



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN UKRAINE

National Report for AIMJF's Comparative and Collaborative Research.

*La participación de niños como víctimas o testigos en causas penales en Ucrania
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 Ukraine*

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

Pavlo Parkhomenko¹

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 Ukraine.

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 Ucrania

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 procéduraux de la participation des enfants dans le système de justice en Ukraine

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.

¹ Judge in Ukraine



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.

Pavlo Parkhomenko²

Research on child participation as victims or witnesses in criminal cases

Introduction

Child-friendly justice is characterized with a range of peculiarities, different from justice with participation of adults. It particularly concerns conditions and environment in which a child finds himself/herself, which requires the country to take special measures of both organizational and legal nature. These measures should be directed at practical implementation of mechanisms which help the children who have suffered different kinds of violence to be respectfully assessed, cured and supported, to avoid traumatization as a result of repeated interviews with workers of different services, etc.

² Judge of the Supreme Court, Ukraine
PhD,
Teacher of the Higher School of Advocacy of Ukraine,
National expert of the Council of Europe



Article 12 of the United Nations Convention on the Rights of the Child contains one of the fundamental principles, which the whole Convention is built on, and which lies in the fact that member nations shall ensure the child, who can define his/her viewpoints, with the right to speak out these viewpoints on all issues concerning the child, moreover, the child's viewpoints shall be paid respectful attention according to his/her age and maturity. The war in Ukraine has influenced juvenile justice, and the consequences thereof show the increased number of children victims or witnesses of crimes, which makes the issue of their protection up-to-date on the state level.

The aim of this research is to analyze legislation and practice of Ukraine in order to compare similarities and differences with other countries, and to develop a flowchart of children's participation as victims and witnesses in the system of justice.

The research shall be built as giving answers to the questions determined by experts from different countries, which encompass fundamental principles of children's participation in criminal cases as victims and witnesses.

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)?



According to the general norm of the Criminal Procedural Code of Ukraine³ (article 65), witness shall be a natural person who knows or may know circumstances to be proven in the course of criminal proceeding, and shall be summoned to give evidence.

The second part of Article 65 of this Law provides the list of people who cannot be interviewed as witnesses, and children are not indicated therein.

Other norms of the Criminal Procedural Code of Ukraine (article 226) provide peculiarities of children being interviewed as witnesses, thus, children shall be legally capable, and their testimony shall not be regarded as untrustworthy (invalid) due to their age.

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

The Criminal Procedural Code of Ukraine and norms of other legislation do not contain any age restrictions on realization of the right to be heard by the child who has become a crime victim or witness.

In practice, the experts rely on peculiarities of every particular case, and during their training the experts are oriented at applying international standards, and at taking into account the fact that young age of the child or vulnerability of his/her condition (for example, disability, being a minority or a migrant and more) shall not prevent the exercise of his/her right to

³ Criminal Procedural Code of Ukraine // <https://zakon.rada.gov.ua/laws/show/4651-17#Text>



express his/her viewpoints and shall not reduce importance paid to the child's viewpoints while determining his/her best interests.

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

Depending on the peculiarities of every particular case, type of crime, etc., criminal proceedings may be terminated but it shall only occur on the basis of general norms, which do not define peculiarities for the child.

In practice, respective actions shall be taken by legal representatives of the child.

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)?

The Criminal Procedural Code of Ukraine is the fundamental legislative act which regulates the above mentioned question in Ukraine. It only includes special norms concerning peculiarities of children interviewing (article 226) during pre-trial investigation and during trial (article 354). They concern interview of children victims or witnesses.

There is also a certain procedure provided for interviewing by investigating judge during pre-trial investigation (article 225), and it is applicable to children, and helps to prevent their repetitive summons to court.



This legislative norm makes the basis of implementing “Barnahus” model in Ukraine.

There are no other special codes of victim rights and the current Criminal Procedural Code of Ukraine is not regulated enough on this issue.

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?

Norms of the Criminal Procedural Code of Ukraine do not contain any specific provisions on coordination between different role players (such as the police, education, social services, health system) during criminal proceedings with child victims/witnesses as participants, including during trial.

However, the Law of Ukraine “On Prevention and Counteraction to Domestic Violence”⁴ includes elements of inter-institutional interaction of different actors. Article 15 of this Law is titled as “Interaction of Actors Taking Measures in Prevention and Counteraction to Domestic Violence”.

In order to exercise the provisions of the indicated Law, the Government adopted “Procedure of Interaction of Actors Taking Measures

⁴ Law of Ukraine “On Prevention and Counteraction to Domestic Violence” No. 2229-VIII as of December, 7 2017 // <https://zakon.rada.gov.ua/laws/show/2229-19#Text>



in Prevention and Counteraction to Domestic Violence and Gender-based Violence”⁵.

However, these documents do not regulate peculiarities of interaction during criminal proceedings, particularly the questions related to arrangement of the interview, collection of evidence, creation of multidisciplinary team during crime investigation and court hearing.

Besides, “Barnahus” model is being actively implemented in our country. It started with pilot regions and was further spread to the majority of districts of the country. Operation of this model is built on inter-institutional interaction of different participants.

In order to make implementation of the described model possible, there were two documents developed in the course of lively discussions:

1). Regulation on the Center of protection and social and psychological support in the justice process for children who have suffered or witnessed violence (“Barnahus” model), which defines the described model, determines its task, principles and activity directions.

2). Procedure of realization of the pilot project on Protection and social and psychological support in the justice process for children who have suffered or witnessed violence (“Barnahus” model). The procedure establishes coordination mechanism of inter-institutional and interdisciplinary cooperation in realization of the pilot project on Protection

⁵ Procedure of Interaction of Actors taking measures in prevention and counteraction to domestic violence and gender-based violence, approved by the Decree of the Cabinet of Ministers of Ukraine No. 658 as of August, 22 2018 // <https://zakon.rada.gov.ua/laws/show/658-2018-%D0%BF#n12>



and social and psychological support in the justice process for children who have suffered or witnessed violence, which is implemented on the basis of Inter-institutional Coordination Council on Juvenile Justice.

These documents are not regulatory acts, but they are specific agreements of interested actors, which are based on both international standards and regulations of the national legislation on the child interview.

On July 26, 2024 the Ministry of Justice of Ukraine, the Prosecutor General's Office, the Ministry of Internal Affairs of Ukraine, the Ministry of Social Policy of Ukraine, and the Ministry of Healthcare of Ukraine signed a common Order No. 2218/5/180/523/352-H/1306 "On approving the Procedure of Realization of the Pilot Project on Implementation of the Centers of Child Protection (according to "Barnahus" model), registered in the Ministry of Justice of Ukraine No. 1151/42496 on July 29, 2024.

Currently, there are 12 centers up and running under "Barnahus" model in Ukraine.

The Council of Europe together with the Prosecutor General's Office is actively adopting the project on implementation of international standards in child friendly justice, emphasizing provision of inter-institutional interaction of experts, who work with children victims and witnesses in criminal proceedings in particular. During expert training inter-institutional interaction is researched in detail as a principle of child friendly justice. There is a separate handbook being prepared for experts under the project results.



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?

- Commence of the criminal proceeding (investigation beginning);
- Conduct of investigation and investigation procedures;
- Evidence collection;
- Insight of criminal proceeding participants with inquiry materials;
- Refer the case to the court;
- Preparatory hearing in the court;
- Trial, which includes evidence research, interview of the participants of the trial;
- Judgement adoption.

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

A child can be heard both during investigation and during trial.

According to the general rule, irrespective of whether a witness has been interviewed during pre-trial investigation, the court shall necessarily interview him/her during trial.

There are exceptions from this rule, they are related to interview of children victims or children witnesses.



If the child is interviewed by investigating judge (article 224 of the Crime Procedural Code of Ukraine) during pre-trial investigation, it may create conditions to avoid repetitive summons of the child during 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?

Depending on the peculiarities of every particular case, type of crime, etc., criminal proceedings may be terminated but it shall only occur on the basis of general norms, which do not define peculiarities for the child.

In practice, respective actions shall be taken by legal representatives of the child.

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?

Unfortunately, creation of brochures and especially videos for children victims and witnesses which are issued during the trial has not become widely spread so far.

There are isolated examples from international projects or from some regions. I can share one of the memory cards for children, designed by the prosecutor's office representatives.



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?

In every particular case, the expert working with the child can provide her with the brochure, explain the process of interview with accessible words to the child, but it all depends on the expert's training and peculiarities of the case.

The Criminal Procedural Code of Ukraine provides possible involvement of psychologist during the child interview who can assess child needs and adapt him/her to the court proceeding.

When the child is within “Barnahus” model, there is an expert who works with the child and prepares him/her to the hearing.

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?



Criminal proceedings which have children as participants, may involve a psychologist, which is provided with the norms of the Criminal Procedural Code of Ukraine. The psychologist can preliminary assess the child before the interview or during psychological expertise in order to determine child's capabilities during further interviews.

According to practice, psychologists can produce the report on assessment of child's capability to participate in interviews, but this procedure is not distinctly regulated by the legislation.

There are pilot projects on involvement of psychologists to criminal proceedings with children as participants. There is a respective register of psychologists created, which includes experts who have undergone training, and are involved in criminal proceedings.

Since October 02, 2023, the pilot project has started to be realized on involvement of psychologists to criminal proceeding with juvenile or underage people as participants through regional/interregional centers of providing free legal assistance. The project is being realized based on the order of the Ministry of Justice of Ukraine, the Ministry of Internal Affairs of Ukraine, the Prosecutor General's Office No. 493/5/67/32 as of 07.02.2023.

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



Yes, investigator (prosecutor) shall involve legal representatives to the case, and during the criminal proceeding they can keep contact. If they do not act in the interests of the child, they may be changed.

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

There is no prohibition thereto, the child is allowed to visit the facilities where he/she is heard. It depends on specific conditions of the case and the person conducting the interview.

The interviews can be conducted in the police precincts, prosecutor offices, courts, as well as with the use of “Green rooms” and “Barnahus” model.

The child can be interviewed via video conference during trial.

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

With realization of the pilot project on “Barnahus” model implementation, the child can receive social, medical and psychological support prior to the interview.

When the child is in “Barnahus”, he/she can be met by a medical doctor or social worker, and receive the respective support, this approach is implemented in the pilot mode, and is not distinctly regulated by the legislation.



In our country, there are also attempts to ensure the child victim or witness with the possibility to involve legal guardians during criminal proceeding via the Centers of free assistance.

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?

As it has already been mentioned, within realization of the Pilot project on “Barnahus” model implementation, the involved “Barnahus” expert can conduct risk assessment for the child.

We have also already mentioned, that in our country there are attempts being made to ensure the child victim or witness with the possibility to involve legal representatives during criminal proceeding via the Centers of free assistance.

In case there is a notification received on the child who has suffered violence or whose life or health is in danger, the authorized division of the National Police, social worker, healthcare representatives all together conduct assessment of safety level for the child immediately.

According to the results of the conducted safety level assessment for the child, they compile the Act (Annex 10 to the Procedure of actions



taken by the institutions of guardianship and tutelage related to protection of children rights, approved by the decree of the Cabinet of Ministers of Ukraine No. 866 as of September 24, 2008).

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

In case of immediate threat to child's life or health, the institution of guardianship and tutelage, under the request from the child affairs service, takes decisions on immediate defiliation from parents or people replacing them, according to the Procedure of actions taken by the institutions of guardianship and tutelage related to protection of children rights, approved by the decree of the Cabinet of Ministers of Ukraine No. 866 as of September 24, 2008.

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

The indicated processes run simultaneously with pre-trial investigation and trial, and often the judge does not know that there are such options available.

The decision on whether to provide support to children victims shall be taken by their parents or other legal representatives. If parents or other legal representatives are violent to the child or avoid to protect rights and interests of the child, it is decided by the institution of guardianship and tutelage, including under requests from child relatives (grandmother,



grandfather, brother or sister of full legal age), stepmother or stepfather if they are not violent to the child. (Article 20 of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence”).

If the abuser keeps living with the child, applying violence to the child and the legal representative does not take active actions to protect the child, there is a possibility considered to send the child temporarily to the center of social and psychological rehabilitation for children, shelter for children from child affairs service, other institutions for children irrespective of form of their ownership and subordination, which provide respective conditions for child’s life, upbringing, education and rehabilitation according to his/her needs. The child can also be sent to live with relatives or with the foster family.

In the course of two weeks after the child is taken into record, the interdisciplinary team of workers is created from the number of actors of detection and/or arrangement of children social protection, whose authorities include provision of services to children and families with children from the experts of the child affairs service, social institution and/or social work expert, pedagogical worker from educational institutions, medical workers, according to the offers from the heads of actors of detection and/or arrangement of children social protection.

In the course of a month after the child is taken into record based on the results of assessment of child and his/her family needs, there is an individual plan developed on providing support to the child and on coordinating activities on implementation thereof.



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?

According to the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” (Article 22) the child victim shall have all rights of the victim, realization of which shall be ensured taking into account the best interests of the child, his/her age, gender, health, intellectual and physical development.

Applications and notifications on domestic violence regarding children shall be accepted and considered according to the order, approved by the Cabinet of Ministers of Ukraine.

If due to domestic violence being applied to the child, he/she cannot reside with his/her parents or other legal guardians, for the period of overcoming reasons and consequences of domestic violence the child can be arranged to stay with relatives, foster family, the center of social and psychological rehabilitation for children, shelter for children from child affairs service, other institutions for children irrespective of the form of their ownership and subordination, which provide respective conditions for child life, upbringing, education and rehabilitation according to his/her needs.

Parents and other legal guardians as well as child relatives (grandmother, grandfather, brother or sister of full legal age), stepmother or stepfather if they are not violent to the child, and the institution of



guardianship and tutelage can protect child victim's rights and interests, including application to the court, representation of his/her interests in court.

When the court or the institution of guardianship and tutelage consider disputes on participation of one of parents in child upbringing, on determining the place of residence of the child, defiliation of the child, deprivation and renewal of parental rights, meetings of mother or father with the child who are deprived of parental rights, defiliation from the person who captured the child without legal grounds or not based on judgment, in all these cases the facts of domestic violence towards the child or with his/her presence shall be taken into account.

5. Environment

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

The interviews can be conducted in police precincts, prosecutor offices, courts, as well as with the use of “Green rooms” and “Barnahus” model.

“Barnahus” model is being actively introduced within the territory of Ukraine, and implementation thereof is of pilot project nature and does not have distinct legislative regulation.

“Barnahus” model has been described in detail in previous sections.



In the court where the author used to work, there was a child friendly court room created, which allows children interview to be conducted therein. The pictures are attached below.

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)

In “Barnahuses” active in Ukraine, there are some facilities with a separate entrance, separate interview room, and separate room for medical examination. The facility itself does not have any door sign in order to avoid the spread of information about the victims for the offender or other people.

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?

There is no specific regulation of demands to organization of child friendly environment. International standards and positive practice of other countries were used in the process of “Barnahus” model and “Green rooms” introduction.

At the level of scientific research, the author has conducted generalization of child-friendly room in court and has provided respective recommendations⁶.

“Barnahus” pictures



⁶ PARKHOMENKO P. Special courtroom as an element of child-friendly justice: organizational and legal aspect. Word of the National School of Judges of Ukraine No. 2(35) 2021. – P. 16-26. DOI 10/37566/2707-6849-2021-2(35)-2

“Courtroom” picture



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

There are no specific waiting areas in courts, there are waiting areas in some “Green Rooms” and “Barnahuses”.

In the court where the author used to work, there was also a special zone created, the corner for children, where they can stay.

Picture



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)

As it has already been mentioned, there are separate exits in some “Green Rooms” and “Barnahuses”.

The interview can also be conducted behind the special glass, with the use of headset and private communication of the psychologist with the child, which allows the child to avoid seeing the offender.

In specific cases, the interview via video conference shall be allowed.



5.6. In case identification of the offender is needed, how is this conducted, and where?

Depending on the stage of the criminal proceeding, the offender shall be identified by investigator or prosecutor during pre-trial investigation, and by judge during trial, which can be conducted by trial secretary or court administrator. This procedure shall take place in the court facility.

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?

Depending on the circumstances of a specific case, the child can be interviewed via video conference from another facility (for example, the court in the place where the child resides) or depending on the circumstances of the case, the interview can be conducted in “Barnahus” if it is situated in the vicinity.

The cases of summoning the child to the trial in another region is not completely excluded.

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, in practice there are instances when the child is interviewed via video conference, which depends on the specific circumstances of the case. The Crime Procedural Code of Ukraine allows the possibility thereof.



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?

Under the common rule established by the Criminal Procedural Code of Ukraine, despite the witness has been interviewed during pre-trial investigation, court shall necessarily interview him/her during the trial, that is why a separate recording of the child testimonies made by investigator shall not be the grounding to avoid child being summoned to the court.

It has already been mentioned, that in Ukraine there is the procedure provided for interviewing by investigating judge during pre-trial investigation (article 225, and it shall be applicable to children and help to prevent their repetitive summons to court. This legislative norm makes the basis of implementing “Barnahus” model in Ukraine.

In this case, the investigator prepares a request to the investigating judge to apply the procedure of interviewing during pre-trial investigation (article 225), and in case it is accepted, the child shall be interviewed by the investigating judge. This interview can be the ground not to summon the child during the trial itself, and the testimony given to the investigating judge can be taken into account as the evidence.

However, depending on the circumstances of a specific case, the judge may take the decision on summoning the child or on interviewing the child via video conference.

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)

It should be mentioned right away, that current legislation does not include any distinct specialization of the people who provide the children with legal assistance.

But on the basis of the National Bar Association, the specialized course named “Advocate for the Child” was introduced, within which the advocates under their own will have undergone respective training in child rights protection.

The important introduction is also the fact that the child shall be the actor to receive free legal assistance, which is defined at the legislative level.

The approaches on involvement of legal representatives for the child victims or witnesses of demeanors have been developed in the course of introduction and realization of the pilot project on implementation of international justice standards.

Legal assistance can be provided since the moment of the child being recognized as the victim and keep being provided during the whole process of the trial.



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; ...)?

The legal assistant can represent interests of the child, apply complaints in his/her interests, represent him/her in court, provide consultations, etc.

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?

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

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

If parents or other legal guardians act in a manner that contradicts the interests of the child, the Law assumes the possibility to change them and to involve another legal representative.

According to articles 44, 59 of the Criminal Procedural Code of Ukraine, parents (foster parents) can be involved as legal representatives, in case of their absence it can be guardians or tutors, other close relatives or family members of legal age, as well as representatives from the institutions of guardian and tutelage, institutions and organizations who are guardians or



tutors of the underage, legally incapable person or a person with limited legal capacity.

The investigator, prosecutor shall adopt a decree on the involvement of the legal representative, and the investigating judge shall adopt the ruling thereon, the copy thereof shall be issued to the legal representative.

In case actions or interests of the legal representative contradict with the interests of the person he/she represents, such legal representative shall be exchanged with another one from the list of people, indicated in part two of this article, under the decision of the investigator, prosecutor, investigating judge or the court.

The legal representative shall use procedural rights of a person the interests of whom he/she represents, apart from the procedural rights, which shall be realized directly by the suspect or the accused, and cannot be entrusted to the representative.

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

As it has already been mentioned, in case actions or interests of the legal representative contradict with the interests of the person he/she represents, such a legal representative shall be exchanged with another one from the list of people, indicated in part two of this article, under the decision of the investigator, prosecutor, investigating judge or the court.



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 can not be identified?)

The Criminal Procedural Code of Ukraine shall establish the following common guarantees for all actors:

In the course of the criminal proceeding, every participant is guaranteed the security of mailing, phone calls, telegraph and other correspondence, other types of communication.

Intrusion into personal communication shall be possible only on the basis of the judgment in the cases, provided with this Code for the purpose to reveal and prevent a grave or especially grave crime, to establish circumstances thereof or the person who committed the crime if it is impossible to reach this goal in other ways.

The information obtained as the result of intrusion into personal communication shall be used only for completing the tasks of the criminal proceeding and not otherwise.

In the course of the criminal proceeding, every participant is guaranteed the security of private (personal and family) life.

Nobody can collect, save, use or spread information on the person's private life without his/her consent, except for the cases provided by this Code.



The information on the person's private life, obtained in the order provided by this Code, shall be used only for completing the tasks of the criminal proceeding and not otherwise.

Everybody who is granted access to the information on somebody's the private life, shall prevent disclosure of this information.

The criminal proceeding shall be conducted openly in the courts of all instances. The investigating judge and the court can adopt the judgment on the conduct of the criminal proceeding in closed trial during the whole proceeding or a particular part thereof in the following events: a minor is accused; the case under consideration is about gender freedom and gender inviolability of a person; it is necessary to prevent disclosure of information about personal and family life or circumstances which humiliate the person's dignity; if open trial of the proceeding may lead to disclosure of the secret protected by law; if it is necessary to ensure security of the people who participate in the criminal proceeding.

These approaches can be used in the cases with children witnesses or victims of demeanors as participants.

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

The child is not directly granted the right to plea on the application of preventive measures. The Criminal Procedural Code of Ukraine grants this right to the investigator and the prosecutor only.

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



The child who is the participant of the criminal proceeding shall be granted the right to appeal the respective judgments, which can be realized via his/her representatives.

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?

Article 226 of the Criminal Procedural Code of Ukraine establishes peculiarities of juvenile or underage person interview.

Juvenile or underage person interview shall be conducted in the presence of the legal representative, pedagog or psychologist, if necessary in the presence of a doctor.

Juvenile or underage person interview shall not continue for over an hour without a break, and for over two hours a day.

The people who are under sixteen years old shall be explained the obligation to give authentic testimony, without warning about the criminal liability for denial to give testimony and for deliberately wrong testimony.



Before the beginning of the interview, the people indicated in the first part of this article, are explained their obligation to be present at the interview, as well as the right to object to the questions and to ask questions.

The law shall not establish limits on the number of child interviews, which depends on the circumstances of a specific case.

It has already been mentioned, that it is possible to conduct the procedure of interviewing during pre-trial investigation with participation of the investigating judge (article 225) which can be the ground not to summon the child during the criminal proceeding trial itself and the testimony given to the investigating judge can be taken into account as the evidence.

Currently, there are international standards being introduced in the sphere of child-friendly justice in Ukraine, and the experts are oriented at the possibility of interviewing the child by the psychologist interviewer, which is being implemented in practice.

The experts are also oriented at avoiding repetitive child interviews during the trial, and the Supreme Court has developed the approach according to which the cross interview of a juvenile child in court is acceptable in exceptional cases only, when the court has run out of any other ways of finding out the truth⁷.

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

⁷ Decree of the Supreme Court as of 30.11.2021, cases No.601/473/20, proceeding No. 51-3269KM21



The general rule establishes the approach according to which the interview shall be conducted by the investigator or the prosecutor during pre-trial investigation, and it shall be conducted by the judge during trial.

Currently, there is investigators and prosecutors' specialization being introduced in Ukraine, in case of child witness or victim. Specialization of the judge is not provided for the cases with child witness or victim as participant.

Involving other experts in interviewing child witnesses or victims, the Law does not provide any specific demands, but depending on the circumstances of the case and possibilities to involve the expert, such actions can take place. It is a distinctive feature of the pilot projects and of project realization which helps to create the respective register of psychologists.

In particular, the Ministry of Justice of Ukraine, the Ministry of Internal Affairs of Ukraine and the Prosecutor General's Office adopted the common order on introduction and implementation of the pilot project on psychologists involvement to criminal proceeding with juvenile or underage people as participants through regional/interregional centers of providing free legal assistance⁸.

⁸ Order of the Ministry of Justice of Ukraine, the Ministry of Internal Affairs of Ukraine, Prosecutor General's Office No. 493/5/67/32 as of 07.02.2023 "On introduction and implementation of the pilot project on psychologists involvement to criminal proceeding with juvenile or underage people as participants through regional/interregional centers of providing free legal assistance"



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?

Such practice is not spread in our country, some protocols can be compiled by specific psychologists, but at the moment of answering the questions, the author does not have any.

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 pre-trial investigation, according to the general rule, the child shall be interviewed by the investigator or the prosecutor and sometimes the accused and his/her defender can be with the child and ask him/her questions.

During the trial, the child can be in the courtroom and asked questions by the prosecutor and defense, judge.

Currently , the experts are oriented at the use of approaches to child interviews in “Green Rooms” and “Barnahus” or to limit the presence of other people during the interview. Such approaches are becoming widely spread.

8.5. 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?



Our country is taking the first steps towards the child being addressed by the interviewer only, although, there is no definite legislative regulation on this issue. That is why the practice when the child is addressed by other participants of the criminal proceeding remains popular.

We have already mentioned, that the cross interview of a juvenile child in court is acceptable in exceptional cases only, when the court has run out of any other ways of finding out the truth.

The use of “Barnahus” model provides the approach when the people communicate via the headset with the interviewer who is in a separate room with the child.

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?

There are no distinct legislative demands to this procedure, but within “Barnahus” model operation there are attempts to use the approach which allows to rephrase the question.

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)?

The interview can be recorded, but not always. The purpose of such recording can be definition of the information precision and even conduct of the further expertises based thereon.



If during pre-trial investigation the described approach of child interview with participation of the investigating judge is used (article 225 of the Criminal Procedural Code of Ukraine), the respective recording shall be conducted necessarily and can be used as the evidence in court, which allows to avoid repetitive summons of the child. This approach makes the basis of “Barnahus” model operation.

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)?

The use of such measures depends on specific circumstances of the case, but this procedure is not distinctly regulated at the legislative level.

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

If in the course of the court hearing the interview recording was found of poor quality, the judge can arrange child interview during the trial and, depending on the case circumstances, use the aforementioned approaches to the interview (in the courtroom, online).

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?

According to the general rule, the person who gave testimony in the criminal proceeding can sign them and enter remarks. The legal



representative can also act respectively in the interests of the child. The participant of the criminal proceeding can familiarize with case materials and receive respective copies.

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?

The ways, procedure and organization of the interview depend on the person who holds it (investigator, prosecutor or judge), depending on the case circumstances, capabilities and preparation of such actor, they choose how to conduct the respective interview.

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?

There is no distinct prohibition for the offender or his/her defender provided by law, and according to the general rule, in order to comply with the right of the fair trial, they shall have the right to ask witnesses questions.

Depending on the case circumstances, the actor conducting the interview can take measures to remove the accused and his/her defender from the interview room, this approach is natural for the “Barnahus” model.



But in any case, the rights of the accused and the victim shall be kept in balance.

The interview organization shall be conducted taking into account the fact that the defending party should have the possibility to ask questions, and the actor conducting the interview shall choose the ways to ensure it.

9.2. 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 absent during the interview, for example, during pre-trial investigation, it is highly likely that the child interview will be conducted during trial and the offender will have the opportunity to ask questions. But this interview shall be organized in child friendly environment.

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?

Currently, the approach which would give the possibility to conduct the interview taking into account parallel proceedings which are based on the same facts is not used in our country.

There is a thought to use “Barnahus” in such cases, but it has not become systematic practice yet.



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

The distinct coordination algorithm has not been developed so far, it depends on every separate region and experts who work with children.

Currently, realization of the pilot projects in child-friendly justice helps to improve inter-institutional coordination and to develop the respective algorithm.

The first step is cooperation in criminal proceedings and we will provide the respective examples of experts training in this field below.

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)?

If the court (other institution) did not participate in the interview, they could conduct a repetitive interview and the interviews from other proceedings are not taken into account in practice.

10. Training

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



“Protecting the rights of Ukrainian children during war and in post-war context” project of the Council of Europe in cooperation with the Prosecutor General’s Office of Ukraine and the Prosecutor’s Training Center of Ukraine conduct the respective training of experts who work with children.

The author is one of co-developers and trainers of the training course and the handbook for trainer’s preparation, which will be published by the Council of Europe.

The training program is based on three modules:

- Module 1. Fundamentals of child-friendly justice, including the respective standards of the Council of Europe.
- Module 2. Inter-institutional cooperation as the primary basis of child-friendly justice.
- Module 3. Introduction of child-centered approaches and application of child-friendly procedures and practices on the basis of precise scenarios.

Certain training for judges is conducted by the National School of Judges of Ukraine, but in the author’s opinion, approaches to training of judges are subject to improvement and enhancement.

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

The described project of the Council of Europe united representatives from prosecution, investigation, inquiry, juvenile prevention, probation



bodies, advocates from the system of free legal assistance, institutions of punishment execution and places of preliminary imprisonment, child affairs services, institutions of guardianship and tutelage, institutions and establishments for children who undergo social and psychological rehabilitation.

In general, over the period of October 2023 - April 2024, the Project conducted a series of 6 analogue trainings for multidisciplinary teams. The purpose of these trainings is development of child-centered approaches and effective algorithms of inter institutional cooperation. In the course of four days of trainings, the participants designed general algorithms of interaction with involvement of all tangible actors on the example of the real case during pre-trial investigation at every stage of the trial and at the stage of terminating contact between the child and child-friendly justice.

As the result of the series of trainings, 156 representatives (110 women, 46 men) gained new knowledge and skills. The training was given positive reviews from the participants.

The trainings are aimed at practical implementation of the standards of the model of effective inter-institutional cooperation in the process of realization of the Pilot project on implementing international standards of child-friendly justice in practice to execute the Common order of the Prosecutor General's Office, the Ministry of Internal Affairs of Ukraine, the Ministry of Justice of Ukraine, and the Ministry of Social Policy of Ukraine.

The project together with the Prosecutor General's Office, provides further institutionalization of the curriculum from "Directives in criminal



proceedings involving children” reaction model of inter-institutional cooperation to provide longterm influence during war and in post-war period. It also provides the change of approaches and methods of work, implementation of legal, political and institutional reforms, which require a long time to gain stability⁹.

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?

Yes, there are reforms in our country which are directed at ensuring the rights of child victims and witnesses.

Over the last years, “Barnahus” model is being actively implemented in practice, the peculiarities of implementation thereof were described above and the Ministry of Justice of Ukraine is the important role player therein.

In Ukraine there is Inter-institutional coordination council on juvenile justice created, which is a temporary consultative and counseling body of the Cabinet of Ministers of Ukraine, which was created for introduction of the inter-institutional platform for systematic discussion and solving problematic issues on juvenile justice development, adoption of coordinated decisions which correspond with the interests of the child.

⁹ <https://www.coe.int/uk/web/kyiv/-/council-of-europe-concludes-a-series-of-6-trainings-on-models-of-effective-interagency-cooperation-in-criminal-proceedings-involving-children-in-ukraine>



The Prosecutor General's Office plays a key role in reforming via implementation of the policy on protecting children witnesses and victims of demeanors.

The purpose of the reform is connected with implementation of the international standards on children rights protection. They are directed at compliance with the rights of the child who is in contact with the law, creation of conditions for the child to adapt to the court hearing.

We have described earlier, that a range of pilot projects on involving psychologists to the criminal proceedings, inter-institutional training of experts have been introduced, which will turn into the systematic approach in child-friendly justice over the time.