

Child victims in the Union - Rights and Empowerment CURE

EXECUTIVE SUMMARY



THE CRIME VICTIM COMPENSATION AND SUPPORT AUTHORITY

Box 470, SE-901 09 UMEÅ, SWEDEN
Tel: +46-(0)90-70 82 00 Fax: +46 (0)90-17 83 53
E-mail: registrator@brottsoffermyndigheten.se
www.brottsoffermyndigheten.se



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Child victims in the Union – Rights and Empowerment, CURE, has been a project on the situation of victimised children in the criminal justice system. It has had the ultimate aim to provide recommendations for an improved position of child victims in the European Union. The CURE project was initiated and run by the Crime Victim Compensation and Support Authority in Sweden during 2009-2010.

Child victims are identified as a vulnerable group of victims in the legislation of many Member States. Over the last couple of years, the legislative activity on issues related to certain groups of child victims and witnesses has been high. This has led to the establishment of a number of procedural safeguards aimed to protect the child victim from hardship in the criminal justice process. These are primarily concerned with how the child victim is interviewed and with ways to avoid that the child victim is confronted with the suspect.

The surveys

Information

Although a need for information about the criminal justice system adapted to children has been recognised in some parts of the Union, few Member States have addressed the issue of how information is actually provided to a child victim who enters the criminal justice system. Only a few Member States have adopted child-specific legal provisions on information to crime victims. Neither has general information about the rights of child victims and their possibilities to receive support been developed in many Member States. Above all, there are no indications on structures or policies for the provision of information to the child victim. The measures that have been taken seem ad-hoc-like and scattered.

Telephone helplines set up for children at risk and for crime victims exist in most Member States and they are considered as possible sources of information.

The investigative interview

Almost no governments refer to child-friendly mechanisms for reporting crimes. Several Member States report about a legal obligation to notify crimes against children to social welfare authorities. Legislative measures have

also been taken to regulate the balance between the professional secrecy imposed on certain groups of professionals and the need to protect a child in danger, but the impression is that the opinions on mandatory reporting of crimes against children vary considerably in the Union as well as within the Member States.

Most Member States have adopted special procedures for the hearing of children in criminal proceedings. These are mainly characterised by the objective to prevent the child victim from being heard repeatedly and by the involvement of psychological expertise.

The need for interview rooms adapted to children appears to be accepted in the majority of the responding states, although most Member States have not given priority to modifying their premises to this need. From this follows that child-friendly interview rooms are available throughout the Union, but in a scattered manner.

Very little information has been supplied by the Member States about the persons present when the child victim is interviewed and the timing of the interview.

The information indicates that it is commonly recognised that only trained professionals should conduct investigative interviews with child victims, and that such training is called for in many parts of the Union. In spite of this, training activities on the situation of the child victim, which target different groups of criminal justice professionals and which are conducted in a consistent manner, do not seem to be common. Clear requirements on qualifications with regard to training on this matter is lacking in many Member States. Neither are guidelines entirely devoted to the interviewing of child victims at hand in all parts of the Union. It is essential that such guidelines are set in place and applied in training of investigative interviewers.

Legal representation

Where there is a conflict of interest between the child and the parent, the law in many Member States provides for possibilities to appoint an ad hoc curator or a lawyer to represent the child victim. Less consideration is paid to legal representation of child victims in other circumstances. The issue of who should look after the interests of a child victim to be legally represented in criminal proceedings, independently of his/her parents or guardians, has largely been left unanswered. Nor are the skills or the training of persons

representing the child victim in the criminal proceedings an issue of concern. If access to justice is to have a practical meaning, the child victim must be able to be legally represented independently of the child's parents and guardians.

Appearance in court

The information from the Member States seems to indicate that it is a recognised principle in the Member States that young child victims should not appear in court. This principle is manifested by the possibilities which exist in all Member States to allow pre-trial evidence, i.e. recorded statements in the court. The legislation that conveys this principle depends on a number of circumstances however and is curbed in different ways. The issue of whether the child should be summoned to be heard in court is often assessed on a case-by-case basis. A number of Member States have set up age limits with respect to the hearing of child victims/witnesses in criminal proceedings.

Although legislative and/or other measures have been taken to reduce the number of interviews with child victims in most Member States, and although in theory, there are manifold possibilities to hear the child victim outside the court, repeat questioning of child victims stand out as a major problem in many Member States.

When the child is obliged to appear in person in the court, very few Member States report about mechanisms aimed towards informing and preparing the child victim for this experience.

With regard to the delicate question of whether the child victim should appear in court to testify, flexibility is key. This necessitates a legislation that is not too rigorous and professionals who are familiar with the needs of victimised children.

Support to child victims

Few specialised services for support to child victims have been set up within the criminal justice system and NGOs are often considered as the obvious service providers to crime victims. It appears as if the majority of the Member States do not consider support provided to child victims in the context of the criminal justice process as the responsibility of the state.

Two forms of NGOs may be of relevance when child victims are in need of support: organisations working to support children and victim

support organisations. All the responding organisations are able to help child victims, but too few are specialised in assisting the child victim in the context of the criminal justice process. Many organisations have insufficient resources which makes it difficult for them to expand their activities and to specialise.

The NGOs are important in their role as providers of assistance to child victims. But they are also bearers of knowledge on child victims. In this role, they contribute to advocacy on issues of concern for the child victim, and to help raise awareness and opinion on the situation of child victims. Other functions which they assume are to initiate co-operation with the actors in the criminal justice system and to conduct training for other professionals. In this way, they have an important task in contributing to the implementation of legislative and policy objectives. In view of this, Member States should not only recognise these NGOs, but also encourage their establishment and financing, without renouncing the State's ultimate responsibility for supporting child victims in the criminal justice process.

The police

Police units and police officers that are authorised to deal with child victims are in place in most parts of the Union. Few of them seem to be exclusively specialised on victim issues or on children, but act on a wider mandate which comprises juvenile delinquency and domestic violence. Specialisation has still not developed in a coherent manner. In spite of this, the view of the police on their role vis-à-vis the child victim very much amounts to specialisation.

A holistic approach

Information on mechanisms, working methods and training which are characterised by a multi-professional approach is scant. Not many examples have been given of co-operation between various professional groups and between these professionals and NGOs in the Member States. In this respect, the Barnahus model is notable as an outstanding example of a multi-disciplinary approach in dealing with child victims.

It is difficult to assess how the UN Guidelines on Justice in Matters involving Child Victims and Witness of Crime are employed on a national level, but they are not accessible in many of the languages of the EU Member States. Very little information is provided about efforts to minimise the length of criminal proceedings when child victims are involved.

A holistic approach towards the child victim should also embrace the prevention of repeat victimisation. It is not possible in this context, to distinguish a clear pattern on what is done in this respect. It is essential that the Member States address groups of children at risk of being repeatedly victimised, other than those who are subject to domestic violence and human trafficking.

Summing up

Rights and empowerment

The declaration that child victims have the same rights as other victims might be correct in theory but is a qualified truth because of the limited possibilities for child victims to access their rights. This can be illustrated by the right to information, which lacks practical meaning if the information is not adapted to children and the right to be heard, which is likewise of no significance if the views of the child victim are not considered.

The possibility for child victims to take legal action following a crime is for natural reasons restricted. This notwithstanding, a view of children as subjects of rights must imply that when children are subjected to crime, they should be equipped with tools to access information. They should be provided with legal representation, independently of their parents and they should be given possibilities to give their view on if and how they should be heard in court.

Research and experience have shown that it is crucial for the child victim to know what has already happened and what will happen in the criminal justice process. To leave children without information is not only to ignore their rights, but it may also instil a sense of insecurity into the child victim. This may impact on the quality of the statement. It is equally important that there is someone available who can listen to and support the child victim before, during and after the criminal proceedings.

Broadening the perspective

It is clear that legislation and policies designed for child victims have developed for the better over the last couple of years. In spite of this, only certain groups of child victims are regarded as vulnerable. The most striking outcome drawn from the information on procedural safeguards and special measures available to child victims is that most of them are surrounded by restrictions with regard to the age of the child and the crime committed. These restrictions have the most severe crimes in view. In relation to the individual child victim they may be discretionary and haphazard. Applying

the principle of the best interests of the child should not be restricted to certain crimes. In view of this, the expansion of offences for which the child victim can qualify for testimonial aids and special measures should be promoted.

All children develop at a different pace and have evolving capacities. For this reason, all child victims below 18 should automatically be eligible for special measures.

Best practices

The apparent lack of best practices set up to facilitate the situation of the child victim in the criminal justice process must be considered in view of how the concept of best practice is looked upon. Legislation with the purpose to benefit child victims has been enacted in the Member States. In this general sense of the word, best practices are put in place. There are however, very few examples of concrete activities conducted in the Member States to realise the standards. A possible contention is that the awareness of the actual management of child victims is poor outside the agencies of the criminal justice system and outside the circle of people who are closely involved with support to child victims. In view of this, there is a need for exchange of information on working methods and policies between the Member States. But it is just as important to raise a discussion on the concept of best practice and its tenor, and to encourage studies and research on practices that can facilitate the experience of the child victim in the process.

The future

Today, the issue of child victims is often dealt with in the context of crime reduction and juvenile delinquency. This applies on a theoretical level, when strategies and action plans are outlined, but also in practice when professionals are trained and specialised units are set up. Awareness-raising and knowledge of the child victim can be realised within a broader framework, but should above all be recognised as a separate issue that deserves attention.

One conclusion from the studies in the CURE project is that the situation of the child victim, and the support which child victims should receive in the context of the criminal justice process, is not sufficiently considered in criminal justice policies. The overall picture and the holistic approach called for in the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime seem to be missing. The situation which child victims face in the justice system requires rights which are justiciable

and a strategic approach in criminal justice policies. One way to improve the legal protection of the child victim is through binding legislation and through child-specific provisions in particular.

Structured mechanisms based on a multi-disciplinary approach are also needed to empower the child victim to meet the needs of the criminal justice process. Although standards and strategies are necessary, flexibility is key when assisting a child victim in the process. To be able to meet the needs of the individual child victim, general and specialised training for criminal justice professionals is required. The ambition to provide training to criminal justice professionals must be bolstered by clear criteria, and cover all the groups in the criminal justice system.

Maybe it is fair to say that the Member States have reached about half way. Looking at child victims as a separate group in the context of the criminal justice process is a very new phenomenon and there is no real discourse on this matter. Certain groups of child victims have been prioritised, notably victims of sexual crimes and trafficking in human beings. The result is that many child victims fall through the cracks. The age limits set up with respect to safeguards and protective measures may counteract the child perspective. Child victims have common needs by virtue of being children. With respect to this fact, the measures taken in the Member States appear as disconnected and fragmentary.

The CURE project should be seen as a first step to highlight issues of concern but further research is needed to gain knowledge on the implementation of law and policies. The next steps should deal with putting the standards into practice. One major conclusion from this project is that there is a need for evidence-based research on ways and means to assist the child victim in criminal proceedings.

A number of actors have shown interest in advancing the plight of child victims at the level of the EU. With a view to the actions envisaged in the Stockholm programme, the 2009 Council conclusions on support to persons who fall victims of crime in the European Union and the future strategy on the rights of the child, various possibilities are at hand. A major goal in the CURE project has been to establish a minimum standard of legal protection and support of child victims in the criminal justice process. To achieve this, the European Commission and the Member States are invited to draw on the CURE recommendations with a view to:

- develop national strategies protecting the child victim in the criminal justice system,
- develop child-friendly information directed to children who are crime victims,
- bring forward and exchange research and best practices related to the situation of the child victim in the European Union,
- further the development of European guidelines on investigative interviewing of child victims,
- include issues related to the situation of the child victim in the criminal justice process in common training for criminal justice professionals at the level of the European Union.