

Promise Procedural Safeguards Reflection Papers

Children providing evidence in Barnahus: considering procedural safeguards for the child and respecting the rights of the defence

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The development of this paper was led by Rebecca O Donnell in [Child Circle](#), a partner in the EU-funded Promise 3 Project, with valuable contributions from Silvia Randazzo, the Council of Baltic Sea States and the Promise Barnahus

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The Promise Barnahus Network

Recent legal obligations concerning child victims of violence in Europe drew inspiration, inter alia, from procedures and practices involving a multidisciplinary inter-agency model, Barnahus, which allows for the coordination of the criminal justice and child protection proceedings in a child-centred way under one roof. The Barnahus was first established twenty years ago in Iceland and its use rapidly expanded across Scandinavia. Following the EU and Council of Europe instruments, the model is increasingly in the spotlight in Europe, and is currently being developed, piloted or implemented in over 20 countries.

Working with partners across Europe, the EU funded Promise project (2015–2017) established regional Barnahus standards and guidance to support the implementation of these legal instruments through the more widespread establishment of Barnahus. The Promise compendium of law and policy was also developed to provide a clear overview of the international and EU obligations concerned.

The Promise 2 project (2017–2020) had the goal of supporting national activities which address the different dimensions of establishing or developing a Barnahus, including through national roundtables and expert seminars.

Promise 3 (2020–2023) aims to ensure a systematic, accelerated, and sustainable effort to train staff and facilitate professional exchange and development across Europe, taking into account the combined need for training in forensic interviews and therapy and in multidisciplinary collaboration and case management.

The Barnahus an inter-agency and child centred approach to child victims of violence, under one roof.

For the purposes of the criminal proceedings, the Barnahus ensures that children are interviewed by specialised professionals with due process safeguards for the defence, providing recorded testimony for use in court proceedings. Some Barnahus also contain facilities which allow on-site forensic medical examination. For the purposes of the child protection proceedings, health and needs assessments of the child are typically undertaken at the Barnahus and therapeutic services will either be directly available on site or made available by immediate referral to other services.

These steps in the two proceedings are intertwined in the Barnahus model and managed together.

The Promise Barnahus Network, launched in November 2019, is a European professional network with activities which include the coordination of the European competence centre; training and education; facilitating exchange among members; developing practical tools, guidance, policy and analysis; undertaking research, data collection, monitoring and evaluation; facilitating meaningful, ethical and safe child participation; and advocacy and awareness raising in close collaboration with the EU, the Council of Europe, the United Nations and other relevant European and international organisations.

Introduction

Within Barnahus, the forensic interview with children in Barnahus typically serves as the moment for *the provision of evidence* by the child for the criminal investigation. Ideally, this is also the moment to record evidence which may be used in the court proceedings. Consequently, when considering the way in which children are interviewed in Barnahus, consideration must be given to *both* their right to participate and express their views in proceedings concerning them *and* to ensuring national procedural rules concerning the criminal justice proceedings are fully respected. The Promise [report *Building a Culture of Participation in the Barnahus: Implementing Children's Right to Participate in Decision-Making*](#) in particular considers the first issue generally within the Barnahus. It encourages measures to facilitate children to *express their views* in processes and proceedings concerning them in the Barnahus. This Promise Reflection Paper – Children Providing Evidence in Barnahus - focuses on the second issue, specifically considering the procedural safeguards used when children giving evidence.

Central to this situation is safeguarding the right to a defence, namely, ensuring that the defendant has the ability to contest the child's statement. Having in place proper processes in this regard, such as safeguarding the ability of defendant's counsel to have questions posed to a child, as provided for in the Barnahus model, should ensure that judges, prosecutors and defence lawyers will view the interview as producing proper evidence and that the child's statements in the Barnahus will be admissible as evidence in the court proceedings.

Practice and procedures falling short of respecting the rights of the defence may undermine both the criminal proceedings and the rights of the child generally, for example, by leaving the child open to further interviews (and possible re-traumatisation) or leading to the criminal proceedings being unsuccessfully prosecuted. It is important to have the right processes in place and that they are

known to be in place, so that neither defence lawyers nor judges are sceptical about the interview process in Barnahus, and consider that the ability to test evidence elicited is insufficient. Indeed, to the contrary, the interview in Barnahus has the ability to advance the interests of criminal justice, by achieving better evidence.

Adapting the System

At the Crossroads (Promise legal briefing) provides a resource for reviews undertaken by stakeholders on what changes might be needed specifically to the criminal proceedings in cases involving child victims, taking into account related child protection proceedings, and recent European law obligations. Amongst other things, it looks at the right to be heard, the interview, how it is undertaken and the rights of the defence.

At the Crossroads is the product of exchange of research, exchange of experience and knowledge in workshops, and discussions undertaken within the Promise 2 project. This paper aims to support stakeholders and professionals involved in both child protection and criminal justice proceedings who typically need to work together closely to identify opportunities for both immediate and more long-term change. It discusses general orientations on potential adaptations to the criminal proceedings, illustrative national practices concerning specific safeguards to be achieved in the criminal proceedings and provides some conclusions and lists additional resources.

Introduction to this Reflection Paper

The aim of this Reflection Paper is to provide a further resource to those professionals involved in processes when children provide evidence in Barnahus. It recalls the key procedural safeguards to be observed, noting authoritative guidance and resources. To support exchange between practitioners in the Promise Barnahus Network, it then shares reflection points that have been identified in relation to the issue.

Overview of EU Procedural Safeguards Concerning Evidence from Child Victims

EU law puts in place a range of procedural safeguards for child victims involved in criminal proceedings. Certain of these safeguards focus in particular on children giving evidence in criminal proceedings.

EU procedural safeguards concerning the interviewing a child victim in criminal proceedings

- Right to be heard:

A victim has a right to be heard and give evidence in criminal proceedings. The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of the victim's age.

- Information

Information, support and assistance must be provided to the child and, in accordance with the role of the victims in the relevant legal system, legal representation.

- Interviews

In relation to interviews carried out in connection with the criminal investigation, Member States will take necessary measures to ensure that they take place:

- Without unjustified delay;
- In premises designed or adapted for children;
- Carried out by or through professionals trained for this purpose;
- In the event of several interviews, they should be carried out by the same persons, if possible and where appropriate;
- The number of interviews should be as limited as possible and are carried out only where strictly necessary for the purpose of the criminal proceedings;
- With a legal representative and a person of their choice

- Video recording testimony

It must be possible that interviews may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under national law.

- Child's presence in the court room:

Member States shall ensure that it may be ordered that the child does not need to be present in courtroom to be heard; appropriate communications technologies be used for the victim to be heard in the courtroom; visual contact with the offender to be avoided where necessary.

Further resources: The [Promise Compendium of Law and Guidance](#) (European and International Instruments concerning Child Victims and Witnesses of Violence) provides a comprehensive view of the legal framework and authoritative guidance concerning the rights of child victims and witnesses across the EU, the Council of Europe and the United Nations. It contains profiles of the key instruments by provision, including the Council of Europe Lanzarote Convention. The Promise Compendium provides further detail on the guiding recitals of the EU and international measures, the full range of their provisions and the authoritative guidance which informs their implementation. The [European Barnahus Quality Standards](#) provides a helpful and detailed table linking the standards to relevant legal obligations.

Overview of Council of Europe Guidelines on Child Friendly Justice Concerning Evidence from Child Victims

The Council of Europe Guidelines on Child Friendly Justice provide important guidance on how to make justice proceedings more sensitive to the needs and rights of children. It provides helpful guiding principles and an explanatory memorandum.

6. Evidence/statements by children

64. Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence

in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.

65. Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.

66. When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.

67. The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.

68. Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.

69. Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.

70. The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.

71. Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.

72. With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.

73. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.

74. The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined

The Explanatory Memorandum to the Council of Europe [Guidelines](#) on Child Friendly Justice notes that “*the issue of collecting evidence/statements from children is far from being simple*”. It recognises that, “*states’ procedural laws and legislation in this domain vary considerably and there may be less strict rules on the giving of evidence by children*”. In all cases, the Guidelines provide that “*member states should give priority to the child’s best interest in the application of legislation concerning evidence*”, ***without affecting the guarantees of the right to a defence***.

What have the European Courts Said: European Jurisprudence

The fact that national rules of evidence may need to be adapted to take account of the child’s best interests was recently reiterated in the judgment of the European Court of Human Rights in Case [B v Russia - 36328/20 \(2023\)](#).¹ The Court concluded that the national authorities have failed in protecting the child victim of abuse and in ensuring that her integrity and her best interests – in the course of the investigation – was preserved. Several interviews and medical examinations have been conducted, and the child had been subjected to extensive and detailed questioning about her sexual abuse and questioned in respect of alleged inconsistencies. Only the first interview had been recorded, but the recording had been lost. According to the conclusions of the Court, the extreme vulnerability of the child – who was very young, with a tragic family situation (an orphan) and victim of alleged sexual abuse from several perpetrators – was profoundly disregarded by the authorities, as there was no indication of any special measure provided to video-record the interview, nor of specialised training of the professionals involved, and with consequent violation of international law.

On the matter of the validity of evidence produced with procedures that are instead adapted to the age and vulnerability of the child the Court also expressed its position with Case R.B. v Estonia - 22597/16 (2021).² In this case, the applicant was about four years old when she reported of being victim of sexual abuse by her father. Given her young age, two video-recorded interviews were conducted, and she was not required to testify in court, while she was not informed of her right to testify against a member of her family – which is a rule under the criminal procedure in Estonia. Her father was initially convicted, but then acquitted after his appeal, whereas the Supreme Court considered the child’s testimony inadmissible because of the failure to inform her of her right to refuse to testify against her father. This

¹ See Promise Barnahus casebook and on the HUDOC database at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-13997%22%5D%7D>

² <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22001-210466%22%5D%7D>

failure was observed by the Court as a failure from the national authorities to take into proper account the victim's vulnerability and corresponding needs as a young child, and so to ensure her effective protection as alleged victim of sexual crimes.

Other cases are presented in the Promise European Case Law Book around the matter of collecting evidence and the balance to strike between ensuring the child's right to be meaningfully heard, with their best interests on one side, and a fair trial for the defendant on the other side. Some general key conclusions refer to:

- The strong need for specialised training for all professionals working with child victims, including investigators, public prosecutors, judges and lawyers;
- The key importance of safeguarding children's testimony both during the pre-trial investigation and trial, with adapted procedures and careful assessment of the individual vulnerability and needs of the child;
- The emphasis on the fact that where less strict rules on giving evidence or other child-friendly measures applied, such measures should not in themselves diminish the value given to a child's testimony or evidence, without prejudice to the rights of the defence (Council of Europe Committee of Ministers' Guidelines on child-friendly justice; R.B. v Estonia - 22597/16).

Reflection points on the provision of evidence by children

Bearing in mind general international and EU obligations apply, national procedural rules will contain more detail provisions, in line with the national systems. These may differ in relation to key issues concerning the provision of evidence by children. This section highlights a number of issues to reflect on and for exchange in professional networking exchange.

Where a child is providing material evidence, there are rules to adapt procedures to be suitable for children as discussed above. There will also be rules of evidence to ensure the

integrity of the proceeding and to secure the rights of the defence to test the child's statement in line with safeguards to protect the child.

Compellability. A question may arise as to whether a child victim, who might be a witness in a criminal trial, is subject to any general rule or procedure obliging witnesses to provide material evidence (in the nature of a public interest obligation). Can a child be summoned by the judge (e.g. on request of defence lawyer) and compelled to provide evidence. Can a child be treated as a hostile witness? Can they be subject to censure if they don't join? It should be noted that the Child Friendly Justice Guidelines note that with regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify. Of background interest, the EU victims' rights directive talks about a right to provide evidence, and a FRA report on victims' rights also speaks of systems evolving away from the concept of a victim as a witness involved to serve the public interest, to a more rights-based conception of the victim's role. (although the two are not necessarily incompatible). Also of interest, the UN Committee on the Rights of the Child General Comment No 12 (2009) on the Right of the Child to be heard refers to the fact that the right to be heard is a right and not a duty and children should not be required or forced to express their views. This might be viewed as distinct from the situation where a child might be asked to provide material evidence in a criminal investigation or prosecution.

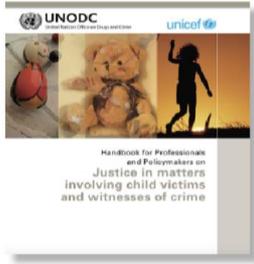
Competence, Credibility, Reliability and Oaths. When do issues arise as to whether a child is considered to be competent as a witness? At what age is a child considered to be competent as a witness? When will a child be considered to be a credible and reliable witness? Can/should a child take an oath of some kind, before giving evidence?

Testifying Against Family Members: what rules exist in relation to the rights of victims not to give evidence against family members.

Victim impact statements – in jurisdictions where victims are invited or permitted to give victim impact statements, are there special rules concerning children making such statements.

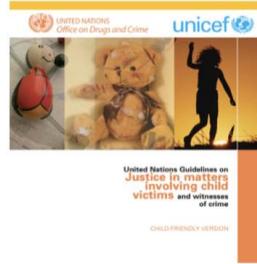
Further resources of interest: UN Guidance Related to Children Giving Evidence

[UN Model Law and Related Commentary on Justice in Matters involving Child Victims and Witnesses of Crime \(2009\)](#)



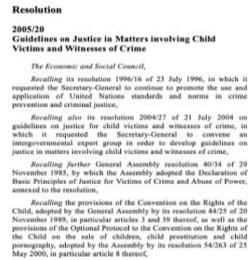
Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime

[Arabic](#), [Chinese](#), [English](#), [French](#), [Russian](#), [Spanish](#)



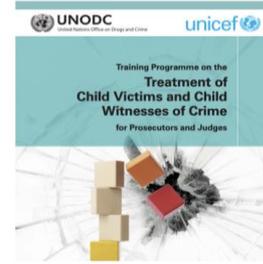
Child-friendly version of the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime

[Arabic](#), [Chinese](#), [English](#), [French](#), [Russian](#), [Spanish](#)



Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime

[English](#)



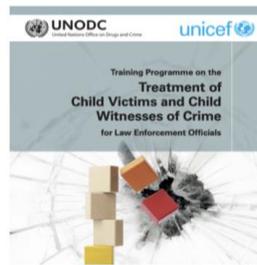
Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Prosecutors and Judges

[English](#)



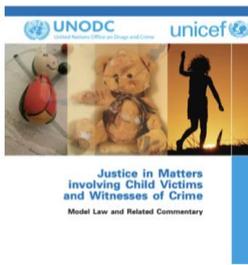
United Nations Guidelines on Justice in Matters involving child victims and witnesses of crime Online Training

[English](#), [French](#)



Training Programme on the Treatment of Child Victims and Child Witnesses of Crime - for Law Enforcement Officials

[English](#)



Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Related Commentary

[English](#), [Spanish](#), [French](#)

Provisions from the UN model law of interest to the issue of children providing evidence

Article 20. Reliability of child evidence

1. A child is deemed to be a capable witness unless proved otherwise through a competency examination administered by the court in accordance with article 21 of this [Law] [Act], and his or her testimony shall not be presumed invalid or untrust- worthy by reason of his or her age alone provided that his or her age and maturity allow the giving of intelligible and credible testimony.
2. For the purposes of this section (“C. During the trial phase”), a child’s testimony includes testimony given with technical communication aids or through the assistance of an expert specialized in understanding and communicating with children.
3. The weight given to the testimony of a child shall be in accordance with his or her age and maturity.
4. A child, irrespective of whether he or she will provide testimony, shall have the opportunity to express his or her personal views and concerns on matters related to the case, his or her

involvement in the justice process in particular his or her safety with respect to the accused, his or her preference to testify or not and the manner in which the testimony is to be given, as well as any other relevant matter affecting him or her. In cases where his or her views have not been accommodated, the child should receive a clear explanation of the reasons for not taking them into account.

5. A child shall not be required to testify in the justice process against his or her will or without the knowledge of his or her parents or guardian. His or her parents or guardian shall be invited to accompany the child except in the following circumstances:

- (a) The parents or the guardian are the alleged perpetrator of the offence committed against the child;
- (b) The child expresses a concern about being accompanied by his or her parents or guardian;
- (c) The court deems it not to be in the best interest of the child to be accompanied by his or her parents or guardian.

Article 21. Competency examination

1. A competency examination of a child may be conducted only if the court determines that there are compelling reasons to do so. The reasons for such a decision shall be recorded by the court. In deciding whether or not to carry out a competency examination, the best interest of the child shall be a primary consideration.

2. The competency examination is aimed at determining whether or not the child is able to understand questions that are put to him or her in a language that a child understands as well as the importance of telling the truth. The child's age alone is not a compelling reason for requesting a competency examination.

3. The court may appoint an expert for the purpose of examining the child's competency. Aside from the expert, the only other persons who may be present at a competency examination are:

- 1. (a) The magistrate or judge;
- 2. (b) The public prosecutor;
- 3. (c) The defence lawyer;
- 4. The child's lawyer;
- 5. The support person;
- 6. A court reporter or clerk;
- 7. Any other person, including the child's parents or guardian or a guardian *ad litem*, whose presence, in the opinion of the court, is necessary for the welfare of the child.

If the court does not appoint an expert, the competency examination of a child shall be conducted by the court on the basis of questions submitted by the public prosecutor and the defence lawyer.

The questions shall be asked in a child-sensitive manner appropriate to the age and developmental level of the child and shall not be related to the issues involved in the trial. They shall focus on determining the child's ability to understand simple questions and answer them truthfully.

Psychological or psychiatric examinations to assess the competency of a child shall not be ordered unless compelling reasons to do so are demonstrated.

A competency examination shall not be repeated.

Article 22. Oath

1. At the discretion of the presiding magistrate or judge, a child witness shall not be required to swear an oath, for instance, if the child is unable to understand the consequences of taking an oath. In such cases, the presiding magistrate or judge may offer the child the opportunity to promise to tell the truth. In either event, the court shall nevertheless hear the child's testimony.

2. A child witness shall not be prosecuted for giving false testimony.

P R O M I S E

Implementing the Barnahus Quality Standards throughout Europe

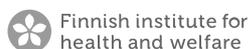
PROMISE is supporting Europe to adopt the Barnahus model as a standard practice for providing child victims and witnesses of violence rapid access to justice and care. We undertake this work to fulfil the PROMISE vision: a Europe where the human rights of children to protection from violence, support and to be heard are fulfilled.

A Barnahus provides multi-disciplinary and interagency collaboration to ensure that child victims and witnesses of violence benefit from a child-friendly, professional and effective response in a safe environment which prevents (re)traumatisation. With the formal support from national authorities, PROMISE provides opportunities to translate national commitment into action and engage internationally in the process. In addition, regular networking and strategic communications continually activate our growing network of professionals and stakeholders who are committed to introducing and expanding Barnahus services nationally.

The first PROMISE project (2015-2017) set European standards and engaged a broad network of professionals. The second PROMISE project(2017-2019) promoted national level progress towards meeting the standards and formalised the PROMISE Barnahus Network. The current project (2020-2022) is expand these activities to include University training, case management tools, with a view to establishing a European Competence Centre for Barnahus and laying the groundwork for an accreditation system for Barnhaus.

PROMISE is managed by the Children at Risk Unit at the Council of the Baltic Sea States Secretariat in close collaboration with Child Circle.

Access the PROMISE tools and learn more at www.barnahus.eu



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