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CHILD INVESTIGATIVE INTERVIEWS IN LITHUANIA: PROBLEMS AND PERSPECTIVES

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Abstract

Until the end of last century Lithuania was the only Baltic country that did not have child interview room. Social service practitioners, though acknowledging all the merits of an interview room, questioned the possibility of building an interview room for children in Lithuania at all because of poor funding, Criminal laws of Lithuanian Republic and unwillingness of officers and other specialists to collaborate. There are two child interview rooms in Lithuania at present. An interview room at NGO "Child house" in Vilnius is mainly designed to conduct investigative interviews in child sexual abuse cases. While conducting investigative interviews differs greatly in child interview room and police office or courtroom, there are still some problems in child sexual abuse investigative interviews.

The purpose of this article is to present the most current problems in Lithuania. We will focus on problems such as recording the testimony, cross-examination, interviewing the child in a presence of a suspect and negative attitudes of police officers towards child-witnesses. The implications for the Criminal Justice system are discussed.

Keywords: children, investigative interviews, evidence, sexual abuse.

Introduction

Forensic interviews of children cause a lot of problems during legal proceedings. One of them is to protect the child from psychological trauma facing the offender who has hurt him/her and can cause danger for a child in future. The other problem is that this trauma can impair the recollection and diminish willingness of a child to tell the truth. Besides, some difficulties can arise because of officers' negative attitudes or misperceptions toward children as witnesses. For example, officers would not trust children's testimony because of their insufficient skills to distinguish reality from imagination; because children are easily submitting to suggestibility or can be easily manipulated by malicious persons; children are egocentric and easily forget the details which are not corresponding with their inside world (Bottoms, Reppucci, Tweed, Nysse-Carris, 2002). These attitudes are not confirmed by

the scientific research results, which suggest that children (even at pre-school age) can describe what has happened to them.

Controversial issues related to children testifying in criminal proceedings caused changes to legal procedures in Lithuania. Starting May 1, 2003 the new Code of Criminal Procedure (CCP) of the Republic of Lithuania and other legal acts regulating forensic interviews of children were enacted. We would like to mention some of them: (1) psychologist can be invited to interviews to assist a child under 18 years old, (2) if the child-witness up to 18 years old can experience second trauma or other negative consequences in the trial process, he/she is not summoned to trial (CCP article No. 280), (3) child-witness under 18 years old *commonly* is interviewed in pre-trial investigation. Video or audio records can be made (CCP article No. 186).

Though some innovations of forensic interview of children were introduced in laws, it is difficult to apply them. Lithuanian system of justice is mostly created for adult persons. Its procedures do not always ensure child's psychological safety or take into consideration his/her needs, consequently it causes secondary trauma to a child. These are the main reasons of inaccurate testimony of children and closings of cases.

The main purpose of this article is to reveal the main problems in forensic interviews of children during legal proceedings in Lithuania, to suggest possible solutions, and discuss the future of the Criminal Justice system.

Investigative interviews of children can be conducted in three stages of legal proceedings: reporting to the police, pre-trial investigation and trial investigation (see Figure 1).

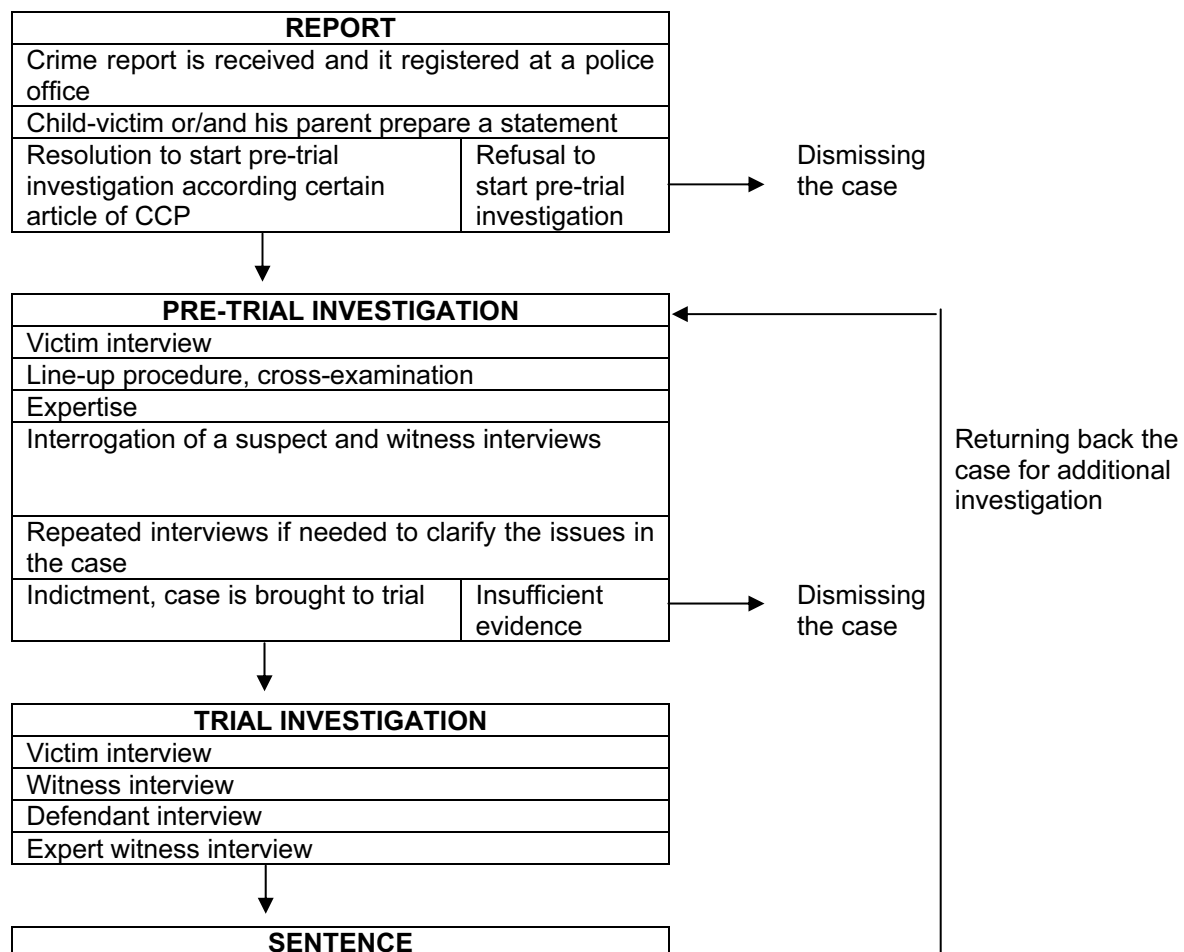


Figure 1. The process of legal proceedings.

There are certain problems concerning children's needs and welfare in every stage of legal proceedings. Each of them would be discussed in more detail.

Report to Police

Starting the discussion about the report to the police, we should consider **obligation to report** first. A child can disclose the crime to his parents or to other adult persons and professionals. There are some gaps in our laws in regard to when it is obligatory to report the incident to the police. The Criminal Code (CC) states, that the person would incur punishment if he/she did not report to law enforcement institution about serious crime without valid excuse (article No. 238). But close relatives of the offender are not held responsible for not reporting the crime. That means if a family member abuses a child, no one in the family would be prosecuted for not reporting the crime.

The second point to consider is a **type of a case**. Main problem in crime investigation arises when a child is the only witness. Child sexual abuse cases are difficult to investigate: frequently there is lack medical evidence, children are trusted less than adult persons. There is widespread opinion that children tend to make up things related to sexual abuse.

The attitudes of officers can cause some problems in the stage of reporting as well. According to our officers, children can start reliably testify when they are approximately 9 years old (Čėsniėnė, 2004). On one hand, officers lack skills dealing with children and frequently interview them as adult persons. On the other hand, the staff turnover with the police force is quite high therefore the benefits of trainings are minimal.

Officers have negative attitudes not only towards children as witnesses. Many of them do not have sufficient skills and are sceptical about multidisciplinary teamwork. They would not collaborate with parents or professionals and are hostile to innovations such as interviewing a child in an interview room, preparing a child for legal proceedings, etc.

Pre-Trial Investigation

Rapport building. Interviewer's role in Lithuania frequently is only formal - just asking the questions but not devoting time for a rapport building with a child. This affects the interview quality and accuracy of testimony. If a child with special needs is interviewed, officers do not know how to establish rapport with him/her and seldom use assistance of other professionals.

Features of interview. According to results of inquest of different professionals in 2004 in Lithuania, forensic interviews of children are the most problematic field in legal proceedings (Ministry of social security and labour, 2004). Twenty percent of respondents stated that it was necessary not only to improve interviews of children but also to shorten the investigative process trying to prevent children from having secondary trauma.

Results of considerable number of studies show that children experience higher stress levels when multiple interviews are conducted by different interviewers. Repeated interviews of children, especially younger ones, may cause contradictions and inadequacy in their testimony, and feelings of guilt and shame.

Different strategies can be employed in order to diminish negative impact on children. One of the ways is to limit the number of interviews of children. Even though the CCP has a premise about *commonly* interviewing a child-witness under 18 only one time, it is not being applied and children are interviewed repeatedly.

Protocols (testimony fixing). In Lithuania exact questions and answers are not written down when a child testifies; the answers of a child are summarized and written down using officer's language. This is one of main factors negatively affecting the case. If the closed questions are given, answers of children are less precise. Biased officers may suggest certain information to a child and it is impossible to prove this since interviews are not filmed. Later on the child may be charged with false testimony.

Confrontation with offender. Confrontation with an offender is the most stressful event of investigation process for a child (Westcott, Page, 2002). The confrontation causes the recollections of the crime and the child has to go through his/her negative experience once again. There is a possibility provided in CCP to take an offender out of the courtroom when a child is bearing testimony (article No. 274). Still, it is valid only in court; during pre-trial investigation child is forced to see the offender and even to answer his/her questions.

Lack of legal education. Representatives of children (frequently parents) have insufficient knowledge of children's and their own obligations and rights in legal proceedings. Police officers only do their work; they are not obligated to provide additional information to parents about their rights or legal process. It appears that parents can't represent their children appropriately in legal process. Not

only children, parents are also in crisis. There is a huge shortage of specialists who could at least give the above-mentioned information to children and their parents.

Trial Investigation

Preparation for court. It is evident that preparation for court (explanation what the court is, what the child must do, etc.) can reduce child's stress and anxiety and provide the feeling of psychological safety. The child can be prepared for the procedures at the court by social workers, psychologists, police officers or other specialists. It would be worth to prepare children not only to testify in court, but for all legal proceedings. It is a pity that preparation for legal proceeding is not provided in Lithuania, with some exceptions.

Use of closed circuit television (CCTV). Although many technological innovations are available in Lithuania, possibilities of all of them, for example CCTV, are not realized in the courts.

Child's testifying in court. Even though CCP provides some possibilities to prevent a second trauma to a child in legal proceedings, it is up to a judge to decide if a child should testify in court, if the offender should be present in a courtroom, etc. Sometimes the judge decides to listen to a child's story in order to make (e.g. to see himself) that the child is not lying.

Discussion and Conclusion

The problems mentioned above are critical to many criminal cases when children are interviewed. It is important to realize that certain changes must be made in order to improve current situation in Lithuania. Some of our suggestions are listed below.

1. **Improvement of laws.** Most professionals in Lithuania agree that improving the laws can ensure the effective intervention for a child who has to participate in legal proceedings. On one hand, we indeed can find a lot of gaps in the laws. On the other hand, certain statements in the Lithuanian laws are intended to protect child's safety during legal proceedings (e.g. commonly children can be interviewed no more than once; interviews of children can be recorded on video or audio tape, etc.). However, they are not put to practice. These statements are just written in recommendatory manner and depend on the will of the officer.

2. **Child interview room.** The child interview room can decrease the number of forensic interviews of children and can facilitate child's participation in legal proceedings. There are two interview rooms in Lithuania at the moment. One of them is not used because rent is being charged. The use of the other child interview room is free (it is financed by World Childhood Foundation). Still, some problems arise. Not all officers are willing to leave their offices. Child interview rooms are only in Vilnius and are hardly accessible for children from other regions. Besides, child interview rooms are not financed by the government. Last year the Ministry of Social Security and Labour in cooperation with other ministries approved the programme targeting the abuse of children for the years of 2005-2007. One of the goals of the programme is to build 5 interview rooms for children in Lithuania. One year has passed since the start of this program and the situation remains the same.

3. **Trainings for the officers.** In the discussions about diminishing the negative effects of legal proceedings on children, the question arises of who (police officer or mental health professional) should interview a child. This question is dealt with differently in other countries. Commonly a police officer or pre-trial judge interviews a child in Lithuania. Interviewers should know not only how to gather evidence, but also must know how to establish rapport with a child, how to react to his/her emotions, how to formulate correct questions, etc. (Wood, Garven, 2000). Unfortunately many officers still lack such skills and knowledge. There are two ways to make an interview of a child more competent in Lithuania: (1) to train the officers, who are conducting interviews of children and (2) to invite mental health professionals to assist in forensic interviews of children.

4. **Proper child representation in legal proceedings.** There is a widespread opinion that children-victims do not need an attorney because their rights are protected by the prosecutor. But the primary aim of prosecutor is to help trial to implement the justice. As it is stated in the CCP, the representative in the name of the law should assist the child and advocate his/her interests. Frequently parents or workers from the Protection of Child Rights Services are not competent to represent a child in a legal manner (as an attorney). The law of free legal assistance was enacted this year in Lithuania. Groups of people, who can get legal assistance for free, are defined in the law. In our opinion a governmental attorney should be assigned for every child, who was abused.

It is very important to search for different ways to assist a child in legal proceedings and to advocate his/her rights. Some of them are: (1) to make use of the right of a victim to request governmental legal assistance (CCP article No. 55), (2) to invite mental health professionals to assist a child in legal proceedings, (3) or to enable parents to represent a child and his/her interests properly. Results of research (Goodman, Quas, Bulkley, Shapiro, 1999) show that the presence of an adult person on whom the child relies enables the child to feel more confident and courageous, psychologically stronger and to cope with the stress during legal proceedings.

5. **Participation of professionals.** According to Lithuanian laws different professionals can and must take part in various processes of investigation. Unfortunately the knowledge and skills of the professionals are used minimally. Specialists can prepare children and help them to cope with psychological trauma during legal proceedings in addition to the above mentioned advantages.

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TEISINĖS VAIKŲ APKLAUSOS LIETUVOJE: PROBLEMAS IR PERSPEKTYVOS

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Santrauka

Iki XX a. pabaigos Lietuva vienintelė iš Baltijos šalių neturėjo vaikų apklausos kambario. Socialinių tarnybų atstovai, nors ir pripažino apklausos kambario pranašumus, abejojo, ar toks kambarys galėtų atsirasti Lietuvoje dėl lėšų stygiaus, Lietuvos Respublikos baudžiamosios teisės ypatumų, pareigūnų ir kitų specialistų nesusikalbėjimo, bendradarbiavimo stokos. Šiuo metu Lietuvoje yra du vaikų apklausos kambariai. Vaikų apklausos kambarys NVO „Vaiko namas“ Vilniuje skirtas atlikti apklausas seksualinės prievartos vaikų atžvilgiu atvejais. Vaikų apklausos specializuotame kambariame labai skiriasi nuo apklausų, atliekamų policijos nuovadose arba teismuose, vis dar kyla sunkumų apklausiant vaikus liudytojus.

Straipsnio tikslas – aptarti pagrindines Lietuvos problemas, susijusias su vaikų apklausa: parodymų užrašymą, kryžminę apklausą, vaiko apklausą dalyvaujant įtariamajam ir kt. Straipsnio pabaigoje pateikiamos rekomendacijos įvairaus profilio specialistams, dirbantiems su vaikais liudytojais.

Pagrindinės sąvokos: vaikai, teisinė apklausos, įrodymai, seksualinė prievarta.