



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN BOSNIA AND HERZEGOVINA

National Report for AIMJF's Comparative and Collaborative Research.

La participación de niños como víctimas o testigos en causas penales en Bosnia y Herzegovina

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Bosnie et Herzégovine

Rapport national pour la recherche comparative et collaborative de l'AIMJF

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Bosnia and Herzegovina.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Bosnia y Herzegovina

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Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procédurales de la participation des enfants dans le système de justice en Bosnie et Herzégovine.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. Right to be heard

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?



Yes, it is assumed that children are capable witnesses.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

No. Any child can testify if his/her linguistic and cognitive capacities (perception, attention, forming a judgment and memorizing) are developed to the extent that the child can tell what happened, what he/she has seen and heard, that the child differentiates between the truth and the lies, and if the child accepts the obligation to tell the truth.

1.3. Are children allowed to refuse to make a statement? If so, in which cases?

Yes, children are allowed to refuse making a statement. Pursuant to the general criminal regulations, a child may refuse to give a statement if the child's parent or guardian has been suspected/accused. If the child was not warned of such possibility, or if the child did not strictly waive that right, no judicial decision can be based on such a statement. If the child, given his/her age and mental development, is not able to understand the significance of the right to refuse to make a statement, any possibility of giving a statement is excluded. Before delivering its decision, the court can ask the court's psychologist within the witness support section or a forensic expert evaluating, about the child's status and all the facts relevant to the delivery of a final decision.

2. Broad perspective of the legal framework and procedure

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

Yes, there is:



- A separate chapter within the Law on Protection and Treatment of Children and Minors in Criminal Proceedings (hereinafter: LPTCM), defines the rules and the procedures of treatment of child victims/witnesses of crimes;
- General criminal regulations (the Criminal Code and the Criminal Procedure Code) apply directly or by analogy when certain legal situation has not been included in the special rules of the LPTCM, and when it is not in contravention of the LPTCM;
- The Law on the Protection of Witnesses under Threat and Vulnerable Witnesses provides for the rules and the procedures for granting protective measures to victims/witnesses before, during and after completion of criminal proceedings;
- The Law on the Witness Protection Program in BiH provides for a group of individual protective measures;
- The Law on Aliens, based on which the Book of Rules on the Protection of Alien Victims of Human Trafficking and the Book of Rules for the Protection of Victims and Witnesses of Human Trafficking, Nationals of Bosnia and Herzegovina (BiH);
- The 1980 Convention on Civil and Legal Aspects of International Child Abduction applies with regard to the issue of children abduction;
- Law on Free Legal Assistance.

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?



The Prosecutor initiates and leads an investigation into a suspect, and under the prosecutor's supervision, the police collect evidence related to a criminal offense, as well as the information on mental and physical capacities, social status and other circumstances pertaining to a victim/witness. For that purpose, the police collect information from parents/guardians (except in cases of existing conflicts of interests), the guardianship authority, school, health institution, persons who know the child well and other subjects that may provide certain information about the child victim/witness. Evidence based on which the court will decide to grant protective measures, or redress claims or damage compensation is also being collected. At the investigation stage, the prosecutor supervises and manages the protection of child victim/witness in co-ordination with other bodies (police, guardianship authority, non-governmental organizations, health sector). Based on the collected data, and with the assistance of a psychologist or another expert person, the prosecutor, mindful of the best interests and needs of the child, carefully plans the child's examination in order to ensure obtaining of a good quality statement, which is to be presented to the court, and thereby to avoid any possibility of the child's repeated examination at the main trial.

2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

- After obtaining information, or after evaluating the child as a victim of a crime, health workers, teachers, parents, guardians and other persons authorized or obligated to provide assistance, protection, supervision, education and upbringing of children, must notify the police or the prosecutor about their suspicion. The state bodies, institutions and citizens are under obligation to report to the social welfare center and the guardianship authority any cases of neglect or abuse of children.
- When there are grounds for a suspicion of a crime commission, a prosecutor issues an order to conduct an investigation, within which all investigative measures are being undertaken, including questioning of a suspect, examination of a crime victim and witnesses; conducts reconstruction of the incident; undertakes special measures to ensure



security of the victim/witness; collects information; and conducts necessary forensic analyses.

- Following the completion of the investigation, and after evaluating that there is sufficient evidence from which a grounded suspicion ensues that the suspect committed the offense, the prosecutor files an indictment and submits it to the court for confirmation.
- After confirmation of the indictment, the accused and his/her defense counsel can file preliminary motions.
- Once the preliminary motions have been dismissed, the accused enters a plea in the presence of his defense counsel. If the accused enters a guilty plea and the court accepts his admission of guilt, the accused receives a sanction, or a sanction is being imposed based on a guilty plea agreement entered between the prosecutor and the accused and his counsel. The injured party (victim) is thereupon notified of the outcome of this procedure.
- If the accused enters a not guilty plea, the court schedules the main trial at which the prosecutor, the accused and his counsel summon their respective witnesses and present their respective evidence.
- Following completion of the evidentiary proceedings, and presentation of the closing arguments by the prosecutor, the victim of crime, defense counsel and the accused, the court delivers a judgment, from which an appeal may be filed. The victim of crime is entitled to file an appeal only with regard to the decision on the costs of criminal proceedings and a redress claim.

2.4. In which moment(s) can a child be heard in this procedure?

A child be heard at the investigation stage and during the main trial.



2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

No. The child can report a criminal offense, and a prosecutor *ex officio* initiates and conducts the criminal procedure.

3. Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

https://www.sudbih.gov.ba/data/Dokumenti/Galerije/Galerija_Brosura/Sta_je_dobro_znati_ako_sam_svjedok.pdf

(Brochure titled: What is Good to Know if I am a Witness)

https://www.sudbih.gov.ba/data/Dokumenti/Galerije/Galerija_Brosura/Vodic_za_djecu,_mlade_i_roditelje_u_krivicnom_postupku.pdf

(Brochure titled: Guide to Criminal Proceedings for Children, Young People and Parents)

My Guide through Criminal Proceedings

Available at: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/123857>

This publication was also printed in the Braille alphabet in a larger font in order to make blind and partially seeing children and youth in BiH more familiar with this topic.

What is a Witness? Guide for Children Witnesses in Criminal Proceedings in BiH, age 7-11 years

Available at: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/123858>

What I Must Know When I am a Witness? Guide for Children Witnesses in Criminal Proceedings in BiH, age 12-18 years

Available at: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/40968>



My Child is a Witness. Guide for Parents/Guardians for Children Witnesses in Criminal Proceedings in BiH.

Available at: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/123859>

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

Almost all forms of information are available, including delivery and presentation of brochures in schools. Nevertheless, the most important are the support and the information that a child receives orally, in the manner understandable to him/her at the police station/prosecutor's office and the court from a psychologist, pedagogist, special teacher or other expert persons making the first contact with the witness upon his/her arrival, and before child the is interviewed.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?

Yes, there is. The prosecutor immediately includes professional persons in the investigation, primarily a psychologist with either the prosecutor's office, a social welfare center, or mental health centers to evaluate the child's current state and his/her capacity to co-operate and give a statement at that moment. The degree of mental trauma resulting



from the crime commission is being evaluated, followed up by an assessment of the child's mental status regarding the capacity to testify and further participate in criminal proceedings. Also assessed are the child's linguistic and communication capacities, as well as educational, family, cultural and social circumstances. An atmosphere of trust is being created for the child during the interview preparations, in order to free the child of fear, to provide explanations and responses in a manner the child can understand. The child is instructed that he/she can use his/her own language, can give responses and speak as he/she wants, and is gradually lead into giving responses relevant to experts for the purpose of taking further actions and adequate measures.

If the child was hospitalized or placed in a safe house/shelter due to the survived physical pain and mental suffering, which require additional engagement of health workers, social welfare centers, non-governmental organizations providing shelter and protection within the scope of their programs, the child's statement will be taken after his/her condition has stabilized, and his/her right to protection exercised, and after a psychologist's assessment of the child's capacity to testify was conducted.

The psychologist or some other expert person will submit to the prosecutor the related report so that the prosecutor can plan the hearing of the child victim/witness, and the prosecutor will further submit it to the court.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

Yes, there is. The psychological preparation of a child to testify also implies an adequate contact with parents/legal guardian (except in cases of conflict of interest).

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

Yes. Visits are organized in the presence of a psychologist, or some other expert who gives the necessary information to the child. During the preparations of the child, the



room from which he/she will testify, the courtroom and the places where the other participants of the proceedings will be sitting, will be showed to the child.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

Yes. The child receives psychological, social, medical and legal support before, during and after completion of the proceedings. Pursuant to the general criminal regulations, the court assigns a legal representative to the child during the hearing if the child's interests cannot be protected in any other manner. With the consent and power of attorney provided by a social welfare center, non-governmental organizations can also provide legal assistance and support to the child.

4. Protection and Support

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

Yes, there is. Based on the facts collected during the investigation, the prosecutor assesses if there is an obvious risk for personal safety of the child victim/witness or his family's safety due to the participation in the proceedings, and whether the risk resulted from threats, intimidation or similar acts. The prosecutor also evaluates the degree of risk after the child victim/witness gave the statement (witness under threat).

Based on the findings and opinion of forensic experts in psychology and neuropsychiatry, it will be assessed whether the child victim/witness is seriously physically or mentally traumatized with the circumstances in which the criminal offense was committed, or whether the child suffers from serious mental disturbances that are making him/her highly sensitive (vulnerable witness). The child victim/witness is automatically considered a



vulnerable witness, and the referenced assessment will be made with the purpose of assigning other adequate protective measures to the child.

If the facts so confirm, the prosecutor files with the court a request for granting protective measures, which are to be implemented by the police, the prosecutor's office or the court.

4.2. In case of identification of risks, what kind of protective measures are available in your country?

- Testifying from another room with the use of technical devices for image and sound transfer;
- Limited number of hearings (no more than twice, during the investigation and at the main trial);
- Testifying with the assistance and support of a psychologist, pedagogist or another expert;
- If it is in the best interest of a victim/witness, the court directly poses questions instead of the parties and defense counsel, who formulate their respective questions in writing;
- Departure from the legally prescribed order of presentation of evidence for the purpose of examination of a witness as soon as possible;
- Exemption from direct presentation of evidence – reproduction of audio or audio-video recording, or reading out at the main trial the statement given by a victim/witness during the investigation;
- Removal of the accused from the courtroom if there is a justified fear that a victim/witness will not testify completely and precisely out of fear;
- Restriction of the right of the accused and his defense counsel to review the case files and documents after an indictment was filed, if a disclosure of all or certain information would lead to the disclosure of identity of the victim/witness and his/her jeopardizing. The data must be disclosed no later than at the time when the witness gives evidence at the main trial.
- When the child victim/witness is granted a protected witness status, he/she will not appear at the main trial (complete anonymity); but rather, at a separate hearing before the trial

panel, he/she will give a statement under a pseudonym by which he/she will be addressed throughout the entire criminal proceedings, and which will be indicated in the records and court's decisions. Thereafter, the record of the statement will be read out at the main trial, and responses to additional questions and clarifications requested by the prosecutor, the accused and defense counsel, the victim/witness provides again at a separate hearing without appearing at the main trial. The data related to the protective measures constitute an official secret, they cannot be requested, or given for the purpose of any other proceedings, or before any other court, tribunal or investigative commission.

- In order to ensure the witness's anonymity, the court can decide to examine the victim/witness with the use of technical devices, image/voice distortion, as well as decide to keep confidential the personal details of the victim/witness for a certain period of time, but no longer than 30 years after the finality of the decision.
- Based on the Law on the Witness Protection Program in BiH, the Witness Support Section of the State Investigation and Protection Agency takes measures for the protection of life, health, freedom, physical integrity or property of persons included in the program.

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

All the above-mentioned support measures are available. The court can order one or several measures depending on the circumstances related to the victim/witness, and the circumstances in which the crime was committed.

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

A child and other members of the family affected by intrafamilial violence will be provided social, health and material care and free legal assistance. Victims of violence



will be accommodated in a safe house, other family or institution; the perpetrator of violence will receive the measure of removal from an apartment, house or other space; restricted approach to the victim; ban on intimidation and tailing; temporary deprivation of liberty and detention.

Victims of human trafficking will be ensured adequate and safe accommodation, medical protection, psychological support, legal assistance in dealing with their status-related issues, while a child, who has been approved temporary residence as a victim of human trafficking, will be also ensured access to education.

In child abduction cases, the BiH Ministry of Justice is the relevant body that undertakes adequate measures as an executive body for communication with foreign ministries of justice pursuant to the Convention on Civil and Legal Aspects of International Child Abductions.

5. Environment

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

A child is interviewed in a separate, adjusted room at the police station or the prosecutor's office, in the child's apartment, social welfare center, and generally, in any space which has a calming effect on the child, which gives the child a feeling of security, and if there are technical capacities, the interview can be made with the use of technical devices for image and sound transfer.

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)

There are no separate buildings, but rather there are separate interview rooms, taking special caution measures in organizing the arrival and departure of witnesses and their parents/guardians where there is no separate entrance for children.

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?



In January 2021, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina adopted the Standards for Equipping and Use of Premises for Child Interviews in accordance with the Law on the Protection and Treatment of Children and Minors in Criminal Proceedings.

5.4. Is there a specific waiting area for the child?

Witness support sections with separate rooms/waiting rooms exist at prosecutor's offices and courts (see 5.3.). Where there are no such sections, adequate precaution measures are being taken to avoid unwanted contacts of the child victim/witness with other witnesses, parties and the audience.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

Yes, there are separate waiting rooms, interview rooms, the use of video-links, and the use of image/voice distortion.

5.6. In case identification of the offender is needed, how is this conducted, and where?
A child identifies the offender by the use of special glass-windows, through which the offender cannot see the witness at all; or after the child has described the offender in



his/her own manner, the child identifies the offender from a photograph inserted among photographs of persons unknown to the child.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

If there are reasons for which a child does not want to leave the city, or his/her arrival is impossible, or is made significantly harder for important reasons, the child can be interviewed at his/her home, social welfare center, court and at any other place that gives the child security and satisfies technical requirements.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

Yes, such possibility also exists. An interview is conducted via a video-link if a child is present in a separate room, while the interviewer, that is, other participants in the proceedings are present outside that room, or in the courtroom. A video conference implies dislocation of the witness, even if the child is present in another state.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

A child must not appear in court if he/she was during the investigation interviewed before a preliminary proceedings judge, and if the defense was given a possibility to cross-examine the witness, while a repeated examination would not contribute to the quality of the given evidence. In such situations, the witness's evidence can be reproduced or the interview record can be read out at the main trial. The same procedure applies if there is a possibility that the child will not be available during the trial, or cannot be located, or the child's appearance before the court is impossible or is significantly made harder for



important reasons, or if the child does not want to give evidence at the main trial without legal reasons.

If a second instance court finds on appeal that the evidence already presented in the first instance proceedings needs to be presented again, the evidence of the interviewed child will be accepted as evidence, and it can be reproduced, or its record read out if the child was cross-examined by the accused's defense counsel, or if the child was not examined by defense counsel although he was given a possibility to do so.

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

If a child is not able to exercise his/her rights at the interview time and if his/her interests cannot be protected in any other manner, the child is entitled to free legal assistance of a specialized representative during the first interview, at the investigation stage and before the court.

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

Specialized representatives communicate with a child at the level of his/her understanding, take actions in the child's best interests, represent the child's views and opinions, and provide all necessary information and explanations, even independently from his/her parents.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?



A child is accompanied by a person appointed as the child's guardian. Pursuant to the Family Law, such person is under obligation to take care of the child's personality, particularly the child's health, education, upbringing and making the child capable of living independently, to manage the child's property, take care about the child's rights, interests, to take all necessary actions, assisted by the guardian authority, to obtain finances (income from the child's property, provision of financial assets from persons whose duty is to support the child, finances based on social protection, etc.) necessary for support and implementation of measures in the child's best interest. Considering the circumstances pertaining to each case individually, in appointing a guardian, the guardian authority determines the scope of the guardian's duties and rights (to compensation and justified expenses). If a guardian is appointed by the court, the guardian authority takes its activities related to the guardian's duties and rights identically as if it has itself appointed the guardian at issue.

6.3. What is the role of parents/legal representative?

During proceedings, a child's parents/legal representative provide assistance and support to the child by participating in the trial proceedings. If the child insists, the court will allow the parent to remain in the child's close physical vicinity, or with the child during his/her testimony, but without any influence on the child while he/she testifies.

6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

Parents/legal representative will be excluded for all the above reasons mentioned in the question above.

6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

On a prosecutor's proposal, and independently from the appointed legal representative, the court can issue a decision appointing an *ad litem* guardian who will provide support to the child, facilitate the child's active participation, represent the child's views and assist



in definition of the child's best interest until the completion of the criminal proceedings. The court appoints a special guardian at a proposal of the guardian authority or the child's proposal.

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child cannot be identified?)

In order to protect a child's interests, at any time from the opening of a session to the main trial completion, the court can *ex officio* or upon a proposal by the parties and defense counsel for the accused, but always after their examination, exclude the public from the entire or a part of the main trial on legally prescribed grounds. Protection of the personal and intimate life of victims/witnesses and minors is also one of the reasons for the exclusion of public. The following activities are also forbidden for the same reasons: disclosure of the course of the criminal proceedings, publication of decisions issued during the proceedings, audio/video recordings for the purpose of public disclosures. A final decision can be made public, but without indication of any details that can disclose the child's identity.

6.5. Is the child allowed to plea for cautionary measures?

Only the prosecutor, the accused and the accused's defense counsel can give their respective comments on the precaution measures.

6.6. Does the child have the right to appeal any decision?

A judgment can be appealed in relation to its part concerning the costs of criminal proceedings and a redress claim.

7. Interviewing structure and procedure



7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

A child victim/witness can be heard no more than twice, that is, once at the investigation stage and once during the main trial. During the investigation, an interview is conducted by the prosecutor (or authorized police official), and at the trial, a judge or the panel presiding, who can decide to pose direct questions to the child victim/witness instead of the prosecutor, the accused and defense counsel, who have formulated their questions in writing.

7.2. Is it mandatory that this professional has specific training for child interviews?

Yes, working with children requires specific training, which is why a specialized police officer, prosecutor and judge conduct interviews.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

Manual for the Treatment of Child Victims and Witnesses of Criminal Offenses

Available at: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/91013>

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

During the investigation and the main trial stages, a child is always present in a separate room with a psychologist, or pedagogist, or social worker, or other expert person, or an interpreter (if the child does not know the language in which the proceedings are conducted, or if the child is deaf-mute). Prosecutors, the child's parents/legal representative and attorney stay outside the referenced room during the investigation



stage. During the main trial stage, from which the public is excluded, in addition to the above mentioned persons, also present in the courtroom are the accused and his/her defense counsel, as well as the persons allowed by the court to attend the main trial: official persons, scientific and public workers, and at the accused's request, his/her spouse or extramarital partner and close relatives, who are cautioned, under a threat of criminal liability, of their duty to keep as a secret everything they have learned during the hearing.

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

A judge or a panel presiding is addressing a child victim/witness. The connection between the child present in a separate room and the other participants in the proceedings sitting in the courtroom is established via a video-link. The child sees only the judge/panel presiding, but not the other participants in the proceedings sitting in the courtroom, who see the child at the screen. Cross-examination is allowed only through the judge/panel presiding, who is reading out written questions of the prosecutor, the accused and his defense counsel.

7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

A judge/panel presiding controls the manner of hearing and ensures that the hearing be conducted without intimidation and confusing of a victim/witness; the judge/panel presiding will forbid a question and an answer to the already posed question if that question, in his/her opinion, is unallowed or irrelevant to the case.

If the judge/panel presiding concludes that the circumstances that the parties and the accused's defense counsel want to prove are of no relevance to the case, or that the offered evidence is unnecessary, or that during the hearing the victim/witness was not examined



about the circumstances in relation to which the victim/witness's hearing is proposed again, presentation of such evidence will be rejected.

If necessary, a psychologist, pedagogist or some other expert person, who is present with a child and provides him/her support, can adjust questions to the child's age and communication capacities in order that the child understand the question and respond to it.

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

Yes. Interviews are audio and video recorded. The purpose of audio/video recording is to check the manner in which a child was interviewed. If during an investigation stage the parties to the proceedings and a suspect's defense counsel were provided a possibility to cross-examine the child, the court can decide not to summon the child to the main trial if that would not contribute to the quality of the child's statement, but rather to accept the audio/video recording as an evidence. Under the same conditions, an audio-video can be used as evidence in appellate proceedings before the Appellate Panel, but not before other courts.

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?

A child's voice is heard from a separate room, but if the court decides that the child's anonymity needs to be preserved, the court can decide to use the child's image and voice distortion.

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?



In order to avoid such possibility, an audio/video recording is made in several copies, or a written record made simultaneously with the audio-video recording or a subsequently made transcript of the recorded hearing will be read out.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

The child is entitled to read the record, or to request that the record be read out to him/her. The child will be particularly notified of the existence of that right. The child is also entitled to correct the given statement.

Upon a request of the heard child, the recording can be promptly reproduced, and corrections or explanations will be recorded. Upon a justified request of the child's legal representative, the judge/panel presiding can allow getting a copy of written statement.

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

Child victims/witnesses in criminal proceedings automatically have the status of vulnerable witnesses and they are always heard in the described manner.

8. Offender's right during or after the interview

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?



No, the offender and his/her defense counsel are not allowed any communication with a child victim/witness of the crime. Participation of the accused and his defense counsel at the main trial is mandatory.

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

If the offender is removed from the courtroom, he/she has an opportunity to follow the trial by way of technical devices for the image/sound transfer, or he/she will be presented with the child's statement record. The offender's defense counsel remains in the courtroom, through whom the offender can pose additional questions and questions aimed at pointing to contradictions in the witness's statement.

9. Parallel proceedings – coordination

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

No priority to conduct the interview with the child is defined.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

In a judgment finding the offender guilty, the court can award to the victim of crime a redress claim, or damage compensation in whole or in part, and instruct the victim to pursue the remaining part of a redress claim in a civil action. If the information obtained during the criminal proceedings do not offer a reliable ground for a total or partly award, the court will instruct the victim to pursue the entire redress claim in a civil action. Also, when the court delivers a judgment acquitting the offender of the charges, or a judgment dismissing the charges, or a decision discontinuing the criminal proceedings, the court will instruct the victim of crime to pursue his/her redress claim in a civil action.



9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

No, an interview of a child under protection cannot be shared, nor can any document be requested, or its substance disclosed because it is an official secret. Pursuant to the general criminal regulations, regardless of legal reasons, the child can refuse to give an interview again about the same event.

10. Training

10.1. Are judges and magistrates trained to deal with child victims?

Judges attend mandatory training in order to acquire special knowledge and maintain professional expertise in working with child victims/witnesses. The training is continuous. At the end of the training, the Center for Education of Judges and Prosecutors awards certificates of competence in working with children, whether they are victims, witnesses or perpetrators of criminal offenses.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

Yes, the content of the training is interdisciplinary. Psychologists, professors, representatives of guardianship authorities, judges and prosecutors with long year experiences and other professionals take part in the training.

11. Reforms in progress

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?



No, there are no reforms in progress in my country regarding child's victim rights.