Volume 12, Issue 2, 1999, pp. 133-143.

<sup>67</sup> Ursula Șchiopu, Emil Verza, *Psihologia vârștelor, ciclurile vieții*, Bucharest, Didactică și Pedagogică Publishing House, 1997, pp. 90-112.

<sup>68</sup> Anca Munteanu, *op. cit.* pp. 176-178.

At 3 years old, feelings of guilt and shame develop and become manifest in the blushing of the child when he feels ashamed<sup>69</sup>.

At 4, the feeling of pride appears.

At 5, the sour candy syndrome develops, which is telling about the emotion of a child when he receives an unworthy reward.<sup>70</sup>

At 6, the child goes through a crisis of prestige, that is he experiences a feeling of discomfort whenever reprimanded in public<sup>71</sup>. At this age, the child's activism and questioning spirit may become excessive. If the family is in support of this attitude, then the questioning spirit can crystallize, whereas if this attitude is penalized, if the parents act too harshly and reluctantly, the child will experience an extremely damaging feeling of culpability<sup>72</sup>.

### *II.3.2.2. Strategic guidelines to build up morality*

#### *Strategic guidelines*

Two strategic guidelines are required for strengthening the morality<sup>73</sup>:

- the child must have the capacity to become aware of his own errors;
- the intentional lie which germinates when the child is around 4 must be eliminated. Until the child is 4, we cannot speak about an intentional lie, but about fabrication exercises<sup>74</sup>. What characterizes this age are the reflex lies having to do with a denial of the facts by the child, who thinks that this is a way to delete the facts.

---

<sup>69</sup> *Ibidem*, p. 203.

<sup>70</sup> *Ibidem*, p. 204.

<sup>71</sup> *Ibidem*, p. 205.

<sup>72</sup> *Ibidem*, pp. 176-178.

<sup>73</sup> *Ibidem*, pp. 212-216.

<sup>74</sup> Anca Munteanu, *op. cit.*, p. 221.

### 11.3.3. Early school (6/7 – 10 years)

*Characterization* At this stage, the physical and mental developments can be noted much more easily, the child's weight increases by around 10 kg, and height by around 20 cm. However, the differences between girls and boys are yet small<sup>75</sup>. Their appetite is fluctuating, the child may even become anorexic at around 6 years old<sup>76</sup>.

#### 11.3.3.1. Specific traits

*Development of child's capacity to accurately evaluate the duration of events* Since at this age, the child gets involved in various school activities, his perception of the space and time improves significantly, thus his capacity to correctly assess the duration of events. For instance, the correct reading of the clock, the succession of seasons, months and days of the week, the clear evaluation of events based on the three temporal dimensions (past, present and future)<sup>77</sup>.

*First traits of character* The affectivity of the child is not circumscribed to a high emotional instability any longer as in the previous period and the first traits of character arise<sup>78</sup>.

*Development of memory and recollection of facts* The memory and the capacity to recollect facts and events in a succession further develop. The automatic, involuntary and short-term memory prevails during the early schooling age (the automatic memory grows to a peak at around 8 years old)<sup>79</sup>. At around 7, the child remembers especially what it most impressed him, he memorizes easily the unessential and the details. Only in the third grade will the child put in efforts to voluntarily develop his memory. The ratio between the capacity to recognize and reproduce data

---

<sup>75</sup> Ursula Şchiopu, Emil Verza, *op. cit.*, pp.116-129.

<sup>76</sup> Anca Munteanu, *op. cit.*, p. 200.

<sup>77</sup> *Ibidem*, pp. 222-248.

<sup>78</sup> *Ibidem*.

<sup>79</sup> *Ibidem*.

changes: if at 6-7, the recognition process is more active, as the child grows older, his capacity to reproduce data increases and it is not loyal to the text read anymore, the small pupil is tented to perform small reorganizations of the assimilated text. In parallel with this capacity, the volume of memory also increases<sup>80</sup>.

*The frequency of forgetting*

However, forgetfulness frequently appears at around 7.

*The distinction between truth and deception*

At this age, the child makes a distinction between truth and deception and shows a lower level of suggestibility than during the previous development stages, but suggestibility will not disappear which means that questions containing the answer should not be used during the interview, since the child may be induced a distorted reality<sup>81</sup>.

*Personality is at its inception stage*

Also during this stage, the personality begins to surface, that is, the child exaggerates to make himself feel important, easily lies and his recollection of the facts should be called into question as it may be influenced a priori by the persons whom the child trusts<sup>82</sup>.

*Expert present*

The interview of this age group is recommended to take place with an expert in child development present.

### *II.3.3.2. Interviewing rules*

*Clarity of questions asked*

Questions asked to the child should be phrased as clearly as possible, and the child should be told from the beginning not to lie, not to be afraid or shame to

<sup>80</sup> *Ibidem.*

<sup>81</sup> A. Memon & R. Vartoukian, „The effects of Repeated Questioning on Young Children’s Eyewitness Testimony”, in the *British Journal of Psychology*, 87, 1996, pp. 403-415.

<sup>82</sup> *Ibidem.*

tell the truth.

*Aware of the seriousness of the interview*

Owing to the specific feature of this age, the need for emotional bonding, the child shows his adulthood, that is the child's need to be treated on an equal footing with the adult<sup>83</sup>.

Consequently, the magistrate conducting the interview must use this feature and give the child the feeling that he is taken seriously and treated on an equal footing.

*Free recollection of facts*

The free recollection of facts is the interview procedure most highly recommended<sup>84</sup>.

*The tone of the interviewer*

The tone of the interviewer must be kind, lack aggressiveness, the child must be ensured that he is believed and taken seriously.

*The older, the more precise the recollection of facts*

According to the research<sup>85</sup> concerning the effects of the repeated questions on the memory of children (who were witnesses to a staged event), the recollection of facts by the subjects is more precise when they are 7 than when they are 5. One common feature for both ages is that when the detailed questions are repeated, the child thinks that his first answer was wrong, so he will correct or completely change his next answer<sup>86</sup>.

#### *II.3.4. Puberty (10-14 years)*

*Definition*

This period corresponds to the middle school and is characterized by a spectacular somatic increase and an obvious maturity.

---

<sup>83</sup> Anca Munteanu, *op. cit.*, pp. 222-248.

<sup>84</sup> A. Memon, R. Vartoukian, „The effects of Repeated Questioning on Young Children's Eyewitness Testimony”, in the *British Journal of Psychology*, 87, 1996, pp. 403-415.

<sup>85</sup> Lindsay E. Cronch, Jodi L. Viljoen, David J. Hansen, *op. cit.*, USA, University of Nebraska-Lincoln, 2005, p. 198.

<sup>86</sup> *Ibidem*.

### II.3.4.1. Specific traits

*Spirit of observation*      The spirit of observation develops, the capacities for spatial and temporal orientation are expanded and the capacity to verbalize own feelings<sup>87</sup> is improved.

*Development of logical components of memory*      Memory performs a quantitative and qualitative leap as the logical components, the interpretation tendencies and the capacity to understand things abstract and to generalize develop<sup>88</sup>.

*Increase of affectivity*      Suggestibility is on the decrease, whereas affectivity is on the increase. At this stage of development, the child is affected by sensibility, characterized by a contradictory behavior, sometimes has the tendency to confabulate out of a need to gain a marked social position and to exaggerate his "I"<sup>89</sup>.

*Potential will or education problems*      In parallel with the development of the mental capacity and moral feelings, some problems with the own will or the education may appear, which would result in aggressive behaviors<sup>90</sup>.  
Teenagers are attracted by the sensational, by facts which make them exaggerate, to stand out, exchange impressions and information with anybody about what happened to them, what they saw or heard, leaving them easy to influence<sup>91</sup>.

### II.3.4.2. Interviewing rules

*Elements to consider*      When interviewing the pre-adolescent children, their wish to stand out must be taken into account, and their interview should be done, if possible, alone and unexpectedly; a detailed recollection of facts may also

---

<sup>87</sup> Anca Munteanu, *op. cit.*, pp. 222-248.

<sup>88</sup> *Ibidem*.

<sup>89</sup> Anca Munteanu, *op.cit.*, pp. 263-266.

<sup>90</sup> *Ibidem*, pp. 274-279.

<sup>91</sup> *Ibidem*.

result from the suggestions made by a close and trusted person<sup>92</sup>.

Owing to the fact that at this age, children have a strong sense of criticism which facilitates the very easy recollection of traumatic events, such as the domestic violence or sex abuse, the information gathered most of the times from the peers facilitates the recollection of attitudes or facts concerning private aspects<sup>93</sup>.

### *II.3.5. Adolescence (14-18 years)*

*Definition* As a consequence to a continuous vacillation between extremes, exuberance and apathy, cruelty and sensibility, hardworking and idleness, childhood and maturity, the adolescence has been called in various ways: “the difficult age”, “the crisis of originality”, “the age of great ideals”, “the age of the drama”, “the age of the social integration”, “the golden age” etc<sup>94</sup>.

#### *II.3.5.1. Specific traits*

*Specific dominant elements* There are some dominant elements which make this stage specific, namely: the teenager’s aspiration to independence; mental activity becomes an introvert act (it had been previously disseminated in a multitude of acts); strengthening of the individual values, simultaneously with the conclusion of the development of gender-specific elements and the impact of the influences from the environment<sup>95</sup>.

*Dominant erotic element* Sensibility continues to develop, but it has now a dominant erotic element. Memory develops a lot and the reproduction of the experienced events takes place

---

<sup>92</sup> Radu Moisescu, Lucian Mursa, „Minorul învinuit sau inculpat în faza de urmărire penală” in *Ghid de practici instituționale în instrumentarea cauzelor cu minori*, Iași, Alternative Sociale Association, 2005, pp. 91-94.

<sup>93</sup> Anca Munteanu, *op. cit.* p. 146.

<sup>94</sup> *Ibidem*, p. 249.

<sup>95</sup> *Ibidem*, p. 250.

through the filter of their own personality<sup>96</sup>. Owing to the fact that the logical memory becomes the main form of retention, the suggestibility and the capacity to be influenced decrease a lot<sup>97</sup>.

*The prominent highlighting of the "I"*

The wish to prominently highlight the "I" in community, and especially in his small group of friends continues. At this age the peer influence counts with 85%, whereas the rest makes up for the family and school influence<sup>98</sup>. Very often they imitate the persons they admire, the persons whom they consider leaders and whom they want to substitute.

*Valorization of own personality*

The adolescent is tempted to highlight those aspects which he perceived through the filter of his own personality, adjusting them based on the major influences resulting from the models of his choice.

*Crystallization of notions and importance of mental capacity*

At this age, the notions become crystallized and mental capacity becomes prominent. The only difference between an adolescent and an adult lies in their different life experiences and that is why interviewing an adolescent should not be different from interviewing an adult<sup>99</sup>.

### *11.3.5.2. Interviewing rules*

*Determining factors*

The magistrate conducting the interview must take into account that they formulate their statements just like the adults (in terms of perception, decryption, memorization, reactivation), but this process with the teenagers will be marked by the following factors: high suggestibility (because of this reason, the free

<sup>96</sup> *Ibidem*, pp. 256-257.

<sup>97</sup> *Ibidem*.

<sup>98</sup> Ursula Şchiopu, Emil Verza, *op. cit.*, p. 146.

<sup>99</sup> Richard M. Lernre, et al., *Handbook of Psychology, Developmental Psychology*, New Jersey, Volume 6, John Wiley & Sons Inc., p.327.

recollection of facts must be followed by direct, simple, unequivocal questions) and lack of life experience, in corroboration with the low level of knowledge<sup>100</sup>.

## II.4. Useful suggestions on how to interview a child victim

*Anticipated rules for the interview, agreed together with the victim*

In order for the child interview to take place in the best of conditions, before its actual start, the person conducting the interview should establish some simple rules of communication together with the victim, so that the interview could be as efficient as possible.

### II.4.1. Ten useful Commandments to interview child victims

The child victim must be informed on the following<sup>101</sup>:

1. that he can at all times say so if he does not understand a question;
2. that he can at all times request clarifications concerning any question or activity which may take place during the interview;
3. that it is very likely that he does not remember all the things that happened to him and that there is no problem if he fails to recall certain events, this being a type of amnesia characteristic for the persons who suffer of post-traumatic stress disorder<sup>102</sup>;

---

<sup>100</sup> *Ibidem*.

<sup>101</sup> Workshop: „Victim identification, and treatment, co-operation between law enforcement and the governmental organizations and non-governmental organizations, witness protection, physical and judicial”, 27-29 September, 2004, Rome, Italy, organized by IOM Italy *apud* Luca C., “Audierea victimei traficului de ființe umane” in the *Traficul de ființe umane. Infractor, Victimă. Infrațiune*. Alternative Sociale Association and the Magistrates’ Association of Iași, Iași, 2005, p. 106.

<sup>102</sup> The post-traumatic stress disorder appears in the weeks following a severe trauma that the child has experienced (kidnapping, sex abuse, accidents etc.), or that the child has witnessed. There is a large number of parameters which have to be taken into account to assess the reaction: the nature of the trauma, its intensity and the nature of the exposure, its potential repetition, the child’s age and gender (girls display more symptoms than boys), the level of psychological maturity, the quality of

4. that he may ask for more time for some of the answers or that he may ask for a break whenever he feels like;
  5. that he must do his utmost to tell everything he recalls, without hiding anything from the magistrate;
  6. the person conducting the interview must make sure that the victim has clearly understood all previous explanations;
  7. during the interview, the magistrate may include some questions concerning events which may make the child victim upset or can bring into the present some painful memories for the child;
  8. the victim and the family must be informed concerning the confidentiality of the facts recollected;
  9. the victim should be asked whether there are any unclear aspects at this stage;
  10. the victim should be asked if she agrees to take part in the investigation.
- 

the family links, the socio-economic and cultural background, the individual or the group response.

Disorders last more than one month and appear during the first three months since the trauma. They take the shape of a mental suffering which affects the adjustment capacities. The post-traumatic stress disorder can be of three types: the repetition syndrome, the avoidance moods, neuro-vegetative hyperactivity.

The repetition syndrome becomes manifest in a child through: 1) the repetitive games which partially re-enact the trauma (games with animals, cars or dolls which re-enact the traumatic event); 2) drawings with the same recurrent topic in a repetitive manner; 3) nightmares focused on the traumatic event, the smaller the child, the more inaccurate the content of the nightmare is; 4) inappropriately intensive responses to imaginary stories or tales (at school or at home).

The avoidance moods, such as, for example, the refusal to use a particular means of transportation, the refusal of a route, or a place which resembles or might lead to the place of the trauma; the refusal to separate from the cherished figures, the separation anxiety may even take the form of a school phobia;

Neuro-vegetative hyperactivity: the child has troubles to get to sleep, wakes up in the middle of the night, is irritable, has choleric fits and focus problems, resulting in a decrease of the school performance, is hypervigilant, has alarm reactions which are exaggerated to noise, surprise. (D. Marcelli, 2003, pp. 450-452).

The findings concerning the post-traumatic stress disorder by the child protection specialist (psychologist or pedopsychiatrist) are relevant for the judicial framework (the measures concerning the detention of the offender, the customization of the offender's punishment, the material and moral damages), and for the psycho-social framework (the measures aimed at the protection and care for the child victim).

## References

1. Butoi T., Voinea D., Butoi A., Prodan M.C., Nicolae L.G., Iftene V., Zărnescu C., Butoi I.T., *Victimologie, Curs universitar, Perspectiva psihologiei victimale asupra cuplului penal victimă-agresor*, Penguin Book, Bucharest, 2004;
2. Butoi T.B, Butoi I.T., *Tratat universitar de psihologie judiciară*, Phobos Publishing House, Bucharest, 2003;
3. Butoi T.B, Butoi I.T., *Psihologia interogatoriului judiciar*, Enmar Publishing House, Bucharest, 2002;
4. Dublea A., Ștefăroi N., Luca S., Moiescu R., Luca C., Mursa L., Vlad M., Pușcașu D., *Practici instituționale în instrumentarea cauzelor cu minori*, Alternative Sociale Association, Iași, 2005;
5. Ekman, P., *De ce mint copiii? Cum pot încuraja părinții sinceritatea*, Trei Publishing House, Bucharest, 2009;
6. Furniss, T., *Manualul Multiprofesional pentru abuzul sexual al copilului. Management Integrat, Terapie și Intervenție Legală*, Waldpress Publishing House, Timișoara, 2004;
7. Gudjonsson, G.H., Haward, L.R.C., *Forensic Psychology, a guide to practice*, Routledge, London, 1998;
8. Lindsay E. Cronch, Jodi L. Viljoen, David J. Hansen, *Forensic Interviewing in child sexual abuses cases: current techniques and future directions*, Elsevier, University of Nebraska-Lincoln, USA, 2005;
9. Marcelli, D., *Tratat de psihopatologia copilului*, Generația Foundation Publishing House, Bucharest, 2005;
10. Memon, A. & Vartoukian, R. "The effects of Repeated Questioning on Young Children's Eyewitness Testimony" in the *British Journal of Psychology*, No. 87, 1996;
11. Munteanu, Anca, *Psihologia copilului și a adolescentului*, Eurobit Publishing House, Timișoara, 2007;

12. Poole D.A. & White L.T., "Effects of questions repetition on the eyewitness testimony of children and adults" in *Developmental Psychology*, No. 27, 1995;
13. Robertson, K., "Active listening. More than just paying attention" in the *Australian Family Physician*, Vol. 34, No. 12, December 2005;
14. Melton, G.B., Petrila, J., Poythress, N.G., Slobogin, C., *Psychological Evaluations for the Courts. A Handbook for Mental Health professionals and Lawyers*, Second Edition, The Guilford Press, New York, 1997;
15. Şchiopu U., Verza E., *Psihologia vârstelor, ciclurile vieţii*, Editura Didactică şi Pedagogică, Bucharest, 1997;
16. Parkinson, F., *Post-trauma Stress*, Sheldon Press, London, 1993;
17. Schaff J.M., Alexander K.W. & Goodman G.S., "Children's false memory and true disclosure in the face of repeated questions", *Journal of Experimental Child Psychology*;
18. Schaper R.H., *Introducere în psihologia copilului*, ASCR, Cluj Napoca, 2005;
19. Shrimpton S., Oates K. & Hayes S., "Children's memory of events: effects of stress, age, time delay and location of interview", in the *Applied Cognitive Psychology*, Volume 12, Issue 2, 1999;
20. Workshop "Victim identification, and treatment, co-operation between law enforcement and the governmental organizations and non-governmental organizations, witness protection, physical and judicial", 27-29 September, 2004, Rome, Italy, organized by IOM Italy;
21. Walker, A.G., *Handbook on questioning children, A linguistic perspective*, American Bar Association, Center on Children and the Law, Washington, 1994.

# Chapter III

## General interviewing principles

*Mariana Haralambe\**

### I. Introductory notions

*Applicable legal provisions*      The right of the child to the freedom of expression regarding any problems that affect him is a central element in the United Nations Convention on the Rights of the Child<sup>1</sup>, provided in Article 12 of this international regulatory act. This right was enshrined in the Romanian legislation under Article 24 of Law No. 272/2004 on the protection and promotion of the rights of the child, a law which transposes the Convention at the domestic level.

*General considerations*      On the other hand, the Romanian civil procedural rules do not make any significant difference between the interviews of a minor witness and the witness of age<sup>2</sup>. The interviewing procedure, in this case outdated, completely ignores the bio-psycho-somatic features of the child and his special needs and does not address the international requirements in the field concerning the setting in place of a child-friendly procedure<sup>3</sup>.

---

\* Mariana Haralambe is a judge at the Court of Appeals of Bucharest, Third Civil Section, tries family and cases with children, and she is also a trainer for the National Institute for Magistrates in the area of Juvenile Justice.

<sup>1</sup> The Convention was adopted by the General Assembly of the United Nations Organization on 20 November 1989 in New York and was ratified by Romania through Law No. 18/1990 for the ratification of the Convention on the Rights of the Child, republished in the Romanian Official Gazette No. 314 of 13 June 2001.

<sup>2</sup> Articles 186-200 of the Civil Procedural Code.

<sup>3</sup> Article XI point 30 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to the Resolution 2005/20 of the UN Economic and Social Council, <http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf>

More detailed provisions in this respect can be found in the criminal procedural provisions, however, the latter is far from being all encompassing and matching the above-mentioned requirement<sup>4</sup>.

Consequently, given the particular importance of this procedural act, the setting in place of fundamental rules to be observed when interviewing children becomes necessary at all stages of the judicial process involving them.

## II. General interviewing principles

### II.1. *The principle of the best interests of the child*

#### *International provisions*

Article 3 of the UN Convention on the rights of the child states that: *“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”*

#### *Domestic provisions*

Domestically, the principle was specifically regulated through the provisions of Article 2 of Law No. 272/2004 on the protection and promotion of the rights of the child: *(1) The present law, any other regulations adopted in the field of observing and promoting the rights of the*

---

<sup>4</sup> Articles 75-86 (5) of the Criminal Procedural Code.

*child, as well as any legal act, issued or, if the case, signed in this field, are subordinated primarily to the child's best interests.(2) The best interests of the child also take priority over the rights and duties of the child's parents, legal guardians, or other persons legally responsible for him or her. (3) In all actions and decisions concerning children, whether undertaken by public authorities and authorized private institutions, as well as courts of law, the best interests of the child shall be a primary consideration.*

*Definition* The principle of the best interests of the child, when interviewed, is a fundamental rule according to which any activity conducted by each participant in the interviewing procedure must be geared up to ensuring the implementation and preservation of the best interests of the child, either in general, or in certain specific situations, in any context, by enforcing the general values and principles enshrined in the Convention<sup>5</sup>.

*Connection with other principles* One can read from the provisions of the Convention that any interpretation of the principle of the best interests of the child must be in agreement with the spirit of the entire Convention, and, more in particular, with the fact that a child must be viewed as a human being, with own opinions and feelings, with civil and political rights, as well as with the right to special protection. The principle of the best interests of the child, and the right to freedom of expression are mutually conditioning one another, since each of the two principles is at the same time, a basis, a safeguard and a limitation for the other.

*Practical implemen-* Following the practical translation of this connection into reality, it results that a child interview must observe

---

<sup>5</sup> UNICEF, *Manual pentru Implementarea Convenției cu privire la Drepturile Copilului*, Bucharest, Vanemonde Publishing House, 2006, p.47.

- tation of the principle* the supremacy of the principle of the best interests of the child, not only at the technical and judicial level, i.e. to ensure the best material, technical, logistical conditions for the interview, but also at the material level, i.e. to analyze the content of the interview and to evaluate the opinion of the child to reach the best possible solution in connection with the child, based on his standing in the judicial process.
- Refusal to hear and repeat the interview* By virtue of this principle, it is possible to deny, providing reasons thereof, to repeat the interview, i.e. *exempli gratia*, when a repetition of the interview could be traumatizing for the child, as he could re-experience the sad and unpleasant happenings which he had to be subject to once.
- Prevailing goal* During the child interview/ interviewing process, the magistrate will permanently observe the best interests of the child, starting with the selection of the location and time for the interview, the preliminary preparation of the interview, the specific means applicable for the interview, the type and particular elements of the explanations and questions raised, and concluding with the individual and associated evaluation of the child's opinion or statement.
- Observing the rights of the child during the interview* Also, this principle presupposes the conceptual observance of the fundamental rights of the child, during the interview, and *inter alia*, the child's right to information, which, in this matter of interest, is one of the rights and safeguards of the basic right to freedom of expression; the child's right to specialized care, which, as the case may be, may mean psychological assistance, health care, legal assistance and the specific notification of the concrete means in which the child may apply for such services (if they have not been already supplied); the child's right to be treated with dignity and compassion; the child's right to be protected against any form of discrimination; the right to confidentiality; the

child's right to be protected from the vicissitudes of a trial; the child's right to safety; the right to benefit from special preventive measures (to avoid his further victimization); the child's right to compensation.<sup>6</sup>

*Case law in this matter*

The special importance attached to the opinion expressed by the child and the specific and effective means to interview the child, taking into account the supremacy of the best interests of the child was enshrined by the European Court of Human Rights which stated that the children's "interest dictated that their opinions on the subject should have been taken into account once they had attained the necessary maturity to express them", namely, in this case, the children rejected the idea to go to Italy together with their foster parents and the Court that when they had attained the age when it could be reasonably inferred that their personality had sufficiently developed, they acquired the necessary maturity to express their opinion concerning the environment where they wanted to be brought up<sup>7</sup>.

In its Resolution (a component of the case law, the European Court showed that the children had rejected the idea to join their foster parents and leave to Italy when they reached an age that could be reasonably deemed as having a structured personality and had acquired the necessary maturity to express their opinion concerning the environment where they wanted to be brought up<sup>8</sup>.

---

<sup>6</sup> *Guidelines on Justice in Matters involving child victims and witnesses of crime, Child-friendly version*, 2006, pp. 6-24, [http://www.ibcr.org/editor/assets/thematic\\_report/2/2007\\_child-friendly\\_guidelines\\_en.pdf](http://www.ibcr.org/editor/assets/thematic_report/2/2007_child-friendly_guidelines_en.pdf)

<sup>7</sup> ECHR Decision of 22 June 2004, case Pini and Bertani, Manera and Atripaldi vs. Romania, published in the *Romanian Official Gazette* No. 1254 of 23 December 2004, § 74, 76, 82, 99 and 135.

<sup>8</sup> See § 74, 76, 82, 99 and 135 of the decision.

However, in the *Civil Ruling No. 20/2005 of the Tribunal for Minors and Family of Braşov*<sup>9</sup>, the judge ordered that the child Florentina should be integrated with the foster family, as the court pointed out that there had been a previous ruling for the endorsement of the adoption which could not be enforced owing to the opposition of the educational institution where the child had been placed and since there was evidence that the child was subject to physical and emotional abuse in the respective institution.

What was relevant in this respect was the following fact, namely that, *even if she had not been kept informed on the developments of the adoption process*, the girl confided to the foster mother her wish to be adopted and stated that she herself had never submitted any formal request to cancel the adoption.

Therefore, after the European Court in Strasbourg had under consideration the opinion adequately and firmly expressed by the child, as a basis for its decision to exonerate the Romanian State of liability, according to Article 8 of the European Convention of Human Rights and Fundamental Freedoms, the child challenged her notification concerning the developments of the adoption process, which was a deficiency that the Romanian court had highlighted in the reasons for its final decision.

*The interest of the child and his prevailing opinion*

In another case when the child had verbally expressed her wish to go to a foster home together with her brothers and sisters since at home, she did not have food, clothing and possibility to go to school, the tribunal<sup>10</sup> found that it was in the best interests of the

<sup>9</sup> Dana Țițian, *Cauzele cu minori în materie civilă și penală. Practică judiciară*, Bucharest, Hamangiu Publishing House, 2006, pp. 64-82.

<sup>10</sup> Civil ruling No. 155/F/02.03.2005 of the Bucharest Tribunal, Fifth Civil Section, published in the *Protecția copilului și adopția. Practică judiciară* by Andreea Florina Mateescu, Ioana Cristina Gheorghe-Bădescu, Hamangiu Publishing House, 2008, pp. 167-169

child to be institutionalized in a foster home, since the life of the child was in danger because of the precarious housing conditions and because the child was not under any supervision, since the mother did not fulfill her parental duties.

Granting the necessary prevalence to the opinion expressed by another child, through the filter of the principle of the best interests of the child, the tribunal<sup>11</sup> assessed that it was necessary to extend the measure of the emergency placement, taking into account the elements highlighted in the report concerning the condition of the child, according to which the mother of the child had left to Italy, the child had been placed in the care of the maternal grandmother, but also the statement by the child, according to which he had left home since his father would beat him up and did not take care of him, as well as that he wished to remain in the placement center.

## *II.2. The principle of the magistrate's specialization*

### *General considerations*

Quite obviously, specialization in juvenile justice and family law mean special training and calling. The special type of personality, the child, characterized by lack of bio-psychological immaturity, requires the adequate social and judiciary model, based on education, protection, which, through a special procedure, complex programs and psycho-pedagogical methods, could guide the child to the societal values. Psychologically speaking, child interviews present special problems. In the absence of appropriate specialization and training of judges, such interviews may have damaging consequences over children.

---

<sup>11</sup> Civil ruling No. 157/F/02.03.2005 of the Bucharest Tribunal, Fifth Civil Section, published in *Protecția copilului și adopția. Practică judiciară* by Andreea Florina Mateescu, Ioana Cristina Gheorghe-Bădescu, Hamangiu Publishing House, 2008, pp.172-174.

*Specific requirements*

Child interviews are an extremely complex process which requires certain professional, psycho-intellectual and moral-affective skills of the actors involved<sup>12</sup>. The magistrate faced with such a case must be a very good professional, familiar with the related sciences (development psychology, victimology, sociology, etc.)<sup>13</sup>. The magistrate must be able to find the most appropriate measure to make the best contact with the child, to win his trust and to provide a safe environment for him during the interview.

If the magistrate does not develop and permanently appropriates such requirements, then the magistrate must be trained to do so, and this activity should be included in the specialized magistrate's training curricula.

*Definition*

The principle of the magistrate's specialization may be defined as that basic rule according to which the child interview, irrespective of the nature of the procedure where he participates in, or his legal standing therein, should be conducted by specialized magistrates, with training and skills in the field.

This principle is also imposed by the international rules in the field<sup>14</sup> and reaffirmed by the bodies which monitor the implementation of children's rights.<sup>15</sup>

---

<sup>12</sup> Aurel Dublea, Nicoleta Ștefăroi *et al.*, *Ghid de Practici Instituționale în Instrumentarea Cauzelor cu Minori*, Iași, Alternative Sociale Association, 2005, pp. 68-69.

<sup>13</sup> Article 22 par. 1 of the United Nations Standard Minimum Rules for the Administration of Juvenile

Justice adopted through Resolution 40/33 of 29 November 1985, at the 96th General Assembly of the United Nations Organization, <http://www.anp-just.ro/recomandari/beijing.htm>

<sup>14</sup> Art. 22 par. 1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted through Resolution 40/33 of 29 November 1985, at the 96th General Assembly of the United Nations Organization, <http://www.anp-just.ro/recomandari/beijing.htm> last accessed on 09 August 2009.

<sup>15</sup> The Committee for the Rights of the Child expressed its real concern regarding the absence of a juvenile justice system or the lack in the efficiency and effectiveness of juvenile justice administration, in particular with respect to its lack of compatibility with the Convention on the Rights of the Child or with other relevant

Initial, as well as in-house training of a magistrate for minors are absolute prerequisites and no derogation thereof can be made, since the juvenile justice field is extremely delicate, as it places a high emphasis on protection, counseling and recovery.

### *II.3. The principle of differentiated interviewing*

#### *General considerations*

The topic of the rights of the child and young adult is based, on the one hand, on their vulnerability, generated by their physical and intellectual immaturity, which calls for special support, and, on the other hand, on their right to fully enjoy their individual and also collective rights<sup>16</sup>.

These premises require a set of rules for the child interview, according to various criteria: age group of the interviewed child; his personal experience; background; legal standing of the interviewed child, on a case by case basis<sup>17</sup>.

#### *International provisions*

Throughout the justice process, children must be “treated in a caring and sensitive manner... taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Every child should be treated as an individual with his or her individual needs, wishes and feelings”<sup>18</sup>.

---

UN standards: reference to Armenia, UN doc. CRC/C/94, the Report of the 23rd session (2000), par. 350, to Granada, par. 411(a) or to South Africa, par. 455(a).

<sup>16</sup> The Preamble to the UN Convention on the Rights of the Child, par. 1.9;

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/547/84/IMG/NR054784.pdf?OpenElement> .

<sup>17</sup> Article V par. 10 and 11 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to the Economic and Social Council Resolution 2005/20, <http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf> The United Nations Organization – “Model of a Law and Comments accompanying the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime”, in English, New York, 2009.

<sup>18</sup> Article XI point 30 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to the Resolution 2005/20 of the UN

*Criteria for the differentiated interviewing*

*The criterion presented above, of the age group of the child requires complete understanding of the way in which the mental characteristics, functions, processes develop from the earliest age and their evolution throughout the human life, together with the progress characterizing each age<sup>19</sup>.*

From this point of view, each age in the development of a child is characterized by a certain somatic and physiological development and, also, by a certain psychological evolution, found in its reference elements: memory, attention, will, affectivity, language, thinking, imagination and personality<sup>20</sup>.

Consequently, the means to judicially interact with the child must be different based on these variables.

*The personal experience criterion* in the case of an interviewed child is important in view of selecting the specific means of interviewing as, firstly, the personal, general experience of a child shapes the latter specific stage in the language and cognitive development and, secondly, the specific experience of a child (which may also determine his *legal standing*: defendant, witness, victim, plaintiff, subject of the procedure and pro-active participant) triggers a different psychological approach for each individual child, even if, in principle, the legal standing of the interviewed child must also trigger some common rules for the interview.

*The child background criterion* may shape up the interviewing techniques based on the set of ethnical, social, religious, cultural etc. factors which are likely to mould the *status quo* of the child that the magistrate

---

Economic and Social Council, <http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf>

<sup>19</sup> Aurel Dublea, Nicoleta Ștefăroi *et.al.*, *Ghid de practici Instituționale în Instrumentarea Cauzelor cu Minori*, Alternative Sociale Association, Iași, 2005, p. 193.

<sup>20</sup> Adela Moraru, „Interviewarea copiilor în context legal”, unpublished paper submitted to the Committee for the monitoring of the implementation of the legislative package made up of Laws No. 272/2004 and 273/2004 set up within the Higher Council for Magistrates, 2005, pp.1-25.

must take into account and that also leaves its print and determines the child's development.

*Conclusions* Child interviewing is, therefore, an *intuitu personae* procedural act that should take into consideration first and foremost, the child. *Eo ipso*, prior to the interview, the magistrate must gather the information in connection with the above mentioned elements, to be able to support the child in expressing his opinion or statement, to provide the necessary assistance required by his special status and to be able to fully understand him.

#### *II.4. The principle of the magistrate's prior preparation from the perspective of making contact with the child*

*Notion and definition* The magistrate who is about to interview a child must prepare himself for the interview, as well. This principle is the basic rule for any interview, which presupposes the prior preparation of the magistrate to be able to interact with the child throughout the specific judicial process of interview. In the area of juvenile justice, and, especially, when making contact with the children, the magistrate must set a socially positive role model for the child even in the short while he spends talking with him, and the very image of the magistrate must convey to the child a strengthened feeling of safety, hope and trust in the child's future prospects. The meeting with the child, whose personality is in full bloom, must be a memorable image for the latter, likely to determine for him or shape the true system of social values for the child. That is precisely why, aware of the impact of a personality in evolution and having the noble role to support the child, irrespective of the situation, the magistrate must pose as calm as possible in front of the latter (leaving behind the daily life and professional stress), with trust in the child and in his prospects, receptive to his opinions and needs, and, in one word, majestic.

The magistrate must prepare the interview and entrust it with an educational character. In this respect, the prior analysis and choice of the most appropriate comparisons of life experiences, the most adequate positive examples and social role models, the most indicated aphorisms, the wisest conclusions are an inherent prerequisite to ensuring a successful interview.

### III. Intertwined principles

#### *Structural correlation*

Child interview is a procedural act whose success requires the observance of several basic rules which make up the hard core of this institution, which, irrespective of its specific name (*interview* according to Article 24 of Law No. 272/2004 on the protection and promotion of the rights of the child or *hearing* according to, *exempli gratia*, Article 95 of the same law), provides substance to the fundamental right of the child to freely express his own opinion concerning any matter related to him or the means to submit in court the child's statement or testimony.

#### *Common legal nature*

Even though distinct in terms of content, the general principles for the child interview are intertwined in a close connection, not only owing to their legal nature, but also owing their concrete aim: to successfully interview a child.

#### *The need for a magistrate's complex training*

More specifically, a magistrate cannot be deemed specialized to work juvenile justice cases unless he has deep knowledge about the specific elements of each juvenile age group, and, consequently, about the need to adjust the interview technique to the specific language and cognitive development stage of the child. Also, the magistrate's preparation, prior to the interaction with the child, cannot be viewed at all in the absence of the minimal requirements of the juvenile

justice field, requirements which are also circumscribed to the principle of specialization in any given field.

*Considerations related to the aim*

On the other hand, all the other principles are connected essentially with the principle of the best interests of the child. In other words, prior specialization and training, as well as the adoption of a certain interview technique based on various criteria must be put to play for the interview to take place in a child friendly and protective environment.

## References

1. Losano, Mario G., *Marile sisteme juridice. Introducere în dreptul european și extraeuropean*, Bucharest, All Beck Publishing House, 2005;
2. Leș, Ioan, *Sisteme juridice comparate*, Bucharest, All Beck Publishing House, 2002;
3. Zlătescu, Victor Dan, *Panorama Marilor Sisteme Contemporane de Drept*, Bucharest, Continent XXI Publishing House, 1994;
4. Tomescu, Milena, *Dreptul Familiei. Protecția Copilului*, All Beck Publishing House, Bucharest, 2004;
5. Woll, P.; Binstock, H. Robert, *America's Political System. Fourth Edition*, New York, Random House, 1984;
6. Luca, Cătălin; Luca, Sofia; Dublea, Aurel; Ștefăroi, Nicoleta; Gafta, Georgeta; Moisescu, Radu; Mursa, Lucian; Scripcaru, Călin; Pușcașu, Dumitru; Vlad, Mirela, *Ghid de Practici Instituționale în Instrumentarea Cauzelor cu Minori*, Iași, Alternative Sociale Association, 2005;
7. Moraru, Adela, psychologist at the Court of Appeals in Târgu Mureș, *Interviarea copiilor în context legal*, unpublished paper submitted to the Committee for the monitoring of the implementation of the legislative package made up of the

following laws: Law No. 272/2004 concerning the protection and promotion of the rights of the child and the Law No. 273/2004 concerning the legal regime of adoption, set up within the Higher Council for Magistrates, 2005;

8. Bogdan Dragoş, Selegean Mihai (coordonatori), *Jurisprudența CEDO – studii și comentarii*, National Institute for Magistrates, 2005;
9. Aba Ceeli Report, *Îmbunătățirea cadrului instituțional al instanțelor pentru minori și familie din România – Proiect – 2007*;
10. UNODC, *Justice in Matters involving Child Victims and Witnesses of Crime*, Model Law and Related Commentary, New York, 2009;
11. United Nations, *Guidelines on Justice in Matters involving child victims and witnesses of crime, Child-friendly version*, printed in Austria, 2006;
12. UNICEF, *Manual pentru Implementarea Convenției cu privire la Drepturile Copilului*, Bucharest, Vanemonde Publishing House, 2006;
13. Țițian Dana, *Cauzele cu minori în materie civilă și penală. Practică judiciară*, Hamangiu Publishing House, Bucharest, 2006.

### Useful Internet websites

<http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>.

[http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf) .

<http://conventions.coe.int/treaty/en/Treaties/Html/160.htm>.

<http://conventions.coe.int/Treaty/EN/Reports/Html/160.htm>

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/477/40/IMG/NR047740.pdf?OpenElement>

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/547/84/IMG/NR054784.pdf?OpenElement>.

# Chapter IV

## Interviewing the child during the civil process

*Mariana Haralambe\**

### I. Introductory notions

*Legal standings of the child* Taking into account his vulnerability, owed to his physical and intellectual immaturity, but also his unquestionable standing of legal subject with full rights, with no discrimination as to the adults, the child must participate inherently in all legal proceedings, including in the civil process.

The complexity of the social relationships bonding the child individually, but also collectively, triggers an entire set of legal standings for the child. Consequently, the child becomes an active participant in the legal process and not only its subject<sup>1</sup>.

*The child as an active participant* In this capacity, the child may take part in the legal processes concerning the dissolution of the marriage of his parents, accompanied by the award of his custody<sup>2</sup>, the change in the measures taken with regard to the personal

---

\* Mariana Haralambe is a judge at the Court of Appeals of Bucharest, Third Civil Section, tries family and cases with children, and she is also a trainer for the National Institute for Magistrates in the area of Juvenile Justice.

<sup>1</sup> According to Chapter II, letter A, point 33 of the Explanatory Report of the European Convention on the exercise of children's rights (ETS 160) <http://conventions.coe.int/treaty/en/Treaties/Html/160.htm>, last accessed on 9 August.2009.

<sup>2</sup> According to Article 42 par. (1) of the Family Code: "When it grants the divorce, the court shall decide which one of the parents shall be awarded the custody of the under age children. To this purpose, the court shall interview the parents and the legal guardian authority and, taking into account the interests of the children, which it shall also interview if they have turned ten, the court shall decide, in the case of each one of the children, which one of the spouses will be granted custody."

*throughout the process* or patrimonial rights between parents and children<sup>3</sup>, in which case the child may even be a plaintiff, according to the domestic legislation, if the child has reached 14 years of age. Jointly with the other children, the child may be party to the procedure whereby the breach of his fundamental rights is punished, according to the possibility provided by the national Law No. 272/2004 on the protection and promotion of the rights of the child, in its Article 29<sup>4</sup>. The child may act as plaintiff in the course of those cases in court to establish the filiation with the mother, paternity, when the paternity has been challenged or to determine paternity outside of marriage<sup>5</sup>.

*The types of civil processes* The child is an active participant and the main subject of those proceedings concerning the establishment or the amendment of a special or alternative protection

<sup>3</sup> According to Article 44 par. (1) of the Family Code: "In the case of a change in the circumstances, based on the application by one of the parents or the child, if the child has turned fourteen, or by the legal guardian authority or any other child protection authority, the court may amend the measures ordered concerning the personal or patrimonial rights and obligations between the divorced parents and the children."

<sup>4</sup> According to Article 29 of Law No. 272/2004 on the protection and promotion of the rights of the child, published in the Romanian Official Gazette, Part I No. 557 of 23 June 2004, "(1) The child has the right to file complaints on his or her own regarding the violation of his or her fundamental rights. (2) The child is informed with regard to his or her rights and on the ways to exercise these rights."

<sup>5</sup> According to Article 52 of the Family Code: "The complaint for the establishment of filiation with the mother may only be filed by the child; it may be submitted by the legal representative, if the child is under age or is prohibited to do so."

Article 54 of the same Code provides that: "Paternity may be denied if it is impossible that the male spouse could be the father of the child. The motion to deny paternity may be filed by each one of the spouses, as well as the child; it may be continued by the heirs."

According to Article 58: "The recognition which is not in line with the truth may be challenged by any interested person. If the mother, the author of the recognition himself or his descendants should challenge the recognition, then the burden of the proof of paternity lies with the author of the recognition or his heirs."

Article 59 of the Family Code provides that: "The motion to determine paternity outside of marriage may be filed by the child and shall be submitted in his name by the mother, even if the mother may be an under age, or by his legal representative."

*where the child is involved* measure, or of those concerning the adoption, based on the provisions of the Article 125 of Law No. 272/2004 on the protection and promotion of the rights of the child <sup>6</sup>, respectively Article 17 of Law No. 273/2004 concerning the legal regime of adoption<sup>7</sup>. At the same time, the involvement of the child in the decision process which is to his interest is aimed at, for instance, his return in the case of an illicit cross-border travel or abduction, which are hypotheses circumscribed to the civil legal concept of international child abductions<sup>8</sup>. The child may also act as

---

<sup>6</sup> According to Article 125 par. (1) and (2) of the Law No. 272/2004 concerning the protection and promotion of the rights of the child: "(1) The cases stipulated under art. 124 are subject to speedy trials, and involve the subpoenaing of the child's legal guardian, and of the general department for social security and child protection, as well as the mandatory participation of the prosecutor. (2) The hearing of the child who has reached the age of 10 years old is mandatory and it is conducted in accordance with the provisions stipulated under art. 24, with the exception of the cases which concern the establishment of special child protection measures for the abused or neglected child; in such a case, the hearing of the child is conducted in accordance with the provisions stipulated under art. 95, paragraph (3)."

<sup>7</sup>Article 17 of Law No. 273/2004 on the legal regime of adoption in the Romanian Official Gazette Part I No. 557 of 23/06/2004 provides that: "(1) The consent to the adoption of a child who has reached 10 years of age shall be given in front of the court, during the phase of adoption endorsement. (2) The adoption may not be endorsed without the consent of the child who has reached 10 years of age. (3) Prior to the expression of his consent, the child protection directorate competent for the area where the child who has reached 10 years of age is a resident will advise the child and inform him, taking into account his age and maturity, especially on the consequences of the adoption and his consent to the adoption and shall develop a report thereof."

Also, Article 9 par. 1, 2 letter f of the European Convention on the Adoption of Children, adopted in Strasbourg on 24 April 1967, provide that: "(1) The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his family. (2) The enquiries, to the extent appropriate in each case, shall concern, inter alia, the following matters (...) (f) the views of the child with respect to the proposed adoption."

<sup>8</sup> According to Article 13 par. 2 of the Hague Convention of 25 October 1980 on the civil aspects of international child abduction (which Romania ratified through Law No. 100/1992, published in the Romanian Official Gazette No. 243/1992), published in the Romanian Official Gazette No. 243 of 30 September 1992: "The judicial or administrative authority may also refuse to order the return of the child if

*The connection with the right of the child to freely express his opinion*

a witness in a civil case, according to Article 195 of the Civil Procedural Code, in connection with the provisions of Article 190 of the Civil Procedural Code<sup>9</sup>.

The diversity of the legal situations in which the child is involved is developed taking into account the right of the child able to express his opinion in any matter of his concern, considered based on his age and his level of maturity<sup>10</sup>.

The principle of child interviewing was provided in the Romanian legislation in Articles 6 letter (h)<sup>11</sup> and Article 24<sup>12</sup> of the Law No. 272/2004 on the protection and promotion of the rights of the child.

---

it finds that the child objects to being returned and has attained an age and maturity level at which it is appropriate to take account of its views.”

In this respect, point 19 of the Preamble to the European Union Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, provides that: (19) The hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable. (...) When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.”

<sup>9</sup> According to Article 195 of the Civil Procedural Code: “The child younger than 14 years old and the persons who lack the capacity on a permanent or temporary basis, may be interviewed, however, when considering their statements, the court shall take into account their special situation as witnesses”, and Article 190 of the Civil Procedural Code shows that: “In all matters concerning the marital status or the divorce, the relatives and the above-mentioned affiliates may be interviewed, except for the descendants.”

<sup>10</sup> Article 12 of the Convention concerning the rights of the child, adopted by the UN General Assembly on 20 November 1989 in New York, and ratified by Romania through Law No. 18 of 1990 republished in the Romanian Official Gazette No. 314 of 13 June 2001.

<sup>11</sup> According to Article 6 letter h of the Law No. 272/2004 on the protection and promotion of the rights of the child: “Observing and guaranteeing the rights of the child should be conducted in accordance with the following principles: (...) h) hearing the opinion of the child and giving it due weight, in accordance with the age and maturity of the child.”

<sup>12</sup> According to Article 24 of Law No. 272/2004 on the protection and promotion of the rights of the child: “(1) The child who has the capacity to discern has the right to freely express his or her opinion regarding any matter which involves him or her.

The regulatory legal framework presented above presents the problem of how the magistrate can more specifically determine the way to interview the child in a given situation. The above overview aimed at highlighting the diversity of the legal hypotheses, which make the presence and participation of the child mandatory, is not exhaustive, as the complexity of the social life as shown above and the multitude of aspects in connection with the manifestations of the child will determine an endless horizon of cases when the child may, fully aware, express his opinion with respect to the issues of his concern or to which he may be a witness. This variety cannot be captured in rigid legal patterns, less so since the dynamics and the evolution of society as a whole are constantly changing at a rapid pace.

*Inexistence of a complete regulation applicable to the child* In order to answer this question, the three following findings have to be previously taken into account: Firstly, according to the conclusion of a survey of the national legal provisions, *there is no specific, detailed regulation applicable to the customary child interview process* (the two terms are synonymous, from the point of view of the legal regime), despite the international recom-

---

(2) The child has the right to be heard in any judicial or administrative procedure which involves him or her. The hearing of the child who has reached the age of 10 years old is mandatory. Nevertheless, the child who has not reached the age of 10 years old may also be heard, if the competent authority deems it necessary, in order to solve the case. (3) The right to be heard grants to the child the possibility to request and receive any pertinent information, to be consulted, to express his or her opinion, and to be informed about the consequences which his or her opinion may generate, if observed, as well as about the consequences of any decision involving him or her. (4) In all cases stipulated under paragraph (2), the child's opinions will be taken into consideration, according to the age and maturity level of the child. (5) Any child can request to be heard according to the provisions of paragraphs (2) and (3). If his or her request is denied, the competent authority will issue a motivated decision in this regard. (6) The special legal provisions regarding the consent or the presence of the child in the procedures which involve him or her, as well as the provisions regarding the appointment of a curator, in case of conflict of interests, are and remain applicable."

*interview procedure*      mendations in this respect<sup>13</sup>, as there are only scattered legal procedural provisions, which are circumscribed to the special interviewing processes<sup>14</sup>.

*Mandatory interview in the case of a child who has reached 10 years of age*      Secondly, interviewing a child who has reached 10 years of age is mandatory, in principle, since it is presumed that at this age, the child would have the necessary maturity to be able to form and express his own opinion<sup>15</sup>. The legal provision with this content corresponds to the obligation of the Romanian state to ensure the exercise of the right to freedom of expression in the case of the child and his opinion<sup>16</sup>. The child has the discretion to use this right whose beneficiary he is<sup>17</sup>.

*Interviewing the child who has not reached*      The situation of the child who has not reached 10 years of age is different in the Romanian legal system. According to Article 24, par. 2, last point of the Law No. 272/2004 on the protection and promotion of the rights of the child, the child may be interviewed, *if the competent authority*

---

<sup>13</sup> Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime Annex to Resolution 2005/20 of the UN Economic and Social Council, pts. 2 and 6, in reference to pt. VIII – “The right to be heard and to express views and concerns” <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>, accessed on 7 August 2009.

<sup>14</sup> For instance, the provisions of Article 95 par. 3 of the Law No. 272/2004 concerning the hearing of the child in chambers; the hearing of the child witness according to Articles 186-200, Civil Procedural Code.

<sup>15</sup> From this point of view, as many other states, Romania chose to define the age of a child’s maturity, from the intellectual point of view, which is necessary for the exercise of this right, through its legal provision found in Articles 24, 125 of Law No. 272/2004 or Article 17 of Law No. 273/2004, without making this category an absolute (see in this respect Article 24 par. 2 final pt. and par. 5 of Law No. 272/2004), whereas other states, such as the ones belonging to the Islamic law system, mainly refer to the physical aspects, in similar evaluations – see for details Losano, Mario G. – “Marile sisteme juridice. Introducere în dreptul european și extraeuropean”, Bucharest, All Beck Publishing House, 2005, p. 372.

<sup>16</sup> According to Article 24 par. 2 and Article 125 par. 2 of the Law No. 272/2004 on the protection and promotion of the rights of the child.

<sup>17</sup> Article 12 of the European Convention on the Exercise of Children’s Rights. <http://conventions.coe.int/treaty/en/Treaties/Html/160.htm>, accessed on 9 August 2009.

*10 years of age* deems it necessary, in order to solve the case. Therefore, the relevant criteria for the interview would be, if it is needed, to solve the case. The limitation inconvenient, based on its necessary character, as the Romanian lawmaker justifies it, having to do with the lack of maturity of the child in this age group is partly alleviated by the provisions of paragraph 5 of the same article, which allow for a child who is even younger than 10 to apply to be interviewed, whereas the refusal of the judicial authority must be substantiated. This is how the child younger than 10 may also be efficiently protected, in the case when the court does not deem necessary to interview him, but the child wishes, however, to express his own point of view. As it uses the phrase “any child”, the legal provision is flexible, dynamic and progressive, even with respect to the provisions of Article 12 of the Convention on the rights of the child, which refers to the “child who is capable of forming his or her own views”.

*International legal framework* Thirdly, the international legislation acknowledges the child as a person and, as such, he has the possibility to fully enjoy all civil, political, cultural, economic, social rights etc. At the same time, it highlights the particular elements in connection with the child – a developing person – respectively, the absence of capacity or intellectual maturity, which limit his legal competence within various frameworks of decision/ actions and which make it mandatory to establish and regulate measures of assistance, prevention, protection and care, as well as institutions which the child may use to implement his rights, without being discriminated against or prejudiced in any way<sup>18</sup>.

*Strengthening the legal* The establishment of good practices related to the child interview is aimed at strengthening this relatively fragile legal competence of the child.

---

<sup>18</sup> Sanda Frunză, „Dispoziții naționale în Dreptul Familiei”, plan of continuous training seminars, pp. 6-7.

*competence of the child*

In what follows, the case when the child is an active participant or part in the process will be analyzed separately from the case when the child is a witness, as the cases when the child is a party and when he is an active participant and subject of the process have the same specific elements in terms of interview, whereas the specific elements are different in the case when the child is interviewed as a witness.

## II. Child Interview Stages

### II.1. Interview preparation

*Definition* The preparation for the interview includes the implementation of all preliminary activities before the interview, which are focused on the equipment, information and psychological frameworks for the interview, geared to lead to the best outcome<sup>19</sup>.

*Sources in the legislation* The only legal provisions in this respect are provided under Article 125 of Law No. 272/2004 on the protection and promotion of the rights of the child, making reference to Article 95 par. 3 of the Law No. 272/2004 on the protection and promotion of the rights of the child and Article 17 of the Law No. 273/2004 concerning the legal regime of adoption<sup>20</sup>.

---

<sup>19</sup> H. Rudolph Schaffer, *Introducere în psihologia copilului*, Cluj Napoca, ASCR, , 2005, p.257.

<sup>20</sup> According to Article 95 par. 3 of the Law No. 272/2004 on the protection and promotion of the rights of the child: "If the court of law deems necessary, it may subpoena the child in order to conduct a hearing. The hearing only takes place in the council chamber, in the presence of a psychologist and only subsequent to an initial preparation of the child in this regard."

According to Article 125 par. 2 of the Law No. 272/2004 on the protection and promotion of the rights of the child: "The hearing of the child who has reached the age of 10 years old is mandatory and it is conducted in accordance with the provisions stipulated under art. 24, with the exception of the cases which concern the establishment of special child protection measures for the abused or neglected

These provisions refer exclusively to the substage regarding the preparation of the child.

## II.2. Prior information provided to the child<sup>21</sup>

*Definition* The prior information provided to the child is one of the measures meant to assist children, likely to improve communication and understanding of the legal process wherein they are involved and whose span is from the initial contact to the superior limit when it loses its mandatory character.

*Legal content* The prior information provided to the child is a procedural step which focuses on the child and refers to the summons the child receives in connection with a certain pending case, to express his own standpoint (according to either his legal standing, or, as the case may be, his own opinion), regarding a given aspect or his statement.

*International regulations* In this respect, according to Article 9 of the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*<sup>22</sup>, which is also applicable to the

---

child; in such a case, the hearing of the child is conducted in accordance with the provisions stipulated under art. 95, paragraph (3)."

According to Article 17 of the Law No. 273/2004 concerning the legal regime of adoption published in the Romanian Official Gazette, Part I No. 557 of 23/06/2004 it is provided that: "(1) The consent to the adoption of a child who has reached 10 years of age shall be taken in front of the court, during the adoption endorsement stage. (2) The adoption shall not be endorsed in the absence of the consent of the child who has reached 10 years of age. (3) Prior to the child expressing his consent, he who has reached 10 years of age shall be advised by the competent child protection directorate and informed, taking into account his age and maturity, especially on the consequences of the adoption and of his consent to the adoption and shall develop a report thereof."

<sup>21</sup> The National Authority for the Protection of the Rights of the Child, *op. cit.*, p. 84.

<sup>22</sup> Annex to the Resolution 2005/20 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>, as well as Justice

civil process<sup>23</sup> titled “The Right to effective assistance”, when assisting children, the states must, according to pts. 2, 3, 24 and 25, have their professionals put in all efforts to coordinate the support extended to the child, so that he should not be the subject of excessive intervention.

### *11.2.1. Applicable to the process when the child is a subject – an active participant or a party*

*The absence of a national legal framework*      The national provisions do not regulate the process of sending subpoenas to the child who is an active participant or a party in the process.

*The summons through the intermediary/ and of the legal representative*      The child party to the process shall be *summoned* based on his age, either in person (and in this case, his legal representative who shall endorse his actions, shall also be summoned) or only through his legal representative<sup>24</sup>, as the summons cannot be sent to a child under 14 years of age<sup>25</sup>.

*Direct summons*      By the summons, however, the child is invited to actively participate in the process.  
In practical terms, the summons may be submitted

---

in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf), New York 2009.

<sup>23</sup> According to pt. 6 of Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to Resolution 2005/20 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime “The Guidelines could also be applied to processes (...) in noncriminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law”, <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>.

<sup>24</sup> According to the provisions of Article 85 and subsequent of the Civil Procedural Code.

<sup>25</sup> According to Article 92 par. 5 of the Civil Procedural Code, “Summons cannot be presented to a child who has not reached 14 years of age or to a person who lacks mental competence. The mental competence is presumed until proven lacking.”

*directly*, through the intermediary of a notification addressed to the child, expressed in words which he can understand, adjusting the vocabulary based on his intellectual development level. The notification must be clear, concise and developed so as not to cause fear to the child. It will include a mention concerning the object of the case, the invitation to come and express his own opinion, the location and the time when the child will have to come, the possibility to come accompanied by a close, trusted person, as well as the contact data for the court, in order for the child to be able to request preliminary explanations and clarifications.

*Indirect summons*

Usually, currently, the child is summoned *indirectly* through the intermediary of the legal representative of the child, who shall be present in person, or through his lawyer, in front of the court.

In such cases, it refers to the request to bring forth the child. This means is used especially when there are no suspicions concerning the manipulation of the child. The indirect summons may also be submitted through the intermediary of the welfare and child protection services, especially when the child has been abused or neglected and it is necessary to take a special protection measure for the child or when a child is adopted. The cutting edge of such a means is that another substage of preparation is facilitated, namely the preliminary preparation of the child.

*The preference towards the direct summons*

However, the direct summons is the best practice in the field, as it provides content for the right of the child to be appreciated as a subject in full right within the civil procedure, and not only as a "small citizen with small rights"<sup>26</sup>, as the child is a proactive participant throughout the legal process and not only a subject<sup>27</sup>.

---

<sup>26</sup> By Albuquerque Catarina, „Drepturile copilului și administrarea justiției – ce rol au judecătorii?”, [http://www.drepturilecopiilor.ro/downloads/CTA\\_Article\\_CRC\\_Judges\\_RO.pdf](http://www.drepturilecopiilor.ro/downloads/CTA_Article_CRC_Judges_RO.pdf), accessed on 19 August 2009.

This means of invitation is the first element of the contact with the child, which establishes the socio-judicial relationship, based on direct dialogue premises, availability and responsibility.

Taking into account the same considerations, when it finds that the motion to interview a child who is younger than 10 is substantiated, the court shall take the measures as indicated previously<sup>28</sup>. *Idem ratio*, the denial to endorse such a motion shall take the shape of an answer, formulated in the same simple manner, which will include the reason why the motion was denied.

### II.2.2. *Applicable to the process when the child is a witness*

#### *Sources in the legislation*

The provisions of Article 188 of the Civil Procedural Code invariably stipulate the witness summons or even the warrant to appear in court, as well as the possibility for the witness to be heard at his residence<sup>29</sup>.

These legal provisions which also target the child witness are repealed, partly, by Article 142 par. 3 of Law No. 272/2004 on the protection and promotion of the rights of the child, with reference to Article 2 of the same legal document which provide the prevalence of the best interests of the child principle, to any measure, of any nature (the enforcement of a warrant to appear in court, as a coercion measure, runs obviously contrary to this principle and may be replaced with the supply of

<sup>27</sup>The explanatory Report to the Convention, Chapter II, letter a), Article 3, pt. 33. <http://www.just.ro/Portals/0/CooperareJudiciara/GhidCooperareCivila/Conferinta%20Haga/Raport%20explicativ%2019%20octombrie%201996.doc>

<sup>28</sup>The National Authority for the Protection of the Rights of the Child, *op. cit.*, p. 85.

<sup>29</sup>According to Article 188 of the Civil Procedural Code: “the Court may issue a warrant against the witness who does not appear at the first court session. In more urgent matters, the court may order warrants against the witnesses even during the first court session. If following the warrant, the witness does not appear in court, the court may proceed with the trial. The court may endorse interviewing a witness at his residence, when he is prevented from coming to court.”

specialized services, such as the legal, psychological counseling, with a view to determining his appearance in court, unless other alternative means have been identified, such as the one provided in the Code – the interview at the child’s residence). From this point of view, Article 188 par. 1 of the Civil Procedural Code, which provides the non-enforcement of the judicial fine to the child witness, is in line with the modern conception concerning the child interview<sup>30</sup>.

*The summons accompanied by an invitation* Given the flexibility<sup>31</sup> and the rigor characterizing the child processes, the good practice namely that an invitation letter to include the contents shown above should accompany the summons of the child witness, proves to be necessary.

### II.3. Place of the interview

*Special conditions* The place of the interview needs to be customized prior to the child interview. This requirement presupposes the special equipment of waiting areas adequate for the child interview. According to Article 11, pt. 30 letter d and pt. 31 letter b of the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*<sup>32</sup>, the

---

<sup>30</sup> „Unless the law provides otherwise, the court, according to the provisions of this article, may punish the following acts related to the trial, therefore: (...) 2. with a judicial fine, from 30 lei to 500 lei: a) the absence of a witness who has been duly summoned or his denial to testify while in court, except for the case when he is a child.”

<sup>31</sup> The Honorable G. Jones, William – U.S. Department of Health and Human Services – Administration of Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child abuse and Neglect – „Working with the Courts in Child Protection”, 2006, p. 20.

<sup>32</sup> Annex to Resolution 2005/20 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>., and Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf), New York 2009, accessed on 8 August, 2009.

courts must have separate waiting areas for the children and restricted access areas specifically equipped, and the layout of the courts must take the children into account as well. It shall be forbidden for any other persons, such as the defendants during the criminal process or the criminal offenders to see or have access to these areas. The magistrate will order the child to wait in such areas and to appear at his/ her calling<sup>33</sup>.

*Customization of the interview place*

Article IX of the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* – an annex to the indicated resolution, titled, the “Right to be protected from hardship during the justice process” provides the determination of the area where the interview will take place under pts. 2, 3, 24 and 25. The establishment of the area refers to the customization of the interview place.

*Interview background*

According to the psychological research<sup>34</sup>, one of the factors which influence the memory of the children refers to the background of the interview. The Romanian judicial system does not provide all these recommended facilities, and, in this situation, the Romanian magistrate must observe the time schedule in the case of a child interview, so as not to dwell too much in a situation which is somewhat unbearable for the child.

*The place of the interview*

The place of the interview must be an area especially equipped for the purpose, as the judicial process and the court layout might be intimidating for the children, may cause them fear or make them unwilling to any

---

<sup>33</sup> The Honorable G. Jones, William – U.S. Department of Health and Human Services – Administration of Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, „Working with the Courts in Child Protection”, 2006, p. 20.

<sup>34</sup> Thomas D. Lyon, *Speaking with children: Advice from investigative interviewers*, Denver, National Association of Counsel for Children, 2005, p.20.

dialogue. If there is no better room, likely to facilitate the communication between the magistrate and the child and to decrease the latter's stress, it is preferable to use even a smaller room, rather than the court room, where the people present can sit at a table<sup>35</sup>.

### *II.3.1. Applicable to the process when the child is a subject – an active participant or a party*

#### *Applicable legal framework*

At the national level, the domestic provisions refer to the child interview which should be conducted in Judge's Chambers, Article 144<sup>1</sup> of the Civil Procedural Code<sup>36</sup> is relevant in this respect. References to this article are made in Article 129 of the Law No. 272/2004 on the protection and promotion of the rights of the child and Article 63 of the Law No. 273/2004 regarding the legal regime of adoption, for the adoption cases. Article 95 par. 3 of Law No. 272/2004 on the protection and promotion of the rights of the child, concerning the special procedure of issuing a subpoena in cases of emergency placement, provides that, if it is deemed necessary, the child shall be interviewed *only* in the judge's chambers.

### *II.3.2. Applicable to the process when the child is a witness*

#### *In camera. Prerequisites*

In the case of a child witness in a civil process which is not based on the Family Code, the provisions of the Civil Procedural Code do not necessarily impose the interview in the judge's chambers. However, according to the provisions of Article 121 par. 2 of the Civil Procedural Code, the court may order that the debates

---

<sup>35</sup> The National Authority for the Protection of the Rights of the Child, *Rolul judecătorilor și al procurorilor în protecția și promovarea drepturilor copilului*, Trei Publishing House, Bucharest, 2006, p. 85.

<sup>36</sup> According to Article 144<sup>1</sup> of the Civil Procedural Code: „In cases when, according to the Family Code, the court must interview a child, it shall take place in the judge's chambers. If it deems it necessary in relation to the case, the court shall interview the child in the absence of the parties or any other persons.”

should take place in camera, if the public debate could bring prejudice to the public order or morality or to the parties.

*The rules applicable to the child interview in the judge's chambers*

Article 28 of the Law No. 272/2004 on the protection and promotion of the rights of the child provides the right of the child to having his personality and individuality respected and that he cannot be subject to any physical punishment or other humiliating or degrading treatments. Article 6 letter g of the Law No. 272/2004 on the protection and promotion of the rights of the child imposes the principle of respect for the dignity of a child. On the other hand, a child must be treated differently in comparison with an adult in court, given his special bio-psycho-somatic characteristic features. Out of these reasons, the child interview shall be conducted in the judge's chambers, in camera, by extending the scope of the provisions of Article 121 par. 2 of the Civil Procedural Code, as allowed in the reference international principles applicable to this matter, which have been invoked above.

*Supplementing the national framework*

The child interview in camera does not observe alone the above-mentioned requirements, necessary to ensure the best conditions for the child. It is a matter for the competent bodies to provide the minimal facilities, imposed by the international standards applicable in the matter, which have been listed above.

#### *II.4. Interviewing time*

*Setting the date and time for the interview. School schedule*

The child's school schedule must be taken into account when a date and a time for the interview is determined. It would be preferable in this respect to set the day for the interview when the child does not have any classes or when he has the fewest classes.

*Daily rest and feeding*

In any case, the child's daily schedule must be taken into account, as it is not recommended to produce

*schedule* any confusion in his daily rest and feeding schedule. The particular needs of each child will be taken into consideration.

*International recommendations* The model law mentioned above, *Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary*,<sup>37</sup> sets in its Article 28 letter i) that the interviews should be scheduled at times of day appropriate to the age and maturity of the child. The interview which ignores these recommendations may cause fatigue, discontent and reluctance of the child, and this will not be useful from the judicial perspective either, since it will not provide the best possible results.

### *II.5. Other persons present during the interview*

In order to provide the adequate climate for the child interview throughout the civil process, it is necessary to establish the persons whose presence is stipulated in the legal provisions, or which is desirable during the child interview.

#### *II.5.1. Applicable to the process when the child is a subject – an active participant or a party*

*Obligation of the states* The States have the obligation to develop and implement measures to facilitate the child interviews<sup>38</sup> and to streamline communication and understanding with them<sup>39</sup>.

---

<sup>37</sup> Article 29, pt. i of Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary, Partea I. p. 22. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf) accessed on 8 August 2009.

<sup>38</sup> Article IX pt. 25 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to Resolution 20/2005 of the UN Economic and Social Council <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf> accessed on 8 August 2009.

<sup>39</sup> Article IX pt. 25 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to Resolution 20/2005 of the UN Economic and

*Support person* Implementing these measures requires the “support person” to accompany the child throughout his interview, who may be a specialist or a family member close to the child. Given that around until the age of 6-7, children are very dependant on the persons around them and on the guarantees which they provide to them<sup>40</sup>, the chosen person should be selected from among the specialized persons or persons with training on how to communicate with the child, to prevent thus any prejudice, including new and secondary trauma for the child.

*Situations of exclusion* The support person must not be selected from among the persons who define their relationship with the child by means of authority, those who have opposite interests in comparison with the child, as well as those who are the object of the interview.

*The support person selection* The child shall select the support person. According to Article 16 of the model law included in the resolution above mentioned, the support person shall be determined by the child, possibly together with his parents or his legal representative, if the specific circumstances do not exclude this possibility, from among those persons who already have a special relationship with the child. If the first hypothesis is not applicable, then the support person may be also appointed by the magistrate based on the previous consultation of the child, or the persons mentioned above, with due respect to the gender of the

---

Social Council <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf> accessed on 8 August 2009.

<sup>40</sup> Cătălin Luca, „Teorii psihologice privind dezvoltarea copilului” in Cătălin Luca, Sofia Luca, et. al., *Ghid de Practici Instituționale în Instrumentarea Cauzelor cu Minori*, Iași, Alternative Sociale Association, 2005, pp. 205-208.

[http://singuracasa.ro/images/img\\_asistenta\\_sociala/pe\\_ntru\\_profesionisti/resurse\\_asistenta\\_sociala\\_copil\\_singur\\_acasa/abilitati/AAS\\_Psihologia\\_dezvoltarii\\_copilului.pdf](http://singuracasa.ro/images/img_asistenta_sociala/pe_ntru_profesionisti/resurse_asistenta_sociala_copil_singur_acasa/abilitati/AAS_Psihologia_dezvoltarii_copilului.pdf), accessed on 3 August 2009.

person who will be appointed<sup>41</sup>, in relation with the characteristic features of the child, including his gender.

*The behavior of the support person*

Therefore, the support person may be the very legal representative of the child, even a member of the enlarged family, or another person close to the child. It is also possible with the appointment to provide the adequate period to get close to the child. The support person shall be notified in connection with the date and place for the interview. In the undesirable situation when the child must be interviewed repeatedly, a very strong emphasis shall be placed on the principle of continuity, according to which the same support person should accompany the child throughout the entire process<sup>42</sup>.

*The functions of the support person*

The functions of the support person are to ensure the child's emotional balance, to supply him with the relevant information in connection with his subpoena, to making him familiar in his own language, according to his cognitive level development, with the specific elements of the procedure: for instance, he could be explained the role of a magistrate, the layout of the waiting area or the interview room, where he would sit. Such a person of reference will be the child's safeguard of trust and safety, in the context of having to explore the unknown, difficult and severe judicial procedures. The child's support person is that person who will inspire him calmness, confidence and emotional

---

<sup>41</sup> Article 16 of Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary, Part I. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf) accessed on 8 August 2009

<sup>42</sup> Article 17 of Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary, Part I. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf) , pp. 16-17, accessed on 8 August 2009

availability, calm down his emotions and anxiety<sup>43</sup>. This person will supply, in a sensitive manner, the assistance which the child needs throughout the entire judicial process, having the role to help, support and advise the child.

*Exclusion of the possibility to manipulate the child*

The requirement not to have the child influenced or manipulated must be given great care. *Ex aequo*, the support person can consult with the parents or the legal representative of the child, with the lawyer who represents the child or directly with the magistrate (especially when there is no lawyer for the child) and may request, when deemed necessary, the adoption of support measures for the child<sup>44</sup>. During the interview, the support person may be seated close to the child, and, if the case may be, may hold the child by the hand. If the child is small, he can be held in the arms or in the lap of the support person<sup>45</sup>.

*Highlighting the opinion of the child*

The child interview, who exercises his fundamental right, provided in Article 12 of the Convention concerning the rights of the child, is not a procedural method to submit evidence, but, according to the new draft of Civil Code<sup>46</sup>, a mere instrument which reveals

---

<sup>43</sup> Sofia Luca, Catalin Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale” in *Justiția pentru Minori în interesul superior al copilului. Practici de lucru cu copilul victimă*, Iași, Magistrates’ Association of Iași, Save the Children Organization, branch of Iași, 2008, p. 22. <http://www.riia.ro/index.php?section=35> accessed on 9 August 2009.

<sup>44</sup> Article 17 of Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary, Part I. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf), p. 16-17, accessed on 8 August 2009

<sup>45</sup> Article 17 of Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary, Part II. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf), p. 47-48, accessed on 8 August 2009.

<sup>46</sup> See the contents of Article 202 par. 3 of the „New Draft of Civil Code”, in the variant adopted by the Senate on 13 September 2004, Bucharest, C. H. Beck Publishing House, 2006.

the opinion of the child with respect to a matter of his concern.

*The possibility to hear the child alone, when the parties are not present*

From this point of view, the European Convention on the exercise of children's rights provides the possibility to interview the child alone, but this possibility does not result in the confidentiality of the interview outcome, as the *parties* may have access, throughout the pending case, to certain parts of the information or to the whole expressed opinion, if the domestic law stipulates it.

*De lege lata*, the Romanian provisions (Article 144<sup>1</sup> of the Civil Procedural Code, Article 95 par. 3 of Law No. 272/2004 on the protection and promotion of the rights of the child), allow the Romanian magistrate to hear the child alone in such cases, therefore not in the presence of the parties to the case, or their legal or conventional representatives.

*The child's legal representative*

When the *legal representative* of the child is also a party, the previous considerations may still be applicable. When this double standing does not occur, the legal representative of the child – parent, guardian, curator appointed according to the conditions of Article 24 final paragraph of Law No. 272/2004 or the natural or legal person appointed throughout the procedures implemented to establish a special protection measure, according to the provisions of Articles 62, 64 and 66 of the same law, may be present during the interview, only if the court deems that it would not affect the safety and the relaxed, quiet and child-friendly atmosphere.

The child must be interviewed without his legal representative, as the presence of several persons throughout the interview process may make the child not at ease and anxious<sup>47</sup>.

---

<sup>47</sup> The National Authority for the Protection of the Rights of the Child – *op. cit.*, p. 85.

This interview method is compatible with the requirement to implement a procedure which is not traumatic for the children.<sup>48</sup>

*Appointing a person to defend the interests of the child*

The European Convention on the exercise of the children's rights provides the appointment of a "legal guardian for the child's interests" who, by virtue of his qualities, shall defend the interests of the child, his fundamental rights throughout the civil process. The child who is deemed sufficiently competent may also ask for the appointment of this legal guardian<sup>49</sup>. Resolution 2005/20 stipulates similar rules providing the obligation of the authority to appoint a person, whenever it deems necessary, who shall defend the best interests of the child. Domestically, with respect to the refugee child, according to Article 73 of Law No. 272/2004 on the protection and promotion of the rights of the child, the presence of such a judicial representative for the rights of the child is mandatory, as he will provide assistance to the child throughout the entire process for the child to be granted the refugee status<sup>50</sup>.

*The psychologist*

A psychologist must be present throughout the child interview process, because, as a child development

---

<sup>48</sup> Article XI pt.30 letter d) of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to Resolution 2005/20 of the UN Economic and Social Council <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>

<sup>49</sup> Article 4, Article 9 of the European Convention on the Exercise of the Rights of the Child, adopted on 20 November 1989

<sup>50</sup> According to Article 73 of Law No. 272/2004: „(1) In case the child who requests the refugee status is not accompanied by the parents or by another legal representative, the protection for the child's interests during the procedure for granting the refugee status is provided by the general department for social security and child protection (...) (3) In order to adequately protect the interests of the child referred to under paragraph (1), the general department for social security and child protection appoints a persons with a graduate degree in law or social work from its own staff or from the staff of an authorized private institution, who would protect the rights of the child and would participate together with the child in the entire procedure for granting the refugee status.”

*present*

expert<sup>51</sup>, the psychologist may supply important information to the magistrate, both prior to the interview, regarding the child development status, as well as subsequent to the interview, regarding the psychological perspective on the behavior and the information the child supplied throughout the interview.<sup>52</sup>

In child abuse cases, the psychologist role within the multidisciplinary team is extremely important<sup>53</sup>.

The psychologist shall be discreet during the child interview, as the psychologist shall watch the child's behavior and interactions<sup>54</sup>, from behind unidirectional vision panel or, at least, from behind the child, without interacting with him or with the magistrate conducting the interview. According to the domestic legislation, the psychologist must be present in many interviewing situations<sup>55</sup>. However, the scope of the civil cases concerning the children is much larger, therefore the assistance provided by a psychologist for a child throughout the interview process should be generalized, taking into consideration the need to correctly assess the child interview outcomes.

---

<sup>51</sup> Article IX, pt. 25 of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to Resolution 2005/20 of the UN Economic and Social Council <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>

<sup>52</sup> Sofia Luca, Cătălin Luca, *op. cit.*, p. 23.

<sup>53</sup> Dublea, Aurel; Ștefăroi, Nicoleta, *et. al.*, *Ghid de practici instituționale în implementarea cauzelor cu minori*, Iași, Alternative Sociale Association, 2005, p.189.

<sup>54</sup> Garbarino & Stott, 1991 *apud* Mc.Leod A., *Listening to children. A practitioners' Guide*, London, Jessica Kingsley Publishers, 2008, p.107.

<sup>55</sup> Special procedure regulated in Articles 94-95 of Law No. 272/2004, as well as the procedure concerning the establishment of a protection measure in the case of the molested or neglected child, according to Article 125 par. 2 of the same law. Also, Article 9 par. 4 of Law No. 369/2004 concerning the implementation of the Convention on the civil aspects of international child abduction, adopted in the Hague on 25 October 1980, which Romania joined through Law No. 100/1992, provides the same mandatory presence of the psychologist throughout the interview of the child who has been illegally transported or detained.

- Caselaw* In practice<sup>56</sup>, the court found that the facts as recollected by the child when he was interviewed in camera with a psychologist present, concerning his wish not to stay in the Center L. as he had been molested by the other children in this center, had been confirmed by the other items of evidence gathered in this case, therefore the court ordered the institutionalization of the child in another center, namely the Reception Center for the Protection of the Child Victim of Abuse C.
- Access to legal counseling and legal aid services* The child has access to the legal counseling and legal aid services<sup>57</sup>. Even if the need to appoint a *pro bono counsel* for the child victim is much greater at the level of the criminal procedures, it cannot be excluded from the civil cases, when deemed necessary. Appointing a *pro bono counsel* for the child does not automatically mean that he should be present throughout the child interview, which is a matter decided upon by the magistrate, based on the best interests of the child. The *pro bono lawyer* plays a similar role to the legal representative or judicial guardian of the child, that is to defend the interests of the child, by providing professional defense.
- The clerk present* By virtue of the prestige and the trust awarded to the magistrate, it is not excluded, and some states even adopted this view<sup>58</sup>, that the interview should take place only between the magistrate and the child, without a *clerk*, in the civil cases regarding the situation of the child.

---

<sup>56</sup> Civil Ruling No.. 1177/26 of October 2005 of the Bucharest Tribunal, Fifth Civil Section, published in the *Protecția copilului și adopția. Practică judiciară* by Andreea Florina Mateescu, Ioana Cristina Gheorghe-Bădescu, Hamangiu Publishing House, 2008, pp. 135-138.

<sup>57</sup> Article XV pt. 43 of Resolution 2005/20 of the UN Economic and Social Council <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>

<sup>58</sup> The National Authority for the Protection of the Rights of the Child, *op. cit.*, pp. 86-87.

*The prosecutor present* If *the prosecutor* participates in the civil process<sup>59</sup>, he shall act to protect the rights of the child according to the general and special legal provisions applicable in the area, the above mentioned statements are also valid in the prosecutor's case.

*The interpreter present* In the case of a child with disabilities, or unable to speak Romanian, *an interpreter* shall be provided to act as an intermediary so that the child can communicate in optimal conditions, as provided in Article 143 of the Civil Procedural Code, which regulates the use of an interpreter in special situations, a legal text which, even if it is not specific for the situation of the child, cannot be set aside from being applied.

In no case can the *media representatives or any other persons* assist in the interview.

In conclusion, we appreciate that, in connection with the persons present in the child interview, an optimal interview presupposes the presence of a support person for the child and/ or a psychologist or another specialist in child development psychology (for instance the case social worker), and it is the magistrate, who, on a case by case basis, shall take a decision regarding the need to have other persons present.

### 1.5.2. *Applicable to the process when the child is a witness*

The previous considerations are fully valid in the case of the child witness as well, taking into account certain specific elements provided in the domestic legislation, which are not in line with the international standards already listed.

*The child witness in a judicial process* Thus, in the case of a child witness in a judicial process which is not based on the Family Code, the national legal provisions do not stipulate the removal of the parties.

---

<sup>59</sup> Article 125 of Law No. 272/2004 on the protection and promotion of the rights of the child and Article 63 and Article 74 of Law No. 273/2004 on the legal regime of adoption.

*which is not based on the Family Code*

*Child protection special measures*

In this context, according to the domestic legal rules, but also based on the right to a fair trial, the parties can be present, but the magistrate shall take special measures to protect the child, starting with the strict supervision of the number of questions and how these are addressed by the parties (the tone of voice, the vocabulary used), and the supply of specialized assistance services, going up to removing the parties from the court room and the denial of child cross-examination, if the situation so requires.

*Mediated interrogation*

The court may require that the interrogation should not be conducted by the parties directly, but by their representatives, specifically trained to communicate with a child (such as specialized lawyers or child psychology experts: psychologists, social workers).

*Assessment of the best interests of the child*

Irrespective whether the court, while assessing the “impact on the child” (which is the cornerstone concept of the Convention on the rights of the child), will find that the best interests of the child require the parties to be absent from his interview, based on the specific elements of the child and of the case, the court shall also have the freedom to remove the parties, to apply Article 3 of the Convention on the rights of the child, according to which the best interests of the child principle must prevail, as an absolute principle, from which no derogation is allowed, not even in war times or emergency situations, therefore not even when it comes into clash with other fundamental human rights, such as the right to a fair trial, provided under Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

In this situation, based on the endorsement by the

court, the parties may take alternative measures, such as putting questions forth through the experts or, in the worst case scenario, in order to debate the child statement from all points of view, they could suggest and submit evidence against it.

*Appointment of a party representative to ask questions to the child* Such solutions are frequently used in other states, even in the criminal matter, as in Australia<sup>60</sup>, for instance, where the judge, in order to avoid the examination by the party, may appoint such a party representative, only to ask questions to the child, thus avoiding the direct contact, as well as the potential intimidation.

*The distance from the child* When the parties or their special representatives' presence is allowed, the magistrate shall ensure that they are positioned at a distance from the child, not to make him uncomfortable.

*The clerk present* As a rule, according to Article 198 of the Civil Procedural Code<sup>61</sup>, the clerk shall be present to record the child statement.

## *II.6. Prior preparation of the child*

### *II.6.1. Applicable to the process when the child is a subject – an active participant or a party*

*Prior information of the child* The rule of the child preparation is to inform them previously thereof, to make them familiar with the judicial process in which they will take part. It is

---

<sup>60</sup> The model of law proposed in the Resolution 2005/20 *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* of the Economic and Social Council.

<sup>61</sup> According to Article 198 of the Civil Procedural Code: „The testimony shall be written by the clerk, upon dictation by the president or the delegated judge and shall be signed on each page and at the end by the judge, the clerk and the witness, after having made the latter aware of the contents. If the witness does not want or cannot sign it, this shall be mentioned therein.“

extremely powerful in connection with the very procedural act of interviewing the child<sup>62</sup>.

*National legal framework*

In regulating this very important substage, as a consequence of having placed the child in a situation of awareness and in a relative and positive control concerning the judicial experience which he will have to cope with, the Romanian civil legislation includes several separate regulations in this respect: the provisions of Article 24 par. 3 of Law No. 272/2004 concerning the protection and promotion of the rights of the child on the child's right to information – his possibility to request and receive information in connection with the matter on which his opinion will refer, a right which may also be exercised prior to his presentation for the interview; Article 95 par. 3 of Law No. 272/2004 concerning the protection and promotion of the rights of the child and Article 17 par. 3 of Law No. 273/2004 on the legal regime of adoption.

*European legal framework*

The European Convention on the exercise of the rights of the children provides that the child's representative or his "judicial guardian" to supply to the child, previously, the necessary information with a view to being interviewed, to explain to the child the relevant aspects to determine him to have an informed opinion<sup>63</sup>.

*Relevant information*

The explanatory report of the Convention indicates the elements that must be taken into account when defining the term of *relevant information*. Thus, the

---

<sup>62</sup> ECHR Decision of 11 January 2000, for the Ignaccolo – Zenide case vs. Romania, published in the Romanian Official Gazette No. 6 of 8 January 2001 or the ECHR Decision of 22 June 2004, for the Pini and Bertani, Manera and Atripaldi vs. Romania, published in the Romanian Official Gazette No. 1254/23.12.2004

<sup>63</sup> <http://conventions.coe.int/treaty/en/Treaties/Html/160.htm> accessed on 6 August 2009.

child shall not get all the information, as some of the information may be damaging and traumatic for him. These elements were inserted in the definition given by the Convention, according to which the term of *relevant information* means the adequate information in connection with the age and competence of the child, which will be supplied with a view to allowing the child to fully exercise his rights, except for the case when communicating such information may be contrary to the child's well-being<sup>64</sup>.

*Communicating information*

The information assessed as potential to be communicated to the child, shall be relayed to him in a format adjusted to his age and understanding capacity.

*The person who conducts the preliminary preparation*

This preliminary preparation may be conducted by the child's support person, who must be receptive in terms of observing the child throughout his previous relevant manifestations, with a view to supplying information and potential consultation with the court, prior to the child interview, concerning the special needs of the child and the potential measures of special assistance which are required. This support person shall not discuss the facts and the circumstances of the case with the child, in order not to influence his opinion, but shall be confined to informing the child in connection with the aspects mentioned previously. The manipulation of the child is not permitted in any case.

For example, the child who has not reached 10 years of age yet and currently lives with his mother must be informed and receive pertinent explanations and advice based on his age and understanding level, so that he could express his opinion. He must be

---

<sup>64</sup> Article 2 of the European Convention on the exercise of the rights of the child, adopted by the General Assembly of the United Nations.

informed on the consequences of his opinion.<sup>65</sup>

As the mother did not inform her child on the consequences of his opinion, the element found in the social inquiry report concerning the statements of the child according to which he did not want to get back to his father to Australia shall be taken into consideration and shall be given the appropriate importance based on the age and maturity level of the child.

*The training by the psychologist*

The prior preparation of the child may be supplied or even doubled by the preparation provided by a specialist, such as a psychologist (according to Article 95 par. 3 of Law No. 272/2004 concerning the protection and promotion of the rights of the child) or the employees of the social welfare and child protection department with tasks in this area (as in the case of the child interview with a view to him expressing his consent to his adoption). As they have specialized training in this respect, these persons will be a safeguard in terms of the prior preparation of the child with a view to his interview.

In terms of the child's prior preparation, psychological counseling sessions may be conducted with him, if deemed necessary, in order to support him to get over this experience which is not in the least easy of getting into contact with the judicial process.

A relevant example in this respect is represented by the future Civil Procedural Code, which, in its Article 882, marginally called "*The refusal of the child*" (Section 2, "Enforcement of court orders in connection with the children", Chapter IV of the Title III – Direct forced enforcement, of Charter V – On forced enforcement), places a special emphasis on the child's psychological counseling with a view to him

---

<sup>65</sup> Civil Ruling no. 470/06.05.2005 of the Bucharest Tribunal, the Fifth Civil Section, published in the *Protecția copilului și adopția. Practică judiciară* by Andreea Florina Mateescu, Ioana Cristina Gheorghe-Bădescu, Hamangiu Publishing House, 2008, pp. 279-290.

expressing his opinion concerning the enforcement of a court order affecting him, his firm refusal in connection with the execution, following the counseling, which can cause the reassessment of the measure initially ordered.

In the current stage, the magistrate must require the persons mentioned above to carry out the prior preparation of the child thereof.

### *II.6.2. Applicable to the process when the child is a witness*

*The lack of legal regulation thereof*

The above mentioned elements shall also apply to the prior preparation of the child witness, a stage of the process in connection with which the Civil Procedural Code does not make any mention.

## **III. Prior preparation of the magistrate**

*The stages in the prior preparation of the magistrate*

It shall be focused on the child interview in the particular case, irrespective of the child's legal standing and it includes, in its turn, two stages (without a necessary chronological sequencing thereof): a) the magistrate gathers the relevant information for the interview; b) the magistrate prepares psychologically for the interview.

### *III.1. The magistrate gathers the relevant information for the interview*

*Activities integrated in the prior preparation of the magistrate*

The national legislation does not provide an overview of the activities circumscribed to the prior preparation of the magistrate, from the perspective of having the magistrate gathering the relevant information for the interview.

*Gathering the relevant information*

The relevant information is usually gathered through the study of the case documents and papers and shall refer to the name, first name and age of the child and his specific situation. This activity is aimed at

collecting the desired information from the child, his specific point of view or testimony on the specific aspects, as well as the optimal way to interview him.

*Elements to determine the cognitive development level of the child*

Determining the age and the general circumstances of the child will enable the magistrate to put an emphasis on the specific features of the child's age group and will also enable him to determine the cognitive development level of the child with whom he gets into contact. Thus, the magistrate will be able to focus on the special needs of the child, as well as to solve them by supplying him with the specific means, known *a priori*.

Thus, if the magistrate knows what the general features of the interviewed child's age group are, based on his senses as well, the magistrate, during the interview, can seize the uncertainties, for which he can provide support to the child by explaining and clarifying the impediment situation, or by asking the child more specifically to tell him when he cannot understand the situation or when he does not know it.

*Other elements required to gather an accurate testimony*

The likelihood of gathering an accurate opinion or testimony of the child is also related to a series of other social, cultural or emotional factors which are at play in that *status quo* of the child, which the magistrate should take into account<sup>66</sup>, among them, the child's ethnic background, culture or the various disabilities<sup>67</sup>.

It is important to know what is the background of the child, as it is an element which determines his actual development. The child interview is, as we have already highlighted it, an *intuitu personae* procedural action.

---

<sup>66</sup> Lindsay E. Cronch, Jodi L.Viljoen, David J.Hansen, *Forensic Interviewing in child sexual abuses cases: Current techniques and future directions*, USA, Elsevier, University of Nebraska-Lincoln, 2005, p.200.

<sup>67</sup> Doina Balahur, *Protecția drepturilor copilului ca principiu al asistenței sociale*, Bucharest, All Beck Publishing House, 2001, pp. 10-11.

*The purpose of gathering these elements* Prior to the interview, the magistrate must gather, eventually through prior contact with the child's support person, all information available in connection with these elements, to be able to support the child in expressing his opinion or testimony, to provide him with the assistance measures required by his special situation and to be able to fully understand him.

### *III.2. The magistrate must enter a special mental framework in order to conduct the interview*

*Contact with the child* The magistrate's prior preparation is aimed at having a streamlined contact with the child.

*The magistrate's specialization* Even if the magistrate for children is a person who must have fulfilled certain special requirements throughout the process of appointment and further specialization<sup>68</sup> - legal in depth knowledge, sociologic and psychological knowledge, psycho-intellectual knowledge – a clear and robust thinking, a critical and moral-affective spirit – tactfulness, patience, tolerance, empathetic availability<sup>69</sup>, however, prior to the interview, the magistrate must be aware of the need to fully apply this knowledge throughout the interview process. In this respect, the magistrate may refresh his specific knowledge, to optimally apply it to specific cases.

*Psychological preparation before the interview* Additionally, the magistrate will prepare himself for the interview. Prior to each interview, the magistrate must:

- set himself in a calm, peaceful mood, so as to be available to show openness and empathy for the child;
- prepare the most adequate words for the specific

---

<sup>68</sup> Ion Buș, Mircea Miclea, Daniel David, Adrian Opre, *Psihologie judiciară-curs postuniversitar 2004-2005*, Cluj- Napoca, Babeș-Bolyai University, Faculty of Psychology and Education Science, p. 66.

<sup>69</sup> Sofia Luca, et al., *op. cit.*, p. 69.

situation of the child;

- constantly recall his purpose – to protect and help the child, and, as the case may be, to empower and (re)direct him to the true scale of social values;
- shape the educational and axiological message that he will convey to the child;
- be prepared to manage the potential crisis situations.

*Amended  
sobriety*

The solemnity, sobriety in the attire of the magistrate may cause anxiety, fear to younger children as well, which makes it desirable for the magistrates who interview children not to wear a robe.

## IV. The interviewing stage

*Enforcing the  
right of the  
child to  
freedom of  
expression*

This stage of the interview process values and provides specific content to the right of the child to freedom of expression in any matter which affects him, as well as to the other rights provided in this field: the right to prior information, the right to be treated with dignity and compassion, the right to effective specialized assistance, the right to be protected against discrimination, the right to be protected from the vicissitudes of a trial, the right to safety<sup>70</sup>.

*Gathering  
information  
concerning  
the situation of  
the child*

On the other hand, the individual interview may be a productive means to collect the necessary, useful information, concerning the specific situation and the wish of the child.

*Evidence for  
the civil legal*

The statement of a child witness is evidence for the civil legal action, which, in corroboration with the

---

<sup>70</sup> UN, Justice in Matters involving child victims and witnesses of crime, Part I, New York, 2009, [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf)

<i>action</i>	other pieces of evidence submitted, enables the magistrate to decide on the case on trial.
<i>The purpose of the child interview</i>	The purpose of this stage is to gather the fully informed opinion of the child or his testimony, and, to fully observe and implement his rights as mentioned above throughout the proceedings, the child interview must be conducted according to a child-friendly procedure, specific for his situation <sup>71</sup> .
<i>The lack of a national procedure to interview children</i>	The national lawmaker has not provided any specific procedure yet to interview children in family law or civil cases.
<i>The principle of differentiated interviews</i>	The manner in which children should be treated throughout the justice process was provided in Article V of Resolution 2005/20 “ <i>Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime</i> ” of the Economic and Social Council. Thus, children should be treated in a caring and sensitive manner throughout the judiciary proceedings, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Every child should be treated as an individual with his or her individual needs, wishes and feelings (...) In order to avoid further hardship to the child, interviews (...) should be conducted (...) in a sensitive, respectful and thorough manner.”
<i>The approach of the magistrate</i>	Consequently, a mild, calm, friendly tone must be used throughout the entire interview. The lack of experience, the immature thinking and the incorrect

---

<sup>71</sup> Article XI pt. 30 letter d of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Annex to Resolution 2005/20 of the UN Economic and Social Council.

*towards child interview* understanding of all things and events by the children are factors which affect their perception, memory and capacity to relay circumstances, feelings, opinions<sup>72</sup>.

*Sources of stress for the child* The magistrate who interviews a child must be aware of the fact that the child summoned to appear in front of him has to cope with two major sources of stress: firstly, the stress of the interview situation, caused by his attempt to follow and understand the magistrate, his concentration to express his opinion, his effort to express himself in front of an unknown person. Secondly, in the case of some legal procedures (such as those in connection with the establishment of special protection measures for abused or neglected children, but also in some divorce cases, when the conflict between the parents of the child is open, acute), the child must also cope with the stress of recalling negatively charged events, which may even trigger a post-traumatic stressful situation, which, in its turn, may lead to the total child blockage<sup>73</sup>.

*Empathetic approach and allowing a certain level of child control* The magistrate should also be of support to the child, and be perceived as such by the latter. He must have an empathetic approach to the child, irrespective whether a support person is present or not. He must encourage the child to express his opinion or to testify in his own words and avoid to strictly controlling the child's behavior. Just the same, the magistrate will have to allow a deviation from the main topic and to formulate questions by using child-familiar activities/ words/ objects<sup>74</sup>.

---

<sup>72</sup> Petre Buneci, Ioana Teodora Butoi, *Martorul pe tărâmul justiției*, Bucharest, Penguin Book Publishing House, 2004, p. 119.

<sup>73</sup> Thomas, D. Lyon, *Speaking with children: Advice from investigative interviewers*, Denver, National Association of Counsel for Children, 2005, pp. 65-82.

<sup>74</sup> *Ibidem*.

- Anticipating the duration of the interview* The magistrate will have to anticipate the duration of the interview based on the child's capacity of concentration and with a view to stimulating him, the magistrate may use certain child encouraging expressions, such as: "...so", "yes... I see!"<sup>75</sup>
- Non-verbally encouraging the child* The magistrate will also encourage the interviewed child non-verbally, so that he can feel that what he says is truly important<sup>76</sup>.
- Establishing a safe environment* By doing so, the magistrate will provide a feeling of safety for the child, and will also show him his availability to communicate, whereas the child will also have in his turn a certain degree of control over the discussion, with benefits for him. In no case shall the child be treated with callousness, coldness, indifference, but the magistrate shall also not seem easy to impress.
- Excluded conducts* Irrespective of the child's opinion or his answers to the various questions asked subsequently, the magistrate is not allowed to show his discontentment, to raise the tone of his voice, or to use informal words which may affect the respect which the child is fully entitled to. From this point of view, the adequate address shall be to use the first name of the child, and not such words as: "boy", "girl", "man", which are likely to make the child inhibited, by causing a feeling of inferiority and fear likely to affect his confidence.
- Managing the potential crisis situations* Not in the least, the magistrate must anticipate the child's response, based on the data he has available before hand and be ready to manage the potential crisis situations which may occur: sudden burst into tears, stubborn refusal to say anything in addition etc. And in such cases too, the magistrate should be calm, understanding, empathetic and try to help the child.

---

<sup>75</sup> *Ibidem.*

<sup>76</sup> *Ibidem.*

## IV.1. Bonding with the child

### IV.1.1. Applicable to the process when the child is a subject – an active participant or a party

#### *Psychological bonding with the child*

The interview will begin with the establishment of a bond with the child, which involves the psychological connection with the latter, with a view to having an optimal communication. This stage is broken down into sequences, as the magistrate and the child introduce themselves in turns – the magistrate’s name, occupation, role, and the child’s name, age, and, eventually, his occupation (already a pupil, in pre-school etc.), just the same as the other participants (for instance, the support person or the psychologist) and everybody is made to feel comfortable by being invited to sit down. In order to facilitate his communication with the child, the magistrate may mention in his introduction a personal element which can help him gain the trust of the child (for instance, children of the same age, common concerns etc.). The language used will be adjusted so that the child can understand the questions and the terms used, whereas certain important terms which cannot be avoided must be explained to the child eventually.

Best is to start with a discussion on neutral topics<sup>77</sup>, such as, for instance, the road to the court, school, skills, concerns, a discussion which will allow the magistrate to assess the language level and the cognitive development level of the interviewed child<sup>78</sup>.

#### *Informing the child on the nature of the*

The magistrate will tell the child, in a language that is accessible to him, what is nature of the process which involves his interview, will show to him what is the

<sup>77</sup> Nicoleta Iuhoş, „Protecția copiilor. Reguli speciale de procedură”, training seminar plan, National School for Clerks.

<sup>78</sup> Thomas, D. Lyon,, *Speaking with children: Advice from investigative interviewers*, Denver, National Association of Counsel for Children, 2005, pp. 65-82.

*procedure which involves his interview*

purpose of his summoning to court – that is expressing an opinion concerning a matter which affects him and will tell him the rules based on which the interview will take place.

The magistrate will also tell the child what will happen later in the process: how his expressed opinion will be taken into account (based on his age, maturity level), the consequences of the decision which will be taken and which will affect him, why his opinion is important, according to Article 24 par. 3 of the Law No. 272/2004 concerning the protection and promotion of the rights of the child<sup>79</sup>.

*Relevant information supply*

The magistrate will ask the child if he has previously received any explanation in connection with the process, from the persons tasked to do so, which is an obligation provided also in the European Convention on the exercise of the children's rights<sup>80</sup>. If the answer is no, then the magistrate will supply the child with the information considered relevant and will give him the necessary time to reflect on it, based on all the newly supplied elements, whereas he may postpone the interview, if he deems it necessary.

In relation with the rules applicable to the interview, which will be communicated to the child, the magistrate will specifically tell the child that "I don't know" is a perfectly acceptable answer and that whenever he is unable to understand the question or the statement, he may ask for them to be repeated or explained. In general, the smaller children have a tendency to answer questions

---

<sup>79</sup> According to this article: "(3) The right to be heard shall give the child the possibility to request and receive any pertinent information, to be consulted, to express his or her opinion, and to be informed about the consequences which his or her opinion may generate, if observed, as well as about the consequences of any decision involving him or her."

<sup>80</sup> The explanatory report to the European Convention on the exercise of the rights of the child, letter B, Article 6, pt. 44; [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf) accessed on 8 August 2009.

which they do not understand<sup>81</sup>.

In what follows, the magistrate will have to make sure that the child understands the concepts of truth and lie<sup>82</sup>. For instance, the child who said he was 6 years old will be told shortly after: "Ah! So, you're 7 years old!" Once the child corrects this statement (only around 30% of the children do this) or after he answers the magistrate who asked for clarifications with respect to this situation, the magistrate will ask him or will provide explanations to him related to the false character of the statement concerning his 7 years of age. He will draw his attention on the need to tell the truth in any situation, including in front of the court.

#### *IV.1.2. Applicable to the process when the child is a witness*

##### *The purpose of calling in a child witness*

The elements described above are also valid in the case of the child witness, the only specific elements are related to the purpose of his being called in to present the aspects he is aware of in connection with the civil case in the framework of which he is interviewed. The applicable provisions of Article 192 of the Civil Procedural Code<sup>83</sup> shall be similarly adjusted to the proceedings where the child is a subject/ an active participant or a party.

---

<sup>81</sup> Robertson Kathrin, „Active listening. More than just paying attention“ in *Australian Family Physician*, Vol. 34, No. 12, December 2005, pp.1053-1055.

<sup>82</sup> Lindsay E. Cronch, Jodi L. Viljoen, David J. Hansen, *Forensic Interviewing in child sexual abuses cases: Current techniques and future directions*, USA, Elsevier, University of Nebraska-Lincoln, 2005, p. 200.

<sup>83</sup> The provisions of Article 192 of the Civil Procedural Code provide that: "prior to taking the testimony, the president shall ask the witnesses to point out: 1. their name, occupation, place of residence and age; 2. their relation or affiliation with one of the parties and to what degree; 3. if they are in the service of one of the parties; 4. if there is a case in court, enmity or interests with any one of the parties."

## *IV.2. Supplying information concerning procedural rights*

### *IV.2.1. Applicable to the process when the child is a subject – an active participant or a party*

*The right to information* By using a vocabulary adjusted to the child’s level of development and a protective, friendly tone, the magistrate must inform the child on his rights throughout the interview. The right of the child to information is one of the rights – safeguards related to the fundamental right to express his opinion, which presupposes, consequently “...to request and receive any pertinent information, to be consulted, to express his or her opinion, and to be informed about the consequences which his or her opinion may generate, if observed, as well as about the consequences of any decision involving him or her.”<sup>84</sup>

*The right to specialized assistance* The child must be informed on his right to specialized assistance, which, as the case may be, may mean psychological assistance and legal aid services, as well as the concrete means he can apply for them<sup>85</sup>.

*Other rights on which the child must be informed* The child must also be informed on his following rights: the right to be treated with dignity and compassion; the right to be protected against any form of discrimination, the right to confidentiality, the right to be protected against the vicissitudes of a trial; the right to safety, the right to benefit of special preventive measures (to prevent any further negative impact on the child).<sup>86</sup>

---

<sup>84</sup> Article 24 par. 3 of the Law No. 272/2004 concerning the promotion and protection of the rights of the child.

<sup>85</sup> [http://www.ibcr.org/editor/assets/2005\\_un\\_resolution\\_en.pdf](http://www.ibcr.org/editor/assets/2005_un_resolution_en.pdf), p.24, accessed on 09 August 2009.

<sup>86</sup> Article 16, 17 and 18 of Justice in Matters involving Child Victims and Witnesses of Crime Part I. [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf) pp.16-17, accessed on 8 August 2009.

*Emphasizing the importance of the child's right to express his opinion* The magistrate will emphasize for the child the importance of his right to express his fully informed opinion and will ensure him that his opinion will be respected, irrespective of its content. The magistrate will be able to ask explanations from the child in connection with the concepts supplied, to check whether the child has understood their meaning and, implicitly, the rights he has throughout the interview.

#### *IV.2.2. Applicable to the process when the child is a witness*

*The obligation to inform the child about his rights throughout the interview* The same obligation to inform the child on his rights throughout the interview applies, with a similar content, to the situation of the child witness.

*The child witness' obligation to testify* In connection with these rights, the child witness has the procedural obligation to testify in connection with the aspects on which the court will focus. The child witness older than 14 must testify under oath, according to the domestic legal provisions. The child who has not reached 14 years of age shall not swear an oath in court. He shall be instructed to tell the truth, according to Article 193 last paragraph of the Civil Procedural Code<sup>87</sup>. This provision related to informing the child who has turned 14 years of age that he may be held liable for perjury is outdated, taking into account the modern conception of protecting a child throughout a justice process by any means.

---

<sup>87</sup> Article 193 last paragraph of the Civil Procedural Code provides that: "The child who has not turned 14 years of age yet shall not swear an oath in court; he shall be instructed, however, to tell the truth."

*International provisions* Thus, Article 22 of the Model Law accompanying Resolution 2005/20 “*Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*” of the Economic and Social Council provides the total immunity of a child in connection with the criminal procedure set in place by perjury, irrespective whether the child is or is not under oath in court.

*The refusal of the child to come to court or to testify shall not be punished* The exoneration from the enforcement of a legal fine if the child refuses to appear in court or to testify, according to Article 108 first indent of paragraph 2 letter a of the Civil Procedural Code<sup>88</sup>, is a measure which is circumscribed to the above-mentioned standards.<sup>89</sup>

### IV.3. Free speech

#### IV.3.1. Applicable to the process when the child is a subject – an active participant or a party

*Definition* Free speech is the interview technique which refers to the unhindered submission of the child’s opinion and which provides the most accurate information, as it is based on the spontaneity of the presentation.

*Setting conditions* Thus, once the child has been informed on the purpose of his presence, on the context in which his opinion is requested, on his rights, the magistrate will ask him on the same mild, protecting and polite tone, to present

---

<sup>88</sup> „If the law does not provide otherwise, then the court, according to the provisions of this article, may punish the following actions in connection with the trial, thus: (...) 2. with a legal fine ranging from 30 to 500 lei: a) failure of the duly summoned witness to appear in court or his refusal to testify when present in court, except for the case when the witness is under age.”

<sup>89</sup> Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime Annex to Resolution 2005/20 of the UN Economic and Social Council, pt. 2 and 6, in reference to pt. VIII – “The right to be heard and to express views and concerns” <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>, accessed 7 August 2009.

him his opinion on the specific matter affecting him. Throughout the free speech the child must not be interrupted, but let alone to speak freely and his digressions, as well as his silences are also allowed. The non-verbal language of the magistrate throughout this interval must not make the child understand that the magistrate approves, disapproves or feels indifferent as to his submission<sup>90</sup>, however, it must ensure the perception of the child that the magistrate is truly interested in his story<sup>91</sup>.

*Particular situations*

At this stage, the child victim of abuse will easily speak about the abuse. Some other times, he might be afraid of the potential repercussions or will not want to cause embarrassment for his parents. If he does not want to provide voluntary information about the abuse, he must not be pressurized in this respect<sup>92</sup>.

The request to submit his opinion may be very specific, concretely determined (as in the case when the establishment of the placement measure is requested), or it may be established in less concrete, but not vague terms.

Thus, for instance, in a divorce case, the child will not be asked to state what his opinion is, in clear terms, regarding the parent who should have his custody, as the child may feel guilty for having caused the dissolution of the marriage between his parents.

The child should be asked to tell how he sees the current situation of his parents, his own situation, how he spends his days, his spare time, what are his plans for

<sup>90</sup> Zdrenghea, Voicu; Butoi, Tudorel – “Ancheta judiciară din perspectiva psihologică” in *Psihologie judiciară*, “Șansa” S.R.L. Publishing and Printing House, Bucharest, 1994, p. 156.

<sup>91</sup> Cătălin Luca (coord.), *Traficul de persoane. Practici și resurse pentru combatere și colaborare*, Alternative Sociale Association, Hamangiu Publishing House, 2008, pp. 88-89.

<sup>92</sup> Corina Mighiu, „Rolul psihologului în lucru cu copilul abuzat/neglijat” in the *Justiția pentru minori în interesul superior al copilului*, The Magistrates’ Association of Iași and the Save the Children Organization of Iași, p.142, <http://www.riia.ro/index.php?section=35> accessed on 10 August 2009.

the future. Out of all these elements, the magistrate will extract pertinent information concerning the parent who will be awarded the custody of the child, without, by doing so, affecting his current and future emotional stability.

The stage of the free speech shall not be this long in the case of the adoption procedure, when the child will submit his consent (a basic pre-requisite for the adoption), through the intermediary of his interview (the procedural means to fulfill this condition), but it may become so if the child is opposed or if he wants to present his point of view in detail.

#### *IV.3.2. Applicable to the process when the child is a witness*

##### *Legal sources for this matter*

In the case of the child witness, Article 196 of the Civil Procedural Code does not make any distinction between children and adults<sup>93</sup>, the interview takes place in turns, according to the rule of having everybody interviewed staying in the court room.

##### *Separate interview*

As it has been shown previously under the section concerning the people present throughout the interview, in the case of the child witnesses, according to the framework set up by the international standards applicable in the matter, the separate interviews of all children must take place, irrespective whether other witnesses have already been interviewed, therefore, based on the second indent of the article, these persons will have to be removed from the court room.

---

<sup>93</sup> Article 196 of the Civil Procedural Code provides that: "Each witness shall be interviewed separately, whereas the witnesses who have not been interviewed must not be present. The order of the witness interviews shall be set by the president, taking into account the request by the parties, as well. Following the interview, the witness shall stay in the court room until the end of the investigation, unless the court decides otherwise. The witness is not allowed to read an answer written before hand, however, he may only use notes only based on the president's endorsement, but only with regard to figures or names."

*Taking breaks*                    The magistrate shall be mindful throughout the effective interview of the child's concentration capacity limits, and, if he notices that the child is agitated or looks bored, he shall allow the child to take a break<sup>94</sup>. Article 28 letter h of the Model Law of Resolution 2005/20 "*Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*" of the Economic and Social Council stipulates that, whenever deemed necessary, breaks shall be taken, a measure which is circumscribed to the best interest of the child<sup>95</sup>.

#### IV.4. Asking questions

##### IV.4.1. Applicable to the process when the child is a subject – an active participant or a party

*Definition*                    This substage involves questions asked to the child, with a view to clarifying certain aspects.

*Need*                            Questions are usually necessary, as the free speech of the children, even if accurate, as a consequence of spontaneity, is often incomplete<sup>96</sup>.

*International legal framework*    The domestic legislation does not regulate this stage. Article 27 of the Comments on the Model Law of Resolution 2005/20 "*Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*" of the Economic and Social Council requires that the questions shall be asked in a simple and protective manner<sup>97</sup>.

---

<sup>94</sup> The Honorable G. Jones, William – U.S. Department of Health and Human Services – Administration of Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect – „Working with the Courts in Child Protection“, 2006, p. 59.

<sup>95</sup> Justice in Matters involving child victims and witnesses of crime, Model law and Related Commentary, UN, New York, 2009

<sup>96</sup> Thomas D. Lyon, *Speaking with children: Advice from investigative interviewers*, Denver, National Association of Counsel for Children, 2005, pp. 4-7.

<sup>97</sup> Article 27 of Justice in Matters involving child victims and witnesses of crime, Model law and Related Commentary, Part II, UN, New York, 2009, p.54.

*The technique of formulating questions*

Questions shall be asked by using terms known by the children, in reference to own knowledge, feelings or opinions. They must include all aspects on which additional clarifications are required. Use of several questions, however, is not indicated throughout the civil proceedings involving child interviews, not to give the child the feeling that he is interrogated<sup>98</sup>. If one and the same question is asked repeatedly, the answers of the child may change.

*The subsequent importance of questions*

The role of the questions is to assess the “contamination” of the child’s opinion, with his manipulation by the adult. This is the frequent case with the applications for the return of a child moved or held illegally across the borders or the divorces, when one of the parents, ignoring the respect owed to his child, will influence his opinion and even his memory, in order to steer him away from the other parent and thus obtain a favorable opinion of the child.

*Special approach*

Special elements can be found in the case of the molested and sexually abused children’ interview. Even if this civil procedure does not have the same particular elements as the criminal procedure in terms of guiding the child interview towards accusing a person (the molester), as the judicial purpose, not in the least, *ex aequo*, it involves a special psychological and human approach. The children of this category must be treated with special care from the point of view of questions asked.

In the case of this category of children, the Romanian lawmaker opted, as well as in the case of other similar categories (such as the neglected children), to protect them, by avoiding, throughout the judiciary proceedings, even if they are civil proceedings, the

---

<sup>98</sup> The National Authority for the Protection of the Rights of the Child, *op. cit.*, p. 86.

inherent remembrance of the traumatic events which the child experienced<sup>99</sup>. Thus, in the situation of these children, it was provided to summon them *only when the courts deemed it necessary*.

The provisions of Article 95 par. 1 of the same law establish an alternative measure in such situations, that is the use of a written or of a recorded statement by the child, assisted by a psychologist, throughout the civil proceedings. Such a measure is fully in line with the measures alternative to the interview, imposed in the international recommendations, such as, for instance, the European Convention on the exercise of the children's rights<sup>100</sup>.

During the interview of such a child, the questions asked will have been prepared with care, in the least damaging form for the child, so as not to additionally traumatize him. The specific means to ask questions shall be common to that of interviewing child victims throughout the criminal trial<sup>101</sup>, with the differences mentioned above, aimed at guiding the interview.

*The role of the psychologist*

In these situations, the role of the psychologist involved not only in the process of assessing the abuse or the neglect, as well as in the therapeutic process to recover<sup>102</sup> the child is essential.

*To be avoided*

All situations creating a psychological discomfort for the child must be avoided. If he is observed to avoid or not to want to address certain more sensitive issues, then it is recommended not to insist with the same question. Questions may be formulated to explain his reluctance into answering them.

---

<sup>99</sup> Article 95 par. (3) and Article 125 par. 2 of Law No. 272/2004 concerning the protection and promotion of the rights of the child.

<sup>100</sup> The European Convention on the exercise of the rights of the children, Article 13 letter f), Strasbourg, 25.01.1996.

<sup>101</sup> Sofia Luca, Cătălin Luca, *op. cit.*, p.22.

<sup>102</sup> Corina Mighiu, *op. cit.* p. 142.

*General recommendations in the case of abused children*

A series of general recommendations have been formulated in the case of this category of children, which take into account their needs following the attack, or, respectively, the disclosure:

- Continue to believe in the child and do not blame him for what has happened.
- Answer calmly and naturally to the questions and feelings that the child expresses in connection with his molestation but do not insist to have him talk about it.
- Instruct the child to tell you immediately if the molester tries again to have sexual contact with him or disturbs him in any way.
- Provide repeated assurance to the child that he is safe<sup>103</sup>.

*Summarize*

After asking questions, it is indicated that the magistrate should summarize what the child has said and allow him, if the case may be, to correct him or to address him additional questions or explanations<sup>104</sup>.

*IV.4.2. Applicable to the process when the child is a witness*

*The lack of a special domestic provision*

In the case of the child witnesses, the Civil Procedural Code, through its Articles 130 and 197, does not make any distinction with respect to the situation of the witnesses of age<sup>105</sup>.

<sup>103</sup> Corina Mighiu, *op. cit.* p. 147.

<sup>104</sup> Cătălin Luca(coord.), *Traficul de persoane. Practici și resurse pentru combatere și colaborare*, Bucharest, Alternative Sociale Association, Hamangiu Publishing House, 2008, p.94.

<sup>105</sup> According to Article 130 of the Civil Procedural Code: „The judges or the parties may ask questions to the witnesses or to the experts only through the intermediary of the president, who may allow them to ask their questions directly.”

According to Article 197 of the Civil Procedural Code: “Witnesses may be asked questions again, if the court deems necessary. Witnesses whose testimonies do not match shall be asked again, being confronted. If the court deems that the question asked by the party cannot lead to the settlement of the case, is offending or attempts to prove a fact as the law prohibits it, the court will not allow that question.

*Inappropriate regulation for the child* The regulation according to which it is allowed for the parties to freely ask questions, directly or through the intermediary of the court, as well as the witness repeated interview or confrontation, is not appropriate in the case of the child witness, as the general principles for the interview of a child throughout the justice process are ignored and the particular features of the child are not taken into account.

*The international model* The best practice models supplied in the international regulations implements the setting in place, throughout the child witness interview procedure, of certain means of interrogation appropriate for the child's level of development. We have presented in the section concerning the presence of the parties throughout the child witness interview procedure the optimal specific means to formulate and direct *questions by the parties, through the intermediary of some specialists*, as well as the requirement according to which the magistrate should be mindful on how simply, respectfully and protectively these questions are addressed, drawing the attention, whenever he deems necessary, on this important requirement.

*Testimony signature* Following his interview, the questions asked and following his being informed about its contents, the child shall be asked to sign his testimony, according to Article 198 of the Civil Procedural Code<sup>106</sup>.

---

Based on the application by the party, the court shall include in the court report not only the questions, but also the reason for which it did not allow it."

<sup>106</sup> According to Article 198 of the Civil Procedural Code: „The testimony shall be written by the clerk, upon dictation by the president or the delegated judge and shall be signed on each page and at the end by the judge, the clerk and the witness, after having made the latter aware of the contents. If the witness does not want or cannot sign it, this shall be mentioned therein. Any addition, deletion or change in the testimony shall have to be endorsed and signed by the judge, the clerk and the witness; otherwise, these shall not be taken into account. That which is not filled in the testimony shall be crossed so as not to have anything else added subsequently.”

#### *IV.5. Encouragement, empowerment and axiological leading of the child*

##### *IV.5.1. Applicable to the process when the child is a subject – an active participant or a party*

###### *The child's axiological orientation*

Found primarily in the case of a child who has committed a criminal violation, but who shall not be held liable, or in the case of a child included in the procedure of divorce of one's parents, but likely to be applied in any other procedure when deemed necessary, this substage presupposes a constructive dialogue between the magistrate and the child, in order to draw together conclusions in connection with a personally determined action of a child (such as, for instance, having committed a criminal violation by a child who shall not be held liable or the personal consequences of his parents' divorce), with a view to providing the child with an axiological orientation in the context of the changes that will occur in his life, as a consequence of a judge's decision.

##### *IV.5.2. Applicable to the process when the child is a witness*

The previous considerations can be found in a less salient form in such procedures where the child is not an object; they are rather circumscribed to the substage of interviewing conclusion.

#### *IV.6. Interviewing conclusion*

###### *Conclusion of the discussions*

This last substage, common to both types of procedures, presupposes the finalization of the talk with the child. Coming back to neutral discussion topics, such as the child's future schedule or that of the following day, the magistrate will wrap up the talk in the same friendly tone, leaving the child in a positive mood<sup>107</sup>,

---

<sup>107</sup> Cătălin Luca (coord.), *Traficul de persoane. Practici și resurse pentru combatere și colaborare*, Bucharest, Alternative Sociale Association, Hamangiu Publishing House, 2008, p.95.

providing him with the feeling that he has been extremely useful and that in this way, relevant and important information was gathered and the magistrate shall also thank the child for having accepted to come forward<sup>108</sup>.

*Conclusion* A successful interview may be conducted if all the stages of the interview process are adhered to, even if, practically speaking, it is not always very easy.

## V. Interview evaluation stage

*V.1. Applicable to the process when the child is a subject – an active participant or a party*

*The need for evaluation* As the child interview is a procedure whereby he may exercise his fundamental right to express his opinion concerning a specific matter which affects him, the correct evaluation of the child's opinion, if conducted in a robust manner, in depth, as a final stage in the process of interviewing a child, will allow the magistrate to take the appropriate decision with respect to the child, setting in place the framework for this optimal future development.

The existence of possible "contaminating" factors related to the accuracy of the child's opinion (parents' influence, anxiety caused by the contact with the judicial authority, the lack of complete understanding of certain concepts used throughout the interview process by the adults) is yet another argument in favor of the need to evaluate the interview, as the magistrate is not forced to adhere to the *tale, quale* opinion of the child.

---

<sup>108</sup> *Ibidem.*

*Practical situations*

Thus, in a solved case, the opinion of a child to live with his father, as he did not wish to stay in the center anymore, was taken into account with the only reservation imposed by the low level of maturity of this child, and the court did not set aside the fact that the reason for such an option could be found in the lack of parental discipline, supervision and care, which could mean a wrong perception of “freedom” by the child, whose choices, at this age, may come into conflict with his own interests. Consequently, the tribunal<sup>109</sup> considered that it was not recommended, at least temporarily, to replace the measure of the emergency placement in a center where the child has access to psychological and healthcare assistance according to the customized protection plan, with the measure of family reintegration, which provides inadequate conditions, currently, from the material and housing points of view, as it is necessary to attain such goals as preventing a criminal behavior and identifying a family-type alternative.

In this particular context, based on the provisions of Article 64 and 68 of the Law No. 272/2004 concerning the protection and promotion of the rights of the child, the court considered that it would be the best interest of the child to maintain the measure of the emergency placement.

*The analysis of the opinion expressed by*

The evaluation stage presupposes the analysis of the opinion expressed by the child, in the light of certain predetermined criteria. The criteria provided in Article 12 of the UN Convention on the rights of the child<sup>110</sup>

---

<sup>109</sup> Civil Ruling No. 610/F/15.06.2005 of the Bucharest Tribunal, Vth Civil Section, published in the *Protecția copilului și adopția. Practică judiciară* by Andreea Florina Mateescu, Ioana Cristina Gheorghe-Bădescu, Hamangiu Publishing House, 2008, pp. 192-197.

<sup>110</sup> According to Article 12 of the UN Convention on the rights of the child: “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

*the child* (his age and maturity level) have been transposed into the national legislation through the principle provisions of Article 6 letter h and Article 24 par. 4 of Law No. 272/2004 on the protection and promotion of the rights of the child.

*The relative character of the opinion expressed by the child* The use of the child's opinion in the above-mentioned sense was restated in the Convention on the Exercise of the Children's Rights, according to which the right of the child to express his opinion does not mean the right *to veto* a measure which affects him. It is not an absolute right, as it is justified by the immaturity and, sometimes, by the negative influencing of the child. This right is not equal to the discretion of the child to decide himself on the matters which affect him.

*The child's right to veto* However, in certain determined fields, for instance, adoption<sup>111</sup>, such a right *to veto* of a child should be acknowledged<sup>112</sup>. At the national level, Article 17 par. 2 of the Law No. 273/2004 on the legal regime of adoption<sup>113</sup> acknowledges the right of the child who is competent *to veto* his adoption.

*Evaluation criteria* As it was established in Resolution 2005/20 "*Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*" of the UN Economic and Social Council mentioned before, the weight of a child's opinion shall be assessed by the judge, based on *his age and maturity*, and a psychologist specialized in providing qualified assistance to children or to another

---

<sup>111</sup> Article 35 of the Explanatory Report of the European Convention on the exercise of the rights of the children <http://conventions.coe.int/Treaty/EN/Reports/HTML/160.htm> accessed on 9 August 2009.

<sup>112</sup> *Ibidem*.

<sup>113</sup> „Adoption shall not be endorsed without the consent of the child who has reached 10 years of age.”

expert in this field may also be consulted<sup>114</sup>.

The opinion of the child may determine, through the magistrate's filter, the defining elements concerning the selection of the most adequate measure to serve the best interests of the child<sup>115</sup>, in a given individual case.

For example, following the discussion with the child, the magistrate can learn who of the parents is more concerned with the raising, education and supervision of the child and who of the parents is more passive in this respect, or even less interested. A child may perceive one of his parents as "the best" as this parent may be very indulging to him: "mommy is good and I want to stay with her because she lets me play or watch the telly and father is bad because he puts me to do my homework and sends me to the chess group practice".

According to the judicial practice, in individual cases, in the absence of consistent evidence, the statement of the child cannot be sufficient grounds by itself to return a verdict<sup>116</sup>.

*The  
interview  
report*

The magistrate shall analyze the interview, and the judicial review courts shall analyze it based on the *report* developed as a consequence of the interview, a procedural document which records how the interview has taken place.

In practice, these reports are developed in very concise and synthetic terms, even if the transcripts should be wholly made to allow the judicial review court to check the ruling in this case, including based on the detailed, specific awareness about the opinion of the child and also based on their own evaluation. The whole

---

<sup>114</sup> Article 20, pt. 5 of the Justice in Matters involving child victims and witnesses of crime, Part II, UN, New York, 2009, p.49.

<sup>115</sup> Bucharest Tribunal, Civil Section No. 500/F of 25 May 2005 in the *Protecția copilului și adopția, practică judiciară* by Andreea Florina Mateescu, Ioana Cristina Gheorghe-Bădescu, Hamangiu Publishing House, Bucharest, 2008, pp. 226-228

<sup>116</sup> Bucharest Tribunal, IIIrd Civil Section, Civil Section No. 142 of 17 February 2005 in the *Protecția copilului și adopția, op.cit.*, p. 209.

transcript should include not only the questions, but also the answers provided by the child, according to the British model in this matter.

## *V.2. Applicable to the process when the child is a witness*

### *The distinction between the child opinion and testimony*

Even though from the technical and judicial point of view, the opinion of the child may trigger the gathering of new relevant information, it cannot be assimilated to the testimony, as item of evidence throughout the judicial process, and the two institutions are fundamentally different in terms of their judicial nature: the first one is a means to enforce a child's fundamental right, whereas the second one is an item of evidence, and the interview of the child witness then becomes the means to submit this evidence in court.

In this last situation, the child interview will be geared to gather information concerning the case on trial, which does not deal with the child's own situation.

### *The principle of equal evidence*

As judicial evidence, the testimony of a child witness does not have a pre-established value, as it shall observe the legal regime of evidence throughout the civil process. Thus, the testimony shall be corroborated with the other evidence submitted throughout the process.

### *The situation of a witness younger than 14*

Article 195 of the Civil Procedural Code<sup>117</sup> according to which: "The child younger than 14 years of age and the persons who are mentally incompetent on a temporary or permanent basis, may be interviewed in court; however, when evaluating their statements, the court shall take into account the special situation of the witness", deals with the evaluation of the statement based on the same criteria presented above in terms of

---

<sup>117</sup> According to Article 195 of the Civil Procedural Code: „The child younger than 14 years of age and the persons who are mentally incompetent on a temporary or permanent basis, may be interviewed in court, however, when evaluating their statements, the court shall take into account the special situation of the witness.“

the child opinion assessment, namely the age and maturity.

## VI. Final remarks

### *A complex process*

Child interview is a procedural process which translates into practice the fundamental rights of the child to be involved and express his opinion in any decision-making process related to him. It also triggers the gathering of relevant information in order to fairly evaluate the measure which must be taken with respect to a child, in a specific case, as well as the full observance and enforcement of the other rights of the child.

When conducted by a specialized magistrate, who is concerned to preserve the best interests of the child, the interview will turn out to be a non-traumatic experience for the child, irrespective whether he is the object of the procedure or he only has a legal standing as a witness.

### *The freedom of expression in the case of a child, as provided in*

The draft of the new Civil Code<sup>118</sup> acknowledges the special importance of the child expressing his own opinion, and dedicates it in its Book II – the Family, in the Title I – General Provisions, an entire article, No. 202, called marginally “Child interview.”<sup>119</sup>

---

<sup>118</sup> The „Draft of the New Civil Code”, the version adopted by the Senate House on 13 September 2004, Bucharest, C. H. Beck Publishing House, 2006

<sup>119</sup> According to Article 202 of the Draft Civil Code: “(1) Throughout the process which affects him, the child who has reached 10 years of age shall be interviewed either by the judge, or by a person appointed thereof. However, the child who has not reached 10 years of age yet may be interviewed if the court deems it necessary for the settlement of the case. (2) The opinions of the child will be taken into consideration based on his age and degree of maturity. (3) Child interview does not mean that the child is a party to the process. (4) The special provisions concerning the child’s consent or presence, in those procedures that relate to him, as well as the provisions concerning the appointment by the court of a case representative in the case of a conflict of interests, shall continue to apply.”

*the Draft  
Civil and  
Civil  
Procedural  
Codes*

As it would have been normal, the new regulation naturally maintains, through Article 316 par. 2, the obligation to interview a child, in the case when his parents' marriage is dissolved, in a text similar to Article 43 of the current Family Code.

The regulations included in the new draft of the Civil Procedural Code acknowledge in Article 882 (called marginally "The child's refusal" of Section 2, "Enforcement of court rulings concerning children" in Chapter IV, Title III – Direct forced enforcement of Charter V – On forced enforcement), how important it is to interview the child and provide him with psychological counseling, how his firm refusal in connection with the forced enforcement of a court ruling in his respect may determine the review of the measure initially ordered.

In connection with the child witnesses, Article 304 of this project in principle excludes the legal standing as witnesses in the of descendants, throughout the "judicial processes concerning the filiation, divorce, and other family relations", and enlarges, quite naturally and necessarily, the scope of the civil processes provided *de lege lata* under Article 190<sup>120</sup>.

However, the draft of the new Civil Procedural Code does not take into account the child witness interview process, as it maintains almost the entire current one, despite its fundamental gaps, mentioned in the previous paragraphs, gaps which are caused by the lack of adjustment to the specific features of the child, in the light of the international requirements already presented.

*The need to  
continue the  
juvenile*

In conclusion, the innovating *de lege ferenda* provisions shown above, transposed from the European and universal general law into the Romanian legal system,

---

<sup>120</sup> Article 190 of the Civil Procedural Code provides that: "In all matters concerning the marital status or the divorce, the relatives and the extended family provided above may be interviewed, except for the descendants."

*justice reform* the although incipient specialization of the Romanian magistrates, the awareness regarding the need for interagency activity and cooperation in the juvenile justice field, as well as the development of best practices guidelines are necessary initiatives in the framework of the current stage related to the juvenile justice reform in Romania, which must be continued.

## References

1. Tomescu, Milena, *Dreptul Familiei. Protecția Copilului*, All Beck Publishing House, Bucharest, 2004;
2. Lupașcu, Dan, *Dreptul familiei. Third edition, amended and updated*, Bucharest, Universul Juridic Publishing House, 2008;
3. Filipescu, Ion P., Filipescu, Andrei I., *Adopția. Protecția și Promovarea Drepturilor Copilului*, Third edition revised and supplemented, according to Law No. 273/2004 and Law No. 272/2004, Universul Juridic Publishing House, Bucharest, 2005;
4. Bacaci, Alexandru; Dumitrache, Viorica-Claudia, Hageanu Codruța, *Dreptul familiei*. Ediția 4, Bucharest, All Beck Publishing House, 2005;
5. Bârsan, Corneliu, *Convenția Europeană a Drepturilor Omului, Comentariu pe articole. Vol. I. Drepturi și libertăți*, All Beck Publishing House, Bucharest, 2005;
6. Moroianu Zlătescu, Irina (coordonator), *Drepturile Copiilor și Tânărului*, edited by the Romanian Institute for Human Rights, Bucharest, 1998;
7. Losano, Mario G., *Marile sisteme juridice. Introducere în dreptul european și extraeuropean*, Bucharest, All Beck Publishing House, 2005;

8. William, G. Jones, *Working with the Courts in Child Protection*, U.S. Department of Health and Human Services Administration of Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child abuse and Neglect, 2006;
9. Buneci, Petre, Butoi, Ioana Teodora, *Martorul pe tărâmul justiției*, Penguin Book Publishing House, Bucharest, 2004;
10. Buș, Ion; Miclea, Mircea; David, Daniel; Opre, Adrian, *Psihologie judiciară. Curs postuniversitar 2004-2005*, Babeș-Bolyai University, Cluj – Napoca, Faculty of Psychology and Education Sciences;
11. Zdrenghia, Voicu; Butoi, Tudorel, *Psihologie judiciară*, Publishing and Press House "Șansa" SRL, Bucharest, 1994;
12. Luca, Cătălin; Luca, Sofia; Dublea, Aurel; Ștefăroi, Nicoleta; Gafta, Gerogeta; Moiescu, Radu; Mursa, Lucian; Scripcaru, Călin; Pușcașu, Dumitru; Vlad, Mirela, *Practici instituționale în instrumentarea cauzelor cu minori*, Alternative Sociale Association, Iași, 2005
13. Atasiei, Ioana; Ivănușcă, Nelu; Luca, Sofia; Luca, Cătălin; Măgurianu, Liviu; Mighiu, Corina; Muntean, Diana; Stoieneț, Adriana, *Justiția pentru minori în interesul superior al copilului. Practici de lucru cu copilul victimă*. The Association of the Magistrates of Iași, Save the Children Association, the Iași Branch, Iași, 2008.
14. *United Nations Guidelines on Justice in Matters involving child victims and witnesses of crime, Child-friendly version*, printed in Austria, 2006;
15. United Nations Office on Drug and Crime, *Justice in Matters involving Child Victims and Witnesses of Crime*, New York, 2009;
16. Fondul Națiunilor Unite pentru Copii (UNICEF), *Manual pentru Implementarea Convenției cu privire la Drepturile Copilului*, București, Vanemonde Publishing House, 2004;

17. Bogdan, Dragoș; Selegean, Mihai (coordinators), *Jurisprudența CEDO – studii și comentarii*, National Institute of Magistrates, 2005;
18. Țițian, Dana; Constantin, Antonia; Cîrstea, Mihaela, *Codul familiei adnotat*, Second Edition, Bucharest, Hamangiu Publishing House, 2008;
19. Țițian, Dana, *Cauzele cu minori în materie civilă și penală. Practică judiciară*, Hamangiu Publishing House, Bucharest, 2006;
20. Autoritatea Națională pentru Protecția Drepturilor Copilului, *Rolul judecătorilor și al procurorilor în protecția și promovarea drepturilor copilului*, Bucharest, Trei Publishing House, 2006, p. 80-81;
21. UNICEF, *O lume demnă pentru copii*, Bucharest, MarLink Publishing House, 2003;
22. Bălan Ana, Alexandru Gabriela, (coordinators), *Situația Respectării Drepturilor Copilului în România*, A report developed in the framework of the Monitoring Group on the Rights of the Child, Bucharest, 2006;
23. Popoviciu Laura, Mihuț, Ana Elena, *Considerații în legătură cu situația copilului care a săvârșit o faptă penală și nu răspunde penal*, The Dreptul Magazine, No. 12/2007;
24. Tomiță, Mihaela, Necșulescu Ion, *Determinante socio-juridice ale delincvenței juvenile*, The Dreptul Magazine, No. 4/2009;
25. *The Draft of the New Civil Code*, adopted by the Senate on 13 September 2004, CH Beck Publishing House, Bucharest, 2006.

### Internet addresses

[www.un.org](http://www.un.org).

[www.unodc.org](http://www.unodc.org).

<http://conventions.coe.int>

[www.singuracasa.ro](http://www.singuracasa.ro).

[www.riia.ro](http://www.riia.ro).

# Chapter V

## Interviewing a juvenile offender and a child witness throughout the criminal process

*Daniel Horodniceanu\**

### I. Interviewing a juvenile offender in court

#### *I.1. Legal framework applicable to the interview of a juvenile offender*

##### *I.1.1. General considerations*

*Juvenile crime rate*      The juvenile crime rate is one of the major and permanent concerns of the criminal policy in all modern states, as it raises special and specific problems in terms of prevention and combating, because of the multitude of various factors which may have a negative impact on the capacity to adjust them to the requirements of the socially accepted conduct norms, but also because of their immature and easy to influence character of their personality<sup>1</sup>.

*Alarming statistical data*      The judicial statistics<sup>2</sup> highlight alarming increases of the juveniles' involvement in criminal activities and of the number of children in penitentiaries, which is why the need to prevent and efficiently combat the criminal conducts among this category, as well as the search for coherent and viable solutions to correct these behaviors

---

\* Daniel Horodniceanu is a prosecutor with the Department for the Investigation of Organized Crime and Terrorism, (D.I.I.C.O.T.), Iași.

<sup>1</sup> Narcis Giurgiu, *Drept penal. Răspunderea penală și pedeapsa: Regimul sancționator al minorilor*, Focșani, Neuron Publishing House, 1995, pp.67-95.

<sup>2</sup> UNICEF, *Juvenile Justice*, [http://www.unicef.org/romania/ro/children\\_2872.html](http://www.unicef.org/romania/ro/children_2872.html), accesat la 21.09.2009

have been extremely stringent in the past decade<sup>3</sup>.

### *1.1.2. Age of criminal liability*

*Age of the criminal liability* Finding the most effective measures to prevent and combat the crime phenomenon among the children also raised the issue of the age of criminal liability in the case of the underaged, that is the age when, according to the psycho-pedagogic research, that the child is deemed to be aware of the social significance of his dangerous conduct, as well as the purpose of the punishments applicable for such a behavior.<sup>1</sup>

#### *1.1.2.1. Domestic legislation*

*Age of 14* The rules of the national legislation provide that the minimum age for the criminal liability is 14, an age when it is presumed that a child has the normal psycho-moral development level and shows the necessary degree of maturity to understand the socio-legal significance of his actions or lack of action in connection with the requirements of the criminal justice legislation<sup>4</sup>. Consequently, starting with the age of 14, the normally developed child

---

<sup>3</sup> S. Cristescu, „Protecția minorului” în *Justiția pentru minori, studii teoretice și jurisprudență, analiza modificărilor legislative în domeniu*, lucrare colectivă, Bucharest, Universul Juridic Publishing House, 2003, p.68.

<sup>4</sup> Article 99 of the Criminal Code. The republished text of the Code was published in the Romanian Official Gazette No. 65 of 16 April 1997, amended and supplemented by: Law No. 143 of 26 July 2000; Law No. 197 of 13 November 2000; Government Emergency Ordinance No. 207 of 15 November 2000; Government Emergency Ordinance No. 10 of 11 January 2001; Government Emergency Ordinance No. 89 of 21 June 2001; Law No. 456 of 18 July 2001; Law No. 20 of 10 January 2002; Law No. 61 of 16 January 2002; Law No. 169 of 10 April 2002; Government Emergency Ordinance No. 58 of 23 May 2002; Government Emergency Ordinance No. 93 of 20 June 2002; Government Emergency Ordinance No. 143 of 24 October 2002; Government Emergency Ordinance No.109 of 16 November 2004; Law No. 85 of 7 April 2005; Law No. 160 of 30 May 2005; Law No. 247 of 19 July 2005; Law No. 278 of 4 July 2006; Government Emergency Ordinance No. 60 of 6 September 2006; Decision No. 62 of 18 January 2007; Law No. 337 of 3 December 2007; Law No. 58 of 19 March 2008; Government Emergency Ordinance No. 198 of 4 December 2008.

is credited to have criminal capacity, as it is assumed that he may become the active subject of the violation as the mental factors that characterize the criminal guilt have sufficiently developed.

*The mental capacity* However, children aged between 14 and 16 may be held criminally liable on condition that it should be proven, based on a psychiatric forensic evaluation, that they have had the capacity to act.

### *1.1.2.2. International legal framework*

*International documents* The domestic legislation is in line with the international instruments which provide guideline principles in the juvenile justice area. Thus, according to Article 40 paragraph 3 letter (a) of the Convention on the rights of the child<sup>5</sup>, the State Parties must establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. The Beijing Rules provide that the notion of penal capacity must be clearly defined and that the age of the criminal liability should not be set too low, taking into account the level of emotional, mental and intellectual maturity level of the child.<sup>6</sup>

*Criteria to define the age of criminal liability* The establishment of the criminal liability age must be made within a legal framework which should take into account the capacity, development skills and contextual experience of a child.

---

<sup>5</sup> Adopted by the UN General Assembly on 20 November 1989 in New York, ratified by Romania through Law No. 18/27 September 1990, republished in June 2001, [http://legislatie.resurse-pentru-democratie.org/18\\_1990.php](http://legislatie.resurse-pentru-democratie.org/18_1990.php), accessed on 21 September 2009.

<sup>6</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice adopted by General Assembly Resolution 40/33 of 29 November 1985, on the 96<sup>th</sup> UN General Assembly, <http://www.anp-just.ro/recomandari/beijing.htm>

## *1.2. Stages of the juvenile offender interview*

### *1.2.1. Special procedural provisions applicable to juvenile offender trials*

*Special procedure* Investigation of criminal cases with juvenile defendants is based on a special procedure which refers to various aspects in connection with certain specific features of the investigation or the trial of juvenile offenders or defendants.

*Special legal provisions* Consequently, according to the provisions of the Criminal Procedural Code<sup>7</sup>, the investigation and trial of the crimes perpetrated by juveniles shall be conducted according to the rules of the ordinary procedure, with the supplementary provisions and derogations included under Chapter II, Title IV of the Special Part of the Criminal Procedural Code, titled "Procedure in the case of the juvenile offenders."

*Lack of legal provisions for the stage of the juvenile* However, there are no special provisions in the domestic legislation which should be applicable to the juvenile offender interview, even if it is one of the most important moments in the investigation of a criminal case; the success of this enterprise determines the correct settlement of the case, as well as the observance and promotion of the rights of the juvenile offender.

---

<sup>7</sup> The Criminal Procedural Code was published in the Romanian Official Gazette No. 145-146 of 12 November, republished in the Romanian Official Gazette, Part I, No. 78 of 30 April 1997, based on Article IV of Law No. 141/1996, published in the Romanian Official Gazette, Part I, No. 289 of 14 November 1996, with the amendments and supplements brought along by: Emergency Ordinance No. 207 of 15 November 2000; Law No. 296 of 7 June 2001; Law No. 456 of 18 July 2001; Law No. 704 of 3 December 2001; Law No. 756 of 27 December 2001; Law No. 169 of 10 April 2002; Emergency Ordinance No. 58 of 23 May 2002; Law No. 281 of 24 June 2003; Emergency Ordinance No. 66 of 10 June 2003; Emergency Ordinance No. 109 of 24 October 2003; Decision No. 100 of 9 March 2004; Law No. 159 of 14 May 2004; Emergency Ordinance No. 55 of 25 June 2004; Law No. 302 of 28 June 2004; Emergency Ordinance No. 72 of 30 September 2004; Law No. 480 of 8 November 2004; Decision No. 482 of 9 November 2004; Law No. 576 of 14 December 2004; Law No. 160 of 30 May 2005; Emergency Ordinance No. 190 of 21 November 2005; Law No. 356 of 21 July 2006; Emergency Ordinance No. 60 of 6 September 2006.

*offender  
interview*

*1.2.1.1. Need for special regulations in the domestic law*

*Specific  
elements  
of the  
juvenile  
offender  
interview*

Interviewing the juvenile offenders by the criminal bodies is an activity essentially different from interviewing of the defendants of age, a hearing mode which requires special care, in points of the training of the magistrate (who must have not only a complex legal training, but also judicial psychology knowledge), but also the preparation of the child, selecting those interviewing techniques that will take into account the specific features of the child, determined by his level of development, as well as the child development psychology and the stages specific for the child's biological age<sup>8</sup>.

*The  
permanent  
and direct  
contact*

At the same time, the interview of a juvenile offender presupposes the permanent and direct contact, throughout the criminal process, between the child, his defense counsel, his parents (as legal representatives and/ or parties liable from the civil point of view) and the probation officer, on the one hand, and the prosecutor and the court, on the other hand.

*1.2.1.2. Mandatory minimal procedure*

*Minimal  
procedural  
rules*

The international provisions stipulate a set of minimum procedural rules which are mandatory for the optimal interview of the child involved in a criminal process, in order to protect and preserve his fundamental rights. These are provided in the European Convention on the Exercise of Children's Rights (ETS 160)<sup>9</sup>, the United

---

<sup>8</sup> Ioana T. Butoi, Tudorel Butoi, *Psihologie judiciară*, Bucharest, România de Măine Foundation Publishing House, 2003, p.131.

<sup>9</sup> Approved on 8 September 1995 by the Committee of Ministers of the Council of Europe and open for signature on 25 January 1996; not ratified, for the time being, by Romania, even if it is an essential document in this area, <http://conventions.coe.int/treaty/en/Treaties/Html/160.htm>.

Nations' Convention developed, in connection with the Rights of the Children<sup>10</sup>, Resolution 2005/20 *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, of the Economic and Social Council<sup>11</sup>, Justice in matters involving child victims and witnesses of crime - Model law and related comments<sup>12</sup>, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")<sup>13</sup>, which will be referred to, specifically, in this chapter.

### *1.2.2. Preparing the juvenile offender interview*

*Three stages of the interview* Both in front of the criminal investigation bodies, but also in front of the court, the stages in the interview of a juvenile offender are as follows: the interview preparation, the interview per-se, and the evaluation of the child statement.

#### *1.2.2.1. Selection of the interview time*

*Conducting the interview immediately following the discovery* There is no optimal moment for the interview provided in the criminal procedural rules currently in force. The juvenile offender interview usually takes place as quickly as possible following the discovery of the criminal violation, as well as its perpetrator.

---

<sup>10</sup> This Convention was adopted by the United Nations General Assembly on 20 November 1989 in New York and was ratified by Romania through Law No. 18/27 September 1990, republished in the Romanian Official Gazette, Part I, No. 314/13 June 2001 for the ratification of the Convention on the Rights of the Child.

<sup>11</sup> <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>, accessed on 02 October 2009.

<sup>12</sup> [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf)

<sup>13</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by the UN through Resolution 40/33 of 29 November 1985, <http://www.anp-just.ro/recomandari/beijing.htm>

*of the  
criminal  
violation  
and its  
perpetrator*

*The  
procedural  
stage for  
the  
interview*

In terms of procedural stages, the offender interview generally takes place following the interview of the party which claims the occurrence of the criminal violation, or following the formulation of the denunciation, but also immediately after the finding of the violation, in the case of flagrant offenses.

*Immediate  
interview,  
according  
to the  
Beijing  
Rules*

According to Article 20 of the UN Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules): "Each case shall from the outset be handled expeditiously, without any unnecessary delay."<sup>14</sup> The regulation establishes as a general rule of major importance that procedures should be expeditious in the case of juvenile offenders. Otherwise, any satisfactory solution which might be allowed by the procedure and the trial could be compromised. The more time elapses, the harder or almost not at all will the juvenile offender re-establish the intellectual and psychological connection with the crime-related investigation procedure and court process.

*1.2.2.2. Background data collection concerning the case and the child*

*Child-  
related  
data*

Prior to interviewing the child, both the criminal investigation body and the court should collect all information related to the child, his social background, his school situation, his physical and mental capacity, prior criminal history, the relationships with the community he is a part of<sup>15</sup>.

<sup>14</sup> *Ibidem.*

<sup>15</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, p.130.

*Psycho-social assessment report* In principle, the family, school and psycho-social background, the child's personality features, but also his perspectives of psycho-social reintegration are best assessed within the psycho-social assessment report which must be developed during the criminal investigation stage by the probation services attached to the tribunals with jurisdiction over for the child's place of residence.

*Legal framework* Thus, according to Article 482 of the Criminal Procedural Code titled "*Need for evaluation report*", "In the case of juvenile offenders or defendants, the prosecutor who supervises or, as the case may be, conducts the criminal investigation, may request, as he deems necessary, the development of the evaluation report by the probation service attached to the tribunal in whose area of jurisdiction the child resides according to the law. In the case of the juvenile defendants, the court must request the development of the evaluation report by the probation service attached to the tribunal in whose are of jurisdiction the child resides, according to the law, except for the case when the development of the evaluation report has already been requested throughout the criminal investigation stage, according to paragraph 1, a case in which the request thereof by the court is optional. The evaluation report must supply the judicial body with data concerning the child and his social background. The evaluation report shall be developed in line with the structure and contents provided in the special legislation regulating the activity of the probation services."

*Child-related data content* Family-related data. The family-related data refer to the type of family (organized, disorganized etc.), the members of the family (age, occupation, education, prior medical history etc.), housing situation, social and economic situation. Under the same category fall the prior behavioral and criminal history of the family members, elements in connection with the domestic violence, and,

if the case may be, the potential use of psychoactive substances (excess of alcohol, high risk drugs, psychotropic medication).

*Place of the child in the family*

The child-related data refer mainly to his place in the family, education, medical history, criminal and behavioral history, potential income from own (legal or illegal) activities.

*Child behavior within the family and the family group*

The information related to the behavior within the family and the family group (relatives, neighbors, friends) may also be important, in the sense of the manner in which he is perceived and characterized by them.

*The child's personal group*

Just as important is the personal group of the juvenile offender (street gang, maybe criminal gang, school peer group), and his place within the group (leader, managed, manipulated etc.).

*The child who is not integrated into any group*

The psycho-social evaluation must also mention the case when the child is not integrated within any group, as well as if, in the expert's opinion, this is beneficial or not for the child. What the child does in the spare time, including game arcades, computer games, may also be relevant.

*The school record*

The school record, if the child goes to school, is important to the extent in which it indicates the child's school results from the first year of school until the last year of school which he attended. Talking with the persons who are involved in the education of the child, the schoolmaster, the teachers, the class coordinator, may also be useful to have an idea about the child's personality.

*Other documents*

Besides that, the following are or may become important for the case: the crime scene report, which shows how

the crime was committed, the residence search, which is telling of the living conditions of the child, the medical documents, which can testify to the child's healthcare disorders.

*Corroboration with other evidence* The data thus gathered shall be corroborated with other items of evidence submitted in the case, such as: the school record to check the school situation, the criminal record to check the prior criminal history, characterization sheets issued by various authorities or persons who have information on the child, and all these elements make up a basis which highlights the personality of the child, but also the reasons which caused the adoption of the criminal conduct.

*International legal framework* Article 16 of the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)<sup>16</sup> provides the need for social inquiry reports. Thus, the social inquiry reports (social inquiry reports or reports developed prior to the sentencing) are an essential help for most of the cases of criminal investigations of juvenile offenders. The competent authority must be informed on the important elements in connection with the juvenile, such as his prior social and family history, the school situation, his education level etc.<sup>17</sup> In this respect, certain

---

<sup>16</sup> According to Article 16.1 of the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by the UN through Resolution 40/33 of 29 November 1985, "In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority." <http://www.anp-just.ro/recomandari/beijing.htm>

<sup>17</sup> The Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by the UN through Resolution 40/33 of 29 November 1985, <http://www.anp-just.ro/recomandari/beijing.htm>. provide under Article 16: "In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed

jurisdictions make appeal to special welfare services or persons working for the tribunal or the committee. Other persons, especially the probation officers may also fulfill this role. Consequently, the competent welfare services must be tasked with the development of the adequate social inquiry reports.

### *1.2.2.3. The preparation of the magistrate for the interview*

*Complex professional training* The magistrate must have not only a complex legal training, but also legal psychology knowledge. When they prepare for the interview, the prosecutor or the judge must have a clear representation concerning the character, the preferences and the interests of the child<sup>18</sup>. This information may be gathered from the statements of the persons close to the child, trainers, teachers, extracted from the evaluation report developed by the probation service with jurisdiction over the place of residence of the child.

*Background evaluation* The magistrate should also take into account the nature of the case, the items of evidence submitted until that time, in order to get familiar with all the aspects of the case.

*Mindful of the age of the child* With a view to conducting an effective interview, the magistrate must be mindful of the age of the child.

### *1.2.2.4. Relationship between the juvenile offender interview and the various age groups*

#### *1.2.2.4.1. The juvenile offender under 14*

*The absolutely* The child under 14 is legally presumed not to have any liability from the legal point of view. In this context, since

---

shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.”

<sup>18</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, p.131.

*lawful presumption of the lack of legal liability* he cannot be the subject of a criminal investigation, it becomes useless (and, actually, unlawful), to launch a criminal investigation thereof. Consequently, as the framework necessary for the submission of evidence cannot be set in place, interviewing a child who is not yet 14 can be considered evidence only in a context when another person as well would be charged in the same case<sup>19</sup>.

*The child statement* However, the child will give a statement in connection with the violation not only in front of the prosecutor (when the prosecutor alone has jurisdiction, according to Article 209 of the Criminal Procedural Code) or the criminal investigation bodies (in the case of the other violations).

*Observing the legal provisions concerning the child interview* The fact that the child has no criminal liability and cannot be applied any punishment or disciplinary measure does not cancel for the criminal investigation body the obligation to observe all requirements in connection with the child interview, taking into consideration, especially, the age of the child.

#### *1.2.2.4.2. The juvenile offender aged between 14-16 and 16-18*

*The general interviewing rules applicable* In the case of the children aged between 14-16 and 16-18, the interview shall take place in accordance with the general child interviewing rules.

*The need for a forensic expert's report* However, in the case of children aged between 14-16, the criminal investigation body shall take the necessary required measures in connection with the forensic expert's report, with a view to determining whether the child has the mental capacity to have perpetrated the violation, since, according to Article 99 par. 2 of the Criminal Code, "The child aged between 14 and 16 years shall be held

---

<sup>19</sup> In this situation, the child could be interviewed as a witness, if he knows any element in connection with the criminal violation and its perpetrators.

criminally liable only if he is proven to have mental capacity.”

### *1.2.2.5. Place of the juvenile offender interview*

#### *1.2.2.5.1. During the criminal investigation*

##### *Selecting the place of the interview*

Prior to interviewing the juvenile offender, the person who shall conduct the interview must select the place where the child will be heard.

Throughout the criminal investigation stage, as there is no rule providing for the place where the investigation should take place, the interview of the child may be conducted in several locations, if all the other requirements in connection with the persons who must be present at the child’s interview are fulfilled.

##### *Interviewing rooms especially furnished*

Usually, child interviews are conducted in the office of the investigating prosecutor or the police officer, when the activity of the prosecutor is confined to supervising the investigation. However, it is recommended that, with a view to interviewing children, to using the specifically designed rooms located within these institutions, wherein the interview shall take place in the best conditions.

##### *Interview conducted in other areas*

The interview can also take place where the violation has been committed, in the special room from the detention facility (detention room or penitentiary) or even at the child’s place of residence.

#### *1.2.2.5.2. During the court investigation*

##### *Applicable legal provisions*

Throughout the trial, the child must be interviewed in the court room.

##### *Court room*

The juvenile offender’s trial shall take place separately from the other court sessions, according to Article 485 par. 1 of the Criminal Procedural Code. If the trial refers

only to children, the court session shall not be open to the general public, as provided in Article 485 par. 2 of the Criminal Procedural Code.

According to par. 3 of the above-mentioned law, when the defendant is a child under 16, the court shall remove him from the court room, as soon as the interview has ended, if it deems that the court investigation or the debates may have a negative influence on the child.

*Juvenile defendants together with defendants of age*

If a defendant of age is also on trial together with the juvenile defendant and the case cannot be severed, then the court shall investigate the case in an open session, according to Article 486 of the Criminal Procedural Code.

*Closed door session*

However, whenever the judge deems it necessary, out of own motion or on request, if the trial is likely to bring prejudice to the privacy of the child or could earn him the public opprobrium, then he can conduct a court session with closed doors.

*Interview in the judge's chambers*

If it is deemed that the child should be arraigned for pre-trial detention, then the child must be interviewed by the judge in camera.

*The setting in place of an atmosphere of solemnity*

Irrespective of the interview place, the magistrate must take all the necessary measures to set the child in such a mood that he can relay as comfortably as possible the manner in which he committed the violations and the reasons thereof. In the case of the juvenile offenders, it is also necessary to set in place an atmosphere of solemnity (not of coercion), so as to have them realize the impact and the importance of the statements that they are supposed to give in the context of a trial in court.

### 1.2.2.6. Other persons present during the juvenile offender interview

*Applicable legal framework* According to the internal procedural regulations, according to Article 484 par. 2 of the Criminal Procedural Code, when the court hears the child, the Probation Service with jurisdiction over the child's place of residence, as well as the child's parents must be summoned, or, if the child does not have any parents or if the parents are being removed their parental rights, then the tutor or the guardian or the person who takes care of the child must be summoned. Besides them, the court may also summon other persons whose presence it deems necessary.

*The need for their presence* The presence of these persons who have the affection or the trust of the child or who have authority in front of him provide additional trust and increase the chances of the child's telling the truth<sup>20</sup>.

#### 1.2.2.6.1. Practical difficulties

*The important persons from around the child cannot be identified* In practice, the determination of these persons may be difficult, especially throughout the trial in court if prior to that, during the criminal investigation stage, the criminal investigation body has not taken the necessary steps to discover which persons around the child could be important in the economy of his interview or, if on the contrary, the presence of the persons which the court calls for interview is truly needed.

#### 1.2.2.6.2. Actual duality

*Assisted by the parents* Thus, for instance, there are cases when the persons in whose care the juvenile offender is placed are precisely those who instigate or assist him into committing the violation; however, the parents are the ones who will assist him throughout the trial.

---

<sup>20</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, p. 131.

*Assisted by other persons* Out of various reasons also (for instance their parental rights have been removed or they are working in another country), the parents are not always the ones who are the closest to the child through their daily presence, a reason why the presence of the person who takes care of the child is all the more important not only for the purpose of interviewing the child, but also for the child himself, thus contributing to a successful interviewing process.

This is in the context of the court investigation, when, unlike during the criminal investigation stage (when the juvenile offender may be heard in several places, including at home), in front of the court, the child may refrain from providing a real statement because of the orality of the process, the solemnity of the place and the persons involved etc.

The fact that the court session is not – most of the times – public, as the Article 485 par. 2 of the Criminal Procedural Code provides imperatively, is an advantage which does not compensate, altogether, for its other flaws.

#### 1.2.2.6.3. Rule of the matter

*The presence of persons of age, close to the child* Usually, the child interview must be conducted in the presence of those persons of age who are close to the child, and who the child trusts (for instance, in the presence of the parents, tutors, teachers etc.).

*The role of the persons who are present during the* The role of the persons who are present during the interview is to support the magistrate to win over the shyness of the child and to get accurate statements from him; in other circumstances, they should limit the tendency of the child to fantasize while describing the facts<sup>21</sup>. However, the child must not be interviewed in the

---

<sup>21</sup> Tudorel Butoi, Ioana T. Butoi, *Tratat Universitar de psihologie judiciară-teorie și practică*, Bucharest, Phobos Publishing House, 2003, p. 115.

*interview* presence of a person of age who is interested that he should make false statements.

*The probation officer present* However, in some cases, the shyness of a child who committed acts of a certain nature (for instance, sex crimes) or the fear that his parents will punish him for what happened make it that it should not be recommended for him to be interviewed with his parents present, as there is a real risk that the child would close within himself and would stop answering the questions<sup>22</sup>. That is why, in such circumstances, it is recommended that a probation officer or any other person whom the magistrate or the police officer have established as being close to the child should be present during the interview.

#### 1.2.2.6.4. International legal framework

*The Beijing Rules* According to Article 15 of the United Nations Standard Minimal Rules for the Administration of Juvenile Justice (the Beijing Rules): "Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country. The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile."<sup>23</sup>

*Text commentary* According to this text, the services of the counsel or the free legal aid are necessary to ensure the legal assistance for the child, but the right of the parents or of the guardian to participate, as provided under Article 15.2., must be

<sup>22</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, pp. 132-133.

<sup>23</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice („The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985, <http://www.anp-just.ro/recomandari/beijing.htm>

deemed general psychological and affective assistance for the child – a function extending throughout the procedure. Pursuing an adequate solution by the competent authority may be facilitated through the cooperation with the legal representatives of the child (or with another person whom the child may or effectively trust). It may happen that the parents or the guardian could play a negative role throughout the interview process, when, for instance, they are manifestly hostile towards the child, which is the reason for the provisions in connection with their potential removal.<sup>24</sup>

### *1.2.3. The juvenile offender interview*

#### *1.2.3.1. Building up the trust between the magistrate and the juvenile offender*

*Concluding the stage of interview preparation* Following the gathering or child-related data, as mentioned above, the magistrate shall consider that he has all the necessary data to interview the juvenile offender and, consequently, shall deem concluded the stage of the interview preparation.

*Building up the trust and respect* The magistrate shall conduct the necessary steps with a view to establishing a relationship based on trust and respect with the juvenile offender, thus preparing the latter for the interview to follow.

*Interaction with the child* He may firstly interact with the child by detailing the standard questions included in the report where the defendant statement is put down.

*Preliminary questions* Thus the child shall be asked questions concerning his place of residence, the date and place of birth, parents, the education institution which he attends, prior criminal

---

<sup>24</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice („The Beijing Rules“), adopted by General Assembly resolution 40/33 of 29 November 1985, <http://www.anp-just.ro/recomandari/beijing.htm>. Comment to Article 15

history; the questions related to these aspects shall facilitate the next interview, which shall include specific questions in connection with each of these aspects.

### *1.2.3.2. Strategy concerning the juvenile offender interview*

*Legal framework concerning the interview mode* According to Article 71 of the Criminal Procedural Code, each offender or defendant shall be interviewed separately. During the criminal investigation, if there are several offenders or defendants, each shall be heard without the others present.

*The separate interview of the juvenile defendants* The literature highlights the opinion according to which in those cases when the crime was committed by defendants of age together with juvenile defendants, the interview of the children must take place separately, especially in a situation when inconsistencies can be found between their statements and the statements of the other defendants (of age or not)<sup>25</sup>.

*The reason for the separate interview* The reason is that in principle, the child can be influenced much more easily and may be constrained or have an emotional connection with one of the other defendants, may feel confined to disregard facts which he would normally reveal when the others would not be in the court room.

*Particular case* Even when during the criminal investigation stage all defendants have acknowledged the facts (including the juvenile defendant), one or several defendants may come in court and be in doubt about the recognition, or even point the finger at the child, as there is a possibility that the child could be returned a smaller sentence, and that the punishment thresholds are lower or the child may even be acquitted, since, most of the times, they are on their first criminal violation.

---

<sup>25</sup> *Ibidem.*

*Psychological reasons* Starting with the idea that, psychologically, the juvenile defendant has the highest chances to tell the truth, the interrogation of the defendants should start with the child, who should be interviewed separately from the people of age and the other children as well. Since they would not know what the child has stated, but assuming that he could tell the truth, the chances that the other defendants could tell the truth would be higher. Certainly, throughout the written stage of the criminal justice procedure (the written preservation of the stories of the defendants throughout the criminal investigation stage, in a holographic format, whenever it is possible), the defendants shall be heard separately, according to the procedure.

*The request for a separate interview* In this context, most of the statements taken at this stage – maybe even owing to their closeness in time with respect to the criminal violation – appear to be more sincere and more complete. If there are doubts about the sincerity of one or several of the defendants, be they only in relation with their age, the prosecutor may request the court to separately interview the defendants because of this reason.

*Contrary opinions* According to other opinions expressed in theory<sup>26</sup>, tactically speaking it is not appropriate to start with the child interview and then continue with the interview of the defendants of age, especially as there might be among them some with known criminal record, but it should start with a defendant of age, and, if he should change his attitude, that is he will either fail to admit the criminal violation or give it another interpretation, the rule of interviewing the defendants one in the presence of the others should be changed and the separate interviewing should take place.

---

<sup>26</sup> The procedural rules concerning the forensic experts' reports and other findings and forensic documents approved through Order No. 1.134/C/25.05.2000 of the Ministry of Justice and No. 255/04.04.2000 of the Ministry of Health and Family, published in the Romanian Official Gazette Part I No. 459/19.09.2000.

### 1.2.3.3. *Supplying information concerning procedural rights*

*Legal provisions* According to Article 70 par. 2 of the Criminal Procedural Code “the defendant or the offender shall be notified the criminal violation which represents the object of the case, the legal provisions applicable, the right to a defense lawyer, as well as the right not to make any statement, and his attention shall be drawn to the fact that whatever he states might also be used against him.”

*European legal framework* The European Convention on the Exercise of the rights of the children provides that the child’s representative should provide the former, the necessary preliminary information concerning the interview, explain the relevant aspects thereof to the child in order to determine the former to build up an informed opinion<sup>27</sup>. The explanatory report to the Convention defines the phrase “*relevant information*”. Article 40 (ii) of the Convention stipulates the right of the child charged with a crime to be promptly and directly informed about the charges that are brought to him or, if the case may be, through the intermediary of his parents or legal representatives, and to have the appropriate legal assistance or any type of adequate assistance, with a view to formulating and supporting his defenses.<sup>28</sup>

### 1.2.3.4. *Main safeguards throughout the process*

*General international legal framework* According to Article 7 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules): “Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to

---

<sup>27</sup> The European Convention on the Exercise of the Rights of Children, Article 10 letter C.

<sup>28</sup> Adopted by the United Nations General Assembly on 20 November 1989, entered in force on 20 September 1990, published in the official edition „Tratate internaționale” 1998, vol. I, p. 51.

appeal to a higher authority shall be guaranteed at all stages of proceedings.”<sup>29</sup> The text mentioned above focuses on the essential elements of a fair trial, with international recognition.

#### *1.2.3.5. The offender’s right not to say anything and the right not to self-incriminate*

*Definition* The right of the defendant not to say anything and the right not to self-incriminate mean keeping silent about the facts with which the defendant is charged and not contributing to own incrimination, both as essential elements of a fair trial.

*The reason to acknowledge them* The reason for acknowledging these rights is the protection of the person charged with the commission of a crime, the pressure exercised by the authorities to avoid judicial errors<sup>30</sup> and the implementation of the goals of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>31</sup>.

*The ECHR caselaw* According to Article 40 (iv) of the European Convention for Human Rights, the juvenile offender must be ensured the right not to be constrained into testifying or confessing his guilt.<sup>32</sup>  
The European Court decided that the right not to

---

<sup>29</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice („The Beijing Rules”), adopted by General Assembly resolution 40/33 of 29 November 1985, <http://www.anp-just.ro/recomandari/beijing.htm>.

<sup>30</sup> Corneliu Bîrsan, *Convenția europeană a drepturilor omului. Comentarii pe articole. Vol. I Drepturi și libertăți*, Bucharest, All Beck Publishing House, 2005, p. 527.

<sup>31</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950, ratified by Romania through Law No. 30 of 18 May 1994, published in the Romanian Official Gazette No. 135 of 31 May 1994.

<sup>32</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950, ratified by Romania through Law No. 30 of 18 May 1994, published in the Romanian Official Gazette No. 135 of 31 May 1994.

contribute to own incrimination means that throughout a criminal justice procedure, the prosecution shall try to base its arguments on points of law without using the items of evidence gathered through constraint or pressure against the will of the defendant<sup>33</sup>.

*The defendant's testimony, as a defense* Throughout the criminal justice procedure, but especially throughout the criminal investigation stage, the defendant's statements are deemed as defense. To this purpose, the role of the magistrate is to provide the defendant with the opportunity to display his arguments as fully as possible, to help him remember and to gather evidence which may be important for his defense, to check these items of evidence and to compare them against other items of evidence and to evaluate them as a whole in this framework<sup>34</sup>.

*Determining the truth* While hearing the defendant, the investigator shall try and make him recall the moment when the crime was committed, and if the defendant does not tell the truth, to reveal what is not true in his statement. While checking the defendant's statements, the investigator shall try at the same time to establish the manner in which the violation has occurred and the scope of the criminal liability in the case of a juvenile offender.

### *1.2.3.6. The juvenile offender interview*

#### *1.2.3.6.1. No difference with respect to the adult offender interview*

*Legal provisions* Formally speaking, the interview of a juvenile defendant shall not be different from that of a defendant of age, as the stages of the interview are the same, as provided in Articles 70 – 73 of the Criminal Code.

<sup>33</sup> ECHR, 8 February 1996, *John Murray c/Royaume-Uni*, Recueil 1996-VI.

<sup>34</sup> Aurel Ciopraga, Ioan Iacobuță, *Criminalistica*, Iași, Junimea Publishing House, 2002, p. 261.

*The stages in the juvenile defendant's interview* Thus, as in the case of the interview of the defendants of age, the child interview shall take place in three stages:

- a) The identification data of the person to be interviewed is checked;
- b) The person's free speech is heard (the statement, which, during the criminal investigation stage shall be transposed, most of the times, in the holographic statement of the child, if the child knows how to write, and during the trial in court, in the statement transcribed according to the records made by the judge);
- c) The child is asked questions and his answers are listened to.

#### *1.2.3.6.1.1. Identification*

*The juvenile offender's identification data is checked* The identity of the child must be checked to avoid mistakes or potential misunderstanding. The child who is interviewed as a free person must be asked, in the beginning of the interview, to show an identity card and the data recorded within must be checked against the defendant's answers to the biographic questions.

*The case when his identity card is within the court file* If the defendant is in pre-trial custody, then his identity card must be with the court file, the magistrate has thus an opportunity to see it before interviewing the defendant.

*Informing the child on the charges brought to him and his rights throughout the criminal justice procedure* In what follows, the defendant must be informed on the criminal justice case opened against him (the resolution to begin the criminal investigation, unless a criminal case has been opened) throughout the criminal investigation stage, or on the operative part of the bill of indictment which calls him to court, throughout the court investigation, and explained the facts which are the basis for the charges and his rights throughout the criminal justice procedure.

### *1.2.3.6.1.2. Free speech*

*Free speech is listened to* When the magistrate has concluded the presentation of the reason why the child must be heard, the charges brought against him, the child will be asked to speak freely about the crime he has allegedly committed. The child must not be interrupted while he speaks about the facts since, on the one hand, the already created bond could break and, on the other hand, the child loses focus much quicker than the adult.

*Interrupting the free speech* In this context, the child may be likely to divert his speech from what happened or to focus on elements which are irrelevant for the case. That is why the magistrate will have to draw the attention of the child on the items of interest for the case without reprimanding or offending the child for it. The attitude of the magistrate is essential at this stage to make appeal at the child's goodwill and make him state the truth<sup>35</sup>.

*Using the appropriate language* Most of the times, the juvenile offenders have an attitude and a language which are inappropriate for the place where they are. The magistrate must make the child to give up the inappropriate language by using a firm tone, setting the tone for the defendant to follow and making him to change his attitude or tone, so that the free speech could continue.

### *1.2.3.6.2. General strategic procedures*

*Observing the strategic procedures at any stage of the process* While listening to the juvenile offender's free speech, irrespective of the stage in the process, the magistrate must observe a series of strategic procedures.

---

<sup>35</sup> Ioana T. Butoi, Tudorel Butoi, *op.cit.*, p.132.

*Any kind of pressure is forbidden* Thus, it is forbidden to obtain a confession from the child offender at any price; if pressure is exercised on the child offender, he might confess to having committed a crime which in reality he did not.

*Questions must be asked subsequent to the free speech* The child's free speech must not be interrupted with new questions before he has ended his story or with comments related to what the child has said.

*Interruption of the free speech must be an exception* If the child is caught lying, or intentionally moving astray from the subject, talking about facts which are not connected to the case, then his attention must be drawn to the elements which are of interest for the case.

*The interview must be circumscribed to each individual episode* If the charges brought refer to several episodes, then the defendant/ offender must be interviewed in connection with each episode. When his free speech with respect to the first episode has finished, questions related to this episode must be asked. Only following the complete clarification of all circumstances related to the first question, can the child be interviewed in connection with the subsequent episode<sup>36</sup>.

*Questions related to the facts* According to Article 72 of the Criminal Procedural Code, "once the defendant or offender has made his statement, he can be asked questions related to the fact which is the object of the case and the charges that are brought against him." The moment when questions are asked is the tensest moment of the defendant's interview.

---

<sup>36</sup> Nicolae Mitrofan, Voicu Zdrengea, Tudorel Butoi, *Psihologie Judiciară*, Bucharest, Șansa S.R.L. Publishing and Printing House, 1994, p.157.

*The qualities of the magistrate are revealed* At this stage, the qualities of the magistrate are fully manifest, his training to hear defendants, perseverance, patience, the spirit of observation, quick mind, initiative and active spirit.

*The answer should not be influenced through the question* The questions to be asked of the children must not suggest the answer, they must be clear and concise, with specific goals which must be attained through the answers aimed at from the defendant<sup>37</sup>. This is because the juvenile defendant is much more readier to be influenced than the defendant of age.

*Preliminary questions* Prior to moving to questions related to the specific means in which the crime has been committed, the child may be asked about his behavior prior to the violation (information about how he prepared for the act, to determine the spontaneous or the premeditated character of the act). It is also necessary to determine what the child did following the commission of the crime (did he hide the object of the crime, did he take any steps to prevent the criminal investigation etc).

#### *1.2.3.6.3. Division of questions into categories*

*Categories of questions* To this purpose, the questions should be ordered into three categories, namely: questions referring to certain activities which took place prior to the commission of the crime, questions aimed at specific elements in connection with how the crime was committed and then questions related to the activities conducted by various people following the violation.

*Absence of a pre-established* There is no pre-established order for the questions, that is why, if the child interview requires it, questions could be ordered into the needed sequence to hear the child, but

---

<sup>37</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, p.132.

*order for questions* the magistrate will take the decision on the spot if there are any questions which should be asked and when<sup>38</sup>.

*Defined attitudes concerning the charges* Children may have various attitudes towards the charges brought against them, as follows: the child confesses his guilt (wholly or partially) and makes truthful statements; the child does not confess his guilt and makes truthful statements, as he is really innocent; the child acknowledges his whole or partial responsibility but makes false statements, taking upon himself the blame for somebody else or hiding the most heinous circumstances of the crime he has committed. Under the same category is the possibility that the child should hide his accomplices or present his actions or the actions of his accomplices in a more favorable light; the child does not admit his guilt and makes false statements to get over his responsibility or to mislead the magistrate.<sup>39</sup>

### *1.2.3.7. How appropriate is the confrontation*

*Assessing the appropriateness of the confrontation* In the case when there are contradictions between the statements of the defendants and an adversarial hearing is required when the juvenile defendant will be in opposition with the co-defendants of age, this activity must be prepared firstly in terms of a detailed evaluation of the psychological aspects, together with the usual preparation in the case of such confrontations.

*Practical situations* There are situation in practice when the defendants will motion for confrontations with the victims, with the witnesses or even with the other defendants, especially with the children. In principle, they take into account that in a direct and adversarial discussion, because of the concerns caused by the presence of the defendants of age, the confronted persons will come back or provide some

---

<sup>38</sup> Nicolae Mitrofan, Voicu Zdrengea, Tudorel Butoi, *op. cit.*, p.160.

<sup>39</sup> Aurel Ciopraga, Ioan Iacobuță, *Criminalistica*, Iași, Junimea Publishing House, 2002, p. 263.

nuances at least for their initial statements, especially in connection with the defendants of age. This is the reason why such an adversarial hearing is not only useless for the case, but it can also be traumatic when it takes place during the adversarial (oral) stage of the trial in court.

*The child should not sustain additional trauma*

Personality elements in connection with the age of the people who will be confronted must be known in advance, so as to attain the goal of the confrontation and not to distort it.

*Mental preparation for the confrontation*

During the preparation for the adversarial hearing, the child must be assessed mentally fit for it. When the child who would be confronted is deemed under the powerful influence of the defendants of age or afraid of the person with whom he would be confronted, then it is indicated to drop this activity altogether.

*Valuing the psychological aspects*

The child offenders may be interviewed by using any of the strategic procedures presented, but one should take into account the psychological aspects in connection with this category of defendants which make their interview special.

## **II. Child witness interview throughout the criminal process**

### *II.1. Preparing the child witness for the interview*

*Preparing the interview, in general*

The preparation for the witness interview, in general, refers to the following elements: the summons for the witness; the study of the case; the study of the witnesses' personalities and their relationships with the parties in the trial; the development of the interview plan and the questions to be asked of the witness; the development of

materials to be used throughout the interview; the selection of the time and place where the interview will be conducted; the selection of the means to call the witness in for the interview.

*International legal framework* According to Article IX pt. 25 second thesis of Resolution 2005/20 of the Economic and Social Council mentioned above, the states have the obligation to develop and implement measures to facilitate the interview of the children and to improve communication and understanding with them.<sup>40</sup>

*The support person* Among them, one measure is to have the child accompanied throughout the interview by a *trusted person* (“the support person”).

### *II.1.1. Summoning the child witness*

*The summons* According to the Romanian criminal procedural law, with a view to conducting the interview, the witnesses must be summoned either through subpoenas or by phone or cable.

Based on the circumstances, the witness may also be verbally summoned, during his first contact with the criminal investigation bodies (which is specific to the criminal investigation stage), by phone or through a letter.

*Selection criteria for the summons* The selection of way in which the witness should be summoned is both a practical and a tactical matter: for example, if during the interview the defendant indicates a witness to check his alibi, such witness should be promptly called in, before the defendant or his relatives could have reached an understanding with him. Such witness should be immediately interviewed, even if it

---

<sup>40</sup> Article IX pt. 25 of the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* Annex to Resolution 2005/20 of the United Nations Economic and Social Council, <http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf> accessed on 4 August 2009.

means that the criminal investigation body should immediately reach the place where the witness.

### *II.1.2. The time of the child witness interview*

*Prompt interview* Children must be interviewed about the events which do not involve them a lot emotionally as soon as these have been experienced. When various events are known to have stressed the child a lot, it is reasonable to interview him no sooner than 2-3 days after the event. After 12-15 days, the memories of a child about the events experienced begin to fade away, which is why the child loses his interest about them<sup>41</sup>.

### *II.1.3. The place of the child witness interview*

#### *II.1.3.1. Choice for the place of the interview throughout the criminal investigation*

*The freedom of choosing the place of the interview* The criminal justice law does not restrain the magistrate to select a place where the interview shall take place throughout the criminal investigation stage.

*Circumstances related to the selection of the place of the interview* Usually, the witness, irrespective whether he is a child or of age, shall be interviewed in the office of the investigator. If the child witness is ill, he can be interviewed at his place of residence or in the healthcare unit where he is confined and, if he is severely ill, the recommendation is to interview him based on the agreement of his doctor. Small age children shall be interviewed in an environment where they feel at ease, for instance at home or in the community where they live.

---

<sup>41</sup> Mihai Lupu, Svetlana Rjičcova, *Ghid pentru specialiștii justiției juvenile*, Criminal Justice Reform Institute, Chișinău, <http://www.irp.md/files/1193755251.pdf> accessed on 4 August 2009.

### *II.1.3.2. Selection of the interviewing place throughout the trial in court*

*The interview shall be conducted in the court room* Throughout the trial in court, the child witness shall only be interviewed in the court room, whereas the magistrate has an opportunity to hold the court session within closed doors, if he deems that the justice requires it, with a view to defending state interests, the morals, the dignity or the privacy of a person, and in these conditions, the witness shall be interviewed only in the presence of the parties to the trial, their representatives and the other persons summoned by the court for the case<sup>42</sup>.

*Special measures* In certain cases of child witness or even child victim interviews, the magistrate may be faced with problems caused by the fear of the child that his truthful statements could cause the revenge of the interested persons<sup>43</sup>. These children should be interviewed only after taking the measures which ensure their personal security – for instance following the arrest of the people about whose actions they would testify or following the confinement of the interviewed person to a reception center, where he could not be subjected anymore to influences from the people in whose company he could be found previously.

### *II.1.4. Features that characterize child witness personality*

*Characterization* To characterize the witness' personality the following must be known: the development level of his thinking (especially in the case of the child witnesses), the witness' personality features, his main interests (on which the quality of his perception depends to a great extent), the healthcare status of the witness when he experienced the facts, the environment where he lives, with direct effect on his experience, interests etc. and, sometimes, his parents' profession and occupation.<sup>44</sup>

<sup>42</sup> Art. 290 Criminal Procedural Code.

<sup>43</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, p. 116.

<sup>44</sup> Daniel Titus Toma, *Psihologia martorului și tactica ascultării*, Focus Publishing House, Bucharest, 2005, p. 78.

## II.2. Child witness interview

### II.2.1 Strategic rules for the child witness interview

*Age differentiation* The strategic procedures applicable to the child witness interview differ based on the age when they are interviewed, their psycho-somatic development level, as well as the case specific elements.<sup>45</sup>

*The child mental development level and the strategic behavior of the person conducting the interview* The strategic behavior of the person conducting the interview must be adjusted to the child's mental development level, each period having a corresponding child development stage as follows:<sup>46</sup>

1) *The first 1 – 3 years of age*, which is of no interest for the criminal investigation.

2) *The preschool period, 3 – 6 years of age*: the tactical rules to interview the pre-school witness, who, as a matter of fact, must be interviewed only if the situation so requires, shall be adjusted to the child's mental development level. The interview should take place with the support of a child psychology specialist and in places which the child is familiar with<sup>47</sup>; the emphasis shall be laid on the free, spontaneous speech. The questions to be asked of the child witness at this age must be precisely formulated, kindly and in an accessible language<sup>48</sup>.

3) *The school period, 6 – 10 (11) years of age*: at the school age, the success of the child interview depends on how well he is known – in terms of intelligence level, concerns, preferences etc. The tactical procedure of the free speech, without being interrupted by the investigator, is to be preferred at this stage too, and the questions must be clearly, precisely formulated, asked so that the child could have the feeling that he is taken seriously and

<sup>45</sup> Daniel Titus Toma, *op. cit.*, p. 73.

<sup>46</sup> *Ibidem*.

<sup>47</sup> *Ibidem*.

<sup>48</sup> *Ibidem*.

treated on an equal footing.<sup>49</sup>

4) *The puberty period, 10 – 14 years of age:* at this age, the attraction of the child for sensational facts makes him exaggerate, show off and be influenced easily, a reason why he should be interviewed immediately, surreptitiously even.<sup>50</sup>

5) *The adolescence period, 14 – 18 years of age:* owing to the fact that at this age the spirit of observation develops a lot and the potential to perceive, experience and relay is very high, the teenage witness may be applied the same tactical rules of interview as in the case of a witness of age<sup>51</sup>, taking into account that his life experience is missing.

### *II.2.2. Witness identification and swearing-in*

*Checking the identity of the child* During the child witness interview, the child's identity papers must be checked firstly.

*Clarifying the relationship between the child and the defendant or the victim* His connections with the defendant and/ or the victim must also be clarified.

*The witness' swearing-* At this stage too, the witness shall be sworn-in and it shall be stressed that he shall be held criminally liable in the case of false testimonies or if he refuses to testify<sup>52</sup>. All

---

<sup>49</sup> *Ibidem.*

<sup>50</sup> *Ibidem.*

<sup>51</sup> *Ibidem.*

<sup>52</sup> According to Article 85 par. 7 of the Criminal Procedural Code: "Following the swearing-in or the oath provided under par. 5, the witness shall be told that if he fails to tell the truth, he shall be held liable for perjury which is a crime."

*in and the emphasis on the consequences of false testimonies* these must be told to the witness on the occasion of any new interview.

*The witness is informed on the reason of his presence in court* The witness must also be informed what is the case for which he has been summoned to appear in court and asked what he knows about this case.

*Derogation of oath in the case of a child witness under 14* The witnesses under 14, who, according to the law, cannot be held criminally liable for false testimonies or for refusing to testify, must be explained how important their testimonies are and why it is necessary to point out the truth<sup>53</sup>. According to Article 85 par. 9 of the Criminal Procedural Code, the witnesses who are under 14 shall not be sworn-in but shall be drawn attention that they should tell the truth.  
The swearing-in as a witness is an extremely important psychological moment, essential for the witness as a person legally bound to state the truth.<sup>54</sup>

*The child's absolute immunity* However, Article 22 of the Model law accompanying Resolution 2005/20 of the Economic and Social Council<sup>55</sup> requires the total immunity of a child throughout the

<sup>53</sup> V. Bercheșan, I. N. Dumitrașcu, *Probele și mijloacele de probă*, Bucharest, Publishing House of the Ministry of Interior, 1994, p.80.

<sup>54</sup> Daniel Titus Toma, *op. cit.*, p. 72.

<sup>55</sup> [http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf), accessed on 2 October 2009.

*towards the criminal justice procedures* criminal justice procedures concerning the false testimony, irrespective whether the child has been sworn in or not.

### *11.2.3. Listening for the free speech of the child witness*

*The mode in which to listen to the child witness* The child witness must be patiently listened to, without rushing him, without asking him to shorten his recollection of the facts, as it would prevent the accurate reproduction of the event<sup>56</sup>.

*Preliminary talks* The child witness interview must begin with an interesting talk for the interviewee; the magistrate must engage him in a talk about things which bring him pleasure. Such a talk is geared to win the trust of the child witness.

*The language used* The magistrate must adjust his language to the child's development level.

*Specific questions* After the child has finished telling the story, specific questions must be asked: if everything has occurred exactly the way in which he has told the facts; if he saw these things personally; when he has heard them from somebody else, from whom etc.

*Necessary questions* One has to take into account that many children are not able to tell a story for a long time. That is why, immediately as he notices that the interviewee has grown tired because of the story, the investigator must ask the necessary questions to obtain statements concerning the details of the facts or to provide more specific elements in the case of parts of the stories. On this occasion, any suggestive formulation of the questions so as to influence the interviewee is recommended to be strongly avoided.

---

<sup>56</sup> V. Bercheșan, I. N. Dumitrașcu, *op. cit.*, p. 80.

#### *11.2.4. Asking questions for the interviewee and hearing the answers*

*Excluding questions* If during his free speech, the witness has made complete statements, questions are not needed anymore.<sup>57</sup>

*The need to ask questions* However, most of the times, following the free speech of the child witness certain aspects may be left unclear or there might be some omissions concerning important circumstances which, following the logic of things, the child witness should be aware of. Questions must be asked about such facts.

Sometimes it is important to ask the child witness questions about facts which can be checked with the help of other evidence, for instance, to clarify who, besides the witness, was also present during the event he has described or which were the criteria that the witness has used to assess the duration of the facts or the size of an object.

*The quality of the questions* The questions addressed to the witness must be precise, clear and short.

Asking complicated questions, which should call for more independent answers may lead to answers only with respect to a part of the question, and the child witness may be likely to forget to answer the other part of the question or even to avoid formulating an answer.

*Inadmissible questions* The questions aimed at misleading the child or which can suggest an answer shall be inadmissible. If the first ones have no sense, as the witness may very well not understand the question, the others may make the witness make statements which are not connected with the things he perceived directly, the things that he only fathoms about and which do not help the criminal investigation body in conducting the investigation.

---

<sup>57</sup> *Ibidem.*

*Supporting questions* Suggestive questions must be distinguished from the supporting questions as they are aimed at re-establishing in the memory, through association, the forgotten facts.<sup>58</sup>

*Suggestive questions* One variant for the suggestive questions is represented by the alternative questions, which propose to the witness to select among two versions of the answer: for instance, “the criminal was wearing a black or brown sweater.” The risk of such questions is that they may contain information which is not real, and may make the witness decide on an answer which does not cover the reality. Such questions must be avoided when the witness is asked for the first time about a given fact; they may be asked when it is checked to what extent is the witness sure about the answers he has provided to the previously asked question or when the honesty of the witness is checked.

*Admissibility of alternative questions* Alternative questions, however, shall be admissible whenever they are asked so that the witness can state which of the contradictory answers previously formulated he deems just. In general, in the case of the children, the “yes-no” questions shall be used very seldom and only when the focused questions, which are asked to draw the attention on the relevant information or the multiple choice questions, which are formulated so as to include the correct answer as well, do not lead to clarifying answers, since these questions stimulate the person to provide socially desirable answers<sup>59</sup>.

*The difference between recalling and recognition* The magistrate must make the distinction between “recalling” when, wishing to stress on certain elements, specifically asks the child what happened and the child provides the details, and “recognition”, when the child cannot provide detailed elements and the investigator supplies alternatives, versions so that the interviewee can

<sup>58</sup> V. Bercheșan, I. N. Dumitrașcu, *op. cit.*, p.80.

<sup>59</sup> Aurel Ciopraga, Ioan Iacobiță, *op. cit.*, p. 265.

choose the correct version. In these last cases, the magistrate shall supply the child with the details which the latter affirms or denies.

*Presenta-  
tion of  
additional  
evidence  
with a  
view to  
deter-  
mining the  
reality of  
the  
answers*

When questions are being asked, sometimes the witness should be presented material items, such as documents, plans, drawings, photographs etc., as these may have as purpose to either remind the witness about the facts which he forgot or to reveal the false testimony<sup>60</sup>. To this purpose, the travel to the crime scene may also be organized, with the interview continued on that spot.

*Particular  
situations*

In some cases, for the statements to be as explicit as possible, the witness may be suggested to draw up the drawing, plan, layout of a specific place or object, and all these elements may be attached, when necessary, to the interview report<sup>61</sup>.

*Observing  
the  
interviewee's  
conduct*

At the same time, throughout the interview, the conduct of the interviewee must be observed<sup>62</sup>. Certainly, the manner in which the witness reacts to the questions which are being asked, does not have evidentiary value, but it may guide the magistrate into selecting the tactical procedures to conduct the interview.

### *II.2.5 The magistrate's empathetic attitude*

*The magis-  
trate's  
behavior  
throughout*

The person conducting the interview should not display any attitude towards the child witness statements. He should not only know how to ask questions, but also listen: one specifically false answer of the witness should

<sup>60</sup> *Ibidem*, p. 264.

<sup>61</sup> *Ibidem*.

<sup>62</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, p. 115.

*the interview* not cause any ironical replies, just the same as an expected answer to an addressed question must not be accompanied by endorsing statements or expressions.

*Active listening* The interviewer must not confine to the passive recording of the witness statements, but he must actively pursue to clarify the truth about the facts which are essentially important for the case.

*Prohibiting any type of pressure on the witness* At the same time, the magistrate must not put any pressure on the witness<sup>63</sup>, to make him give the convenient answers for the investigation.

*Determining the reason for the false testimony* When there is the suspicion that the child witness intentionally gives false testimonies, it is necessary to minutely determine, throughout the interview, by using other items of evidence as well, what makes him give false testimonies.

This is done through the careful study of the links of the witness with the defendant or with the victim, with their relatives and friends, as well as that of the threats on the child witness or the setting in place of a climate of fear for him. Sometimes, in order to clarify the reasons for the false testimonies, the interviewer must check whether the child witness has not himself been involved in the commission of the offence.

Special attention must be attached to the interview of the witnesses proposed by the defendant/ offender, as there might be biased persons among them.

*Breaks during the interview* To avoid that the child should grow tired, breaks must be made during the interview. Article 28 letter h of the Model law of Resolution 2005/20 of the Economic and

---

<sup>63</sup> Criminal Code of Romania, Article 267: „Subjecting a person to bad treatments while in detention, pre-trial detention or throughout the enforcement of a safety or educational measure shall be punished with imprisonment from 1 to 5 years.”

Social Council<sup>64</sup> requires that throughout the child interview breaks must be made when necessary, a measure taken for the best interests of the child.

*Elements that the magistrate should take into account*

The magistrate should take into account the age and the psycho-intellectual development level of the child witness, as his capacity to perceive and understand the facts and phenomena he witnessed depends on these elements.

### **III. Recording and evaluating the juvenile offender interview or the child witness interview**

#### *III.1. Developing the court report concerning the child witness or the juvenile offender interview*

*Information is put down into written*

Putting down the statement of the child witness or offender is the operation whereby the information gathered by the magistrate throughout the interview process is translated into a written format.

*The gradual development of the interview report*

The interview report shall not be developed all at once, but gradually: in the beginning, the part of the report referring to the identity of the person shall be filled in; the annotation about him shall be made as the person interviewed answers the questions related to his biography. Following that, the free recollection of the facts by the person interviewed shall be put down.

*Direct questions concerning the family*

In the case of a child interview, the questions regarding his biography must be addressed so as to avoid direct questions concerning the family situation, but the child must be asked where and with whom he lives, where he

---

<sup>64</sup>[http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf), accessed on 02 October 2009.

*situation should be avoided*

goes to study etc.

*The development of a report throughout the interview should be avoided*

One should usually avoid developing the interview report throughout the stage of the free recollection of facts because, if it were developed this way, the child would have to be interrupted after each phrase, as he would have to wait until what he has stated would be put down in the report<sup>65</sup>. This way, the person interviewed could lose his thread and the magistrate would turn into a simple scribe (throughout the criminal investigation stage), and would lose the possibility to critically assess the free speech.

*The development of the interview report in the case of an un-complicated interview*

If the interview is not complicated, the magistrate must memorize what has been stated and put it down afterwards in the report.

*The development of the interview report in the case of a complicated interview*

If the interview is complicated, the recommendation is for the magistrate to put down some information, which would be like an abridged version of the speech, as well as the questions as a consequence of the witness statements. One must put down exactly the various characteristic expressions used by the person interviewed, as well as the special terms used throughout the free speech.

---

<sup>65</sup> Ioana T. Butoi, Tudorel Butoi, *op. cit.*, p. 133.

- The report development or editing* Following the free recollection of facts, based on the notes put down, the report shall be edited or developed. When necessary, the interviewed person may be asked to repeat various parts of his speech, either because the person conducting the interview must realize if he has understood precisely what the child wanted to state, or see whether the child relays the same thing about aspects which the magistrate finds more important.
- The report style* The report style must get as close as possible to the style of the interviewed person. This rule must be especially observed when interviewing children, as it is not allowed to put down in the report words and expressions which are unknown or not understood by the person interviewed.
- Recording criteria* If the person interviewed is constant with respect to the items relayed, then the report of all questions and answers shall be made upon the end of the interview. If on the contrary, throughout the interview, it becomes clear that the person interviewed avoids answering certain questions or changes his statements, it is indicated that the report should record each question and each answer of the person interviewed, immediately as it has been developed. The revealed contradictions shall be the object of questions to be asked or shall be valued by the magistrate throughout the operation to corroborate the gathered evidence.
- Reading the statement* After the statement has been developed, the child witness or offender shall be invited to read it personally, and if he does not know how to read, this circumstance shall be recorded within the statement, which will be notified by the person who developed it in a written form. Based on the request by the interviewed person, supplements, amendments, corrections shall be included within the report. All corrections, deletions or supplements must be mentioned at the end of the report, prior to the signature by the interviewed person.

*The statement is written by the person interviewed* The law does not forbid the right of the interviewed person to personally write the statements, but this is specific only to the criminal investigation stage<sup>66</sup>. Development of the statement by the person interviewed is usually extremely significant for the clarification of the case. When the interviewed person says the truth, the holographic writing of the statement creates a safeguard in connection with a more complete and accurate formulation regarding the facts stated.

*Justification* Should the child want to change his statements – subsequently – without any reason at all, the personal recording will not facilitate this change, making it impossible for the child to provide arguments in connection with his changing the facts as initially stated that he was misunderstood or that what he stated has been incorrectly recorded. In the case of a statement written in person as well, the child must firstly be interviewed while observing the same stages, listening to the free recollection of facts and asking questions, following which the person interviewed, shall put down personally the outcome of the discussion with the magistrate. It is indicated to record statements immediately and in the same spot where the interview took place. The statements written personally by the child should be immediately read by the magistrate and – should the magistrate find that there are any unclear elements or omissions – they must be clarified or supplemented through the written answers provided to the questions which might appear necessary.

*Reading of the statement by another person* If the child does not know how to read or write, besides the comment made throughout the statement, it is indicated that it should be read by another person, who will sign together with the child or for him.<sup>67</sup>

---

<sup>66</sup> V. Bercheșan, I.N.Dumitrașcu, *op. cit.*, p.82.

<sup>67</sup> *Ibidem.*

### *III.2. Child interview assessment*

#### *III.2.1. Assessment of the juvenile offender statement*

##### *The principle of equal evidence*

According to Article 69 of the Criminal Procedural Code, the “statements of the offender or the defendant throughout the criminal justice procedure may serve to reveal the truth only to the extent in which they are corroborated with facts and circumstances resulted from the entire set of evidence in the case.”

##### *Criteria to assess the child's opinion*

As established in Resolution 2005/20 of the Economic and Social Council<sup>68</sup>, the weight of a child's opinion shall be assessed by the judge, based on his age and maturity, with a possibility to call in either a psychologist specialized in supplying qualified assistance to children or another specialist in this field.

When assessing the child interview, the prosecutor or the court must determine the degree of relevance of the statement, its importance within the set of evidence, the matters it clarifies, as well as the maintenance or change of the legal provisions referred to as a consequence of the details supplied for the current context.

#### *III.2.2. Aspects to clarify throughout the child interview*

##### *Aspects to clarify throughout the child interview process*

Throughout the child interview process, the magistrate should try to clarify the following aspects:

- a) To gather full explanations concerning all facts related to the defendant/ offender, to become aware and verify all arguments that the latter invokes for his defense;
- b) To gather new information, previously unknown, in connection with the facts which are essential for the case;
- c) To fully clarify the explanations of the child so that after he has answered all clarifying questions formulated by the person conducting the interview his statements should not

---

<sup>68</sup> <http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>, accessed on 02 October 2009.

- include any unclear matters anymore;
- d) To re-establish in the memory of the juvenile offender all facts and circumstances which are important for his defense;
- e) To gather data from the child, especially in connection with certain facts, which are necessary to check the truthfulness of his statements;
- f) To reveal deceitful statements, the lack of truthfulness of the juvenile defendant, in the case when his statements are in contradiction with the case circumstances which have been precisely determined.

*Assessing the convincing power and the level of usefulness of the statement*

Irrespective of the purpose for taking the child statement, the person who has interviewed the child shall analyze the answers in connection with what he wanted to find out and what he already had in the case file. Thus, it will be possible to assess whether the child statement is a convincing and useful item of evidence for the case, likely to be used as evidence.

*How opportune is to repeat the interview*

It will be possible to determine whether the child statement has clarified aspects which were unknown to that date, or incorrectly known to the criminal investigation bodies. It shall be determined whether it is opportune and useful to hear the child in a subsequent stage, following the submission of evidence or the assessment of the existing one through the filter of the statements already made by the child.

*Possible attitudes*

The prosecutor or the judge may choose to use the contradictions between what the child has already stated and the other evidence submitted or to record the statement, keeping the other items of evidence, to prove the dishonesty of the defendant.

### III.2.3. Check and assess the child witnesses' statements

#### *Corroboration of evidence*

The child witnesses' statements must be checked by comparing their content with the other items of evidence submitted in the case, as well as by conducting other criminal investigation activities – interviewing other witnesses, the victim, the defendant/ offender, confrontations etc.<sup>69</sup>

#### *Determining the honesty and the truthfulness of the statements*

The evidence assessment is the final stage in the activity of the person conducting the interview. The witnesses' statements assessment is the result of their verification and the conclusions developed through the evaluation of facts presented in the respective statements. In other words, the assessment of the witnesses' statements is essentially a matter of determining their honesty and truthfulness.<sup>70</sup>

The witnesses' good-faith ensures the collection of honest statements, which may not be truthful at all times.

The honesty of the witnesses' statements is based on their conviction that whatever they state is the truth, while their truthfulness is the correspondence between the facts presented and what happened in reality.<sup>71</sup> Consequently, throughout the witnesses' interviewing process, one must pursue not only the collection of honest statements, but also, and more particularly, truthful ones.

#### *Mirroring reality*

The witnesses' statements shall be assessed only in corroboration with all the evidence submitted for the case and, only to the extent in which they are confirmed by the other items of evidence checked in the case, can they be assessed as mirroring reality.<sup>72</sup>

---

<sup>69</sup> Daniel Titus Toma, *op. cit.*, p.73.

<sup>70</sup> *Ibidem*, p.74.

<sup>71</sup> *Ibidem*.

<sup>72</sup> *Ibidem*.

## References

1. Giurgiu, N., *Drept penal. Răspunderea penală și pedeapsa: Regimul sancționator al minorilor*, Neuron Publishing House, Focșani, 1995;
2. Butoi Teodora, Butoi T., *Psihologie judiciară*, România de Măine Foundation Publishing House, Bucharest, 2003;
3. Cristescu S., „Protecția minorului” in the *Justiția pentru minori, studii teoretice și jurisprudență, analiza modificărilor legislative în domeniu, lucrare colectivă*, Universul Juridic Publishing House, Bucharest, 2003;
4. Bîrsan Corneliu, *Convenția europeană a drepturilor omului. Comentarii pe articole. Vol. I, Drepturi și libertăți*. All Beck Publishing House, Bucharest, 2005;
5. Ciopraga Aurel, Iacobașă Ioan, *Criminalistica*, “Junimea” Publishing House, 2002;
6. Mitrofan N., Zdrenghia V., Butoi T., *Psihologie Judiciară*, “Șansa” SRL Publishing House, Bucharest, 1994;
7. Toma D.T., *Psihologia martorului și tactica ascultării*, Focus Publishing House, Bucharest, 2005;
8. Bercheșan I.N. Dumitrașcu, *Probele și mijloacele de probă*, The Ministry of Internal Affairs Publishing House, Bucharest, 1994, p.80
9. Lupu Mihai and Svetlana Rîjlcova, *Ghid pentru specialiștii justiției juvenile*, The Criminal Reform Institute, Chișinău, <http://www.irp.md/files/1193755251.pdf>
10. Criminal Code of Romania
11. Criminal Procedural Code
12. UNICEF, Juvenile Justice, [http://www.unicef.org/romania/ro/children\\_2872.html](http://www.unicef.org/romania/ro/children_2872.html)
13. The European Convention for the Protection of Human Rights and Fundamental Freedoms adopted in Rome on 4 November 1950, ratified by Romania through Law No. 30 of 18 May

1994, published in the Romanian Official Gazette No. 135 of 31 May 1994

14. The Standard Minimum Rules for the Administration of Juvenile Justice adopted by Resolution 40/33 of 29 November 1985 on the 96<sup>th</sup> General Assembly of the United Nations Organization, <http://www.anp-just.ro/recomandari/beijing.htm>
15. ECHR, 8 February 1996, *John Murray c/Royaume-Uni*, Recueil 1996-VI.

**Internet websites:**

<http://conventions.coe.int/treaty/en/Treaties/Html/160.htm>.

[http://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf),

<http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf>.

# Chapter VI

## Child victim interview throughout the criminal justice process

*Sofia Luca\**

### I. Preparing the child victim interview

#### *I.1. The need for a preliminary stage of the interview*

*The legal standing of the child victim* Children are often victims of crimes, especially of violent or sex crimes. In this context, they are viewed as having the legal standing of a victim, or, if they take part in the criminal trial, they are victims and/ or civil parties<sup>1</sup>.

*The legal provisions applicable* The identification and enforcement of the legal provisions governing the child participation throughout the criminal justice process is relevant for the smooth development of the criminal trial in connection with a child, for the protection of the rights of the child and the provision of the optimal environment aimed at preserving the physical, mental and physical identity of the child<sup>2</sup>.

The participation of the child in the criminal trial means that he can be found in a series of settings, he may have various rights and obligations, and one of the most important aspects refers to the interview of a child who is the victim of a crime.

---

\* Sofia Luca is a judge at the Tribunal of Iași and a trainer with the National Institute for Magistrates in the areas of juvenile justice and the ethics of the magistrate.

<sup>1</sup> S. Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale – Perspectiva legală” in the *Justiția pentru minori în interesul superior al copilului, Practici de lucru cu copilul victimă*, collective work, Save the Children, Iași branch, 2008, p. 17.

<sup>2</sup> *Ibidem*.

*The complexity of the legal elements in correlation with the psychological elements* This is why it is extremely important to identify and apply all legal provisions in connection with the child victims, which are explicitly provided or which may be inferred from the provisions of the criminal justice regulations, the criminal procedural rules or the special laws, as well as to tackle all aspects related to the child, his psychological development stage, with direct implications on the subsequent appropriate conduct of the person coordinating the investigation, to identify and implement the best practices in the area of child victim interviews<sup>3</sup>.

*Elements preliminary to the interview* Whenever it is necessary to interview the child victim of a crime *throughout the criminal justice procedures*, the person conducting the interview should take into account a series of elements preliminary to the interview, concerning the place where the interview will take place, the persons summoned to witness the interview, the preparation of the child for the interview, the training of the person conducting the interview<sup>4</sup>.

*The requirement for special interview conditions* Recommendation (2001) 16 on the protection of children against sexual exploitation<sup>5</sup> provides the need to set in place special interview conditions to reduce the number of interviews and traumatic events for the victims, witnesses and their families and to increase the credibility of their testimonies, in the sense of observing their dignity.

## *1.2. Persons summoned to witness the child interview*

*Special legal provisions* The criminal procedural rules of the domestic legislation contain only marginal provisions concerning the child victim; however, regulations concerning the children,

<sup>3</sup> *Ibidem*, p.18.

<sup>4</sup> *Ibidem*.

<sup>5</sup> Recommendation Rec (2001) 16 on the protection of children against sexual exploitation adopted by the Committee of Ministers on 31 October 2001, on the 771<sup>th</sup> meeting of the Ministers' Deputies, par. 30, [http://www.coe.ro/documente\\_traduse.php?tip\\_doc=1](http://www.coe.ro/documente_traduse.php?tip_doc=1), accessed on 28 July 2008.

*concerning the subpoenas* applicable for the stages of the criminal trial may be found in a series of provisions of various special laws. From these *the need to subpoena the legal representatives of the child victim* may be inferred.

*The legal representative of the child* Thus, according to the provisions of Article 9 and Article 11 of Decree No. 31/1954 concerning the natural persons and legal entities<sup>6</sup>, the judiciary documents of the children with restrained capacity of exercise (children aged between 14 and 18) shall be concluded by them based on the preliminary endorsement of the parents or their legal guardian, and in the case of children with no legal capacity (children aged up to 14), these shall be concluded by their legal representatives.

At the same time, according to the provisions of Article 132 par. 3 of the Criminal Code<sup>7</sup> “in the case of the persons lacking the legal capacity, the conciliation shall be concluded only by their legal representatives. The people with restrained legal capacity shall conciliate only based on the endorsement of the persons provided in the law”, which means that both defendants and child victims may conciliate only based on the endorsement by their legal representatives.

According to the interpretation of the legal texts mentioned above, there is a need to summon the legal

---

<sup>6</sup> Decree No. 31/1954 concerning the natural persons and legal entities, published in the Official Bulletin No. 8 of 30 January 1954.

<sup>7</sup> The republished text of the Criminal Code was published in the Romanian Official Gazette No. 65 of 16 April 1997, amended and supplemented by Law No. 143 of 26 July 2000; Law No. 197 of 13 November 2000; Emergency Ordinance No. 207 of 15 November 2000; Emergency Ordinance No. 10 of 11 January 2001; Emergency Ordinance No. 89 of 21 June 2001; Law No. 456 of 18 July 2001; Law No. 20 of 10 January 2002; Law No. 61 of 16 January 2002; Law No. 169 of 10 April 2002; Emergency Ordinance No. 58 of 23 May 2002; Emergency Ordinance No. 93 of 20 June 2002; Emergency Ordinance No. 143 of 24 October 2002; Emergency Ordinance No. 109 of 16 November 2004; Law No. 85 of 7 April 2005; Law No. 160 of 30 May 2005; Law No. 247 of 19 July 2005; Law No. 278 of 4 July 2006; Emergency Ordinance No. 60 of 6 September 2006; Decision No. 62 of 18 January 2007; Law No. 337 of 3 December 2007; Law No. 58 of 19 March 2008; Emergency Ordinance No. 198 of 4 December 2008.

representatives any time a child is involved in the judiciary proceedings, a circumstance also as a result of the contents of Article 2 of Law No. 272/2004 on the protection and promotion of the rights of the child<sup>8</sup>, which requires that the family should be involved in all decisions concerning children.

*International legal framework*

Recommendation (2002) 5 of the Committee of Ministers to the Member States on the protection of women against violence<sup>9</sup>, requires the Member States (an implicit obligation for the judiciary) to “ensure that children are accompanied, at all hearings, by their legal representative or an adult of their choice, as appropriate, unless the court gives a reasoned decision to the contrary in respect of that person.”

At the same time, Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure<sup>10</sup> stipulates the need that, whenever possible and recommended, children should be heard only in the presence of their parents or legal representatives or of any other persons qualified to assist them.

As results from this last Recommendation<sup>11</sup>, how appropriate is the presence of the parents at the interview must be evaluated on a case by case basis.

---

<sup>8</sup> Law No. 272/2004 on the protection and promotion of the rights of the child, published in the Romanian Official Gazette No. 557 of 23 June 2004, which entered in force on 1 January 2005.

<sup>9</sup> Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers’ Deputies, par. 46, [http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf), accessed on 19 August 2009.

<sup>10</sup> Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers’ Deputies <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605227&SecMode=1&DocId=686736&Usage=2>, accessed on 28 July 2009.

<sup>11</sup> *Ibidem*.

*How inappropriate may be the presence of a parent at the hearing* There are situations when one of the parents should not be deemed appropriate to attend the hearing, for instance, throughout the interview of a female teenager, and her bonding with her parents is a matter of misunderstanding, lack of communication, or there is an acute feeling of shame in tackling aspects connected to one's privacy, or if one of the parents is the child's molester, a situation known and tolerated by the other parent<sup>12</sup>.

*Support person* In these circumstances, it is necessary to find out from the child who is the person he trusts, a person who might be indicated to accompany him throughout the hearing<sup>13</sup>. Selecting this person is very important, as his presence or advice may exert a special influence on the child and his statements, it may dissolve his nervousness, insecurity, may provide him with the necessary stability to give the statement<sup>14</sup>.

*Other persons attending* If the child is the victim of a crime perpetrated by his legal representatives<sup>15</sup>, the persons appointed by the competent authority to care for the child shall be

---

<sup>12</sup> Court of First Instance of Iași, *Criminal Sentence No. 3407/1997*, final through *Court Ruling No. 210/1998* of the Court of Appeals of Iași, quoted by S. Luca in the "Protecția minorului victimă în cursul cercetării judecătorești", *Ghid de practici instituționale în instrumentarea cauzelor cu minori*, Alternative Sociale Association, Iași, 2005, p. 60.

<sup>13</sup> Tilman Furnis, *Manual multiprofesional pentru abuzul sexual al copilului, integrated management, therapy and legal intervention*, Timișoara, Waldpress Publishing House, 2004, p. 206.

<sup>14</sup> Tudorel Butoi, Ioana T. Butoi, *Tratat Universitar de Psihologie Judiciară-teorie și practică*, Bucharest, Phobos Publishing House, 2003, p. 115.

<sup>15</sup> Court of First Instance of Iași, *Criminal Sentence No. 5408/2008*, which remained final as it was not under review, quoted by S. Luca in the "Audierea copilului abuzat/traficat în procedurile judiciare penale", in the *op. cit.*, p. 22. In this case, the defendant, a mother of three, repeatedly exerted violence on two of her children, ultimately forcing her 5-year old daughter to put her hands on a heated kitchen cooker. The children had been placed in a foster family in the criminal investigation stage, with a foster mother identified by the General Social Welfare Department, who represented the interest of the children victims in the case of bad treatments applied by the mother.

the  
interview  
as  
appointed  
by the  
competent  
authority

summoned to attend, as a consequence of the measures ordered in this respect by the judiciary bodies (for instance in the case of bad treatments for the child, the child shall be assisted by a guardian<sup>16</sup>).

Psycholo-  
gist  
attending

There are also situations when the interview of the child cannot be conducted but after a preliminary preparation and *with a psychologist attending*, owing to the fact that what the child might express concerning the trauma cannot be changed into a statement but with the help of the experts<sup>17</sup>. The involvement of a psychologist is

---

<sup>16</sup> Court of First Instance of Iași, *Criminal Sentence No. 5962 of 21 December 2004, amended and which remained final through the Criminal Ruling No. 686 of 29 September 2005 of the Tribunal of Iași*, in the sense that the term of punishment diminished, quoted by Sofia Luca in the “Audierea copilului abuzat/traficat în procedurile judiciare penale”, *op. cit.*, p. 23. In this case, the mother of four children aged between 1 and 14 years, as the father was in prison serving his sentence, had abandoned her children to pursue a relationship with a shepherd and had left them to go to his sheepfold. In this context, the school aged children had dropped out of school as they were left without clothes and shoes and they had to take care of the two smaller children and begged from their neighbors. Subsequent to the identification of the facts, the mother was sent to court for family relinquishment, as provided under Article 305 letter a of the Criminal Code, and throughout the trial, the legal provisions applicable were deemed to be those related to the crime of bad treatment applied to children, as provided under Article 306 of the Criminal Code, the court deemed that letting children starve in the wintertime, for 2 weeks up to 1 month was likely to severely jeopardize their physical, intellectual and moral development. Throughout the trial, the court ordered the appointment of a guardian to represent the children interests in court, taking into account that there were adversarial interests between the mother and the children.

<sup>17</sup> Court of First Instance of Iași, the *Criminal Sentence No. 4114 of 30 September 2004, which remained final as it was not appealed*, quoted by S. Luca in the “Audierea copilului abuzat/traficat în procedurile judiciare penale”, *op. cit.*, p. 23. In this case, a little girl of 4 was subject to sexually perverted acts (her vagina was finger-penetrated, followed by masturbation and ejaculation), by a man hired by her family to provide support within the household, whom the child trusted, calling him the “grandfather”. The child was interviewed starting with the criminal investigation stage in the presence of her mother and a psychologist from the Save the Children

necessary since, for instance, children have various ways to express and describe the abuse based on their age and mood<sup>18</sup>. Child victims are often unable to express with their own words what happened because their language might not be as developed as to allow them to reveal the traumatic event<sup>19</sup>, or because of their fear or nervousness, as the judiciary proceedings might cause inhibition and determine their incapacity to make statements.

*Expert psychologist* In reality, the psychologist is an expert<sup>20</sup> in child development, and, if it is necessary to involve him in the legal proceedings, he may be considered an expert<sup>21</sup>

---

Organization, the Iași branch, called as an expert, with whose help, the child statement was put down in writing, after the interpretation of the language she used to denominate the sexual organs (“prick” and “nuts”), or the semen (“yoghurt”).

<sup>18</sup> Corina Mighiu, Cătălin Luca, „Rolul psihologului în lucrul cu copilul abuzat/neglijat” in the *Ghid de bune practici pentru prevenirea abuzului asupra copilului, Iași*, Save the Children, republished by the Alternative Sociale Association, 2005, p. 57.

<sup>19</sup> Ana Muntean, „Intervenția” in the *Copilul maltratat - Evaluare, prevenire, intervenție*, Bucharest, collective paper coordinated by Șerban Ionescu, the International Foundation for Child and Family, 2001, p. 151.

<sup>20</sup> Court of First Instance of Iași, the *Criminal Sentence No. 3407/1997*, final through the *Criminal Ruling No. 210/1998* of the Court of Appeals of Iași, quoted by S. Luca in the “Protecția minorului victimă în cursul cercetării judecătorești”, *op. cit.*, p. 60. In this case, the psychologist was summoned by the criminal investigation body to assist in the interview of the child victims (a boy and a girl), who had been abused and molested by the mother’s partner, whereas the mother had been an accomplice, as she was pathologically jealous of her daughter. Subsequently, the psychologist who assisted in the interview of the child victims throughout the criminal investigation testified in court as an expert in the field and from his statement, the court retained that “the children had no inclination to lie, they may only omit certain facts, do not have the tendency to exaggerate and do not make unreal statements.”

<sup>21</sup> Court of First Instance of Iași, the *Criminal Sentence No. 6965/11 December 2002*, final through the *Court Ruling No. 255/2003* of the Tribunal of Iași, maintained through the *Criminal Ruling No. 254/28.03.2003* of the Court of Appeals of Iași, quoted by S. Luca, “Audierea copilului abuzat/traficat în procedurile judiciare penale”, *op. cit.*, p. 23; in the case, the defendant was convicted as found guilty for the crimes provided under Article 198 par. 1 of the Criminal Code, Article 201 of the Criminal Code and Article 202 of the Criminal Code, as during September 2001 – May 2002, he had repeatedly, based on the same criminal ruling, had sexual

having his own point of view concerning the child psychological development, the consequences of the abuse on the child, as well as the diagnosis regarding the recovery of the child<sup>22</sup>.

### 1.3. Legal aid

*The need for legal aid* According to the legal practice, the *legal aid* for a child victim of a crime, especially in the case of severe crimes – violent crimes or sex crimes – is also necessary<sup>23</sup>.

*Distinctions* The domestic legislation must make the distinction between the free legal advice and the pro bono legal aid provided to child victims of various crimes.

*Free legal advice* Thus, according to Article 14 of Law No. 211/2004 regarding some measures to ensure protection for the victims of crimes<sup>24</sup>, certain categories of victims (persons subjected to attempted murder, provided under Articles 174-176 of the Criminal Code, a severe bodily injury,

---

intercourse with the victim L.M., aged 13 years, and he engaged throughout the same period in perverted sexual acts forced not only on the victim L.M. but also on the victim B.M. aged 9 years and 6 months. Throughout the court investigation, given the specific elements of the crimes and the small age of the victims, the court ordered the psychological evaluation of the child victims. The evaluation report was developed by the psychologists of the Child Protection Department of Iași, an institution which was also summoned in the case. The report highlighted that the victim had a damaged self-esteem (she considers herself forgetful, poor, orphan, lazy and cheeky); culpability feelings (she states that it was because of her that the family is not happy; she is nervous, but she cannot express her feelings easily; her mood is slightly depressive (she states that she has had a poor background, a childhood which was “a bit sad”); she experiences an intense bereavement following the death of her mother.

<sup>22</sup> Corina Mighiu, Cătălin Luca, *op. cit.*, p. 41.

<sup>23</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale - Perspectiva legală” in the *op. cit.*, p. 24.

<sup>24</sup> Law No. 211/2004 on various measures to ensure the protection for the victims of crimes, published in the Romanian Official Gazette No. 505/04 June 2004, with the amendments and supplements brought by Emergency Ordinance No. 113 of 17 October 2007, published in the Romanian Official Gazette, Part I, No. 729/26 October 2007.

provided under Article 182 of the Criminal Code, an intended crime which resulted in the severe bodily injury of the victim, sexual intercourse with a child and sexually perverted acts, provided under Articles 197, 198, Article 201 par. 2-5 of the Criminal Code or the victims whose household capita income is not more than the national basic gross salary), shall be provided *free legal advice*, based on request and upon fulfilling certain requirements referring to the prompt response, the place where the crime occurred, the nationality of the victim and the place where the trial takes place.

*Derogations in favor of the child victim*

The law provides, in this respect, various special derogations in the case of child victims, in that they are not required to seize the criminal investigation body or the court within 60 days, as the law requires the other categories of victims to do.

*Informing the victims on their legal rights*

To this purpose, the child victim or his legal representative must be informed on the rights provided in Law No. 211/2004 from the criminal investigation stage, as the unclear elements and the loopholes in the statement of one of the parties at this stage may be speculated by the defense of the opposite party, more since the credibility of the victim is often questioned throughout the investigation of sex crimes or cases of human trafficking<sup>25</sup>.

*Pro bono legal aid*

Other means which ensures the provision of legal assistance to the child victim is to appoint, based on the court request, a *pro bono defense lawyer*.

*Applicable legal*

This possibility results from the provisions of Article 173 par. 3 of the Criminal Procedural Code<sup>26</sup>, which, under

---

<sup>25</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale – Perspectiva legală” in the *op. cit.*, p. 24.

<sup>26</sup> The Criminal Procedural Code was published in the Official Bulletin No. 145-146 of 12 November, republished in the Romanian Official Gazette, Part I, No. 78 of 30 April 1997, based on Article IV of Law No. 141/1996, published in the Romanian

*provisions* the title “Aid provided for the other parties”, provides the right of the victim or of the civil party to *pro bono legal aid*, a decision taken by the criminal investigation body if it deems that the party needs this service as it could not build his own defense alone. Thus, according to the law mentioned above “when the criminal investigation body deems that, out of various reasons, the victim, the civil party (...) could not build up his own defense, it shall order taking the necessary measures to appoint a pro bono defense lawyer ex officio or based on request.”

*Appointment of the pro bono defense lawyer* Child victims are usually part of the category of persons who cannot build up their own defense by themselves, therefore, in practice, especially in the case of severe crimes, such as sex crimes or crimes against the freedom or the integrity of the person, especially throughout the court stage, the court order the appointment of pro bono defense lawyers who are capable to provide legal aid for the victim.

*The rule of the mandatory* The legal aid becomes mandatory in the case of the human trafficking victims, Law No. 678/2001 on the prevention and fight against the human trafficking<sup>27</sup>,

---

Official Gazette, Part I, No. 289 of 14 November 1996, with the amendments and supplements brought by: Emergency Ordinance No. 207 of 15 November 2000; Law No. 296 of 7 June 2001; Law No. 456 of 18 July 2001; Law No. 704 of 3 December 2001; Law No. 756 of 27 December 2001; Law No. 169 of 10 April 2002; Emergency Ordinance No. 58 of 23 May 2002; Law No. 281 of 24 June 2003; Emergency Ordinance No. 66 of 10 June 2003; Emergency Ordinance No. 109 of 24 October 2003; Decision No. 100 of 9 March 2004; Law No. 159 of 14 May 2004; Emergency Ordinance No. 55 of 25 June 2004; Law No. 302 of 28 June 2004; Emergency Ordinance No. 72 of 30 September 2004; Law No. 480 of 8 November 2004; Decision No. 482 of 9 November 2004; Law No. 576 of 14 December 2004; Law No. 160 of 30 May 2005; Emergency Ordinance No. 190 of 21 November 2005; Law No. 356 of 21 July 06; Emergency Ordinance No. 60 of 6 September 2006.

<sup>27</sup> Published in the Romanian Official Gazette No. 783/11 December 2001, updated by 16 October 2005, with the amendments and supplements brought by: Emergency Ordinance No. 143 of 24 October 2002; Law No. 39 of 21 January 2003; Emergency Ordinance No. 79 of 14 July 2005; Law No. 287 of 11 October 2005.

- legal aid* which establishes under Article 44 the right to mandatory legal aid in the case of the human trafficking victims, so that they could exercise their rights throughout the criminal justice proceedings, at all stages of the process, and to support their civil claims concerning the persons who perpetrated the crimes provided under this law and which involved them.
- Exception to the rule* This provision created derogation from the rule of the criminal procedure, according to which only the culprit or the defendant have the right to mandatory legal aid<sup>28</sup>.
- The logic of this right* The logic of this right for the victims of the human trafficking is to ensure qualified defense supplied by a defense lawyer who was selected or appointed *ex officio*, so that these persons may have a possibility to fully exercise their procedural rights throughout the process.
- International legal framework* According to the international regulations<sup>29</sup>, throughout the legal proceedings, the child victim or witness must be assisted by a lawyer, supplied by the state free of charge, in the following situations: based on the request by the child; based on the request by the parents or his guardians; based on the request by the *person of support*.<sup>30</sup>
- Informing on the* As highlighted in Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the position

---

<sup>28</sup> This provision made a derogation from the rule of the criminal procedure, according to which only the culprit or the defendant have the right to the mandatory legal aid (see the provisions of Article 171 of the Criminal Procedural Code in this respect.)

<sup>29</sup> Article 10 of the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, adopted through Resolution 2005/20 of 22 July 2005 of the Economic and Social Council, [http://www.unodc.org/pdf/criminal\\_justice/Guidelines\\_E.pdf](http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf), accessed on 19 August 2009.

<sup>30</sup> Person defined in the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* as a “specialized person, appointed to assist the child throughout the judiciary procedures, with a view to preventing the treatments using force, revictimization and the secondary victimization of the child.”

*rights of the child* of the victim in the framework of criminal law and procedure<sup>31</sup>, it is extremely important that the victim should be informed by the law enforcement officer, in the first stage of the process, about the possibility to get qualified legal aid.

#### *1.4. Preparing the child victim for the interview*

*Preliminary preparation* The child victim must be prepared prior to the interview<sup>32</sup>, so as to have the information from the right person concerning the procedures which are applicable to a case such as the one he is involved in, how important this interview is to identify and punish the perpetrator, and all these actions are geared to avoid the secondary trauma of the child victim and to gather a relevant statement<sup>33</sup>.

*The probation officer present* However, the criminal procedural provisions refer to just one situation at this stage. Thus, according to Article 77 first indent of the Criminal Procedural Code, only when the victim's life, physical integrity or freedom may be in jeopardy, has the criminal investigation body the obligation to notify the victim about his right to request that the interview should be conducted with a probation officer present, called in from the probation services. Even if this does not presuppose the prior contact of the victim with the probation officer, it does not exclude it, as the role of the probation officer is obviously to provide counseling to the victim throughout the interview process,

---

<sup>31</sup> Adopted by the Committee of Ministers of the Council of Europe on 28 June 1985 on the 387<sup>th</sup> meeting of the Ministers' Deputies <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605227&SecMode=1&DocId=686736&Usage=2>; [http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf), accessed on 25 September 2009.

<sup>32</sup> Court of First Instance of Iași, the *Criminal Sentence No. 1626 of 31 March 2006, final* through the *Criminal Resolution No. 102 of 22 February 2007*, quoted by Sofia Luca, in the „Audierea copilului abuzat/traficat în procedurile judiciare penale”, *op. cit.*, p. 19.

<sup>33</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale – Perspectiva legală” in the *op. cit.*, p. 25.

moral support, to help the victim cope with his exposure during a criminal justice procedure.

*Emergency placement. The psychologist present*

The provisions of Law No. 272/2004 on the protection and promotion of the rights of the child<sup>34</sup>, which, in its Article 95, provide the possibility to take the statement of the child victim of abuse or neglect, for whom the measure of emergency placement has been taken. According to the legal text mentioned above, "The interview shall take place only in chambers, with a psychologist present, and only after a prior preparation of the child."

*Excluding the possibility to use the civil statement of the child in the criminal justice procedure*

In connection with this matter, there is the issue of whether the child statement taken throughout the civil procedure observed with a view to establishing the placement, may be used throughout the criminal justice procedure. The answer can only be negative, as there are specific procedures which require the abuse to be investigated in a first stage by the criminal investigation body or the prosecutor and if the abuse is confirmed, then the perpetrator must be charged by these bodies.

*Mandatory psychologist's presence*

However, as long as, with a view to taking a measure of protection, Law No. 272/2004 on the protection and promotion of the rights of the child, which is a special law concerning the protection of the rights of the child, establishes the obligation to provide assistance to the child by a psychologist, it is a provision which must be included moreover throughout the criminal justice procedure, which involves the repeated interviewing of the child, by

---

<sup>34</sup> Published in the Romanian Official Gazette No. 557/23.06.2004, with the amendments and supplements of: Decision No. 2.393 of 21 December 2004; Decision No. 1.762 of 22 December 2005; Decision No. 9 of 9 January 2008.

several criminal investigation bodies<sup>35</sup>.

*Selecting the person of support*

Moreover, it is important to note that, for instance, in the case of the sexually molested children, the professional to whom the child partially disclosed the facts or in whose presence he displays the behavioral changes induced by the abuse, shall be selected by the child, and this person may become for the child his *support person*. In the presence of this person, the child shall feel safe to communicate the “secret of the sexual abuse reality.”<sup>36</sup>

*The psychologist – person of support*

That is why the presence of a psychologist, who has become the *support person* for the child is essential, both prior, but also during the interview, and is part of the stage of the preliminary preparation of the child victim for the interview.

*Informing the victims about their rights*

At this stage too the child victim and his representative are informed concerning the rights of the victim of a crime<sup>37</sup>, which is how they will receive the information provided under Article 4 of Law No. 211/2004<sup>38</sup>. This is the obligation of the institution, or, more precisely, the person with a right to have the first contact with the victim of a crime, namely, the prosecutor, the law enforcement commissioned and non-commissioned officers, if they have the jurisdiction to conduct the criminal investigation. However, if the victim did not receive this information during the criminal investigation stage, this obligation is transferred to the judge who investigates the case, on the

<sup>35</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale” in the *op. cit.*, p. 26.

<sup>36</sup> Tilman Furniss, *op. cit.*, p. 206.

<sup>37</sup> Art.9. *Right to be informed*, Chapter III. „Assistance to child victims and witnesses during the justice process”, *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, adopted by Resolution 2005/20 of 22 July 2005 of the Economic and Social Council, [http://www.unodc.org/pdf/criminal\\_justice/Guidelines\\_E.pdf](http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf), accessed on 19 August 2009.

<sup>38</sup> Law No. 211 of 27 May 2004 on certain measures to ensure protection for the victims of crimes, published in the Romanian Official Gazette No. 505/4 June 2004

arraignment of the victim in court.

*Contents of the information* According to the legal text, the information consists of notifying the victims of crimes concerning: a) the services and the organizations which supply psychological counseling or any form of assistance for the victim, based on his needs; b) the criminal investigation body where they can lodge a complaint; c) the right to legal aid and the institution where they may go to exercise this right; d) the conditions and the procedure in place to get free legal advice; e) the rights of the victim and the civil party throughout the process; f) the conditions and the procedure to benefit of the provisions of Article 86 first indent of the Criminal Procedural Code (on the protection of the identification data for the witness), Article 86 second indent of the Criminal Procedural Code (on the special means to interview a witness), Article 86 fourth indent of the Criminal Procedural Code (on the interview of witnesses under 16 in certain cases), Article 86 fifth indent of the Criminal Procedural Code (on the protection of the witness travels to and from the court), as well as the provisions of Law No. 682/2002 on the witness protection<sup>39</sup>; g) the requirements and the procedure for the financial compensation by the state.

*Means to submit the information* The above mentioned information shall be notified to the victim by the above mentioned persons, in written or verbally, in a language that the victim understands.

*The procedural* The fulfillment of the legal obligations concerning the victim information shall be recorded in a report which

---

<sup>39</sup> The law makes special mention to the protection of the identification data for the witness, the special means used to interview a witness, the interview of a witness under 16 in certain cases, as well as the protection of the witness travels to and from the court. Currently, because of the change in the Law No. 356/2006, the victims also benefit of the protection measures provided under Article 77 first indent of the Criminal Procedural Code, which have been referred to before in this chapter.

*document which must be concluded* shall be registered by the institution where the magistrate conducts his activity<sup>40</sup>.

*The right to be understood* This stage must be circumscribed to the idea that the magistrate must make sure that the child victim has the same right recognized for all who have contact with the judiciary, namely, the equal opportunity to understand not only the language of the procedure, but also the right to be understood<sup>41</sup>.

### *1.5. The magistrate's preparation for the interview*

With a view to conducting a complete hearing of the child victim of a crime, the person who will interview the child, namely the magistrate, must be specifically prepared in this respect.

This stage refers to two specific aspects: the professional training of the child interviewer and the development of the victim interview plan.

#### *1.5.1. The professional training of the child interviewer*

It is important that the person conducting the interview should be knowledgeable about: the child development psychology; the psycho-social consequences of the abuse on the child; the investigative techniques in the case of child victims etc.<sup>42</sup>

Talking with children, especially in the case of child victims of sex crimes to get a correct and objective disclosure of the facts means a lot of pressure<sup>43</sup>. This is owed to the fact that, on the one hand, in these situations, the disclosure of the abuse by the child is a slow process, the

---

<sup>40</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale – Perspectiva legală” in the *op. cit.*, p. 24.

<sup>41</sup> Anne Graffam Walker, Ph.D., *Handbook on Questioning Children: a Linguistic Perspective*, ABA Centre on Children and the Law, Washington, 1994, p.1.

<sup>42</sup> Cătălin Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale - Perspectiva Psihologică” în *Justiția pentru minori în interesul superior al copilului, Practici de lucru cu copilul victimă*, collective paper, Save the Children Organization – Iași Branch, 2008, p. 36.

<sup>43</sup> Tilman Furniss, *op. cit.*, p. 200.

communication is difficult, as the child is anxiously affected by the abuse, concerned because of the consequences of the disclosure, the lack of trust in connection with the help to be supplied to him, and, on the other hand, the magistrate harbors concerns that he will not be able to succeed in best approaching the child to find out the truth, or that, through the questions, he would cause the secondary victimization of the child.

*The judges' specialization* The Law on the judiciary organization<sup>44</sup> provides the principle of judges' specialization, as it stipulates the mandatory requirement to set up specialized judges' panels within the juvenile justice and family courts.

*Recommendation concerning a comprehensive treatment* Recommendation (2002) 5 of the Committee of Ministers to the Member States on the protection of women against violence requires the member states to "ensure that children are suitably cared for in a comprehensive manner by specialized staff at all relevant stages (initial reception, police, public prosecutor's department and courts) and that the assistance provided is adapted to the needs of the child."<sup>45</sup>

### 1.5.2. Development of the victim interviewing plan

*The victim interviewing plan* The magistrate should prepare on all information and items of evidence for a given case, and should develop a *victim interviewing plan*, made up of all issues which need clarification throughout the victim interview. In this respect, the magistrate should study the complete relevant documentation for the specific case (who seized the criminal bodies concerning a possible abuse, which were

---

<sup>44</sup> Law No. 304/2004 on the judiciary organization, published in the Romanian Official Gazette No. 827 of 13 September 2005, republished based on Article XIV of the Title XVI of Law No. 247/2005 on the reform in the areas of ownership and justice, as well as other additional measures, published in the Romanian Official Gazette No. 653 of 22 July 2005, Article 35, Article 36 par. 3 and Article 39 par. 2.

<sup>45</sup> Recommendation(2002) 5 of the Committee of Ministers of the Council of Europe to the Member States on the protection of women against violence, par. 31, [http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf), accessed on 9 August 2009.

the circumstances which made possible such an action, the culprit's/ defendant's criminal record if any, prior complaints by the victim etc.)<sup>46</sup>.

*Use of technical equipment* If the interviewer selects to conduct the hearing by using the audio-video devices, according to the requirements provided in Article 77 first indent of the Criminal Procedural Code, or deems that it is necessary to record the victim's statement before the beginning of the hearing, *the technical equipment must be checked* for proper use.

*Arguments pro recording* In connection with the recording of the interview, it should be mentioned that there is a set of arguments pro recording the victim statement by using the audio-video equipment because: the memory of a person may be deleted with time, or may be influenced by external factors<sup>47</sup>; the victim may subsequently change his statements, owing to the pressure exerted by the family members, the perpetrator or any other persons to retract what he stated throughout his initial interview; the recording may be used subsequently in the court of first instance<sup>48</sup>, or in the higher courts,

---

<sup>46</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale - Perspectiva legală” in the *op. cit.*, p. 24.

<sup>47</sup> Cătălin Luca, „Memoria. Elemente generale, particulare situației traumatice și psihopatologice”, in the *Justiția pentru minori în interesul superior al copilului, Practici de lucru cu copilul victimă*, collective paper, Save the Children Organization – Iași Branch, 2008, p.81.

<sup>48</sup> In the case No. 30261/2002, initially investigated by the Court of First Instance of Iași, which was then transferred according to Article 55 of the Criminal Procedural Code, the child victims (their number was seven) of the following crimes: “sexual intercourse with a child” and “sexual corruption”, namely during 1997-2001 they had been subject, by the defendant, to abnormal sexual intercourse, as well as to sexual corruption acts while in placement centers; the victims were interviewed in the room especially equipped to hear child victims or juvenile offenders at the Police of Iași, by the case law enforcement officer trained to conduct such investigations. The victims' statements were recorded on audio-visual support and were taken with the social workers present, and when the investigation by the criminal investigation bodies was concluded, the audio-visual evidence was submitted to court as evidence. It should be noted that the statements recorded described the facts included in the bill of indictment submitted to court. Whether with a vested interest

which could decrease the number of hearings the child could be subject to; it records the emotions of the child and supplies non-verbal clues.

*Arguments  
contrary to  
the  
recording*

Among the arguments which are contrary to the recording of the child statement are those in connection with: the possibility that the equipment could not work properly when the statement is being taken; the child may speak either too low, or too fast, or he might not be understandable; owing to his inhibition, or his insufficient or inappropriate preliminary preparation, the child might not reveal the crime perpetrated against him but when the interview has already ended or some other time in the future<sup>49</sup>. The opinion of the professionals in the area of child psychology<sup>50</sup> is that problems might arise in terms of determining the best moment for the video recording by the specialists, namely when “the memory of the event is still fresh but no longer overwhelming for the child.”

---

or not, throughout the court investigation, five of the child victims changed their initial statements and even created a scandal in the media, while in these circumstances, the defendant, a French citizen, had been in detention for a few months and the pre-trial detention measure could have been seen as unlawful in this context. Added to these elements was the difficulty in proving the facts in the absence of substantive evidence (semen, pictures etc). In the absence of those video cassettes which proved the fact that the statements of those involved had been taken in observance of the legal provisions, there would have been serious problems in proving the facts, and, consequently, in returning a conviction sentence. The defendant was found guilty and convicted to four years of imprisonment for having committed the crimes of “sexual corruption” and “sexual perversion”.

<sup>49</sup> Radu Moisescu, Lucian Mursa, “Minorul victimă în cursul urmăririi penale” in the *Ghid de practici instituționale în instrumentarea cauzelor cu minori*, collective paper, Alternative Sociale Association, Iași, 2005, p.39.

<sup>50</sup> Gerard Lopez, *Violențele sexuale asupra copiilor*, Cluj-Napoca, Dacia Publishing House, 2001, p.79.

## 1.6. Interviewing place

### 1.6.1. During the criminal investigation

*Lack of specific applicable regulations* There are no specific legal provisions in force applicable for the area where the interview shall take place.

*The need to regulate adequate areas* From the practice of the prosecutor's offices and courts<sup>51</sup> which implemented projects concerning the good management of the juvenile justice<sup>52</sup>, as well as from the legal practice of other countries in the area of the juvenile justice, results the need to ensure adequate areas, aimed exclusively for the hearing of child victims of certain crimes. Thus, it is recommended that the interview of the child should not take place in the office of the law enforcement officer or the prosecutor as in this area the access of other persons is also allowed, but in a specifically dedicated and properly equipped space, where the interview process should not be interrupted<sup>53</sup>.

*Requirements concerning the interview space* The room where the interview shall take place must be sound proof, so that the noise coming from outside should not disturb the hearing, the room should have simple, but friendly furniture, designed to set in place an environment which should decrease the anxiety of the child and to provide him with emotional stability.

---

<sup>51</sup> The prosecutor's offices and courts of Iași, Vaslui, Botoșani, Hârlău, Răducăneni and Pașcani.

<sup>52</sup> The projects: the *Instanța pentru minori*, implemented throughout 2000-2001 and *Instanța pentru minori - extindere la nivel de județ (Pașcani, Hârlău, Răducăneni)*, implemented throughout 2002-2003, as well as the Children Court of Botoșani and Vaslui, implemented throughout 2004-2005, managed by the Alternative Sociale Association.

<sup>53</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale - Perspectiva legală” in the *op. cit.*, p. 18.

*Unidirectional vision panel* In connection with this topic, it was pointed out that in the case of the investigation of victims of sex crimes, trafficking in human beings or other violent crimes, the unidirectional vision panel, the mirror type, is extremely useful, as it allows the identification of the perpetrator, without having the victim in direct contact with him<sup>54</sup>.

*Recording devices* The audio-visual recording devices, which are useful to record the statement of the victim must not be displayed ostentatiously, but they should not be hidden either.

*The child should be informed concerning the recording of his statements* In all circumstances, the child shall be informed concerning the fact that his interview shall be recorded<sup>55</sup>.

*Avoiding an extensive waiting period* The contact with the person conducting the interview must take place very shortly after the child is in the institution, so that an extensive waiting period (given the limited patience of children), just as well as the likelihood to meet with the perpetrator or his family could be avoided, which also removes the risk of potential influences which these persons might exert on the child.

### *1.6.2. In court*

*Emotional impact* Child participation at the trial in court, as party to the legal action, means that the child should also be present in the area where court sessions take place, which is usually a court room, in an environment full of sobriety, with dark furniture, with people who take part in the process dressed accordingly, in dark gowns – prosecutor, judge and

---

<sup>54</sup> Tilman Furniss, *op.cit.*, p.223.

<sup>55</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale - Perspectiva legală” in the *op. cit.*, p. 19.

lawyers – which is likely to cause a feeling of fear, emotion, inhibition, especially if this is a first for the child to be in such a role<sup>56</sup>.

*Selecting  
the best  
area*

That is why it is extremely useful to hold the court sessions which presuppose hearing of children as either victims or offenders in a smaller room, with simple furniture, adequate for the purpose, painted in warm colors, with the necessary audio-video recording equipment, as well as with anterooms<sup>57</sup> which should allow for waiting without having the children in a position where can get into contact with the defendants or their accompanying persons.

*Interview  
envi-  
ronment*

The interview environment must be devoid of any intrusive factors, any element which could distract the attention of the victim. The more safer the background, the more chances to get the most relevant information throughout the victim interview.

---

<sup>56</sup> *Ibidem*.

<sup>57</sup> In connection with this aspect, a special situation found in practice is that of the human trafficking victims, who, when summoned to court with a view to their hearing must be confronted, until the beginning of the trial, with the threats and influences exercised by the network of traffickers who are tried free or deprived of freedom, or with their friends or relatives. Leaving aside the inconvenient place where they have to wait for the beginning of the trial, the human trafficking victims must also confront with the difficulty to show up in court, because of the same fear of the traffickers who are free and their friends, so that, many times, the court must “hit” against the refusal of the victims to appear in court. The issue arose of protecting the victims to the court. In practice, some courts made appeal to the support of the border police officers who accompanied the victims from their homes to the court when they would be interviewed. However, in these conditions, the defendants’ lawyers raised the matter of the victim being influenced by the police officer who accompanies him, taking into account that the police officer is part of the body which conducted the criminal investigation in the case. Even if such arguments are disproved, they draw attention on the need to have the manner in which the courts may provide protection for the human trafficking or sex crime victims regulated throughout the criminal proceedings, with a view to solving the case.

*Protecting the rights of the children throughout the proceedings* To the same purpose, throughout the court investigation, the judge shall deem if, based on the specific situation, he must protect the child victim by a holding a **closed-door court session**, according to Article 290 of the Criminal Code, whenever a public court session in the case “could bring prejudice to the [...] morals, dignity or privacy” of the victim<sup>58</sup>.

*International legal framework* This need is a consequence of the *Recommendation No. 5 of 2002 of the Committee of Ministers to the Member States on the protection of women against violence*<sup>59</sup> which requires the judiciary bodies “take specific measures to ensure that children’s rights are protected during proceedings.”

*Special protection measures* Law No. 678/2001 regarding the prevention and fight against the human trafficking<sup>60</sup> establishes a special, mandatory protection measure, as it provides that the trial of cases concerning child trafficking and child pornography victims shall take place by derogation from the principle of publicity, as the text of Article 24 stipulates that “the court sessions ... shall not be public.”

---

<sup>58</sup> The Court of First Instance Iași, the *Criminal Sentence No. 1626 of 31 March 2006, final through the Court Ruling No. 102 of 22 February 2007 of the Iași Tribunal* in S. Luca, “Audierea copilului abuzat/traficat în procedurile judiciare penale – Perspectiva legală”, *op. cit.*, p. 19. In this case, the child aged 8, victim in a sexual corruption case, requested that the defendant should not attend her court hearing and she even refused to have eye contact with the defendant. The court decided that the trial should take place with closed doors and the victim hearing took place without the defendant present (who was assisted by a defense lawyer and who, as he feared being recognized and identified in court, did not wish to be present throughout the interview of the little girl in court). The child was accompanied by a psychologist from the Save the Children Organization, Branch Iași, who prepared her for the hearing.

<sup>59</sup> Recommendation (2002) 5 of the Committee of Ministers to the Member States on the protection of women against violence, par. 45, [http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf) accessed on 9 August 2009.

<sup>60</sup> Law No. 678 of 21 November 2001 on the prevention and fight against the trafficking in human beings, published in the Romanian Official Gazette No. 783/11 December 2001.

- Interview in special cases* Moreover, according to Article 77 first indent par. 1 of the Criminal Procedural Code, “if the life, the physical integrity or the freedom of the victim or of the civil party or of his close relatives are jeopardized, the prosecutor, or, as the case may be, the court, may have the person interviewed without being present where the criminal investigation body is located, or, as the case may be, where the court session takes place, through the intermediary of the technical equipment provided in the subsequent paragraphs.”  
Which means that currently, because of the advent of the video and audio equipment, the people in special situations (even if the lawmaker includes them into a very restricted category) may be heard with the support of a video and audio connection, without being seen by the people in the interview room at the police or at the prosecutor’s office or in the court room.
- Restrictive nature of the special circumstances* Even if the psychological research<sup>61</sup> confirmed that one of the most stressful factors for children is their confrontation with the defendant, which proves that the emotional status of the children *was improved* with the advent of the close circuit cameras (respectively, being taken a statement in another room of the tribunal, without the defendant in the room), the situations when the victims of various crimes are heard in the special conditions provided under Article 77 first indent par. 1 of the Criminal Procedural Code are relatively few.
- Legal arguments* This circumstance is determined, on the one hand, by the restricted category of victims who may submit such a motion in court (those whose life, physical integrity or

---

<sup>61</sup> Tudorel Butoi, Ioana T. Butoi, in the *op. cit.* p. 112, refer to a series of pilot research studies conducted in Portugal, Australia and New Zealand with favorable impressions concerning the procedure to use close circuit cameras. Thus, according to the observations, all children who had testified in a CC TV system were much more surer of themselves, had a much more clearer and more fluent speech, focused better and cooperated both with the defense, but also with the prosecutor.

freedom may be jeopardized), and, on the other hand, the request in the case of a criminal investigation body must come from a victim or a civil party (which means that the latter should have been informed about this right, preferably before his interview), which results from the term “may have the victim”, referring to the prosecutor or the court.

*Factual arguments* Added to these inconveniences there is also the fact that until presently, only the larger courts in the country have special rooms, with the necessary equipment to conduct a hearing without having present therein the person whose protection must be ensured.

*Obligations of the states* However, Recommendation No. 5 of 2002 of the Committee of Ministers to the Member States on the protection of women against violence<sup>62</sup> provides a requirement for the legislation of the Member States, namely to take the necessary measures “to protect victims effectively against threats and possible acts of revenge.”

## II. The child victim interview

### II.1. Applicable legal framework

*Preliminary considerations* Even if it has a major importance for the subsequent stages of the criminal justice proceedings, the hearing of a child victim is not specifically regulated in the criminal justice procedural rules under the chapter focusing on *the evidence*, there is a reference only to the culprit and defendant’s testimonies, on how and in what conditions

---

<sup>62</sup> Recommendation Rec (2002) 5 on the protection of women against violence, adopted by the Committee of Ministers of the Council of Europe on 30 April 2002, on the 794<sup>th</sup> meeting of the Ministers’ Deputies, par. 44, [http://www.coe.ro/ptcoe/Rec%20\(2002\)5%20a%20CM%20catre%20statele%20membre%20referitoare%20la%20protectia%20femeilor%20impotriva%20violentei.doc](http://www.coe.ro/ptcoe/Rec%20(2002)5%20a%20CM%20catre%20statele%20membre%20referitoare%20la%20protectia%20femeilor%20impotriva%20violentei.doc), accessed on 19 August 2009.

he may be heard, whereas the Articles 75-77 of the Criminal Procedural Code provide that the victim shall be interviewed according to the provisions concerning the culprit or the defendant's hearing, which shall be applied accordingly.

*Not regulated victim interview procedure*

Consequently, the Romanian lawmaker does not have a special procedure applicable to the victim interview, and child victim even less, although, on the one hand, the defendant and the victim do not have the same equal legal standing, from the point of view of the procedural rights acknowledged by the lawmaker<sup>63</sup>, and, on the other hand, there are essential differences between the adult and the child.

In other words, there are relevant aspects which differentiate between the victim and the offender, moreover, between the adult and the child.

*Increased vulnerability of the child as victim*

According to the psychological research, children have increased vulnerability as victims, owing to the specific psycho-behavioral elements and age<sup>64</sup>.

Children are almost completely deprived of defense physical and mental capacities, do not possess a high capacity to anticipate various own behavioral actions, have a low capacity to understand the effects and

---

<sup>63</sup> According to Article 171 par. 2 and 3 of the Criminal Procedural Code, the legal aid is mandatory when "the culprit or the defendant is a child, confined to a re-education center or an educational healthcare institution, when he is detained or arrested even in another case, or when he was committed in a healthcare institution as a safety precaution or when he was subject to healthcare treatment even in another case or when either the criminal investigation body or the court deem that the culprit or the defendant could not build his own defense alone, as well as in other cases provided by the law. Throughout the trial in court, the legal aid is mandatory also for the cases when the law provides a sanction of life imprisonment or a term of imprisonment of 5 years and more for the crime (3), whereas according to Article 173 of the Criminal Procedural Code, supplying legal aid to the other parties to the trial shall be discretionary.

<sup>64</sup> Nicolae Mitrofan, "Victima și victimologia" in the *Psihologie judiciară*, Bucharest, Șansa S.R.L. Publishing and Printing House, 1994, p. 84.

consequences of their own actions or any other persons', have a low capacity to empathize, as they are unable to distinguish between the good and evil intentions of other persons, believe anything and are honest, which makes them easy victims, but also a *special* category of parties to the trial, with legal standing<sup>65</sup>. That is why, whenever required to hear a child, the magistrate must take into account at first the specific features of age and personality of the child<sup>66</sup>.

## II.2. The child victim interviewing stages

*Specific elements of differentiation* The procedural provisions concerning the hearing of defendants stipulate three different stages thereof, namely, the stage of the preliminary questions, the stage of the spontaneous narration and the stage of the questions per se, which will be analyzed in what follows from the point of view of hearing a child victim having the legal standing of a victim in court, taking into account the specific elements in connection with his age and development level, the type of crime whom he was a subject to, the evidentiary value of the child victim's statement, the factors which influence the victim statement, as well as from the perspective of the disadvantages caused by the repeated hearing of the child victim<sup>67</sup>.

*Identifying the psychological mechanisms* From the perspective of the forensic psychology, the stages of the interview have special importance as certain psychological mechanisms may be identified therein which may help the person conducting the interview and which should be taken into account. Thus, by listening to the free narration made by the victim, the person conducting the interview will be able to note if the victim

---

<sup>65</sup> *Ibidem*.

<sup>66</sup> Petre Buneci, Ioana Teodora Butoi, *Martorul pe terenul Justiției - perspectiva procesual penală și psihologică*, Bucharest, Pinguin Book Publishing House, 2004, p. 118.

<sup>67</sup> Sofia Luca, „Audierea copilului abuzat/traficat în procedurile judiciare penale-perspectiva legală” in the *op. cit.*, p. 28.

has any logic in his presentation of the facts, if he coherently presents the chain of events, and the interviewer may decide subsequently if contradictions are caused by the fears or the inconsistency of the facts stated.

### *II.2.1. Explanatory and preliminary questions stage*

<i>The goal and the importance of the stage</i>	The goal and the importance of this stage is to facilitate the psychological contact between the person conducting the interview and the child victim. This stage is important also to mitigate the emotional mood of the child, which may be heightened by the psycho-behavioral instability, the fear of the consequences related to the disclosure for him or his family <sup>68</sup> , the problems it may cause <sup>69</sup> , the sobriety of the place or his position <sup>70</sup> .
<i>How to approach a child victim</i>	In any case (whether the child is a victim, a witness or a culprit), the approach must be different from that of an adult, a soft voice must be used, and the transition to the subject of the interview must be done step by step <sup>71</sup> .
<i>Bonding with the child</i>	The psychological contact between the person conducting the interview and the child victim starts with the bonding with the child, through introductory talks related to his family and school status, health status, aspects connected with the future, his skills, hobbies etc., <sup>72</sup> , which help the magistrate determine the child's development level <sup>73</sup> . That is why initially the interview must focus on elements which are not connected to the

<sup>68</sup> Tilman Furnis, *op. cit.*, p. 28.

<sup>69</sup> According to the psychological research, in most of the cases, the child victim takes part of the blame. See in this respect Corina Mighiu, C. Luca, "Rolul psihologului în lucrul cu copilul abuzat/neglijat" in the *op. cit.*, p. 57.

<sup>70</sup> Tudor Butoi, Ioana T. Butoi, *op. cit.*, p. 109.

<sup>71</sup> *Ibidem*, p. 115.

<sup>72</sup> *Ibidem*.

<sup>73</sup> Maria Roth-Szamoskozi, „Evaluarea situațiilor de maltratare a copilului” in the *Copilul maltratat - Evaluare, prevenire, intervenție, op. cit.*, p. 69.

case. Consequently, the child begins to relax, there is a bond established between the magistrate and the victim, which facilitates the subsequent interview concerning the facts.

*Setting in place a safe environment for the child*

The usefulness of the stage of the preliminary explanations and questions is proven as in a case with honest, but emotionally unstable characters, such as the children, a safe environment of mutual trust must be instated, in an open, relaxed and cooperative dialogue<sup>74</sup>. If such an environment is not achieved, then artificial emotional inhibitions may appear, with facial elements, combined with gestures and neurovegetative responses<sup>75</sup>.

*The behavior of the magistrate*

At this stage, the attitude and the behavior of the magistrate are very important. The person who conducts the interview must have a professional attitude, a calm demeanor of encouragement and respect<sup>76</sup>, setting in place at the same time the conviction that he is well informed. An authoritarian and formalized attitude may lead to a complacent victim, not to a trustful and cooperative one.

Patience, tactfulness, tolerance, availability to listen, empathetic availability, self-restraint etc. are essential for this process, which could establish a positive psychological background<sup>77</sup>.

---

<sup>74</sup> Vasile Zdrenghia, Tudorel Butoi, „Ancheta judiciară din perspectivă psihologică” in the *op. cit.*, p. 152.

<sup>75</sup> *Ibidem*.

<sup>76</sup> Article 2 par.2. *General principles*, Chapter II. „General provision of assistance to child victims and witnesses”, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, adopted by Resolution 2005/20 of 22 July 2005 of the Economic and Social Council, [http://www.unodc.org/pdf/criminal\\_justice/Guidelines\\_E.pdf](http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf), accessed on 19 August 2009.

<sup>77</sup> Ion Buș, Mircea Miclea, Daniel David, Aurel Oprea, *Psihologie judiciară-curs postuniversitar 2004-2005*, the Babeș – Bolyai University, Cluj-Napoca, Faculty of Psychology and Education Sciences, p. 66; T. Prună, *Prelegeri de psihologie judiciară*, Iași, „Chemarea” Foundation Publishing House, 1992, p. 100.

- Necessary information* At this stage there must be an explanation in connection with the role of the magistrate in the process. The information supplied concerning the stages of the proceedings, the importance and role of the victim throughout the criminal process are likely to decrease the stress and the fear of unknown, so that, the better he understands the purpose of the interview, the more active the child will be in providing answers<sup>78</sup>.
- Information about the recording of the statement* If the child statement must be recorded, it is recommended that both the child and his legal representative be notified thereof<sup>79</sup>.
- Victim credibility* The magistrate must explain to the victim, (especially in the case of sexually abused or trafficked victims) that the credibility of a victim may be questioned during the trial in court and that is the reason why the details are very important, to prove by independent means that the story of the victim is true and that the victim should do his utmost to recall and tell what happened, without hiding anything.
- The notification obligation provided under Article 76 of the Criminal Procedural Code* According to Article 76 of the Criminal Procedural Code, at this stage of the preliminary explanations, the criminal investigation body or the court must notify the victim that he may be party to the trial as victim, and that, if the damage incurred was material or immaterial, he may be party in a civil action; he should also be notified that the motion to participate throughout the process having any one of the two legal standings may be submitted at any stage during the criminal investigation process, and throughout the arraignment, until the bill of indictment is read in court.

---

<sup>78</sup> Maria Roth-Szamoskozi, *op. cit.*, p. 69.

<sup>79</sup> *Ibidem.*

### 11.2.2. *The Free speech stage*

*Free speech definition* Free speech means that the child victim is allowed to tell everything he knows about the facts and his free recollection of facts should be uninterrupted.

*Legal sources* As a result of the provisions of Article 71 of the Criminal Procedural Code, referred to in the Article 77 of the Criminal Procedural Code, the victim hearing shall not start by reading or reminding the victim his previous statements in the case, as the victim shall not start by submitting or reading a previously developed statement; however, the victim may use his notes concerning the details which are hard to remember.

*Advantages of the free speech* The free speech has more advantages in that the victim may mention circumstances unknown to the judiciary until that date; some other information may be revealed referring to the commission of additional criminal violations by the culprit or the defendant<sup>80</sup>; the manner in which the victim formulates his statements in terms of truthfulness may be analyzed; the victim's honesty and good willingness may be estimated, the interviewer has a possibility to study, observe and note any omission, hesitation, contradictory aspects; the victim's testimony at this stage may be the most truthful evidence which may be obtained.

*Active listening by the magistrate* Throughout the narration, the magistrate must do the active listening, meant to encourage to continue the free speech and to supply as many pieces of information as possible.

*The non-verbal language* The professional's non-verbal language must reflect the attention and the interest for what the victim says. Taking into account that the mood one person may

---

<sup>80</sup> Radu Moiescu, Lucian Mursa, „Abordarea psihologică a victimei în cursul urmăririi penale”, in the *op. cit.*, p. 33.

have at a given moment may be transmitted to the interlocutor not only through words, but also through the body language (some of them involuntary), the magistrate must censor not only his language, but also his body language, so as to avoid any gesture of irritation, approval or disapproval, of any kind – not to be moved by any contradiction, agitated mood or inconsistency<sup>81</sup>.

*Conducts to be avoided* When interviewing the persons involved in one capacity or another, the judiciary should avoid any type of suggestion, approving or refuting the statements of the child, as well as showing satisfaction or happiness<sup>82</sup>.

### II.2.3. The stage of the questions

*The purpose of this stage* To clarify all the elements of the case and to avoid repeating the child interview, once the child victim has exhausted his free speech, the interview moves to the *stage of the questions*.

*How questions should be addressed* At this stage it is important the manner in which the questions are asked. The language used for the questions must be adjusted to the child's intellectual development level, using simple terminology. The terms which the child cannot understand will inhibit him or will lead to obtaining information which is not in line with what happened. The psychological studies proved that language may be a barrier between the child, the adult and the truth<sup>83</sup>.

*Children should be treated* Some magistrates have the tendency to treat children on an equal footing with the adults (either to create the children the conviction that their story is just as important

<sup>81</sup> Vasile Zdrenghia, Tudorel Butoi, „Ancheta judiciară din perspectivă psihologică” in the *op. cit.*, p. 156.

<sup>82</sup> *Ibidem*.

<sup>83</sup> Anna Graffam Walker, Ph. D., *op. cit.*, p. 20

- differently* as any adult's, or, as they are not empathetically involved or follow a routine, they automatically use questions specifically related to the case they are investigating): ask the children direct questions, often in connection with delicate aspects, in a professional jargon, usually difficult to understand even by an adult person.
- The quality of the questions* The questions asked to the child victim must be clear, precise and concise, be expressed in a format which is accessible to the child, according to his age, experience, training and intelligence. The simplicity of the formulation and the contents of the questions must be directly proportional with the age of the child and his level of development, focused on one idea only, which is deemed important. Another aspect which needs clarification shall be tackled only after the first one has been clarified<sup>84</sup>.
- Check if the questions have been understood* The magistrate must make sure, in this respect, on the one hand, that the respective child has understood the question and, on the other hand, that the child has understood that he is allowed not to answer it if he does not know the truth, as the children have frequently a tendency to answer each question even if they do not know the answer<sup>85</sup>.
- The contents of the questions* Meant to clarify all aspects of the case, the questions must lead to the perpetrator (data should be gathered to help in identifying the perpetrator – if the molester is not known, or, if the child knows him – as well as in describing the relationship with this person); the questions must obtain details on the facts in the terms described by the child (the child should describe the place of the incident, how he ended up as a victim, what he has experienced – in this respect, he should be asked to described the clothing of the alleged offender,

---

<sup>84</sup> *Ibidem*, p.3.

<sup>85</sup> *Ibidem*.

the body, his tattoos, scars – if he has been offered drugs or alcohol etc.); the date when the facts have occurred should be determined (the date and the hour of the incident, with reference to specific moments, the repetitive or singular character of the violation.)

*Typology of the questions*

When investigating child victim cases, the stage of the questions must include the *general questions* (used as introductory questions, with the role of focusing the discussion on the problems of the child), *focused questions* (respectively, focused on the people and their behavior, on the circumstances of the facts, the body parts – especially in the case of the sex crimes), *multiple choice questions* (with the role to gather information when this is not obtained through the focused questions, they must be formulated so as to include the correct answer), *the closed questions* are recommended to be used more seldom (*the yes-no questions*, respectively, which, even if quite frequently used in the judiciary, are not recommended because the tendency of these questions is to incite to socially desirable answers – the tendency of the person heard is to answer more with “yes” than with “no” out of the wish not to contradict the person asking the question, a more manifest tendency in the case of the persons who are emotionally unstable and who accept indiscriminately everything that comes from a figure of authority<sup>86</sup>); *the leading questions* are not recommended (as they lead the child to a given answer which, in fact, is included in the question and force the child to clarify the situation)<sup>87</sup>.

*Ethics with respect to the questions*

The questions will be focused on the facts as perceived directly by the child, shall not include any intimidating elements, to confuse the child and shall not be

<sup>86</sup> Radu Moisesescu, Lucian Mursa, „Abordarea psihologică a victimei în cursul urmăririi penale” in the *op. cit.*, p. 32.

<sup>87</sup> Maria Roth-Szamoskozi, *op. cit.*, p. 75.

*asked* suggestive<sup>88</sup>. It should be mentioned that, especially with children, who can be influenced very easily, suggestion leads to accepting without any critical examination the ideas of the other people, which limits the option of the victim for one or another of the alternatives which the question itself gives rise to<sup>89</sup>.

*International recommendation framework* Recommendation No. 5 of 2002 of the Committee of Ministers to the Member States on the protection of women against violence<sup>90</sup> requires the Members States to “ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma that they have suffered in order to avoid further trauma.”

Also, Recommendation 11 of 1985 on the position of the victim in the framework of criminal law and procedure<sup>91</sup> requires that the victims should be questioned in any stage of the procedure in a manner which ensures an understanding for their own personal situation, rights and dignity.

*The magistrate’s conduct at* At the end of the interview, the child should be thanked for the help provided, told that he was very brave and did what he had to do and thus helped in understanding

<sup>88</sup> Tudorel Butoi, Ioana T. Butoi, *op. cit.*, p. 269.

<sup>89</sup> Radu Moisescu, Lucian Mursa, „Abordarea psihologică a victimei în cursul urmăririi penale” in the *op. cit.*, p. 32.

<sup>90</sup> Recommendation Rec (2002) 5 on the protection of women against violence, adopted by the Committee of Ministers of the Council of Europe on 30 April 2002, on the 794<sup>th</sup> meeting of the Ministers’ Deputies, par. 43, [http://www.coe.ro/ptcoe/Rec%20\(2002\)5%20a%20CM%20catre%20statele%20membre%20referitoare%20la%20protectia%20femeilor%20impotriva%20violentei.doc](http://www.coe.ro/ptcoe/Rec%20(2002)5%20a%20CM%20catre%20statele%20membre%20referitoare%20la%20protectia%20femeilor%20impotriva%20violentei.doc), accessed on 19 August 2009.

<sup>91</sup> Adopted by the Committee of Ministers of the Council of Europe on 28 June 1985 on the 387<sup>th</sup> meeting of the Ministers’ Deputies <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605227&SecMode=1&DocId=686736&Usage=2> ; [http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf), accessed on 25 September 2009.

*the end of the interview* what had really happened<sup>92</sup>.

### 11.3. Types of questions used for the molested child interviews

*Reference points needed for the interview* The psychological studies prove that, irrespective of their age, the children will say whatever they know about the fact if the questions are correctly and adequately asked<sup>93</sup>. That is why it is important to remember that there are no universally valid interviewing techniques, suited for the interview of all child victims, but there are only reference points which the magistrate may use in interviewing *a certain child*, with his own behavioral model and experience<sup>94</sup>.

*Sex crime victims* In the case of the sex crime victims, the problems of the victims are much more serious and delicate than in the case of the victims of other crimes.

*Loss of trust* The sex crime victims are differently affected and, in general, experience a multiple trauma: physical, mental, emotional etc.<sup>95</sup>, which causes a difficult communication, moreover as the abuse (even if its author is an adult) may cause the loss of trust in any adult person.

*Taking into account the additional trauma* Besides these traumas, which are directly caused by the criminal violations they were a subject to, the sex crime victims are forced to “cope with” the whole array of interrogations, examinations, confrontations etc., needed in the case of criminal proceedings and they may be further traumatized, a situation called

---

<sup>92</sup> Radu Moisescu, Lucian Mursa, „Abordarea psihologică a victimei în cursul urmăririi penale” in the *op. cit.*, p. 39.

<sup>93</sup> Anna Graffam Walker, Ph.D., *op. cit.*, p. 2.

<sup>94</sup> *Ibidem*, p. 9.

<sup>95</sup> Sofia Luca „Protecția minorului victimă în cursul cercetării judecătorești” in the *Ghid de practici instituționale în instrumentarea cauzelor cu minori*, collective paper, Alternative Sociale Association, Iași, 2005, p. 64.

secondary victimization<sup>96</sup>.

*The secrecy syndrome* Many times, because of the lack of ability of the magistrate who conducts the interview, to establish a relationship of trust with the child victim, or because of the threats the child is subject to from his molester, the sexual abuse becomes a secrecy syndrome<sup>97</sup>.

### *II.3.1. Types of questions used to investigate molestation*

*General description* It seems necessary to present, from this point of view, some of the technical specific elements to be used when investigating the cases of sexual, physical and mental abuse which children may be subject to. In order to investigate child molestation cases, in the stage of the questions, general questions, open questions, focused questions and multiple-choice questions must be asked, and it is recommended to use closed questions quite seldom, whereas the leading questions<sup>98</sup> are not recommended, as it will be pointed out in what follows:

*Categories of questions* *II.3.1.1. General questions* are used as introductory questions, as they are useful for the psychological contact between the magistrate and the victim, to relax the atmosphere and to stimulate the trust of the child, but also to focus the talk on the problems of the child<sup>99</sup>. Such questions may be: “*Can you tell me why we must talk today?*” or “*Has anyone told you why you came to me to talk?*” Children (especially adolescents) might say that they are not aware of the reason for the interview, even if they

---

<sup>96</sup> Chapter I. „Definitions”, in the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, adopted through Resolution 2005/20 of 22 July 2005 of the Economic and Social Council, [http://www.unodc.org/pdf/criminal\\_justice/Guidelines\\_E.pdf](http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf), accessed on 18 August 2009.

<sup>97</sup> Tilman Furniss, *op. cit.*, p. 200.

<sup>98</sup> Maria Roth-Szamoskozi, *op. cit.*, p. 75.

<sup>99</sup> *Ibidem*.

have been prepared previously by the adult who is accompanying them. Smaller children might admit the reason and provide vague answers, under the form of questions (for instance: “shall I tell you about the bad things?” or “shall I tell you what my father did to me?”)<sup>100</sup>.

*11.3.1.2. Open questions* are the ideal questions for the criminal justice procedure, as they provide the child with a possibility to present his own point of view concerning what happened (for instance “what happened when you were living with your father?”), without suggesting any answer to the victim<sup>101</sup>.

Even if this type of questions urges the child to freely narrate what happened, they might not be followed by a revelation, therefore the person conducting the interview should ask focused questions, so that the answers which refer to the abuse experiences could be much clearer and detailed<sup>102</sup>.

*11.3.1.3.* Seldom children will spontaneously reveal a case of abuse, and this is why they must be helped by being asked *focused questions*<sup>103</sup>. These types of questions may be used to facilitate the disclosure process, but they must be followed directly by an open question<sup>104</sup>.

Focused questions are considered to be the most appropriate in alleged child abuse cases<sup>105</sup>. They may be questions:

- focused on people and their behavior, for instance: “*How do you get along with your father?*”; “*Are there any things which he does especially to you?*”; “*Does he ever do anything you do not like?*”
- focused on the circumstances of the abuse, for instance: “*Are there any secrets in your family?*”; “*What*

---

<sup>100</sup> *Ibidem.*

<sup>101</sup> Tilman Furniss, *op. cit.*, p.222.

<sup>102</sup> *Ibidem.*

<sup>103</sup> Maria Roth-Szamoskozi, *op. cit.*, p.71.

<sup>104</sup> Tilman Furniss, *op. cit.*, p.222.

<sup>105</sup> Maria Roth-Zamoskozi, *op. cit.*, p.75.

*does your mother do when she is very angry at you?"; "What happens when your mother goes to work and you stay home with your daddy?"*

- focused on body parts. To this purpose, the child may be asked firstly how he defines the various parts of the body<sup>106</sup>, and then focused questions might arise such as: *"Did you see how ... (it) looks like?"; "Has it ever hurt you ...?"; "Has anybody touched you there?"*

The open discussion about the feelings experienced by a child may help in overcoming certain barriers and in the disclosure of the abuse. For instance, the disclosure of the feeling of fear of a violent father may be a starting point extremely important for a child who repeatedly runs from his family<sup>107</sup>. Thus, some focused questions may arise from the feelings of the child, such as, for instance: *"I heard that today you were very afraid to go home. Can you tell me why?"*

*II.3.1.4. Multiple-choice questions* have the role of gathering information when this cannot be obtained through focused questions. They must be formulated such as to include the correct answer<sup>108</sup>.

Thus, for instance, following the statement of the child that another child has seen what happened but cannot tell who, a question along the lines of the following *"Is he one of your friends, or is he somebody else?"*

Using this type of questions is recommended to find out data concerning the circumstances of the abuse, but not about the abuse itself<sup>109</sup>.

However, the multiple choice questions whereby the child is asked to pick out from a limited number of possible are not recommended. These questions may

---

<sup>106</sup> Court of First Instance Iași, *the Criminal Sentence No. 4114 of 30.09.2004, final through the Criminal Ruling No. 210/1998* of the Court of Appeals Iași, quoted by S. Luca in the „Protecția minorului victimă în cursul cercetării judecătorești”, *op. cit.*, p. 60.

<sup>107</sup> Maria Roth Szamoskozi, *op. cit.*, p. 71.

<sup>108</sup> *Ibidem*, p.75.

<sup>109</sup> *Ibidem*, p.76.

mislead not only the person conducting the interview, but also the child.

*11.3.1.5. "Yes-No" questions* are used quite seldom, when the open questions do not lead to clarifying answers, even if the magistrate continues to believe that the child has been molested. Even if they are used quite frequently in the judiciary proceedings, they are not recommended, because the tendency of these questions is to incite to the socially desirable answers.

For instance, the question "has your father put his finger in ..." clearly suggests the possibility of the sexual abuse and can only be answered with "yes" or "no"<sup>110</sup>. The disadvantage of these questions is that they can lead the investigation to a wrong path, when the abuse has certainly occurred, but the author is not the one the magistrate presupposes with his question.

Unlike the "yes-no" questions, the focused questions identifies both the molester and the incriminated behavior.

*11.3.6. Directed or suggestive questions* are those questions which lead the child to a given answer, which, in fact, has not included in the question and forces the child to clarify the situation.

For instance "Did he put ... in your mouth or down, between your legs?" This type of questions is not recommended for the investigation of a child abuse case.

#### *11.4. Evidentiary value of the child victim statement*

##### *Legal sources*

According to provisions of Article 63 par. 2 of the Criminal Procedural Code, no item of evidence has a pre-established value. "The criminal investigation body or the court shall assess each item of evidence, following the examination of all evidence submitted, with a view to finding out the truth."

Therefore, the legal provisions stipulate the need to examine the statements of the child victim by

<sup>110</sup> Tilman. Furniss, *op. cit.*, p. 222.

corroborating them with the other items of evidence which have been submitted.

*Factors which influence the statement of a victim of a crime*

Any person's statement is preceded by a very complex psychological process, marked by the capacity to receive information, to process and store it into one's memory, as well as by various objective and subjective distorting factors, influencing the reception<sup>111</sup>.

Consequently, when evaluating the statements of the child, the *factors which influence the statement of a victim of a crime* shall be taken into account as follows:

1) *the way in which the victim has experienced the event*<sup>112</sup>: even if in general the children have a more acutely developed sense of observation than the adults, their attention focuses on irrelevant things and details, so that they do not perceive what is important in the case of such an event. Moreover, some emotions which children frequently harbor may cause the distortion of events which they perceive. Added to these is the coefficient of distorting the reality stimulated by the affectivity, suggestibility and personality of the victim<sup>113</sup>;

2) *the way in which he stored the event in his memory*<sup>114</sup>: as the traumatic events are hidden in the memory, bringing them to the present time causes pain, discomfort, thus, the victims want to forget the event most of the times and do not want to remember it;

3) *the way in which the victim may remember the traumatic event*<sup>115</sup>: in this respect, it shall be taken into account that the notions of the child are vague, not clarified; their lack of experience, undeveloped thinking

---

<sup>111</sup> Tudorel Butoi, Ioana T. Butoi, *op. cit.*, p. 286.

<sup>112</sup> Ion Buş, Mircea Miclea, Daniel David, Adrian Opre, *Psihologie Judiciară, Curs postuniversitar, „Babeş-Bolyai” University, Cluj-Napoca, the Faculty of Psychology and Education Sciences*, p. 52.

<sup>113</sup> Tudorel Butoi, Dan Voinea, Alexandru Butoi, *et.al., Victimologie, Curs Universitar – perspectiva psihologiei victimale asupra cuplului penal victimă – agresor*, Bucharest, Pinguin Book Publishing House, 2004, p. 119.

<sup>114</sup> Ion Buş, Mircea Miclea, Daniel David, Adrian Opre, *op. cit.*, p. 52.

<sup>115</sup> *Ibidem*.

and failure to correctly understand facts are factors which affect perception, memory and the way in which the events which occurred are recollected<sup>116</sup>;

4) *the way in which the child victim may express himself*<sup>117</sup>: culture, education level, language, lack of experience, emotion, suggestibility, which are understandable in the court room<sup>118</sup>, fear of the defendant and his revenge, may influence the recollection of the traumatic event. Thus, the subjective impression of a person who was the victim of a crime, concerning the traumatic event, may be more important than the event itself<sup>119</sup>;

5) *the way in which he wants and is interested to recollect the traumatic event*<sup>120</sup>; in this context the victim benefits most of the times of the special attention of his family, the media, and a psychological phenomenon called “role shift” occurs, which leads to a change in his initial behavior<sup>121</sup>; thus, the child becomes the instrument of those whose authority he is under and who try sometimes to take advantage of the crime whose victim the child was<sup>122</sup>.

*Other factors which influence the child victim testimony*

At the same time, when evaluating the testimony of the child victim, the court shall be mindful of the fact that the human mental development is conditioned by the age of the person, his specific personality features<sup>123</sup> and, not last, by a series of socio-cultural factors, frequency of the traumatic events, impact of the trauma, as well as the time elapsed in between the experiencing and the recollection in court of the traumatic event.

<sup>116</sup> Petre Buneci, Ioana T. Butoi,, *op. cit.*, p. 119.

<sup>117</sup> Ion Buş, Mircea Miclea, Daniel David, Adrian Opre, *op.cit.*, p.52.

<sup>118</sup> Tudorel Butoi, Ioana T. Butoi, *op. cit.*, p.110.

<sup>119</sup> Corina Mighiu, Cătălin Luca, *op. cit.*, p.46.

<sup>120</sup> Ion Buş, Mircea Miclea, Daniel David, Adrian Opre, *op. cit.*, p. 52.

<sup>121</sup> *Ibidem.*

<sup>122</sup> Petre Buneci, Ioana T. Butoi, *op. cit.*, p. 120.

<sup>123</sup> *Ibidem*, p. 118.

### *II.5. Disadvantages related to the repeated child victim interview*

#### *International legal framework*

In the preamble of Recommendation 11 of 1985, concerning the victim's position throughout the criminal justice procedure<sup>124</sup>, the importance of increasing the trust of the victim in the judiciary, of encouraging his cooperation, especially in terms of testimony, is highlighted and, to this purpose, it is necessary to grant increased attention to the physical, psychological, material and social sufferings of the victim throughout the criminal proceedings.

Also, Recommendation No. 5 of 2002 of the Committee of Ministers to the Member States concerning the protection of women against violence<sup>125</sup> requires the Member States to "envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatic effects of proceedings."

#### *Disadvantages in connection with the repeated interview*

Circumscribed to these Recommendations, one should not forget that there are a set of disadvantages in connection with the repeated interview of the child victim, which will be introduced in what follows:

**a.** Children have a reduced capacity of perception and verbalization and their attention is focused on things which are usually unimportant<sup>126</sup>. Moreover, children are persons with reduced capacities to verbally relay traumatic events, or who are even expression-

<sup>124</sup> Adopted by the Committee of Ministers of the Council of Europe on 28 June 1985 on the 387<sup>th</sup> meeting of the Ministers' Deputies <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=605227&SecMode=1&DocId=686736&Usage=2> ; [http://www.mpublic.ro/minori\\_2008/minori\\_2\\_9.pdf](http://www.mpublic.ro/minori_2008/minori_2_9.pdf) accessed on 25 September 2009.

<sup>125</sup> Recommendation Rec (2002) 5 on the protection of women against violence, adopted by the Committee of Ministers of the Council of Europe on 30 April 2002, on the 794<sup>th</sup> meeting of the Ministers' Deputies, par.33, [http://www.coe.ro/ptcoe/Rec%20\(2002\)5%20a%20CM%20catre%20statele%20membre%20referitoare%20la%20protectia%20femeilor%20impotriva%20violentei.doc](http://www.coe.ro/ptcoe/Rec%20(2002)5%20a%20CM%20catre%20statele%20membre%20referitoare%20la%20protectia%20femeilor%20impotriva%20violentei.doc), accessed on 19.08.2009.

<sup>126</sup> P. Buneci, I. T. Butoi, *op. cit.*, p. 119.

challenged<sup>127</sup>.

**b.** The fear of the defendant present in the court room could distort the contents of the statement given in his presence<sup>128</sup>, and there is even a risk that the victim could change his statements<sup>129</sup>.

**c.** The suggestibility and the emotions felt, which may be explained in the environment of the court rooms could render the victim unable to tell fluently, cursively, with details what has happened<sup>130</sup>. At the same time, it may be a first for the child to have such a role, and he may be impressed by a series of factors, such as the gravity of the action, the framework in which the trial takes place, the gowns used by the officials<sup>131</sup>.

**d.** The relatively long span of time elapsed between the event and the taking of the statement throughout the court investigation is likely to affect the fidelity of the statement.

**e.** A repeated interview has a damaging effect on the incompletely developed mind of a child and on his subsequent development<sup>132</sup>. The trauma produced by

<sup>127</sup> Court of First Instance of Iași, a final ruling as it has not been appealed, quoted by S. Luca in the „Audierea copilului abuzat/traficat în procedurile judiciare penale” *op. cit.*, p. 23.

<sup>128</sup> Court of First Instance of Iași, the Criminal Sentence No. 5962 of 21.12.2004, as amended and final through Criminal Ruling No. 686 of 29.09.2005 of the Tribunal of Iași, in the sense of a decrease in the term of the initially provided punishment, quoted by S. Luca in the „Audierea copilului abuzat/traficat în procedurile judiciare penale”, *op. cit.*, p. 23.

<sup>129</sup> Court of First Instance of Iași, the Criminal Sentence No. 2173/2005, final through Criminal Ruling No. 17/MF/22.02.2007, not published.

<sup>130</sup> Petre Buneci, Ioana T. Butoi, *op. cit.*, p. 119.

<sup>131</sup> Sofia Luca „Protecția minorului victimă în cursul cercetării judecătorești” *op. cit.*, p. 58.

<sup>132</sup> Tribunal of Iași, Criminal Sentence No. 576 of 24.09.2007, final, as it has never been appealed, quoted by S. Luca in the “Audierea copilului abuzat/traficat în procedurile judiciare penale – Perspectiva legală”, *op. cit.*, p. 36. In this case, taking into account that it was not possible to interview the child in the trial court (rape victim, coerced into having oral sexual intercourse with a boy of 14), as the child blocked when asked about the abuse, could not say anything, therefore the court requested the psychologists to provide counseling to the minor and prepare him for

the crime against a child is sufficient, and it is not necessary to make the victim experience again the trauma on the occasion of his interview.

f. Moreover, repeated questioning would mean for a child that there is doubt concerning his statements, and this could make him provide the desired answers.

*Necessary solutions*

That is why it is so important to find efficient, legal solutions, which, by observing the best interest of the child – the supreme goal – and by protecting his mental health, should avoid the successive and repeated interview of the victims throughout the criminal justice procedure<sup>133</sup>.

*Quality standards*

A first step would be to increase the quality standards in taking the victim statement during the criminal investigation stage by the police officer and the prosecutor through: to observe the procedural rules applicable to the child interviews; to set in place areas specifically designed to be exclusively used for the interview of these persons; to conduct a thorough initial interview concerning all facts; to use interview techniques adjusted to each individual case; to use the audio-video recording techniques even from the

---

the interview, if that could be possible. The report developed by the psychologists of the Alternative Sociale Association maintained that the symptoms of the child victim as a consequence of the traumatic event which he had experienced in February 2006 had improved so that he did not feel nauseating and sick, he did not have fits of crying anymore, nor trouble sleeping etc. However, the child still displays fits of nervousness and feel uncomfortable when asked to tell about the traumatic event, his speech pace accelerates. The child also has spontaneous lapses of memory and feels confused about some of the aspects of the traumatic event, which proves that he has not completely separated from the trauma. In connection with all these elements, the court appreciated that the direct repeated interview of the child victim, aged 7, who had already given other three statements concerning the sex crime he was a victim of throughout the two other prior stages in the criminal justice procedure, was not necessary any longer, as there was a high risk of secondary traumatization of the victim.

<sup>133</sup> Sofia Luca, „Protecția minorului victimă în cursul cercetării judecătorești”, *op. cit.*, p. 59.

criminal investigation stage; to provide psychological assistance for the child victims; to use the psychological evaluation<sup>134</sup>, followed by observance and enforcement of the international conventions which regulate the matter of child victims and witnesses, not only during the criminal investigation stage, but also in court.

## References

1. Buneci P., Butoi I. T., *Martorul pe terenul Justiției - perspectiva procesual penală și psihologică*, Pinguin Book Publishing House, 2004
2. Butoi T., Butoi I.T., *Tratat Universitar de Psihologie Judiciară-teorie și practică*, Phobos Publishing House, Bucharest, 2003
3. Butoi T., Voinea D., Butoi A., Prodan M.C., Iftene V., Zărnescu C., Butoi I.T., Nicolae L.G., *Victimologie, Curs Universitar – perspectiva psihologiei victimale asupra cuplului penal victimă – agresor*, Pinguin Book Publishing House, Bucharest, 2004
4. Dublea A., Ștefăroi N., Luca S., Moiescu R., Luca C., Mursa L., Vlad M., Pușcașu D., *Practici instituționale în instrumentarea cauzelor cu minori*, Alternative Sociale Association, Iași, 2005
5. Furnis T., *Manual multiprofesional pentru abuzul sexual al copilului, Management integrat, terapie și intervenție legală*, Waldpress Publishing House, Timișoara, 2004
6. Buș I., Miclea M., David D., Opre A., *Psihologie judiciară. Curs postuniversitar*, “Babeș-Bolyai” University, Cluj-Napoca, Faculty of Psychology and Education Sciences, 2004-2005
7. Graffam A. Walker Ph.D., *Handbook on Questioning Children: a Linguistic Perspective*, ABA Centre on Children and the Law, Washington, 1994

---

<sup>134</sup> *Ibidem.*

8. Ionescu Ș. (coord.), *Copilul maltratat - Evaluare, prevenire, intervenție*, the International Foundation for the Child and Family, Bucharest, 2001
9. Atasiei I., Ivănușcă N., Luca S., Luca C., Măgurianu L., Mighiu C., Muntean D., Stoieneț A., *Justiția pentru minori în interesul superior al copilului. Practici de lucru cu copilul victimă*. The Magistrates' Association of Iași, Save the Children Organization, the Iași branch, Iași, 2008.
10. Păunescu G., Alexandrescu G. (coord.), *Ghid de bune practici pentru prevenirea abuzului asupra copilului*, Save the Children Organization, re-published by the Altemative Sociale Association, Iași, 2005
11. Prună T., *Prelegeri de psihologie judiciară*, "Chemarea" Foundation Publishing House, Iași, 1992
12. Zdrenghea V., Mitrofan N., Butoi T., *Psihologie judiciară*, "Șansa" S.R.L. Publishing House, Bucharest, 1994
13. United Nation Office on Drugs and Crimes, UNICEF, *Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary*, New York, 2009
14. United Nation Office on Drugs and Crimes, UNICEF, *United Nations Guidelines on Justice in matters involving child victims and witnesses of crime. Child –friendly version*, December, 2006
15. Resolution 2005/20 Adopted by the UN Economic and Social Council: Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime
16. Recommendation Rec (2002) 5 on the Protection of Women against Violence, adopted by the Committee of Ministers on 30 April 2002, at the 794<sup>th</sup> meeting of the Ministers' Deputies, [www.coe.ro](http://www.coe.ro)
17. Recommendation R (85) 11 on the position of the victim in the framework of criminal law and procedure of the Committee of Ministers to Member States, adopted by the Committee of Ministers on 28 June 1985 at the 387<sup>th</sup> meeting of the Ministers' Deputies; <https://wcd.coe.int/com>.

18. *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, adopted through Resolution 2005/20 of 22 July 2005 of the UN Economic and Social Council; [http://www.unodc.org/pdf/criminal\\_justice/Guidelines\\_E.pdf](http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf)
19. Law No. 304/2004 on the organization of the judiciary, republished in the Romanian Official Gazette, Part I, No. 827/13.09.2005;
20. Law No. 211/2004 on various measures to provide protection for the victims of crimes, published in the Romanian Official Gazette, Part I, No. 729/26.10.2007
21. Law No. 678/2001 on the prevention and fight against the trafficking in human beings, published in the Romanian Official Gazette No. 783/11.12.2001
22. Law No. 272/2004 on the protection and promotion of the rights of the child, published in the Romanian Official Gazette No. 557 of 23 June 2004, which entered in force on 01/01/2005
23. Criminal Procedural Code

# Chapter VII

## Practical exercises in the civil matter

*Claudia-Antoanela Susanu\**

### **I. Practical exercise. 1. Exercise of child visitation rights**

The petitioner G.V. called to court defendant H.M. on 18 December 2008, as she urged him to allow her to establish personal contact with her child, H.C. born on 10 October 1998, following the schedule below:

- In the first and the third weeks of a month, starting with Friday, 5 pm until Sunday 5 pm, at the place of residence of the petitioner;
- One week during the spring break of the child, at the place of residence of the plaintiff;
- One week during the summer break of the child, at the place of residence of the plaintiff.

When substantiating her motion, the plaintiff pointed out that in the Civil Sentence No. 1874/20 January 2008, returned by the Court of First Instance of H., which was not appealed, the divorce was granted for the common fault of the parties, and the father was awarded custody of the child, to educate and raise him, as the child was more attached to the father, and as the father provided the child with a more secure and emotionally stable environment, as well as all the safeguards necessary for the harmonious development of the child's personality.

The petitioner has been away from the country, starting with the month of February 2005, to complete her architectural degree, while she has tried to keep in contact with the child so that he could not miss her too much.

---

\* Claudia-Antoanela Susanu is a judge with the Court of Appeals of Iași, a trainer with the National Institute for Magistrates in the area of the ECHR.

To this purpose, she was phoning on a daily basis to the defendant, she would send money and various presents for her son on a monthly basis.

During the first months after her leave, the petitioner could speak with her son on the phone, but gradually, this right has been denied by the defendant with various reasons. She would thus be told that the child was at his tennis calls, with his grandparents, with his tutor, conducting various other extracurricular activities, and if she phoned the defendant's cellular phone, her calls would be rejected.

Every time she came back to the country, during the winter holidays, but especially, when she finally came back to the country, in August 2008, the petitioner would try to see her child, but her efforts proved in vain, as the defendant denied her access to his house, did not give her the child on the phone, using the pretext that he was away from the town, which subsequently proved false, required the teacher not to allow the mother's contact with the child, providing the teacher with the divorce decision to this purpose.

Even if she had visited the child at school several times, the child would be reluctant to talk with her. Even the teacher told her that the child would not want to talk at all with his mother, and when he had to write an essay titled "The mother's Day", he mentioned in his composition his father's mother.

The petitioner learnt that the defendant had imbued the child with the idea that his mother did not love him anymore, that she had abandoned him and she would no longer care for what happened to him, that is why the child's attitude towards his mother could be explained.

To re-establish the natural connection between the mother and the child, to prove the child that her affection for him has not decreased and to avoid the potential traumas of the child, generated by the lack of maternal affection, the petitioner must surely be allowed to maintain personal contact with the child.

The petitioner claims that the provisions of Article 43 last paragraph of the Family Code allow the parent without custody the right to maintain personal contact with the child, and to oversee the latter's development, education, training and vocational qualifications. The purpose of establishing this regulation was to provide the child with a possibility to have the affection of both parents.

The content of this right is very complex and cannot be confined to a simple right of visitation of the child, as it could not allow for the maintenance and continuation of the bond between the child and the parent who was not awarded the child’s custody.

For all the above mentioned reasons, the petitioner moves for the admission of her case, as it has been formulated.

In points of law, the petitioner invokes the provisions of Article 43 of the Family Code, as well as Articles 15, 16, 38 of the Family Code.

*1.1. Interviewing a child in connection with the visitation rights of the parent without custody*

**1. Preparing the interview. The relationship of trust between the child and the magistrate who is interviewing the child.**

**Case No.**  
**ROMANIA**  
**COURT OF FIRST**  
**INSTANCE OF H.**

*Elements of the case*

The preparation for the interview includes the study of the elements of evidence submitted in the case, to identify the elements which will shape the interview. In this case, the initial hypothesis is that of a child marked by his mother’s absence, who, following the possible scenario inoculated by the father, has abandoned him. This “attitude” of the mother was likely to generate her total rejection by the child, which was confirmed by all the witnesses heard in the case and highlighted in the social inquiry report.

**PRESIDENT:**  
**Clerk:**

**Court session in**  
**Chambers of 28 March**  
**2009**

**REPORT:**

The following appeared for the interview: the child H.C. born on 10 October 1998, accompanied by his father, the defendant H.M. The child will be interviewed in a court session conducted in chambers, according to the provisions of Article 144 first indent of the Civil Procedural Code.

*The goal of the interview*

The interview is focused on the identification of the extent in which the ties between the

The psychologist appointed by the General Social Welfare and Child Protection Department attended the child interview,

mother and child have been severed and the means whereby in the beginning, a bridge between the two could be created, so that the connection between the mother and the child could gradually become normal. Two psychologists specialized in the child psychology attended the interview, who put questions through the intermediary of the court, so that the interview could attain its goal.

together with the consultant psychologist, selected by the defendant H.M. The court notifies the parties present that the interview conducted in chambers shall be intermediated by the court.

*Preliminary elements for the interview*

The relationship of trust between the child and the magistrate conducting the interview is aimed at preparing the child to decrease the stress level associated with the interview which is about to take place. The relationship of trust may be established by a more closer contact with the child.

It started with questions likely to defuse, relax and alleviate the pressure generated by the presence of the child in court:

“Hello! What is your name?  
What grade are you in?  
In what school? What is the subject you like best?”

To empower the child and make him open, it was necessary to use such as

statement as: “You are a big boy, a smart boy, I like to talk with you because I can have an interesting talk.” The previous statement was meant to satisfy the need of a child – aged between 6-10 – to be treated as an adult, with the goal to emotionally relate with the child.

Consequently, the child relaxed and entered into a dialogue with the magistrate, and the environment was set in place to conduct the interview in the best conditions.

**2. The interview**

*General questions*

*The interview started with general questions, geared to lead the discussion to the problems of the child.*

**The court:** Do you know why you are here today?  
**The child:** Yes, I do.

*The child is informed on the goal of the interview*

*The child was informed on the goal of his interview.*

C: We are here today, together, to set a schedule for your mother to come to see you. Do you want us to do it?  
 Ch: I don't want to see my mother.

*The behavior of the magistrate related to the negative position adopted by*

*The judge, taking into account the position of the child to refuse any connection with his mother, had to make him aware that, under normal circumstances, children maintain their connection with*

C: You know, any child in this world has both a mother and a father and children in this world like to have contact with both their parents.  
 Ch: I think that she is not my mother.  
 C: Let's still find a solution

<i>the child</i>	<i>both parents and visit them.</i>	for you to see your mother.
		She wishes to see you.
		Ch: I don't want to find any solution, I don't want to see her.
<i>Outcome</i>	<i>The child must thus try and adjust his behavior to the conduct in normal circumstances, the purpose being that he has to understand that he must correct his attitude.</i>	
<i>Use of open questions</i>	<i>Taking into account the denial of the child, the court had to use open questions as they do not suggest any answer and help the child tell more about the reason for his refusal to see his mother, thus facilitating gathering of all information.</i>	C: Tell me some of the reasons why you won't see your mother!
		Ch: I've told you, I don't think that she is my mother.
		C: What do you think about the children who won't see their mothers and who would say the same things about them?
<i>Outcome</i>		Ch: I think that there are such children, but it depends on the situation, why they won't want to see their mothers.
	<i>By taking this attitude, the magistrate found out that the situation in which the child was in, which is not normal, makes him unhappy.</i>	C: What if this child were in a similar situation with yours?
		Ch: I don't want to be in the situation I'm in.

*Determining the child to freely narrate the situation*

*The court mentioned to the child that it was not aware of his situation, but based on the documents and pieces of information of the court case file and, in order to get more familiar with the circumstances, the child had to speak what the reasons were for him not considering that his mother was his mother. Also, the child had to be asked to tell the truth and to take a pledge in this respect.*

*Outcome*

*As a result of this conduct of the judge, the child is not longer afraid of the idea that the magistrate knows absolutely everything about him, thus he feels free to tell his story and has no longer the feeling that he is “under the scope”, which will cause the decrease of his suggestibility to misleading questions. The child knows what the significance of a promise is, therefore, chances are that he is honest.*

C: You know, I don't know you very well, I know just a few things about you, from this case file. I would like you to promise that you will tell me the truth.

Ch: Yes. I see.

C: I want you to tell me, honestly, why don't you think that the one who gave life to you is your mother?

Ch: I don't think that she is my mother because she did not raise me, as a good mother would do, she hasn't been with me, she has been away.

C: What it means for you that she did not raise you?

Ch: Because she has left me with my father and grandma Maria's and she would drop by once a year to see me.

C: Do you know the reason why your mother has left you with your grandparents?

Ch: She just left me and was gone. She did not raise me, if she were a real mother, she would have raised me. She has not visited me. She just came once in school, brought a box of chocolate and looked strange at me.

C: What do you mean by she looked strange at you?

Ch: I mean as if I were bound to get the box of chocolate, and the classmates were asking me what was going on.

C: Would you like to take a decision jointly with your mother, about the visitation hours?

Ch: I don't want to take any decision, I'm stressed to think about it!

C: What do you mean by being stressed?

Ch: When she visited me in school, my mother, I was ashamed in front of my classmates. They looked strange at me, I seemed different than the other children.

C: Would you agree that you should meet with your mother, together with your father, but not at school?

Ch: I don't want that!

You're forcing me, I don't want to meet with mother!

C: You know, this is a situation where nobody can be preferred more than the other. We must agree on a common decision. We understand that when you were younger, your mother saw you more often, and now she sees you more seldom. Do you know why this is happening?

Ch: I don't know why.

C: Your mother wishes very much to be together with you, I wonder why?

Ch: I don't want to talk about it.

C: It would be natural for you to be curious to know why. Your mother must have a reason if she is fighting so much to see you. Usually, when you want something very much, a toy, something to wear, a computer game, do you fight to get it?

Ch: Yes, I do whatever I can to get what I want.

C: It means you're a powerful boy who knows what he wants! Do you think that your mother is fighting now for you?

Ch: I don't understand why

she has not raised me?

C: Do you think it would be a good idea if your parents met to have a talk?

Ch: I don't know, it's my father's business.

C: What if your father wanted you to see your mother, what would you do?

Ch: I don't want to see her, I've already told you that!

C: So, even if your father asked you to see your mother again, you would refuse it. Can you tell me your reasons?

Ch: She should have come to see me when I was younger. She dropped by very seldom and would bring me a pack of crackers.

C: The reasons why she came rarely to see you are known by your mother.

Only she can tell you what these were, so that is why it would be a good idea to ask her about it. What do you think?

Ch: I don't want her to explain me now, I won't give her this chance.

C: What if your father or grandmother were sick, would you agree to having your mother helping you? Would you ask her for help?

Ch: I'd ask Mrs. Mihaela, our cleaning lady.

C: You have two sets of grandparents, the maternal and the paternal ones. How do you get along with your maternal grandparents?

Ch: I don't have a good relationship with them.

C: Most children have good relationships with their

		<p>mothers. Do you think that you can do anything to improve your relationship with your mother?</p> <p>Ch: I don't want to do anything, I don't think that there is anything that I can do.</p> <p>C: Usually, children are proud with something in front of their parents, for instance, with their grades, with some things they know how to do. What would you like to be proud of in front of your mother?</p> <p>Ch: I'm proud of my results in front of my father and my grandparents.</p>
<i>Use of specific questions</i>	<i>With the specific questions, the child confirms or denies what the magistrate tells him. This way, the more distorted elements in his story are clarified.</i>	
<i>Outcome</i>	<i>The child must say what he will do in a very specific and concrete situation.</i>	<p>C: What would happen if you were to be forced to meet with your mother?</p> <p>Ch: I don't want it, but if she came, she'd stay and watch me.</p> <p>C: Why won't you see your mother?</p> <p>Ch: Because she left me and this is not how a real mother would do.</p>
<i>Use of closed questions</i>	<i>Closed questions may be used if the magistrate could not acknowledge certain significant elements in the statement of the child, namely, to identify the real feelings the child has for his mother.</i>	
<i>Outcome</i>	<i>The child is in a situation to acknowledge what makes him refuse to relate with his mother.</i>	<p>C: Are you angry at your mother?</p> <p>Ch: Yes, I am.</p> <p>C: Do you want to live with this anger for ever? Wouldn't it be better for you to get over this anger by talking with her?</p> <p>Ch: I don't want to live with this anger, but if she visited me, it wouldn't go away.</p> <p>C: What if, hypothetically, you should punish your mother, how would you punish her?</p> <p>Ch: I wouldn't punish her,</p>

but I don't want to see her.  
What right does she have to see me?

C: You can be more tolerant with your mother and give her another chance?

Ch: My anger will end when my mother stops coming to see me.

C: Could you set now a date when you could meet with your mother?

Ch: I cannot set such a date.

C: If you can't take a decision right now, don't take it, but it would be better if you promised that you'd be thinking about that.

Ch: Yes, I'll be thinking about that.

*General conclusion*

*Following the interview, the conclusion was reached that the extended separation between the child and his mother led to this break in their relationship, a reason why the relationship between the two is extremely tense, and this context must be taken into account when the court will rule on the means for the implementation of the personal relationship schedule. As the boy does not have the habit of having any relationship with his mother, as it cannot take place all of a sudden and as the boy cannot be absent more than a few hours from the only environment he is familiar*

**THE COURT OF APPEALS:**

Deems completed the interview of the child H.C. in this case, which was attended by the psychologist appointed for this purpose by the General Social Welfare and Child Protection Department, as well as the consultant psychologist, selected by the defendant H.M.

**ORDERS:**

The case shall have a continuance on 25 April 2009, set for the court to rule on the merits. Returned in public court session, today, 28 March 2009.

*with, which provides him with comfort, protection and emotional security, the relationship between the mother and the child must take place gradually, with the help of a few meetings between the child and his mother, outside the father's place of residence, but with the father attending, if the latter deems it necessary, taking into account the absolute rejection by the child of the relationship with his own mother.*

PRESIDENT, CLERK,

*All parties involved must have psychological counseling: the child, the mother and the father, in order to overcome the emotional block of the child and his acceptance of the mother, and, subsequently, his normal relationship with his mother.*

## **II. Practical exercise. 2. Child custody in a case of divorce, as granted in the appeal procedure**

The petitioner G.M. called the defendant G.D. to court on 15 July 2008, and motioned in court, among others, for the divorce between the two parties, the marriage having been concluded on 15 January 1990, because of the exclusive fault of the defendant, for the custody of the two children, Georgiana Daniela and Paul Mihai, for her to raise and educate them, and for the court to set an obligation so that the defendant should pay the child support pension.

In substantiating her case, the petitioner shows that the parties were married in 1990, and two children were born during their marriage,

Georgiana Daniela, born on 30 March 1995 and Paul Mihai born on 10 July 2001.

Since the beginning, the relationship between the parties had been tense, the attitude of the defendant had not been compatible with his status of a husband, as he had repeatedly beaten and abused his wife and children verbally, which was set against a background of alcohol consumption.

The spouses had lived together with the two children at the parents of the petitioner, who had constantly helped her to raise and educate her children, as the husband had been completely uninterested to continue any family life, had been absent from home without providing reasons and preferred to spend his time in the company of people of doubtful conduct.

The petitioner had constantly been concerned with the raising and education of her children, that is why in February 2006, she had secured her husband's agreement to leave the country, to provide additional income for her family, but, at the same time, being constantly preoccupied about her children, whom she called on a weekly basis on the phone, she was sending money and presents.

Throughout this period, the maternal grandparents had taken care of the children, as the petitioner came back to the country every three months. In March 2008, the defendant left for his parents, and took the child Paul Mihai with him. As of that moment, he did not allow the child to talk with either his mother or his sister, which is why the defendant had abandoned the mobile phone number that the mother and the sister knew.

Since he had left with his father, the child could not attend the kindergarten anymore, as he had not received the necessary stationery, had been forced to do the household chores, as the paternal grandparents are old, and had not received the proper care. Moreover, the child was afraid to receive the sweets, the stationery and the clothes his mother had sent from Italy, taking into consideration the father's response.

Becoming aware that the defendant was trying to put forth impediments for her and her daughter to maintain personal contact with her male child, the petitioner was forced to come to court to be able to see her child, a right which she was granted with the Civil Sentence No. 497/16.04.2008 of the Court of First Instance of B; however, when she

had decided to have it enforced, she was hit by the defendant, elements which are developed in the motion by the prosecutor whereby the defendant G.D. was fined, according to the case file No. 1369/P/2008 of the Prosecutor's Office attached to the Court of First Instance of B.

In the spirit of the good faith and understanding, in the best interest of the children, in principle, both parents should do their utmost to be available and to fully cooperate, excluding the fights, so that the children could enjoy the presence, affection, care and support for development from both parents.

The petitioner claims that it is the best interest of the child Paul Mihai for her to be awarded his custody, to be able to raise and educate him, as she provides real conditions and safeguards related to the favorable environment, appropriate for his normal and harmonious development.

She shows that, according to the interpretation of the provisions of Law No. 272/2004, it results that the siblings have a certain right to live together, which is a true principle that must be enforced when analyzing all child custody award applications.

In this case, the best interest of the children must be analyzed from the perspective of both children, and not individually, by analyzing the situation of each of them, as it is to the siblings' advantage to develop together, to develop feelings of mutual affection and to deter any possibility that the misunderstanding between the parents could affect the relationship between the children themselves.

As a consequence of the Law No. 272/2004, the best interest of the child was awarded the status of a principle, and in its Articles 1 and 2, it is provided that this principle is imposed for the rights and obligations of the parents of the child, or other legal representatives that the child may have, as well as on any other persons, in whose care the child had been lawfully placed. Moreover, this principle must prevail in all steps and decisions regarding children, as taken by the public authorities and the authorized private bodies, as well as in all cases settled in court.

The criterion the courts must take into account as a guideline when they award child custodies is the best interest of the child.

Several factors must be taken into consideration when determining the best interest of a child, such as: the material standards of the parents, the possibilities for physical, moral and intellectual development which the child may find with his parents, the age of the child, the behavior of

the parents towards the child before the divorce. Several other factors may be taken into consideration, such as the gender of the child or his health status.

Article 32 of the Law No. 272/2004 provides that the child has the right to be raised in conditions which allow for his physical, mental, spiritual, moral and social development, according to his skills, to make him a useful element in the community.

The petitioner claims that all items of evidence highlight the powerful emotional bond of the child with his mother and sister, as well as the fact that she is the only one able to provide the best conditions for the raising and education of both children, a reason why she applies for the admission of her claim as it had been formulated.

The points of law which the petitioner invoked are the provisions of Article 42 par. 3 and 4 of the Family Code, Article 86 par. 1 and 3 of the Family Code, Article 94 par. 1 of the Family Code, Articles 1, 2, 32 of the Law No. 272/2004.

The court which tried the case on its merits rejected the application which the mother had submitted to be awarded the custody of the child Paul Mihai, as it essentially considered that, if the mother was abroad, she could not care for her son effectively. The appeal submitted by the petitioner is aimed at the unlawfulness of the ruling, as the best interest of the child calls for his mother to be awarded his custody, as well as at the wrong evaluation of the evidence submitted in court.

The tribunal ordered for the child to be interviewed again, to clarify his situation, as the child had been interviewed briefly in the court of first instance and stated that he wanted to remain with his father, but, on the other hand, the attempts of the defendant to obstruct the personal contact between the child and his mother result from the evidence submitted in the case.

*II.1. Interviewing a child a second time during an appeal procedure related to custody*

**1. Preparing the interview. The relationship of trust between the child and the magistrate who is interviewing the child.**

*Elements of the case*

*The items of evidence submitted in the court of first instance attests the lack of concern of the father towards the child who did not attend the kindergarten any longer, and was left in the care of the paternal grandparents, who made him do the household chores. The child had been briefly interviewed in the court of first instance, when he stated that he wanted to stay with his father. The position of the child and the fact that only the father was in the country and took care of him were of significance for the decision to award the child's custody to the father.*

*The goal of the repeated interview*

*The tribunal decided that it was necessary to hear the child again to establish what were the elements which made the child state that he*

**Case No.**

**ROMANIA  
TRIBUNAL OF H.  
PRESIDENT:  
JUDGE:  
Clerk:**

**Court session in Chambers  
on 14 October 2008**

**REPORT:**

The child Paul Mihai born on 10 July 2001 (aged 7) appeared in court accompanied by his father, the defendant G.D. The interview of the child shall take place in chambers in accordance with the provisions of Article 144 first indent of the Civil Procedural Code.

*had good conditions with his father (which was refuted in the social inquiry report), what his real perception was related to the environment in which he lived and what the reasons were to refuse the clothes, the stationery and the sweets sent by his mother, according to the witness statements in the case.*

*Preliminary elements for the repeated interview*

*A small amount of time to do some small talking is required prior to the interview, to make contact with the child. Questions likely to decrease the pressure exercised on the child by his presence in court and the interview which shall take place must be used in the beginning, such as: "Hello! What is your name? How old are you?" As the child is 7 and came to the interview with his favorite toy, we may ask him if he wants to take it with him in the room. Having with him a cherished toy contributes to releasing pressure and to relaxing the*

*atmosphere. This way the child will strike a dialogue with the magistrate on topics which are familiar to him, which implicitly leads to a release of pressure and to setting in place a better environment for the interview. "I see that somebody else came here with you besides Daddy. What is the name of your little bear? Would you like us to take it with us? It's a good idea!*

## **2. The interview**

*General questions*

*The interview begins with the general questions which have the role of guiding the discussion on the problems of the child.*

**The court:** Can you tell me why we have to talk today?

**The child:** Shall I tell you why mother and father have fallen out?

*The child is informed on the goal of the interview*

*The child receives information on why he is to be interviewed.*

C: We are here today together so that we can set a schedule for you to meet with your mother and sister.

Would you like us to do that?

Ch: I don't know what to say, because they didn't want to call me anymore.

C: Do you know why they have stopped calling you?

*Determining the child to freely narrate the situation*

*Outcome*

*The court highlighted for the child that it did not know about his situation but only from the documents and the pieces of information from the court case file and, in order to be more acquainted with this situation, the child had to tell his story about what had happened. Just the same, the child had to tell the truth and had to promise that he would tell the truth in this respect.*

*As a result of this conduct of the judge, the child is not longer afraid of the idea that the magistrate knows what happened to him, and, consequently, knows the answers to the questions which he is about to be asked, which will cause the decrease of his suggestibility to misleading questions. The child knows what the significance of a promise is, therefore, chances are that he is honest.*

C: You know, I don't know you very well, I know just a few things about you from the case file here. I would like you to promise me that you will tell me the truth.

Ch: Yes. I see.

C: I want you to tell me, honestly, when is the last time that you have seen your mother?

<i>The free speech</i>	<p><i>The free speech of the child follows, the child uses his own words, spontaneously, uninterruptedly, and the magistrate uses the active listening. Active listening is a communication skill which extremely useful, especially throughout the stage of the free narration of the facts, as it improves the climate of the discussion and reduces the problems of understanding.</i></p>	<p>Ch: I understood that they have both gone to Italy and that they wouldn't want to see me anymore. I stayed with my father and with my father's parents who take care of me.  C: .... so....  Ch: I don't know anything more about my mother. Neither she, nor my sister have called me.  C: ...yes.....so.....  Ch: I don't even know when was the last time that they have called. Too much time has passed since then.  C: ...yes.....continue.....  Ch: I take it that they no longer care for me.  C: From where did you get that?  Ch: More people said that.</p>
<p><i>Keeping the eye contact with the child and providing encouragement</i></p>	<p><i>It is necessary to keep the eye contact with the child, and to encourage him to continue his narration of the facts: ... so, ... yes, ... continue etc.</i></p>	
<p><i>Outcome</i></p>	<p><i>This approach allows the magistrate to be perceived as having a good willing, kind and understanding attitude towards the child, which could cancel the negative feelings that the child may harbor and could facilitate the good understanding of the people who make contact with him. This is how the interlocutor is</i></p>	

*encouraged to communicate, which allows for the gathering of many pieces of information which are necessary for the settlement of the case.*

*Use of open questions*

*The court must use the open questions in relation with the position adopted by the child, as these questions do not suggest any answer and help the child to tell as many things as possible about the reason which made him unhappy.*

C: The reasons why you didn't get any calls are known by her mother alone. Only she can tell you what these were, that is why it would seem a good idea to ask her about it. What do you think?  
Ch: What would she explain to me now?

C: Would you like us to take a decision concerning the way in which you could see your mother and your sister?  
Ch: I don't know.

*Outcome*

*Consequently, because of the approach taken by the judge, the child started to tell things about his relationship with the mother and his sister.*

C: Most children have good relationships with their mothers and sisters. Do you think that you can do anything so that you could improve your relationship with your mother and sister?  
Ch: I don't think there's anything I could do, they left me with my father and were gone.

C: You have two sets of grandparents, the mother's parents and the father's parents. How do you get along with your mother's parents?

Ch: My mother's parents were those who raised me.  
C: What is your relationship with them?

Ch: I would get along very well with them, but it's been a while since I've last seen them.

*Use of specific questions*

*Outcome:*

*The use of specific questions is recommended as they focus a lot on the elements of special significance in the story of the child, which have the role to clarify the distorted elements.*

*This way, the magistrate gets the necessary information to distinguish what were the circumstances which made the child state that he wished that his father were awarded his custody, even if all the evidence indicated that he did not have the necessary rearing conditions to ensure the best education for the child.*

C: What happened that made you lose contact with them?

Ch: Father had an argument with them some time ago and we left them to be with my father's parents.

C: You haven't seen them since?

Ch: No.

C: What would you do if your mother were ill?

Ch: I think I would call the nurse from the clinic to treat her.

C: About this trouble of yours, have you been talking with anyone else, for instance, with your father, with your grandparents?

Ch: Yes, I have, and they all say that she wouldn't even hear about me or my father.

C: Are you angry at your mother?

Ch: Yes, I am.

C: Can you tell me the reasons why you are still angry at your mother?

Ch: Because she left to Italy, she has fallen out with father, and we're not the same as we used to be.

C: Has your mother tried to make contact with you after you left with your father to the other grandparents?

Ch: She came only once with the police and again there was a row.

C: Could you tell us more about that visit?

Ch: I don't remember it very well. All I know is that Dad was very angry.

C: What do you tell your kindergarten classmates when they are asking you about your mother or about your sister?

Ch: I haven't met with my kindergarten classmates.

C: What prevented you from seeing them?

Ch: I stopped going to the kindergarten since I've left with father to the other grandparents.

C: Can you tell me the reasons why you stopped going to the kindergarten?

Ch: The father's mother is old and sick and she cannot prepare for me the clothes and the food I need for the kindergarten. I have a lot to walk from where I stay right now to the kindergarten and I must cross a little forest. That is why father no longer agrees to send me to the kindergarten.

C: But if you don't go to the kindergarten, what do you do all day?

Ch: I go with my grandfather and help him with his work.

C: How long do you play with your friends from the neighborhood?

Ch: I only have one friend with whom I play on Sundays, as he also goes with his father to the forest to work during the week.

C: What if your father wished you to see your mother and your sister, what would you do?

Ch: I haven't talked about it with my father. He is very nervous if he hears about my mother.

C: Do you think it would be a good idea if your parents could meet to talk?

Ch: I don't know.

C: Would you like to spend more time only with your mother and your sister?

Ch: I don't know.

C: What would happen if you were forced to stay only with

*General  
conclusion*

*Following the hearing, it resulted that the wish of the child for his father to get the custody was based on the idea according to which his mother no longer cared for him, or for his father, that was why she had left to Italy with his sister only. As the child was not aware of the real reason why he could not talk with his mother or with his sister – the fact that his father had given up the mobile phone number which they knew – the child ended up with the feeling that he had been abandoned by those he cared for and that the only support that he had was his father.*

your father or only with your mother? Who would you rather stay with?

Ch: I want to stay with my father.

C: Can you explain to us why are you making this choice?

Ch: Because mother no longer cares for me.

**THE COURT:**

Sees that the interview of the child Paul Mihai has taken place.

**ORDERS:**

The next continuance shall be set for 20 November 2008, wherein the witness testimonies shall be submitted.

Returned in public session today, 14 October 2008 .

PRESIDENT, CLERK,

### III. Practical exercise 3. Child placement in an emergency case

The General Social Welfare and Child Protection Department called to court the defendant M.I. on 20 February 2007 and submitted a motion in court for the emergency placement measure to be taken in the case of the child M. Laura –Elena with her maternal aunt, Mrs. Mihalache Gabriela.

To substantiate its motion, the Department argued that the case was about a little girl, Laura–Elena, born on 16 January 1998, daughter of M. I. and M. F., whose mother died one year ago, since when she was raised in a family made up of the father, and two brothers, aged 19 and 18, respectively.

The elder brother, Ionuț Costel has left home for 6 months, to go to Bucharest, to earn a living and make money, and he left home also because of an argument he had with his father. The other brother, Cătălin, 18 years old is still at home and works together with his father.

The General Social Welfare and Child Protection Department of Iași was seized by the older brother of the little girl, Ionuț Costel, who, upon a visit to his father, was shocked by the attitude the latter had towards his little sister.

Thus, the father's attitude was characterized by violence, he was subjecting the child to labor exceeding her strength (he made her cook, clean the house and the courtyard, take part in the farming activity), deprived her of sleep by setting numerous household chores for her and abusing the little girl if she failed to deliver these services. Owing to this situation, the child dropped out of school, an aspect which was also found by her brother. This behavior of the father is likely to jeopardize the physical, moral development as well as the physical and mental health of the child, Laura–Elena.

All the elements indicated above are the sign of an abuse, within the meaning of Article 89 of Law No. 272/2004, but mean also the privation of education which could allow the development of the child's skills and personality, of the right to have her personality and individuality respected, within the meaning of Article 90, from the above-mentioned law.

The emergency placement was herein requested and substantiated on the refusal of the defendant to allow the representatives of the

general social welfare department to conduct the necessary required checks.

In points of law, the provisions of Article 36 par.3, Article 64, Article 65 par. 2, Article 66 par.3, Article 94 par. 3 of Law No. 272/2004 and Article 581 of the Civil Procedural Code were invoked.

### III.1. Interviewing a child in an emergency placement case

#### **1. Preparing the interview. The relationship of trust between the child and the magistrate who is interviewing the child.**

*Elements of the case*      *The case is aimed at a special protection measure of a child abused by her father. In preparing the interview, the magistrate must take into account that she is subject to double pressure: the pressure generated by the meeting with the judge and the pressure as a consequence of having to recount the events she was subject to.*

*The goal of the interview*      *The interview must lead to the identification of the way in which the abuse she was subjected to imprinted on her universe, diverted from the childhood to adult activities and responsibilities, as well as how she currently perceives the reality and what normality means for a child*

**CASE NO.  
ROMANIA  
TRIBUNAL**

#### **REPORT**

concluded today, 22 February 2007, concerning the interview of the child Miron Laura Elena in chambers

On the above-mentioned date, at 10 am the child Laura Elena appears in chambers, who states that her brother, Ionuț-Costel, has brought her there. In line with the provisions of Article 24 par. 2 related to Article 125 par. 2 of the Law No. 272/2004 on the protection and promotion of the rights of the child, the child Miron Laura Elena, born on 16 January 1998, daughter of Ion and Maria Cristina was heard in chambers. The requested protection measure – emergency placement. The Public Ministry was represented by prosecutor .....

*of her age. The little girl must be helped to provide as many details as possible about the father's conduct, likely to provide shape for the abuse, without using any means which might influence her.*

*Making contact with the child*

*Preliminary to the interview  
The goal of the contact with the child is to prepare her for the subsequent stages of the interview and presupposes the removal of direct communication barriers between her and the person who is conducting the interview.*

*Relaxing questions*

*We may start by asking questions likely to release the pressure of the interview and remove the stress generated by the appearance of the child in court: "Hello, Laura! Actually, your name is also Elena. You have two very beautiful names! How do the people close to you call you usually? How old are you? Where do you live? As the girl lives in the rural area, we may ask her what is her favorite animal, to emotionally relate with her: "Do you have at home any dog or cat? What is the*

*name of your doggie? What color is it?"*

## **2. The interview**

*General questions*

*This stage starts with some general questions which must direct the discussion to the purpose of the child's being in court.*

**Court:** Has anybody told you why you came to me to talk?

**Child:** To tell you what my father did to me?

*The child is informed on the goal of the interview and on her right to be silent*

*The child is informed about the goal of her interview, what the importance is of the details included in her version of the facts, as well as her right to be silent in special situations.*

**C:** We are here today to talk about how your father behaves with you. We will have a talk, you will tell me about the things he did. Do you want to do this?

**Ch:** Yes.

*Determining the child to freely narrate the situation*

*The court highlighted for the child that it did not know about her situation but only from the documents and the pieces of information from the court case file and, in order to be more acquainted with this situation, the child had to tell her story about what had happened. Just the same, the child had to tell the truth and had to promise that she would tell the truth in this respect.*

**C:** I only know a few things about you. I don't know what happened. I want you to tell me. Are you ready to tell the truth?

**Ch:** Yes. I see.

**C:** I want you to tell me, honestly, how do you get along with your family?

*Outcome*

*As a result of this conduct of the judge, the child is not longer afraid of the idea that the magistrate knows what happened to her, and, consequently, knows the*

*answers to the questions which she is about to be asked, which will cause the decrease of her suggestibility to misleading questions. The child knows what the significance of a promise is, therefore, chances are that she is honest.*

*Active listening*

*The free speech of the child follows, the child uses his own words, spontaneously, uninterruptedly, and the magistrate uses the active listening.*

Ch: I get along well with my father and my brother. They take care of me as they can.

C: ... so ...

Ch: I don't know why I am here. I haven't done anything wrong.

C: ... yes ... continue ...

Ch: And I get along well with my brother in Bucharest as well .... He had an argument with father a few days ago.

C: .... so ...

Ch: I don't know why, but they were very nervous both of them.

*Keeping the eye contact with the child*

*It is necessary to keep the eye contact with the child, and to encourage him to continue his narration of the facts: ... so, ... yes, ... continue etc.*

*Outcome*

*By doing this, the judge shows his interest towards the statements of the little girl and he improves the background for the talk, which allows the gathering of as many information as necessary to settle the case.*

*Use of open questions*

*However, the story of the child diverted from the object of the investigation, and the child would tell stories which were not connected with the object of the case. In this situation, it was necessary for the judge to step in.*

*Outcome*

*The court had to use open questions, as they are neuter in terms of content and have the goal to help the victim of the abuse to focus on the conduct of the father and supply as many details as possible about it, without being suggested any answer previously.*

*As a consequence of this behavior of the judge, the child started to tell more about the abuse she was subject to.*

C: I want you to tell me, honestly, how do you help your father with the household. Do you want us to do this?

Ch: I do various things around the house and the yard.

C: Can you tell me more about the things you do?

Ch: I clean the house and the yard, I cook.

C: Can you explain to me why you do all these things?

Ch: My father asks me to do this, as I am old enough.

C: But do you know how to do all these things? Can you do all these things?

Ch: I have to cope with it, since my mother died, I'm the only woman in the house.

C: Can you tell me if the friends who have the same age as you or your classmates do these things too?

Ch: I don't know what the other children do, as I don't have time anymore to see them.

C: What does it mean that you don't have the time to see with your friends?

Ch: Well, if I have to go early in the morning to guide the cattle to the herd, cook or do the laundry or go with father to the fields, then evening comes, and father won't let me get out of the yard.

C: What is the reward you get from your father for helping him?

Ch: (the answer of the child came after a certain hesitation) I don't know what the reward is.

*Explaining the meaning of the words used*

*The court explained to the child that there was no problem if she did not understand the meaning of a word, that it was ok for her to tell when she did not understand it and the court rephrased the question.*

*Outcome*

*This attitude led to a correct communication with the child, who understood the meaning of the question, as it had been rephrased.*

C: Could you tell me what happens when you do one thing well or, for instance, you can't do it?

Ch: If I can't do something well, father swears at me, he even hits me if he is very nervous and tells me I'm good for nothing. He also tells me that I'm no good for his house.

C: How long does he let you rest between these things?

Ch: I don't know.

C: What is the name of your favorite doll and how long does it take you to care for her, daily?

Ch: Her name is Ana, but I'm very sad that I don't know where I put her. Father told me that some gypsies might have stolen it, as they come with pots to sell to our village.

C: Can you tell me what else do you play with and how long a day?

Ch: I haven't played in a long while, because I have serious business to do.

*Use of specific questions*

*The use of specific questions is meant to supplement the typology of the open questions, being aimed at establishing more accurately the circumstances; the focus lies on the determining elements in the child story.*

*Outcome*

*This way, the magistrate gathered complete information regarding the forms of abuse the child was subject to.*

C: What do you understand by serious business?

Ch: Do laundry, cook, clean the yard and the house. Father tells me that I don't have any time to waste it with stupid things.

C: What are the names of your best friends?

Ch: There are no children my age in the neighborhood.

C: Then who are the colleagues with whom you get along best?

Ch: I haven't kept in touch with the pupils at school lately.

C: Can you tell me more about how you do in school?

Ch: Since my mother died, I

haven't have how to get to school on a daily basis.

C: How many times a week do you go to school?

Ch: (the child could not say anything.)

C: What happened that stopped you from going?

Ch: There's nobody who can help me with my homework.

C: Do you think it would be a good idea to start going to school again?

Ch: Yes, I miss very much my music class.

C: What made you not go to school again?

Ch: Father stopped buying the special notebooks I needed.

He was always telling me that he did not have the money to buy my uniform, stationery, as all other children have.

C: What grades did you have when you went to school?

Ch: Then my mother was alive and she helped me with my homework, I was second in my class, and the teacher commended me for being a hardworking girl.

C: Do you like school?

Ch: Yes.

C: Which are your favorite subjects?

Ch: I like best music, then drawing and history.

C: What do you like most, play, study or do household chores?

Ch: I'd like to go to school again, but I cannot convince father to let me.

*Use of closed questions*

*Closed questions are used to clarify or recognize certain specific elements in the child statement. This type of questions is answered "yes" or "no".*

*Outcome*

*The judge was informed regarding the wish of the child to attend school and be free from the abuse which her father had subjected her to.*

*General conclusion*

*The child abuse was highlighted following the interview, as generated by the violent behavior of the father, likely to jeopardize the physical, moral development as well as her health.*

Based on provisions under Article 95 par. 3 and Article 125 par. 2 second indent of Law No. 272/2004, the interview followed the preliminary preparation of the child, assisted by the psychologist ....., from the General Social Welfare and Child Protection Department .....<sup>1</sup>

This report was concluded in one copy which is to be attached to the case file.

**PRESIDENT  
CLERK**

---

<sup>1</sup> This box shall be filled for those cases which refer to the establishment of a measure of special protection in the case of the abused or neglected child, according to Article 125 par. 2 second indent of Law No. 272/2004.





**The Guide has been  
produced and  
translated with UNICEF  
Romania's support.**

**Asociația Alternative Sociale**

Cuza Voda 8A, Sc.B, Iași, 700036

Tel. 0332.405476

Fax. 0332.405477

**office@alternativesociale.ro**

**www.alternativesociale.ro**

**www.antitrafic.ro**

**ISBN 978- 606-522-432-2**



9 786065 224322