



# CHILDREN IN JUDICIAL PROCEEDINGS

Implementation of the European  
Convention on the Exercise of Children's Rights

Proceedings of Expert Panel Meetings Organized by  
the Office of Children's Ombudsperson - Presentation Abstracts

DIJETE U PRAVOSUDNOM POSTUPKU – PRIMJENA EUROPSKE KONVENCIJE O  
OSTVARIVANJU DJEČJIH PRAVA

Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu – sažeci

CHILDREN IN JUDICIAL PROCEEDINGS – IMPLEMENTATION OF THE EUROPEAN  
CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS

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## PREFACE

The responsibility of the Children's Ombudsperson, acting within the scope of the particular duties entrusted to her, is to monitor the implementation of children's rights in a number of different areas, including the protection of children's rights in the criminal justice system (felony and misdemeanor cases) and the civil justice system. Protection of children involved with the justice system also implies the protection of children's rights in administrative and any other proceedings where decisions will be made which will affect children's rights and interests. A child may appear before a court or other administrative body as an offender, a witness or a victim of a felony or a misdemeanor offense, or may be otherwise involved in proceedings where decisions will be made directly affecting their lives, such as, for example, a decision to remove a child from the family home or a parent's decision to separate and divorce. Regardless of the nature of the child's participation in the proceedings and the area of the justice system that the child encounters, the system needs to show full understanding and respects for the rights of the child and acknowledge children's special vulnerability. This is the very backbone of the child-friendly justice system. The awareness of the fact that children taking part in judicial proceedings form an especially vulnerable group has led the international community to create minimum standards for child protection; a number of documents governing this area have been drafted, all of which have been adopted and incorporated in the national legislation of the Republic of Croatia. However, child protection efforts do not end here; protection for children is not achieved simply by adopting certain rules and regulations; it is fully realized only when such regulations are properly implemented in daily life. Regrettably, the number of children, their parents and other persons in their lives who have contacted us seeking help, as well as the number of in-person counseling appointments with professionals working in this field, reveal certain weaknesses in the operation of the child protection system when it comes to protecting children in the judicial process.

Lack of professionals providing court advisory and support services, insufficient information provided to parents and children, lack of uniformity of practices and procedures, nonexistence or failure to use technical equipment and aids to interviewing children, insufficient professional training for judges and other professionals working with children and a lack of coordination and collaboration between law enforcement or judicial authorities and social services, are just a few of the shortcomings observed. Besides the protection of child witnesses or victims in criminal and misdemeanor proceedings, special attention has been drawn to the status of a child involved in any administrative or judicial proceedings, which – despite the fact that they will end with a decisions that will greatly affect the child's life – are often pushed to the margins.

This is the reason why, in an attempt to facilitate a more successful realization of children's rights by prompt and uniform implementation of international documents and national legislation governing this area of child protection, the Office of Children's Ombudsperson has organized five expert panel meetings. The first expert panel meeting entitled "Protecting Child Witnesses in Police Procedures and Criminal and Misdemeanor Proceedings", held on December 14, 2011 in Zagreb, brought together quite a number of experts: social care professionals, legal professionals in the justice system (judges, court-appointed experts, lawyers, court-related service providers and representatives of the Ministry of Justice), law enforcement professionals, family centers' experts, and representatives of the academic community, nongovernmental organizations and the media. Introductory presentations, collected in this proceedings (the first part), were delivered by experts specializing in different fields who encounter these issues in their daily practice. This part of the Proceedings ends with propos-

als to improve the current system, including the processes and provisions that exist to protect child witnesses, resulting from the presentations and subsequent discussion among meeting attendees.

The second part of the Proceedings is the collection of papers presented at four expert panel meetings on the subject “What Significance Does the European Convention on the Exercise of Children’s Rights Hold for Children?”, which were organized in collaboration with the Croatian Bar Association and held in Osijek, Zagreb, Rijeka and Split. The aim of the panel meetings was to instigate an open discussion on the procedural status of children in the proceedings in which decisions are made that will have an impact on children’s lives, pursuant to obligations under the European Convention on the Exercise of Children’s Rights that came into force for Croatia on August 1, 2010. Exceptionally high number of attendees shows that there is a great deal of interest in the subject and the need for this type of expert panel meetings that are regularly attended by experts, mostly lawyers, professionals working in social welfare centers and judges involved in a decision-making process, where all parties to the proceedings possess procedural rights provided for by the Convention. The panel meetings had more than 450 attendees.

We believe that these papers will prove to be a valuable source of information to experts (in their practical work) and to those responsible for creating strategies for development of specific systems and their mutual collaboration, as a rather useful overview of directly-observed problems which need to be solved in order to overcome the discrepancy between the rights guaranteed to children by law and the practice.

Gordana Filipović  
Davorka Osmak Franjić  
*Advisors to the Ombudsperson for Children*

## **PROTECTING CHILD WITNESSES IN POLICE PROCEDURES AND CRIMINAL AND MISDEMEANOR PROCEEDINGS**

**Gordana Filipović, LL.B.**  
*Advisor to the Ombudsperson for Children*

### **CHILD WITNESS IN THE CONTEXT OF INTERNATIONAL LAW**

One of the fundamental duties of the Ombudsperson for Children is to monitor the extent of compliance by the Republic of Croatia with its obligations imposed by the Convention on the Rights of the Child and other international documents relating to protection of rights and interests of children. There is a large number of international documents imposing obligations or providing guidelines to state parties on setting up a juvenile justice system with respect to protection of child witnesses. Such documents require all states to organize their individual legal systems in such a way so as to strike a balance – in a judicial process – between safeguarding basic human rights of the offender on one side

and providing special protection of the rights of child victims and witnesses, as a particularly vulnerable party to a case, on the other. They require that underlying principles set out by the Convention – the principles of nondiscrimination, protection of child’s best interest, child’s active participation and the preservation of its dignity – are upheld throughout the proceedings. Furthermore, they require the states to guarantee to every child witness certain rights such as: the right to be treated with dignity and compassion, the right to information, the right to an effective assistance, the right to protection of privacy, the right to protection against suffering, the right to safety and the right to compensation. In order to ensure full respect for the rights of child witnesses, the United Nations Economic and Social Council provided, in its Resolution 2005/20, guidelines for action – intended for use by professionals working in the criminal, civil or administrative justice systems – in matters involving children as victims of or witnesses to criminal offenses. Based on these guidelines, the United Nations Office for Drug Control and Crime Prevention, in collaboration with UNICEF, has drawn up a Model Law on Juvenile Justice applicable in matters involving child victims and witnesses of criminal offenses, as a practical example of what the protection of child victims or witnesses in judicial proceedings should look like. The paper provides a brief overview of international standards, outlining the process of their implementation into Croatian legislation and practice, but also an overview of some of the observed issues and obstacles in this area of child protection.

**Prof Gordana Buljan Flander, D.Sc.**

*Director of the Child Protection Center of Zagreb*

**Dragana Matešković**

*Psychologist at the Child Protection Centre of Zagreb*

## **DISCLOSURE OF CHILD SEXUAL ABUSE – STIGMA OR A NEW CHANCE FOR CHILDREN?**

Latest reports on global statistics show that one in five children is sexually abused. Similar results were obtained in a survey conducted on a population-based sample of children – the sample containing children from different regions of Croatia – which indicated that 18,1% of children experienced some form of childhood sexual abuse. Disclosure of child sexual abuse plays a crucial role in the initiation of interventions, influences direct effects of child abuse and reduces the likelihood of long-term negative effects of abuse. At the same time, the disclosure process is very embarrassing and painful for children, and may even cause children to experience a new traumatic event. It was found that stigmatization mostly occurs as a result of disbelief and other negative responses expressed by adults to child’s disclosure of sexual abuse. Court proceedings arising out of a disclosure and report of child sexual abuse are another source of re-traumatization and stigma for sexually abused children. According to surveys, most of the children who were required to testify about their experiences in court, found testifying to be both a frightening and upsetting experience; the most stressful was the part when they were asked to repeat their testimonies or recount their experiences to various institutions, but also the incompetence, insensitivity and bluntness of child interviewers. Many studies have found that the system is not best suited for children or sensitive to their needs. That is why the law enforcement and judicial authorities are making increased efforts to bring in specially trained mental healthcare professionals, as well as specialized institutions responsible for conducting forensic interviews of sexually abused children and adolescents, while the child welfare professionals keep developing ways of strengthening children’s mental health, maximizing their ability to be perceived as credible witnesses in court, without being re-victimized by the court process.

**Renata Odeljan, M.Sc.**

*Head of the Department for Prevention of Juvenile Delinquency and Crimes against Youth and Family at the General Police Directorate of the Ministry of the Interior*

## **HOW TO APPROACH CHILD WITNESSES: A POLICE PERSPECTIVE**

The author uses a comparative method to analyze the status of children as witnesses in police procedures in the Republic of Croatia and some European countries. The paper outlines provisions of the new Youth Court Act setting out police powers and responsibilities in criminal cases involving child victims, focusing on its advantages and disadvantages. Special importance is attached to police efforts to improve the protection of children and youth. Finally the paper provides an answer to the question: Are we satisfied with the present status of child witnesses or should we attempt to improve it?

**Ksenija Sviben, M.Sc.**

*Psychologist at the Zagreb Social Welfare Center, Donji Grad Branch Office*

## **PREPARING, PROTECTING AND MONITORING THE CHILD WITNESS: THE SIGNIFICANCE OF THE ROLE OF THE SOCIAL WELFARE CENTER**

In recent years, the legislative bodies in countries around the world have enacted a number of provisions designed to reduce the stress caused to children by the experience of preparing and giving evidence in court, requiring all bodies which are in any way involved in the criminal case proceedings to treat children and minors in a particularly considerate and caring manner in order to neutralize, at least to a certain degree, negative effects of this painful process; at the same time, one needs to take into account their age, personalities, education and living circumstances so as to avoid potentially harmful impact on their upbringing and physical and mental development. One of the most important roles in providing assistance and support to child witnesses should be played by social welfare centers, which may provide different types of assistance, from material support or resources to emotional and psychological support, but also housing and protection services in collaboration with other institutions. Providing appropriate assistance and support to child witnesses in a timely manner, especially right before they testify, makes them feel more secure and thus reduces the need for adequate protection measures for child witnesses during court proceedings. More consideration should be given to the role of the social welfare center in the examination of a child witness presented in a hearing or any proceeding, since such centers have a wide range of options and broad powers to ensure an effective system of preparation, support, evaluation and protection to child witnesses, but also to their families, in pre-hearing, hearing and post-hearing periods. High quality protection of child witness helps increase the level of child's trust and his/her willingness to cooperate with officials and institutions, enhancing the efficiency and effectiveness of proceedings.

**Davorka Lalić-Lukač**

*Social Pedagogue, Senior Advisor to the Municipal Criminal Court of Zagreb*

## **PROTECTION OF CHILDREN IN THE CRIMINAL JUSTICE SYSTEM – THE ROLE OF NON-LEGAL PROFESSIONALS**

The term “legal protection of children” refers to all the provisions of the Criminal Justice Act, including the special juvenile court procedures, aimed at enhancing the protection of children and youth

from undue criminal interference by an adult with their integrity. The Youth Court Act stipulates that youth court judges have the power to hear cases and pronounce judgments upon adult perpetrators of crimes against children. This law is stated to be *lex specialis*. There are non-legal professionals, permanent staff members, performing work for youth courts (social pedagogy experts and social workers), who assist judges in cases that require expert skills. The Courts Act, the Youth Court Act and the Criminal Procedure Act are the basic legislative documents regulating the status and professional conduct of non-legal professionals. The role of non-legal professionals becomes most obvious in the assessment of witness or victims competency to testify – aimed at determining the child’s ability to understand his/her rights and to participate in criminal proceedings – and in providing immediate assistance to a judge in adducing evidence from a child witness or any person under the age of 18 years. Past examples of good practice, which illustrate the good work of youth court judges and non-legal professionals, imply that family court and magistrate judges should be provided such assistance to the same extent and in the same manner. We need to organize well-planned training courses for all professionals who take responsibility for accomplishing a shared goal – ensuring the best interest of children.

**Branka Žigante Živković**

*Judge of the High Magistrates’ Court in Zagreb*

## **CHILDREN AS WITNESSES IN MISDEMEANOR PROCEEDINGS**

Before January 1, 2008 all misdemeanor cases were tried pursuant to provisions of the Misdemeanor Act. Procedural provisions in the Act prescribed strategies and procedures involved in examining witnesses, but did not address questioning techniques for child witnesses. The new Misdemeanor Act came into force on January 1, 2008 – it provided stipulations regarding the proper procedures for examining witnesses and recommended the implementation of provisions of the Criminal Procedure Act, relating to the court examination of witnesses and court appointed experts. Before September 1, 2011, when the new Criminal Procedure Act came fully into force, the magistrates’ courts conducted examinations of child witnesses in criminal proceedings without any considerable difficulty. The truth is that neither old nor the new version of the Misdemeanor Act did explicitly address this particular issue; but the fact is that provisions of both version of the Act set out a well-thought-out strategy for the implementation of the Criminal Procedure Act, as far as it relates to the examination of child witnesses in criminal proceedings. It should be noted that ever since the Criminal Procedure Act came into force (on September 1, 2011), a number of difficulties were reported to be encountered in practice. The Criminal Procedure Act – although not the subject of this paper, needs to be addressed as it relates to the examination of child witnesses in misdemeanor proceedings – questions options available to magistrates’ courts when it comes to questioning of child witnesses. The Criminal Procedure Act stipulates the ways to interview and question child victims and witnesses. In most instances, child witnesses are questioned in cases tried before magistrates’ courts involving offenses stipulated under the Domestic Violence Prevention Act. One of the key things missing from the legislation concerned with misdemeanors is the fact that neither of the two versions of the Misdemeanor Act provides definitions of legal terms, which would be greatly beneficial to magistrate judges in the interpretation and application of certain provisions. Turbulent circumstances of the criminal law reform – which has been under way for several years now, especially since the Youth Court Act and the Criminal Procedure Act came into force last year and introduced significant changes to misdemeanor laws – leave the impression that the legislation on misdemeanors was pushed aside, which is also implied by the fact that children appearing in court as witnesses are perceived as not worthy of special attention in investigative and judicial process and the legislative process by which the Misdemeanor Act is drafted and enacted.

**Lana Petö Kujundžić**

*Judge of the Youth Division of the District Court of Zagreb and the President of the Association of Youth and Family Judges and Magistrates and Child and Youth Care Professionals*

## **CHILDREN APPEARING AS VICTIMS (INJURED PARTIES) OR WITNESSES**

When a child (a person who was under the age of 18 at the time of the crime) needs to be questioned in the course of the criminal procedure, the following questions arise: where the interview should take place, how to conduct the interview with a child, who should conduct the child interview, who should be present during the interview and what procedures should be followed when conducting an interview. Child interview may be carried out outside the courtroom, in a specially equipped room, by a psychologist or other professional working with children as the only person present in the room during the interview. Child's testimony should be audio-visually recorded. Even though the Criminal Procedure Act and the Youth Court Act stipulate that all testimonies of child witnesses under the age of 14 – and of children as victims of crime, falling within jurisdiction of youth courts, under 16 years of age – need to be taped using audio and video recording devices, one should always take into account the fact that court may order that all questioning of juveniles – persons under the age of 18 years – be done in the presence of an expert and audio-visually recorded. The employee of social welfare centers, assigned to the juvenile offender or the victim, may observe the interview in a separate room; presence of the state attorney and the child's attorney is mandatory during the evidence gathering process. A child victim has a right to have a person who enjoys child's confidence present with him/her during deposition and the court is required to appoint a legal representative for the child if a criminal offense – a felony or a crime against sexual freedom and sexual morality – has been committed. It is highly important that the interview with a child is arranged as soon as possible, immediately after the traumatic event, in order for the video and audio taped interviews – the purpose of which is to gather evidence – to be presented at the trial.

**Nikica Hamer Vidmar**

*Psychologist, Head of the Department for Victim and Witness Support System Development and Coordination to the Department of Justice*

## **SUPPORTING CHILD VICTIMS AND WITNESSES IN CRIMINAL PROCEEDINGS**

This paper aims to provide an outline of experiences of the Victim/Witness Support Unit; particular emphasis is placed on providing support for child victims and witnesses. Victims and Witnesses Support System has been on a steady path of development and improvement since 2006 in the Republic of Croatia; seven Victim Support Units were set up in district courts in Zagreb, Zadar, Osijek, Sisak, Vukovar, Split and Rijeka. Their task is to provide practical information and emotional support to victims and witnesses during the investigation stage and the trial itself. Aside from regular staff members, the Victim/Witness Support Units employ volunteers, mostly law, psychology and social work students and students from related professions. They provide support services to victims and witnesses appearing not only in district courts, but also in municipal courts having jurisdiction over cases involving felony and the magistrates' courts dealing with domestic violence cases. Adding to the challenges faced by Victim/Witness Unit employees was the fact that experience has shown that such support needs to be made available for child witnesses and victims as well. As most of the courts in the Republic of Croatia do not procure the services of professionals who would be present whenever the child is interviewed or questioned and the child witness support program has not been developed or used in practice so



far, the Victim/Witness Unit employees have to provide support to children and their parents on a daily basis. The option of having a Victim/Witness Unit employee accompany a child into the courtroom and provide on-going support when he/she is testifying – in courtrooms that have no audio-video system – proved particularly useful. Between May 1, 2008 and September 30, 2011, Victim/Witness Support Units have provided assistance to 286 children and youth. Based on the experiences gained through working with child witnesses so far, we need to emphasize the need for further improvement of interdepartmental coordination and better collaborative relationships between all agencies dealing with child victims and charged with protecting children's rights. Moreover, we need to make sure that all courtrooms have proper technical equipment and set up additional training programs in order to ensure that the Youth Court Act – which, among other things, sets out in detail the guidelines on interviewing child witnesses and victims – is implemented properly in practice.

**Ines Bojić**  
*Zagreb Lawyer*

## **CHILD WITNESS (VICTIM) PROTECTION – A LAWYER'S PERSPECTIVE**

Ever since the new Criminal Procedure Act came into force on September 1, 2011, the legal framework relating to the protection of children participating in court proceedings as victims or witnesses, has undergone major changes when compared to the previous legislation. However, since this law has only been recently put into practice, we may hardly speak of the experiences in relation to the implementation of the new Act; as a result, this overview lays out proceedings commenced at the time when the earlier version of the Criminal Procedure Act was still in effect, under which the position of a victim/witness in the criminal proceedings was insufficiently regulated. When the protection of child victims and witnesses, who are particularly vulnerable parties to criminal and misdemeanor proceedings and subjects to police procedures, is concerned, the protection of their fundamental human rights should be considered in a broader context. Perceiving a victim or a witness as a person, while fully respecting his/her personality rights and applying the principle of proportionality – should provide the basis for a proper approach to be taken in all criminal and misdemeanor proceedings. This certainly includes the right to a high standard of respect for privacy and dignity, but also the right of a victim of crime who is at the same a witness for the prosecution – when a crime was committed that violated his/her rights – to have the case investigated by the relevant authorities within a reasonably short period of time and in a reasonably efficient manner in order to bring the perpetrator of the crime to justice. In the past few years, before the Criminal Procedure Act came into force – speaking from the perspective of a lawyer – the records show a higher number of cases in which children's rights were violated – either as victims or witnesses – in a number of ways; even some examples of drastic human rights violations have been reported. By this I mean primarily repeated questioning of children; asking private, intrusive and inappropriate questions about victims'/witnesses' private lives, which puts into question their characters and credibility; and even the most drastic examples where daily newspapers published every last detail of the victim's/witness's testimony the very next day.

# WHAT SIGNIFICANCE DOES THE EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS HOLD FOR CHILDREN

**Prof Dubravka Hrabar, D.Sc.**

*Chair of the Family Law Section, the Faculty of Law of the University of Zagreb*

## THE EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS – APPOINTMENT AND ROLE OF A SPECIAL CHILD REPRESENTATIVE

The European Convention on the Exercise of Children's Rights (1996) is the Council of Europe's convention that the Republic of Croatia has become a party to in 2000, undertaking binding obligations contained in the Convention. Terms of the Convention apply exclusively to judicial and administrative proceedings initiated to settle family law matters, but only those that the state defined as falling under the Family Law Act when it signed the Convention. The Convention focuses on the child and for this purpose sets new standards and requirements for procedural rights of children. Under the Convention, children have several fundamental rights: the right to receive information and the right to freely express his or her views in proceedings, the right to apply for the appointment of a special representative, the right to receive adequate information and to counsel and the right to be fully informed of the possible consequences of compliance with these views and the possible consequences of any decision. The Convention has enhanced the role of courts, vesting them with special power over proceedings, while the child's representative is given a special role, though defined in very general terms. There is a definite need for courts to appoint lawyers to represent children and for special training courses for such lawyers. Requirements set out in the Convention and special procedural rights of children are treated differently by the current positive laws (the Family Law Act and the Civil Procedure Act). The Family Law Act contains basic provisions; however, these require elaboration and clarification. The Civil Procedure Act requires radical legislative changes regarding the child's competency to stand trial, allowing the Convention to be implemented with greater flexibility, accommodating each child's needs in judicial (and administrative) proceedings. There is no doubt that there are ways to overcome legislative shortcomings, but the principle of legal certainty and legislative modernization plan call to prompt action.

**Prof Aleksandra Korać Graovac, D.Sc.**

*Professor of Law, the Family Law Section, the Faculty of Law of the University of Zagreb*

## EVERY CHILD'S RIGHT TO BE HEARD – THE UN COMMITTEE ON THE RIGHTS OF THE CHILD GENERAL COMMENT NO. 12 (2009)

The paper provides an outline of the General Comment No. 12 on the UN Convention on the Rights of the Child, adopted by the UN Committee on the Rights of the Child in 2009. A provision contained in the Article 12 of the Convention obliges the state to apply the provisions of this article to all judicial and administrative proceedings, but also to all matters concerning children. The Family Law Act of the Republic of Croatia incorporates general requirements of the Convention, but the way of their implementation is left to the discretion of relevant authorities, which makes sense, considering the time at which the General Comment was drafted.

The paper analyzes characteristics of this right: the fact that it is the right, not a duty of the child; that it applies to a child capable of forming his/her own views; that a child has the right to express those views freely in all matters affecting him or her, in any judicial or administrative proceedings; that the views of the child should be given due weight according to the age, maturity and capability of the child; and that a child has the right to give evidence either directly or through a legal representative or an appropriate body and in a manner that complies with state procedural rules.

The author also explains the elements of that right with respect to every stage of the proceedings, what the proceedings should look like and how the right of the child to testify in court is being implemented into local practice, or why this is not the case. The paper concludes with best practice proposals to be considered until adequate legislation is adopted.

**Marina Parać Garma**

*Judge of the Zagreb Municipal Civil Court*

## **STATUS OF THE CHILD AND THE RIGHT TO EXPRESS HIS/HER VIEWS IN COURT PROCEEDINGS DETERMINING CHILDREN'S RIGHTS**

The European Convention on the Exercise of Children's Rights provided judges with new legal tools for the protection of safety and wellbeing of children and imposed new duties and obligations upon them in decision-making process. Particularly important are the new features added to the legislation that grant the judges the authority to appoint a legal representative of the child and to act of their own accord in case the child's well-being is seriously threatened. Even though the Convention has been in force since August 1, 2010, children are still unable to fully exercise all of these rights as the courts have not implemented all court performance measures under the Article 6 of the Convention and rarely utilize their right to act of their own accord, as provided for in the Article 8 of the Convention. The courts still do not appoint lawyers to act as children's special representatives in the proceedings. The fundamental problem related to the position of the child in judicial and extrajudicial proceedings where decisions are made which affect children's rights and interests is the fact that children in most court proceedings are not granted adequate procedural status. Then there is also the issue of the need to revise legal provisions that allow for a number of decisions to be reached in extrajudicial proceedings, instituted to determine basic human rights for children; by their nature, these are actually judicial proceedings.

A duty of the court to appoint a legal representative and the role of such a representative raise a number of procedural and practical issues. We must specify which personal and professional qualities are required of legal representatives and determine criteria important in the selection of such representatives, his/her procedural powers, responsibilities of to the child he/she represents, his/her relations to child's parents, representation fees etc.

Even before children had the right to express their views, so the dilemma of how to enable children to exercise this right remains – it is related to the issues of how to spare the child stress and set up child-friendly spaces, judicial training programs in child interviewing techniques, engaging psychologists in court work etc. We need to enact implementing legislation that would allow the provisions of the Convention to be implemented more effectively.

The only way we can ensure that every child has every right granted by the Convention is to join our efforts and coordinate our actions.

**Višnja Matić**

*Psychologist Supervisor at SOS Children's Village Ladimirevci*

## **THE CHILD'S RIGHT TO PARTICIPATION – ROLES AND RESPONSIBILITIES OF PROFESSIONALS**

Every child's right to be heard and to participate in legal proceedings that affect him/her has a strong footing in the Convention on the Rights of the Child (1989). The Convention acknowledges children's right to be heard and taken seriously, in accordance with their age and stage of development; they have the right to be provided with age-appropriate information to enable them to understand the legal proceedings that affect them as well as their rights in the proceedings; they have the right to receive feedback on the weight given to their views and the right to adult guidance and direction, leading to a dialogue on an equal footing and the acceptance of responsibility. On the other hand, recent research findings in developmental psychology have confirmed children's participatory competences. They suggest that children are social creatures from birth and that their responses are always meaningful. Children are capable of learning to assume personal responsibility, and are most confident and show most developmental progress in subject-to-subject relationships.

Extensive experience gained through a long-term employment at the Social Welfare Center, handling family law cases and dealing with all matters related to child and youth protection, and the experience of working with children in alternative (out-of-home) care in SOS Children's Village Ladimirevci, as a result of changes that occurred in psychosocial paradigm shift in general, has led me not only to take children seriously when talking to or about them, but also to continuously advocate for their participation right, stressing the fact that it is the responsibility of adults to ensure that children can exercise this right.

**Domagoj Štimac, MD**

*Psychiatric Specialist, Subspecialized in Child and Adolescent Psychiatry at the Child Protection Center of Zagreb*

**Nikolina Škrlec**

*Social Worker at the Child Protection Center of Zagreb*

## **INTERVIEW WITH A CHILD: ENSURING THAT EACH CHILD HAS THE OPPORTUNITY TO EXERCISE HIS/HER RIGHT TO PARTICIPATION WHILE AT THE SAME TIME PROTECTING THE WELLBEING OF THE CHILD**

Experts are unsure on when the child's participation is in accordance with and when it is contrary to the best interests of the child.

Clinical practice has shown how big a challenge is to uphold and promote children's rights by allowing them to participate in different types of legal proceedings in which the child's future is being determined on one hand and, at the same time, to work to ensure that the safety and well-being of children are upheld and protected on the other. In such cases, one should take into consideration the fact that we are not talking about children as a homogenous group, but of different stages of development that children are currently going through. Children differ not only by developmental age, but also by their personal experiences, which may play a crucial role in their ability to participate in certain proceedings. In addition, children differ from each other in their abilities to cope with stressful situations and the quality of support provided by the community at a given moment.

Parents' divorce no doubt represents one of the most stressful life events for the entire family and especially for its more vulnerable members, such as the child. It is therefore extremely important that professionals who interview children are adequately trained, highly sensitized and able to identify any factor relevant to such processes, which would enable them to uphold the child's rights while at the same time shielding the child from stressful and frustrating situations brought on by the persons who are closest to the child and to whom the child is strongly emotionally attached.

***Nada Petković***

*Psychologist at the Social Welfare Center Dugo Selo*

## **IMPLEMENTING THE EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS – SOCIAL WELFARE CENTERS' PERSPECTIVE**

The paper provides an outline of experiences of social care professionals working in a social welfare center, related to the implementation of the provisions of Article 12 into practice. The Convention on the Rights of the Child obliges member states to ensure that all children, capable of forming their own views, have an opportunity to exercise their right to freely express their views on matters that affect them and that those views be heard and given due weight in accordance with the age and maturity of the child. For this purpose the child shall be provided the opportunity to be heard 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 national procedural rules. This right imposes a direct and clear legal obligation on member states to recognize this right and to ensure the free exercise of such right by listening to the views of children and giving them due weight. There are a few steps that need to be followed to accomplish this goal: evaluate children's competency to testify, prepare the child witness to testify in court, children's hearing, provide information about the weight given to the views of the child (feedback), inform the child of the possibility of appeal, seeking legal remedies and of potential compensation.

The European Convention on the Exercise of Children's Rights, which has been in force in the Republic of Croatia since August 1, 2010, has attempted, at regional level, to intensify the implementation of these rights, focusing on family law related matters. One of the aims of this paper is to draw attention to potential difficulties and risks related to the implementation of the Convention, but also to propose more realistic goals in the process of implementing the Convention or at least a subject for an expert panel discussion.

***Beti Korać-Zuppa***

*Zagreb Lawyer*

## **THE ATTORNEY'S ROLE IN CHILDREN'S WELLBEING AND RIGHTS PROTECTION IN PROCEEDINGS FALLING UNDER THE EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS**

Under the European Convention on the Exercise of Children's Rights states are legally bound to adopt legislation to promote children's rights and enact laws to ensure the protection of children's rights in all judicial proceedings affecting them. For this purpose, one is obliged to do the following: provide children with relevant information and age appropriate explanation enabling them to respond ade-

quately; allow them to express their views in legal proceedings where decisions are made that affect their rights; and ensure that each and every child has the right to an independent representative to accompany, assist, and represent him/her in cases when parents are unable to represent their children's interests, and, if the case requires so, appoint a special representative or even an attorney for a child.

Children, as a weaker party in child protective proceedings initiated before the court, may suffer serious psychological and emotional harm and is therefore in need of greater protection than the average functionally and procedurally competent adult person.

In compliance with the Convention requirements for persons concerned with children's rights, an attorney assigned to a child protection case should not only complete general legal education, but also undergo special training on the family law and children's rights; be continuously practicing in the area of family law; be able to, based on his/her experience-based knowledge, competently collaborate with other professionals service providers involved in such proceedings (psychiatrists, psychologists, pedagogues etc.); be competent and, at the same time, able to guarantee his/her independent professional judgment, exercising his/her professional duties freely, impartially and independently of the family law judge.

In divorce and other proceedings – where children are not a party to the proceedings and the court decides on their rights – these requirements need to be met: the eligibility for appointment of an attorney needs to be clearly defined in special cases when children's rights are seriously threatened; the authority to appoint a legal representative for a child should be vested in a court – a judge will decide the matter according to his/her own private judgment and of his/her own accord; the Croatian Bar Association should be required to create a list of lawyers specializing in representing clients in family law cases, pursuant to the requirements set out in the Convention.

## APPENDIX

### **PROPOSALS TO IMPROVE PROTECTION OF CHILD VICTIMS/WITNESSES RESULTING FROM THE EXPERT PANEL MEETING ENTITLED “Protecting Child Witnesses in Police Procedures and Criminal and Misdemeanor Proceedings”, held on December 14, 2011 in Zagreb**

1. It is essential to enact effective implementing legislation outlining a strategy flowchart, setting out clearly defined steps or activities to be undertaken by various authorized institutions and their personnel, aimed at protecting child victims/witnesses and facilitating the exercise of their rights.
2. It is necessary to establish a body (at national level) responsible for coordinating activities designed to provide support to victims and witnesses of crime, setting up training courses for professionals and have the authority to assign adequately trained personnel to provide victim support and services and supervise their work activities.
3. It is necessary to set up a network of child support professionals (advisors) who would provide counseling, guidance and on-going support to child victims and witnesses during the various phases of criminal or misdemeanor proceedings, and clearly define terms of their appointment, a scope of their duties and authority, and the terms of their collaboration with other relevant services.
4. Each and every child victim/witness and their parents should be provided information about their rights in a timely, understandable and acceptable manner (prepare leaflets, brochures and a directory of institutions offering support and assistance).
5. Alternative methods of taking child's testimony (designed to alleviate some of the testifying child's trauma) must be made available to all children under the age of 18.
6. It is necessary to ensure that all criminal and misdemeanor courts have the appropriate level of technology and staff size and competency allowing for better protection of child witnesses (telephone or video conferences, highly qualified staff, specially designed witnesses waiting rooms etc).
7. It is important to ensure speedy conduct of all criminal and misdemeanor proceedings, involving children as victims or witnesses; deposition of a child must be taken as quickly as possible (immediately after the criminal or misdemeanor offense has been committed).
8. In order to prevent secondary victimization of children, the child's testimony should take place in appropriate, child-friendly environment and the transcript or recording be made accessible to all relevant parties to proceedings so as to avoid repeat examinations of a child.
9. It is necessary to set up centers in regional capitals, providing forensic interviews to child victims and witnesses; following the example of the Child Protection Center of Zagreb, the interviews are conducted in a child-friendly environment by specially trained staff, utilizing equipment of adequate technical quality.
10. Colleges and universities should provide specialized training courses for future professionals working with children.

11. It is necessary for all professionals who work in any position involving children appearing as victims or witnesses in judicial proceedings to receive specialized and continuous training.
12. It is necessary to publish a listing of specially trained attorneys representing children, but also the listing of victim advisors.



# THE OMBUDSPERSON FOR CHILDREN'S RECOMMENDATION



THE REPUBLIC OF CROATIA  
THE OMBUDSPERSON FOR CHILDREN  
Our ref. DPR-700-01/12-003-2  
June 12th, 2012  
Zagreb

Mr Orsat Miljenić, M.Sc.  
The Minister of Justice  
Dežmanova 10  
Zagreb, 10000

Ms Milanka Opačić  
Deputy Prime Minister of the Republic of Croatia  
The Minister of Social Policy and Youth  
Trg hrvatskih velikana 6  
Zagreb 10000

**Subject: Recommendation for the Implementation of the European Convention on the Exercise of Children's Rights**

Dear Sir or Madame

Prompted by the need for a more effective protection of children's rights in legal proceedings falling under the European Convention on the Exercise of Children's Rights – which has been in force in the Republic of Croatia since August 1, 2010 – in February 2012 we organized, in collaboration with the Croatian Bar Association, four expert panel discussions on the subject "**What Significance Does the European Convention on the Exercise of Children's Rights Hold for Children?**", held in Osijek, Zagreb, Rijeka and Split respectively. Panel discussions attracted a total of 450 professionals involved in decision-making process – mostly lawyers, professionals working in social welfare centers, judges and other professionals with a stake or interest in the subject of the meeting – in proceedings where procedural rights guaranteed by the Convention, apply.

Among those who accepted the invitation for a panel discussion taking place in Zagreb, were representatives of the Ministry of Social Policy and Youth and the Ministry of Justice. We hereby express our gratitude for their participation.

All four expert panel discussions dealt with issues relating to the implementation of the European Convention on the Exercise of Children's Rights, with specific focus on the child's right to participate in legal proceedings and the right to have a special representative assigned to his/her case. Introductory

presentations were delivered by renowned experts in this particular area of children's rights' protection. Panel discussions lead to certain conclusions which are contained in the recommendation given below, issued under the Article 10 of the Ombudsman for Children Act (Official Gazette No. 96/03):

First of all, even though the Convention, pursuant to the Article 140 of the Constitution of the Republic of Croatia, could and should be directly implementable, due to emerging dilemmas, a conflict of norms intergrated in present legislation and legal voids, we hereby make the following recommendation to *the Ministry of Justice* for the enactment of a **separate law** establishing procedural rights which would allow children the opportunity to exercise their right to participation, pursuant to the provisions of the Convention. In addition, children's procedural rights as well as the role of the court and child's legal representative, need to be regulated by additional pieces of legislation for the purpose of ensuring that all children have complete and effective protection in any proceedings before judicial or administrative bodies. Future amendments to laws pertaining to the child's right to participation must clearly define responsibilities of parents in proceedings in which children have the opportunity to share their views as well as after the conclusion of the proceedings, in order to ensure **protection of children from inappropriate behavior and negative reactions from parents**.

It is exceptionally important to clearly define requirements that must be met by a person to be eligible to be appointed a special representative for a child. In addition to be highly motivated for the job, the child's legal representative has to demonstrated appropriate sensitivity in communication with children and necessary knowledge of law and child psychology. We strongly recommend that respective ministries urge for drawing up of a **list of experts** (with educational background in social work, social pedagogy, psychology, pedagogy and law) who would meet the requirements to be complied with by a child' special representative acting for a child in judicial and administrative proceedings. Such professionals should be licenced in order to provide this type of services, and their professional knowledge and competence should be periodically tested through assements required for a licence or certificate renewal.

We would like to draw the attention of the *Ministry of Justice* to the need to set up **family courts**, which should, similar to youth criminal courts, regularly employ the services of professionals, such as psychologists, social pedagogues and social workers, assisting the judges in carrying out the business of the court. We should provide **specialized training programs for judges** dealing with personal status or capacity matters and family law cases, aimed at producing highly qualified judges who would welcome the opportunity to collaborate with other professionals and be sensitivized to this type of proceedings. **Interview rooms** at courthouse or social welfare centers, where child interviews take place, should be child-friendly (informal and cosy).

As regards the improvements to current legislation, aimed at strenghtening the child's right to participate in proceedings affecting him/her, we hereby make a recommendation to the *Ministry of Social Policy and Youth* to **extend** the *Rules on Basic Required Elements of the Assesment in a Divorce Mediation Process (Official Gazette, No. 32/05)* by adding an element which would provide insight into whether and how the child has exercised his/her right to be told that his/her parents are getting a divorce in an appropriate manner, and to express his/her own views. This way, clear and precise information on whether and how the child was allowed to participate in the proceedings will also be provided to the court.

We must emphasize the fact that in administrative and judicial proceedings under the Convention on the Exercise of Children's Rights, children's participation sets strong foundation for a more effective protection of children's rights and decision-making about the best interest of the child, provided that it is carried out in compliance with the established standards for children's participation and that

children are interviewed by highly qualified and well-prepared professionals. Therefore, we would like to make a recommendation to the Ministry of Justice and the Ministry of Social Policy and Youth to provide **training for professionals** working with children and on behalf of children within the justice and social services system, and thus ensure that the treatment of children and the way they exercise their right to participate in proceedings is compliant with the *General Comment No. 12 (2009): The right of the child to be heard drafted by the UN Committee on the Rights of the Child*.

Please inform us of your position and opinion and actions you are planning to take in accordance with this Recommendation before the deadline for filing the response expires, Pursuant to Sections 1 and 2 of the Article 11 of the Ombudsman for Children Act (Official Gazette, No. 96/03).

Yours sincerely

The Ombudsperson for Children  
Mila Jelavić, LL.B.



