

Social Fieldwork Research

Child Participation in Justice Report

Romania, 2012

FRANET contractor: Foundation Centre for Legal Resources

Authors: Fusu-Plăiașu, G, and Manole, M.

Interviewers: Georgiana Elena Pascu and Claudia Cerasela Bănică

This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the [project children and justice](#). The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of Contents

EXECUTIVE SUMMARY

1. BACKGROUND

1.1 Research Methodology

1.2 Sample

1.3 Legal Context

2. FINDINGS

2.1 Right to be heard

2.1.1 Right to be heard in criminal justice

2.1.2 Right to be heard in civil justice

2.1.3 Concluding assessment on right to be heard

2.2 Right to information

2.2.1 Right to information in criminal justice

2.2.2 Right to information in civil justice

2.2.3 Concluding assessment on right to information

2.3 Training and cooperation of professionals

2.3.1 Training and cooperation of professionals in criminal justice

2.3.2 Training and cooperation of professionals in civil justice

2.3.3 Concluding assessment on training and cooperation of professionals

2.4 Horizontal issues

2.4.1 Discrimination

2.4.2 Best interest of the child

2.4.3 Differences and similarities in regional, national, international context

2.5 CoE Guidelines

3. CONCLUSIONS

3.1 Overarching issues

3.2 Research

3.3 Any other issues not covered in previous sections: Recommendations

ANNEX

Documentation

Resources

Tables

EXECUTIVE SUMMARY

A national analysis of the situation of children involved in judicial proceedings (as victims and witnesses in criminal proceedings, and as part to the civil proceedings) has revealed that Romania doesn't have a proper juvenile justice system or even a justice system that is adapted to the needs of the child. Thus, the criminal and civil proceedings are mostly carried out in accordance with the rules and procedures designed for adults; just a few special provisions for children can be found and some of these are not strong enough (because they are not mandatory) or are applicable only to certain categories of children. The language and the rules of the proceedings are not accessible for children and there are no adapted materials to be used in this regard.

There is no national methodology to guide professionals in conducting a child hearing and no methodology for informing and preparing the child for the proceedings. In the absence of clear guidelines, each legal professional develops his/her own approach towards the children whom (s)he works with.

In criminal proceedings, child hearings are approached from a procedural perspective, not from a rights-based perspective. In order for children to make use of their right to be heard, they should receive relevant information and support in this regard. However, the research showed that these important elements – information and support – are overlooked, while the hearing of the child seems predominantly driven by the need to solve the case. The research identified issues such as repeated hearings (which have a traumatising effect on the child), inadequate hearing spaces (unfriendly, cold, not ensuring safety and privacy), public hearings (which expose a child victim or witness to contact with the offender; the hearing of the child by audio-video means is an exception, rather than common practice), the lack of specialisation of the professionals involved (who, thus, may approach a child victim in an unfriendly or inappropriate manner) and the lack of support services. Situations were also presented when the existing rules aimed at protecting the child were not respected.

In civil proceedings, children should be always heard in chambers (*camera de consiliu*), but this rule is not always observed (thus, the interviews show that children might be also heard in the courtroom, even in the presence of the public). In civil proceedings, children younger than 10 are rarely heard. The hearings are generally seen as uncomfortable for the child and the views of the child are given variable weight, depending on what the judge sees as the best interest of the child to be in the case. Several participants in the research underlined the need to secure the assistance of a psychologist for child hearings.

Children might spend even several hours in the court hallways or in courtrooms before being heard in both civil and criminal proceedings.

The right of the child to information is not fully ensured. No single professional has the responsibility or oversight on whether or not the child involved in judicial proceedings has received any information, while some professionals, mainly from social field, showed a limited knowledge of the relevant procedures and practices. The research found that some children might be misled or might receive incorrect or contradictory information. Other children are left in the dark as they don't receive any information and support from specialists, especially in divorce and custody cases.

There are no cooperation mechanisms between the relevant professionals/institutions and a gap between the professionals from legal and social fields was noticed.

Many of the interviewees were unable to provide a proper definition of 'the best interest of the child' and, overall, appeared not to observe this principle in their daily work with children either.

The issues identified by the research are mainly systemic (the heavy caseload, the lack of resources, of training/specialisation and of adapted rules and methodologies etc.), while the good practices and efforts are rather developed by dedicated and proactive professionals or by small scale projects/initiatives which remain insufficiently capitalised.

These findings reflect to a smaller extent the situation of children participating in proceedings as offenders, as this category was not part of the target groups and was not included in the research sample. There are several specific rules and proceedings for children coming in conflict with the law and the problems faced by them during and after the proceedings are distinct.

1. BACKGROUND

1.1 Research Methodology

The research conducted in Romania within the ‘Child Participation in Justice’ project followed the common methodology developed by FRA (European Union Agency for Fundamental Rights).

The relevant national pieces of legislation, official reports, statistics, guides and other publications were analysed and the main points were presented in the section ‘Legal Context’ within this report. The findings of the desk-research were used also to more accurately interpret some of the answers provided by the interviewees.

The desk analysis was supplemented by qualitative field research. 53 face-to-face semi-structured interviews were carried, with 54 Romanian professionals, from the age groups 26-45 and 46-65. Two focus groups – one focused on the civil matters and the other on the criminal proceedings – were conducted with seven participants each (almost all of them were selected among the interviewed specialists). Due to technical issues, one interview record was lost; therefore, this report reflects the views of 55 professionals, collected through interviews and focus groups.

The research covered three counties (Timiș, Brașov and Iași)¹ and Bucharest (Romania’s capital city). Overall, four geographic areas were covered:

- South: Bucharest and Pitești;
- North-east: Iași and Pașcani;
- Centre: Brașov;
- West: Timiș.

The selection of the participants from the legal field was made based on the judiciary structure of Romania, aiming to ensure a balance between the professionals working in civil matters and those working in criminal matters, at different levels of jurisdiction.

Thus, the research included professionals working within courts of first instance (*judecătorii*), tribunals (*tribunale*) and courts of appeal (*curți de apel*). Romania has only one specialised Tribunal for Children and Family (in Brașov) and it was very important to conduct interviews with judges from this tribunal.

In the selection of respondents we took into account also the main actors from the criminal investigation stage. Police officers from municipal and county level (including one police officer working within the county inspectorate, but investigating the offences committed at rural level) and prosecutors were therefore included in the target group, as well as lawyers and legal counsellors.

The professionals from social field were selected based on the analysis of the institutions that can be subpoenaed by the criminal investigation bodies and/or court or that have a role in the proceedings, according to the law. For example, the General Directorates for Social Work and Child Protection (*Direcția Generală de Asistență Socială și Protecția Copilului*) (GDSWCP) from county level have an important role in the context of civil proceedings involving children for whom the court

¹ Timișoara, Brașov and Iași Municipalities are the capital cities of Timiș, Brașov and Iași Counties.

decides/reviews/changes the special protection (such as placement in a centre or to a foster parent). The GDSWCPs can also be subpoenaed in cases involving child victims or in custody cases. Professionals from the regional centres of the National Agency against Trafficking in Persons (*Agenția Națională împotriva Traficului de Ființe Umane*) (ANITP) and from the Probation Services were also selected for the research.

Taking into account that civil society organisations might provide support to children involved in judicial proceedings or might conduct projects in the area of juvenile justice, specialists from the non-governmental field were considered a target group also.

For the recruitment of the participants, letters were sent to the head of these institutions and organisations, describing the research and asking to delegate one or two professionals that could participate to the interview. A few of the participating professionals, especially from the non-governmental field, were reached based on recommendations and informal contacts.

The initial target groups included also specialists from the special police unit with responsibilities in the area of trafficking in human beings – the Direction for Investigating Organised Crime and Terrorism (*Direcția de Investigație a Infracțiunilor de Criminalitate Organizată și Terorism*) (DIICOT), as well as professionals from the Institute of Legal Medicine (*Institutul de Medicină Legală*) (IML) responsible for conducting forensic examinations of crime victims, but we were not able to conduct interviews with these specialists.

Also, requests for interviews were sent to several Guardianship Authority Services (*Autoritatea Tutelară*) from local level – institution responsible for representing the interests of the child who lacks parental supervision or whose interests conflict with those of his/her parents. The roles of this institution were recently reduced by the provisions of the new Civil Code, thus their answers to our requests show either that they had no recent cases of represented children who were involved in judicial proceedings, or that the guardians/legal representatives were not willing to participate in the research due to personal reasons. Therefore, no interviews with representatives from the Guardianship Authority Services could be scheduled either.

The participants to the focus groups were selected mostly from the professionals who took part in the interviews, with two exceptions – one lawyer and one judge who participated to the focus group on civil matters without being previously interviewed.

The focus group on criminal matters took place in Iași, gathering thus specialists from that area, while the focus group on civil matters was conducted with professionals from Bucharest.

In total, there were 37 participants (31 specialists working in the public field and 6 working or collaborating with NGOs) appointed by their superiors, the latter being approached through official requests sent by fax or email. One can only assume that their participation might have been decided based on: their specialisation or experience which their superiors considered as relevant; the fact that the time and the working scheduled allowed them to get involved; or on their interest in the subject of the research.

The remaining 18 participants – lawyers, leaders of NGOs, self-employed social professionals (psychologist, social worker), a president of a Court section – were approached through networking

or recommendations of other interviewees. One can assume than in their case, the specialists took part in the research due to their personal motivation and interest in the subject.

The interviews and focus groups followed the schedules developed by FRA and were audio recorded. For analysing the results, the discussions from each interview / focus group were structured based on the common templates developed by FRA. The transcripts of the interviews and the templates facilitated the analysis and comparison of the interviews findings. Microsoft Excel was used to better analyse the responses on some thematic issues – such as professionals' knowledge of the CoE Guidelines or their participation to training and similar activities.

Difficulties were encountered in recruiting the participants from the legal field as these professionals have a very busy schedule and a heavy caseload. Moreover, the magistrates were less available in the first two months of the fieldwork, as in Romania, the judicial holiday takes place in July and August. The same vacation period applies also for most of the professionals from our target group. Therefore, only three interviews were conducted during this period, leading to a very busy interview calendar during September and October and extending the fieldwork until mid November. Moreover, some of the interviews were often rescheduled or even refused on the spot due to alleged time constraints of the interviewees.

Despite our very clear requests as well as checking before conducting the interviews, several institutions appointed professionals with experience in working with children, but either their experience wasn't related to child hearings or was limited to child offenders. As a consequence, some interviews offered poor information or were downright cancelled because the potential interviewees lacked the relevant experience.

The qualitative field research was conducted by two female interviewers from the age group 26-45. Even though the interviewers have different qualifications and educational backgrounds, both of them have experience in working with legal and social issues. The first interviewer is a social worker who has a qualification in Sociology, Psychology and Social Work, but she has working experience with legal issues regarding children, also. The second interviewer is a researcher whose educational background is in Law and Public Administration and who has also worked on social issues, carrying out interviews with specialists working with children, interviews in the field of trafficking etc.

1.2 Sample

The research sample included 55 professionals who took part in 53 face-to-face interviews and two focus groups.

Out of the total, 30 participants were working in the legal field and 25 in the social field; no participant was working in the legal and social field at the same time. The sample comprised 23 specialists working solely on criminal matters, 17 specialists working only in civil matters and 15 professionals working in both fields.

There were 18 actors – professionals with an active role in conducting the child hearings (law enforcement officials, prosecutors and judges), 34 specialists having a support role (lawyers, legal counsellors, psychologists, social workers etc.) and 3 observers (from non-governmental organisations).

Overall, the sample included more women (38) than men (17), also because women were significantly better represented in the social field (19 women, compared to only 6 men).

Most of the participants (50) were between 26-45 years old, while only 5 specialists were between 46-65 years of age.

Three specialists were from small municipalities. The rest of the participants (53) were working within institutions from/organisations active at county and municipal level. Overall, the distribution of the sample on the four geographic areas covered by the research was:

- South (Bucharest – Capital City and Pitești Municipality): 20 participants;
- North-east (Iași County, with Iași Municipality and Pașcani small Municipality): 16 participants;
- Centre (Brașov County, with Brașov Municipality and Codlea small Municipality): 8 participants;
- West (Timiș County, with Timișoara Municipality): 12 participants.

With respect to profession, the participants from legal field were: 9 judges from different levels of jurisdiction; 5 prosecutors; 4 law enforcement officials; 10 lawyers; 2 legal counsellors.

The participants from the social field were: 14 psychologists; 6 social workers, and 5 NGO specialists.

With respect to participants' title, the sample included several professionals with leading functions, such as a president of a section within a court of appeal, two police chief commissioners, a head of an emergency placement centre, two presidents and an executive director within non-governmental organisations. There were also included: a senior specialist officer within a municipality police directorate, case managers from public and private field, programme directors/coordinators from NGOs, but also specialised professionals – such as judges, prosecutors, lawyers, police officers, psychologists etc..

The professionals from social field seemed less familiar with the rules and procedures for child hearings, in comparison with those from legal field. On the other hand, several legal professionals were not able to present how children are informed and prepared for the hearings, mentioning instead that this activity was carried out by the social professionals.

Except for one interview which was conducted with two participants, all the others were individual interviews. The recording of one interview was lost, therefore its content was not taken into account during the writing of this report and it was not included in the sample.

The average duration of the interviews was of 60 minutes, with a maximum of 122 minutes and a minimum of 37 minutes. The longest interviews were with social professionals, while the shortest one was with a legal professional. The confidence and confidentiality of the interviews were at medium levels. In case of two legal specialists and one social professional, the discussions were slightly affected by interruptions, thus the amount of interruptions during the interviews can be estimated as medium.

Seven professionals – two actors and five experts from support services – took part in the focus group on criminal matters. Their ages were between 26 and 45 years old. The gender representation

was balanced (3 males and 4 females). All the participants previously took part to individual interviews. Four of the participants (a prosecutor, a psychologist and two NGO representatives) were very active, talking also about aspects outside their specific duties; two other professionals (a police officer and a psychologist from the anti-trafficking authority) tended to intervene in the discussion when the topic concerned their specific roles; only one participant (a head of an emergency placement centre) was waiting for the moderator to specifically address the questions to her. The participants talked mainly about child victims and witnesses in cases of trafficking in children, sexual abuse, domestic violence (ill treatment of children) and thefts.

The focus group on civil matters was carried out in Bucharest and benefited from the participation of seven professionals – one actor, one observer and five specialists from support services. Six of them were between 26 and 45 years old and one professional was in the age group 46-65. There were more females (5) than males (2). Most of the participants (5) took also part to individual interviews. The legal professionals (two lawyers and one judge) were the dominant figures, participating more actively in the discussion compared to the social professionals (two psychologists, one social worker and one NGO specialist). The participants talked about children as parties of the proceedings in civil cases concerning custody/divorce, special protection measure and asylum.

The focus group on criminal matters was longer (116 minutes) than the one on civil matters (94 minutes).

Both focus groups discussion were open and interesting, with just a few interruptions. The levels of confidence and confidentiality were high.

1.3 Legal context

Criminal field

Children of any age may be heard during criminal proceedings, appearing either as an injured party, a civil party² or a witness,³ regardless of their age or legal capacity. There are no official regulations on how often, where or how the child should be interviewed during criminal proceedings.

In criminal cases, the law states that children under 14 years of age will be heard by the police officer, prosecutor or judge (according to the stage of the proceedings) in the presence of a parent or guardian⁴; *per a contrario*, a child older than 14 can be interviewed alone. The law does not contain many provisions for the situation in which the parent or guardian of the child cannot attend. A representative of the Probation Service may attend the hearing of a child victim of a crime,⁵ upon the request of the victim or his/her family, for the purpose of providing psychological support. If the parents or guardians of the children victims are unable, for any reason, to represent or assist them, the judicial authorities will notify the child protection authorities, so that a protection measure may be taken.⁶ If the child has been subjected to a protection measure, a representative of the child protection authority will attend the hearing.⁷

The legal assistance of the child victim of trafficking is mandatory.⁸ The legal assistance of children who are victim of other crimes is not mandatory, but the criminal investigation authorities may consider that legal assistance is necessary and appoint a lawyer *ex officio*.⁹

The Law No. 211/2004 regarding some measures to ensure protection for the victims of crimes, provides, based on request, for the free legal advice to victims of certain categories of crimes, such as sexual intercourse with a child, attempted murder, severe bodily injury etc., or to victims whose household's income per capita is below the national basic gross salary.¹⁰

The New Criminal Procedure Code provides that legal assistance of a child victim is mandatory.¹¹ According to the latest official information, this new code is scheduled to come into force on 01 February 2014¹². However, taking into account that the date of coming into force has been postponed several times already, the latest announced date might be changed also.

²Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Section II.

³Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 81.

⁴Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 81.

⁵Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 77¹.

⁶Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 161.

⁷Asociația Alternative Sociale (2005), *Ghid de practici instituționale în instrumentarea cauzelor cu minori*, Iași, Asociația Alternative Sociale, p. 56.

⁸Romania, Law No. 678/2001 regarding the prevention and fight against the human trafficking (*Legea nr. 678/2001 privind prevenirea și combaterea traficului de persoane*), 21 November 2001, Art. 44.

⁹Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 173.

¹⁰Romania, Law No. 211/2004 regarding some measures to ensure protection for the victims of crimes (*Legea nr. 211/2004 privind unele masuri pentru asigurarea protecției victimelor infracțiunilor*), 27 May 2004, Art. 14-20.

¹¹Romania, Law No. 135/2010 on the Criminal Procedure Code (*Legea nr. 135/2010 Codul de Procedură Penală a României*), 1 July 2010. Art. 93 (4).

¹²Romania, The Ministry of Justice, 'Information' (*Informare*), 20 September 2012. Available in Romanian at www.just.ro/Sectiuni/Comunicate/Comunicateseptembrie2012/20septembrie2012v2/tabid/2237/Default.aspx All hyperlinks were accessed on 11 February 2013.

The criminal investigation specialist can select the place for hearing the witness or the victim, as the legislation does not impose restrictions in this regard.¹³

The hearing of a crime victim (thus also of a child victim) can be carried out through audio-video means, if the criminal investigation authorities or criminal court consider that the life, physical integrity or freedom of the victim is endangered.¹⁴ A counsellor of the Probation Service may be present during the hearing,¹⁵ if the victim agrees.

Based on the same considerations, the hearing of the victim by the court can take place in secret session¹⁶. When no such endangerments are considered, the victim is heard in the courtroom, during public session.

Special provisions are introduced for trials involving children victims of trafficking, the law mentioning that the court session shall not be public¹⁷.

According to the Criminal Procedure Code, witnesses, thus children witnesses also, are heard in the courtroom. However, if the criminal investigation authorities have reasons to believe that their life, physical integrity or freedom is endangered, they can be heard in secret session or by means of a video link, with a blurred image and distorted sound¹⁸, and can have their identity concealed¹⁹. A counsellor of the Probation Service may also be present during the hearing,²⁰ if the witness agrees.

The children victims of abuse, neglect, exploitation, trafficking or family violence will be informed by the staff of the child protection authorities about their rights, available protection measures and legal proceedings.²¹ This discussion will take place after the children are referred to the authorities and the case manager has drafted an appropriate service plan.²² The children have the right to ask for additional information at any time during the proceedings.

¹³ The Alternative Sociale Association and the National Institute for Magistracy, Luca C., Pivniceru M. (2011) *Interviewing children throughout the legal proceedings: handbook*, Bucharest, Editura Hamangiu, pp. 156 and 194. Available in English, online at www.unicef.org/romania/AAS_2011_Interviewing_children_throughout_legal_proceedings.pdf

¹⁴ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 77¹.

¹⁵ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 77¹ (2).

¹⁶ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997 Art 290.

¹⁷ Romania, Law No. 678/2001 regarding the prevention and fight against the human trafficking (*Legea nr. 678/2001 privind prevenirea și combaterea traficului de persoane*), 21 November 2001, Art. 24.

¹⁸ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art.290 and 86².

¹⁹ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 86¹.

²⁰ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 86¹.

²¹ Romania, Government Decision No. 49/2011 regarding the approval of Framework Methodology on prevention and intervention within multidisciplinary team and network in situations of child and family violence and of the Methodology of multidisciplinary and inter-institutional intervention for exploited and at risk children for labor exploitation, children victims of trafficking in persons and Romanian emigrant children victims of other forms of violence on territory of other states (*Hotărâre de Guvern nr.49/2011 pentru aprobarea Metodologiei cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și violență în familie și a Metodologiei de intervenție multidisciplinara si interinstitutionala privind copiii exploatați și aflati in situatii de risc de exploatare prin munca, copiii victime ale traficului de persoane, precum si copiii romani migranti victime ale altor forme de violenta pe teritoriul altor state*), 19 January 2011.

²²Romania, Government Decision No. 49/2011 regarding the approval of Framework Methodology on prevention and intervention within multidisciplinary team and network in situations of child and family violence and of the Methodology of multidisciplinary and inter-institutional intervention for exploited and at risk children for labor exploitation, children victims of trafficking in persons and Romanian emigrant children victims of other forms of violence on territory of other states (*Hotărâre de Guvern nr.49/2011 pentru aprobarea Metodologiei cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și violență în familie și a Metodologiei de intervenție multidisciplinara si interinstitutionala privind copiii exploatați și aflati in situatii de risc de exploatare prin munca, copiii victime ale traficului de persoane, precum si copiii romani migranti victime ale altor forme de violenta pe teritoriul altor state*), 19 January 2011.

Civil field

The Civil Procedure Code indicates that, in family matters, children will be heard only in chambers (*camera de consiliu*)²³, while in other civil cases, they will be heard during the public session²⁴; nevertheless, in such a case, if the public debate could bring prejudice to the public order or morality or to the parties, the court may order the debates to take place in secret session²⁵. Law No. 272/2004 on the protection and promotion of the rights of the child stipulates that, if the child hearing is deemed necessary in the context of issuing a presidential ordinance for the emergency placement of the child, he/she shall be interviewed only in the judge's chambers.²⁶

The Civil Procedure Code doesn't' provide that the hearing of a child witness, in civil proceedings, takes place in chambers. However, several authors concluded that the hearing of the child witness should also be conducted in chambers, by extending the scope of the provisions on secret session (namely the article 121 par. 2 of the Civil Procedure Code).²⁷

The New Civil Procedure Code, to come into force gradually starting with the 15th of February 2013²⁸, brings more light to the matter, indicating that children must always be interviewed in chambers (*cameră de consiliu*), regardless of the object of the proceedings.²⁹

The current legal framework provides that children must be informed about any proceedings or decisions that concern them, as well as about any possible consequences these decisions may have.³⁰ However, in the situation of civil proceedings, there are no additional regulations specifying the exact means, place or method of enforcing this right.

The judiciary structure

The Romanian court system consists of: courts of first instance (*judecătorii*), tribunals (*tribunale*) and specialised tribunals, courts of appeal (*curți de apel*) and the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție, ICCJ*).³¹ Civil cases (such as custody, adoption, placement, the exercise of parental rights) and criminal cases (involving children as victims or offenders) are tried by specialised panels or sections of each court,³² with the exception of the ICCJ, which does not have

²³ Romania, Civil Procedure Code (*Codul de procedură civilă*), 26 July 1993, Art. 144¹ (1).

²⁴ Romania, Civil Procedure Code (*Codul de procedură civilă*), 26 July 1993, Art. 196 and 197.

²⁵ Romania, Civil Procedure Code (*Codul de procedură civilă*), 26 July 1993, Art. 121.

²⁶ Romania, Law 272/2004 on the protection and promotion of the rights of the child (*Legea nr.272/2004 privind protecția și promovarea drepturilor copilului*), 21 June 2004. Art. 95 (3). Available online at http://www.dreptonline.ro/en_resources/en_romanian_child_protection.php accessed on 20.01.2013.

²⁷ The Alternative Sociale Association and the National Institute for Magistracy, Luca C., Pivniceru M. (2011) *Interviewing children throughout the legal proceedings: handbook*, Bucharest, Editura Hamangiu, pp. 79-80. Available in English, online at http://www.unicef.org/romania/AAS_2011_Interviewing_children_throughout_legal_proceedings.pdf

²⁸ Romania, the Ministry of Justice, 'Info-press regarding the coming into force of the new Civil Procedure Code' (*Informare de presă cu privire la intrarea în vigoare a nouului Cod de procedură civilă*), 30 January 2013. Available in Romanian at www.just.ro/Sectiuni/Comunicate/Comunicateseptembrie2012/30ianuarie2013v1/tabid/2390/Default.aspx.

²⁹ Romania, New Civil Procedure Code (*Noul Cod de Procedură Civilă*), 01.07.2010, Article 226.

³⁰ Romania, Law No.272/2004 concerning the protection and promotion of the rights of the child (*Legea nr.272/2004 privind protecția și promovarea drepturilor copilului*), Art. 24, 21 June 2004. See also Law No. 287/2009 on the Civil Code (*Legea nr. 287/2009 privind Codul Civil*), Art. 264 (2), 17 July 2009.

³¹ Romania, Law No. 304/2004 concerning the Organization of the Justice System (*Legea nr. 304/2004 privind organizarea judiciară*), Art. 2 (2), 28 June 2004.

³² Romania, Law No. 304/2004 concerning the Organization of the Justice System (*Legea nr. 304/2004 privind organizarea judiciară*), 28 June 2004, Art. 35 (2), 36 (3), 39 (2), 40 (1).

such a specialised panel or section.³³ The law regarding the organisation of the judiciary initially stipulated for the establishment of specialised tribunals for children and family matters.³⁴ However, only one such tribunal has been established so far in Brașov and there are no reported plans to establish others³⁵

The new Civil Code, which came into force in 2011, stipulates that all civil matters concerning children will be tried by a court of guardianship (*instanța de tutelă*). However, these provisions have not been implemented yet and the date when such courts will become functional is yet unknown.

The situation of specialised sections for children and family, in 2011, was the following³⁶:

- Not even one of the 179 courts of first instance had a specialised section for children and family (moreover, a rather low number had separated specialised sections for civil, respectively criminal matters).
- A specialised tribunal for children and family matters exists in Brașov County. Out of the remaining 40 counties, plus Bucharest, only one tribunal (Dolj County Tribunal, with 6 judges) had a specialised section on children and family.
- Out of the total 15 courts of appeal, only one had a separated section for child and family matters (Court of Appeal Alba, with 3 judges). However, most of the courts of appeal had partially-specialised sections which also cover child and family matters: either sections for civil *and* children and family matters (some of these covering also other matters such as work conflicts and social insurance), or sections for criminal *and* child and family matters. Overall, in these partially-specialised sections from the courts of appeal there were 41 specialised judges operating in the civil area and 135 in the criminal area.

However, the term ‘specialised judge’ for children and family matters doesn’t imply that the judge completed a specific training programme on children and family matters, but that he/she was ‘designated’ to work in such matters. In addition, the numbers of specialised judges mentioned above also include the temporarily vacant positions (due to maternity leave, for example).

In Romania, generally, the magistrates are confronted with a heavy caseload: the average caseload (considering the courts from all the levels) was of almost 1.000 cases per judge in 2011. The heaviest caseload was recorded at courts of first instance (with an average of 1.101 cases/judge; and with a maximum of 2.346 cases/judge – in the 2nd Sector of Bucharest). The caseload was significantly lower in the case of the specialised Tribunal on Children and Family from Brașov (342 cases/judge), thus giving the judges more time to better understand children’s individual cases.³⁷

³³ Romania, Law No. 304/2004 concerning the Organization of the Justice System (*Legea nr. 304/2004 privind organizarea judiciară*), 28 June 2004, Art. 19 (2).

³⁴ Romania, Law No. 304/2004 concerning the Organization of the Justice System (*Legea nr. 304/2004 privind organizarea judiciară*), 28 June 2004, Art. 37.

³⁵ Romania, Ministry of Justice, *Raport Final sur le Jumelage RO03/IB/JH09*. Available in French and Romanian, online at http://www.just.ro/Sections/PrimaPagina_MeniuDreapta/JustitiepentruMiniori/tabcid/426/Default.aspx.

³⁶ Romania, The Superior Council of Magistracy, ‘Report on the justice system 2011’ (*Raport privind starea justitiei 2011*). Available in Romanian, online at <http://www.membricsm.ro/wp-content/uploads/2012/03/raportjustitie2012.pdf> and the online database ‘Nominal evidence and sections repartition – January 2012’ (*Evidenta nominală și repartizare pe sectii – ianuarie 2012*). Available in Romanian at <http://www.csm1909.ro/csm/index.php?cmd=080101>

³⁷ Romania, The Superior Council of Magistracy, ‘Report on the justice system 2011’ (*Raport privind starea justitiei 2011*), pp. 22, 23 and 126. Available in Romanian, online at <http://www.membricsm.ro/wp-content/uploads/2012/03/raportjustitie2012.pdf>

2. FINDINGS

2.1 Right to be heard

2.1.1 Right to be heard in the criminal justice field

Specialists and other people involved

The interviews have shown differences in the practices on child hearings, based primarily on the type of the crime which the child is a victim or witness of.

A. Criminal investigation authorities

Crimes such as thefts and robberies are initially dealt with by the police station acting in the area where the offence took place, thus, at level of village, town or municipality. In these cases, the child hearing takes place, almost all the time, at the police station, being led by the police officer.

More serious and complex crimes are transferred to the Police inspectorates from county level or could reach the prosecutor's office. The criminal investigation is carried out either by the police, under the prosecutor's supervision, or directly by the prosecutor.

The hearing of the child victims or witness of trafficking is led by an officer from a specialised unit of the police dealing with organised crime, the Direction for Investigating Organised Crime and Terrorism (DIICOT – *Direcția de Investigațare a Infracțiunilor de Criminalitate Organizată și Terorism*). In such cases, the police have to subpoena the regional centres of the National Agency against Trafficking in Persons (ANITP – *Agenția Națională Împotriva Traficului de Ființe Umane*), in order to assist to the hearing and to support the child throughout the proceedings. Interviewees in one region (Iași County) stated that the representatives of the anti-trafficking agency participate to the hearing only if they are notified.

B. Lawyers

Legal assistance for children victims of trafficking is mandatory. A child victim of trafficking should benefit from the support of a lawyer, who, most of the times, is an *ex officio* lawyer. All the interviewees dealing with such cases in all the regions covered by the research, who talked about *ex officio* lawyers, have complained about the poor legal representation offered by these specialists, highlighting their low interest, absence from proceedings or lack of active participation during the proceedings (as some don't say anything or don't intervene when needed). For example, such lawyers were appointed to participate in trafficking related cases; however, the representative of the anti-trafficking authorities said it was often impossible to contact them.

"[...] although we sent a request to the Bar Association and they gave us 3 lawyers who should be permanently at the disposal of victims. They never answer the phone or they are always busy."

Moreover, a worrying practice was pointed out in one region, Iași, where the *ex officio* lawyer of the child victim of trafficking can differ from one hearing/court-session to another, as he/she is the lawyer on duty when the hearing or the court session takes place. Thus, there is no continuity in the legal assistance provided to a certain victim.

“...forgive me, I must tell you, I met, for example, lawyers who came and defended [the victim] ex officio and after they acted ex officio, at the next hearing I saw them as the lawyers of the other party..., that is of the traffickers, because they found out already everything that was very important, and you can imagine, a child of 13-14 years old cannot defend himself/herself.”

As presented in section 1.3, when considering that legal assistance is necessary for a crime victim, the criminal investigation authorities might appoint an *ex officio* lawyer in cases related to other types of crimes. However, the research participants indicated that, in practice, this provision is rarely used. Moreover, interviewees described problems in the activity of these *ex officio* lawyers, similar to the ones presented above for cases of child trafficking.

Rare cases when the victim's family paid for a lawyer were mentioned during the interviews.

When NGOs are offering services to child victims, they tend to have legal specialists in their teams or even to hire lawyers for the case; sometimes they can rely also on the pro-bono involvement of some lawyers.

C. Child protection specialists

For crimes such as child abuse, incest, ill treatment towards trafficking in children or other crimes that are a threat to the child's life and development or when the age of the child victim is small, some criminal investigation officers and judges declared collaborating with specialists from the General Directorate for Social Work and Child Protection (GDSWCP). Their role is to assist and support the child, ensuring that a special protection measure will be taken for that child. The investigation bodies might collaborate also with specialists from non-governmental organisations active in the area.

There are situations when the child receives assistance from a non-governmental organisation and thus, the specialists (psychologist, lawyer, social worker) employed or contracted by the NGO accompany the child and provide support before, during and after the hearing.

D. Parents

If present, the child's parents or legal representatives attend the hearings organised at the criminal investigation stage, as long as they are not the defendants.

According to most of the specialists working in the field of trafficking, the parents of child victims tend not to be present, as, on one hand, the victims of this crime may have a difficult family background (e.g., children neglected and/or exposed to domestic violence, children lacking parental guidance), or the children themselves may prefer that the parents don't find out about their involvement in trafficking. However, it was not clear from the answers if there is actually a concern for informing the parents about the situation of the child victim of trafficking.

The presence of a child protection specialist from GDSWCP might be requested by the police officer or the prosecutor when the legal representative of the child is not present.

E. Court

When children are heard by the court, the following people are present: the judges(s), the prosecutor(s), the court clerk(s), the lawyers of the defendant(s), the lawyers of the victim (if available/appointed), the child's legal representative, the defendant(s) and the security personnel (if it's the case). Sometimes other specialists could be present: professionals from public child protection services or from NGOs offering support to victims (legal counsellor, psychologist or social

worker), representatives of the Probation Services or professionals from the anti-trafficking authorities.

The experiences of the NGOs shared during the interviewees showed that there is no unifying practice regarding their presence in the court room. Thus, there were cases when NGO staff were asked to remain outside the courtroom during the hearing of the child to whom they provided assistance and support, and cases when they were allowed to assist to the hearing.

If not stated by law or decided otherwise by the judge, the public are also present. Some research participants expressed their discontent regarding this procedure, arguing that if the cases with child offenders are tried behind closed doors, then the law should specifically prohibit the access of the public also in the cases of child victims and witnesses.

When the judge considers it necessary, the defendant might be removed from the courtroom for the duration of the child's hearing.

According to the interviewees, if the court hearing is conducted by means of video-link, the child might be alone in a special room or might be accompanied by one or more of the following specialists: psychologist or other representative of the child protection services, lawyer, court-clerk, court technician in charge with the equipment/transmission, or even by the judge.

The physical settings of the hearings

Almost all the specialists who handled criminal cases involving children mentioned that the spaces where children are heard **during the criminal investigation** are the normal offices of police officers or prosecutors.

These are the same rooms in which the adults are heard, thus no special attention is given to creating a child-friendly environment. Only one social professional recalled a situation in which the prosecutor waited the child with colouring pencils and toys, but she highlighted that this was an isolated case in her experience.

In the rooms of the criminal investigation specialists there are office-desks, chairs placed in front of the desks, cabinets and sometimes stacks of files. Most of the time, the offices are shared with other colleagues, therefore people might come and go during the hearing, affecting the child and distracting the professionals involved.

"I'm referring to a situation related to that criminal investigation of the rape case. So we were there, in the same office, victim and perpetrator, we were with the police officer in charge of the investigation, and at that moment, either the driver kept coming in, saying he must hurry and buy gas, so [the officer] should give him money... where will he find money to go... at some point I got upset and told them 'Gentlemen, please stop!'. A colleague came in to ask something. 'Don't you have a room, can't we go there?'... 'Well, we don't have, these are the conditions'. So the outcome of the case was affected to a large extent I think, because they didn't have conditions allowing us to focus ...what we needed, they were thinking about gas and what the chief had asked and they were telling us that they were in a rush. This is not possible [...] I mean they weren't to blame for this either... the environment was inappropriate, the conditions were inadequate for the hearing. And when it comes to us, as lawyers, we have to pay a lot of attention in such situations, meaning that we have to be a thousand time more vigilant, to pay attention to what is happening, to continue our idea

from where we left it. [...] So, this is how it is here, I don't know if it's the same in Bucharest, but here there are no proper conditions."

The rooms visited by the interviewers confirm the descriptions provided above. Thus, the office where one interviewed prosecutor conducts the child hearings was not considered child-friendly by the interviewer, because it couldn't ensure confidentiality or privacy and because the environment created by the piles of files stored was cold. (see pictures in Annexes)

The police office visited during the research has some desks, a cupboard, a sofa and a TV, it's old-furnished and unfriendly. (see pictures in Annexes)

A few of the interviewees mentioned that some of the rooms of the criminal investigation bodies are equipped with the technology needed for the audio-video recording of the hearings. It came out of the focus-group that, through some projects carried out by the civil society, some police stations and prosecutor's offices from one region (Iași) were equipped with unidirectional glass windows and recording technology. Because of the lack of space, the unidirectional window was placed in between two regular offices and, in order to be used, the specialists working in one of the rooms have to leave. The focus-group participants added that, unfortunately, some of this equipment might not be used anymore in accordance with its primary purpose.

Only a few specialists talked about hearing locations different than the premises of the criminal investigation bodies. Thus, one police officer appreciated that, in most of his cases involving children as victims of sexual offences, he conducted the child hearings in the counselling chamber of the local General Directorate for Social Work and Child Protection. This room was described as child-friendly, welcoming and containing toys. Despite its clear benefits, this approach is rather an exception that was even seen as breaching the rules.

"[Are all your hearings conducted at the GDSWCP premises?] The majority of them. [...] but once I was scolded because of this, actually at a seminar, by the judge, because the Criminal Procedure Code mentions that the injured party or... is heard at the premises of the criminal investigation body, but as long as there are no appropriate conditions, I can't play with a child's life... as you can realise, we are often talking about a child that suffered a trauma..."

Another police officer mentioned that he also uses the premises of the GDSWCP, but only in cases involving children with disabilities, when the presence of the psychologist is needed. He added that there are occasions when the child is heard at home, as the parents prefer the hearing to take place there. Both police officers who mentioned using other locations than their offices were from Iași County.

Also in Timiș County the interviews revealed a certain concern about the location where the hearings conducted by the Police and prosecution's office take place. Thus, an agreement was recently concluded with regards to hearings in child trafficking cases, between the criminal investigation body and an NGO providing assistance to victims. Based on this agreement, child victims looked after by the association are heard on the premises of the association.

One police inspector, from the same region, indicated that a regular police office is used for the child hearings, but that there are no aggressive posters or announcements on walls as in other rooms, that attention is paid to ensure confidentiality and privacy. This setting was confirmed by other interviewees from the social field.

However, the rest of the interviews from Timiș region have shown that this is an isolated example and that almost all the time, similar to the situations described in the other regions covered by the

research, the spaces used for hearing children during the investigation phase of the proceedings are not at all adequate.

In court, children are heard almost all the time in the regular court room, regardless of whether they are victims or witnesses. Sometimes, the sessions are declared secret by the judge. Most of the interviewees from both social and legal field, dealing with criminal cases, described the courtrooms as unfriendly, rigid and cold, too solemn for children.

When the hearing is conducted by video-link, the child sits in a special room, where the equipment is placed.

If the waiting time before the hearing is not very long at the police or prosecutor's office, in the court house this wait is sometimes significant (a couple of hours), as the progress of daily caseload cannot be anticipated. Until their hearing, **children wait** in hallways or in other court rooms where other potentially disturbing cases are being tried. Thus, they wait together with other people, even meeting the defendants sometimes.

"There was a situation when the police came with the child victim to the courtroom, in the public session, the witness... no, the victim was left there and the police officers left, it's not their fault, it's because they are... there is no special training, the victim sat in the courtroom for 3 hours, where the offenders were also present. I didn't know what she looked like so I didn't realise what was happening. The clerk and the ex officio lawyer pointed her out to me, I requested that she be escorted out of the courtroom but it was too late because her entire statement changed"

There were seldom situations when child victims were escorted to a judge's office in order to wait for the hearing and to avoid meeting their abusers. However, one of the judges highlighted that even the security provided by their offices is far from perfect since the court house is short of surveillance staff.

Criteria for deciding the hearing, the age of the child heard and the length of the hearing

The ages of the children heard and the length of the hearing depend on several factors, such as the complexity of the case, the type of crime, the stage of the proceedings and the amount of evidence available. The length of the hearing also depends on the age of the child.

According to the interviews, children as young as 4 or 5 were heard in criminal matters, either as witnesses or victims. Nevertheless, this wasn't presented as a very common practice, but rather an exceptional one, triggered by what it seems to be the lack of evidences in those particular cases. The interviewees were referring mainly to cases of child victims of sexual offences which were harder to prove and when the testimonies of the children were the only evidences available.

Children victims or witnesses of trafficking, participating in hearings, are mainly young adolescent girls of 13-17 years old, rarely younger.

The research methodology doesn't allow us to determine the minimum age at which professionals consider it is appropriate for the child to be heard.

The answers of the interviewees show that the length of the hearings varies between tens of minutes to several hours.

The lengthiest hearings are those of child victims of trafficking, which might take half a day or more and sometimes even an entire night. Several professionals explained this extreme length by referring

to the high complexity of the case, indicating that victims or witnesses are not always willing to communicate, or they tend to change their initial declaration or to provide contradictory statements.

Another important aspect correlated with the length of the hearing is the stage of the proceedings. Thus, it came out of the interviews that the initial hearings are usually the longest ones, as the criminal investigation specialist needs to find out as many details as possible about the crime. The prosecutors mentioned that their hearings are not too long when children were previously heard by the police officers, as they were more interested to find out issues requiring explanations or clarifications. As in the court hearing more people are usually involved, the length of the child hearing is determined not only by the amount of information needed by the judge or by how cooperating is the child, but also by the amount of questions and the techniques used by the defendant's lawyers.

On the subject of hearings involving very young children, some professionals indicated that the length of such hearing is much shorter than in the case of older children, as younger children are quickly getting bored and therefore the specialist needs to obtain as much information as possible in a shorter time. On the opposite side are the specialists who concluded that such hearings tend to last longer than the hearings of older children, because the younger ones can't stay focused for too long, taking breaks in narration, and thus the person conducting the hearing has to address the same questions again, to rephrase them, to ask for more details and so on and so forth.

Asked what are the criteria used for deciding to hear the child, the professionals mostly mentioned the age of the child, his/her level of cognitive and emotional development and also the circumstances of the case as described in the file. For example, one judge described a case when she wanted to hear two children aged 8 and 10 because they were the only witnesses of the violence between their parents.

Keeping in mind that the psychological assessment of the child is not mandatory and is requested when the magistrate considers it necessary, one could conclude that the information about the child's level of cognitive and emotional development is sometimes missing from the file and that the judge will assess it on an *ad-hoc* basis.

The level of child participation and child protection. Techniques of conducting the child hearing

Most of the research participants stated that the child victim can **refuse to be heard** and that this would be mentioned in the case file. However, there were professionals, most of them from the social field, who stated that the child doesn't have such an option and that the hearing is mandatory. One judge described a child victim who refused to testify. In this case, the judge changed the status of the child – from victim to witness – which resulted in the child having to participate in the hearing (as the witness is compelled to testify if a subpoena is issued in this regard, while the victim has the right to refuse). The judge stated that this practice helped her to find the truth in that particular case.

An interesting observation was made by few participants who said that if a child doesn't want to participate, then (s)he won't say it directly, but (s)he would instead give vague and inconclusive answers.

In the interviewees' opinions, the child's level of participation during the proceedings depends on how well prepared and informed is the child before the hearing, on how well adapted the line or style of questioning is, the general atmosphere and the settings, but also on the personality traits of each child and on his/her wishes and expectations from the hearing.

Several interviewees, mainly having a support role, mentioned that participation is affected if the child has to wait too long before being heard.

One of the most recurrent issues appearing in the interviews is that child victim or witness of crimes are strongly affected by what has happened and they have the need to feel safe and to be offered protection and support, in order to testify and recount what they have experienced.

An important concern was raised in relation to the **repeated hearings** of child victims or witnesses of crimes that have to recount again and again the trauma.

The interviews showed that the same child might be heard by the police, then by the prosecutor and afterwards by the court.

During the investigations conducted by the Police, children are usually heard only once. Nevertheless, situations were described when the child hearings were conducted by inexperienced police officers (sometimes the ones on duty when the case was brought to police's attention) and therefore, the same children had to be heard once again, but by the police officer in charge of the criminal investigation.

Some of the prosecutors said that they also want to hear the child in order to have a better grasp on the circumstances, while others declared that try to avoid a new hearing of the child as long as the previous one was able to produce enough information and as long as no contradictory aspects exist. The audio/video recording of the child's hearing at the criminal investigation stage is extremely rare. The child is heard once again by the court. As the focus-group showed, sometimes, even if recordings from the criminal investigation stage are available, the child is still heard by the court.

Almost all the research participants supporting child victims of trafficking expressed serious worries about the **lack of protection** of children. Despite the fact that some protection measures exist and can be taken in such cases, these are rarely implemented.

The specialists who have an active role in the hearings mentioned serious gaps in the protection of victims, as well. Thus, judges and prosecutors talked about child victims or witnesses who: were waiting for hours in hallways or in courtrooms where they met with the offenders and their families; changed their testimony (including by dropping the charges); refused to come to the scheduled hearings and sometimes they even went missing after being threatened and intimidated; could not access all the protection that they were entitled to because there were not enough services or resources available. Moreover, situations when the child was heard by the police or prosecution in the presence of the defendant or even when the child took part in a confrontation with the defendant were also presented.

Only the judge can address direct questions to the child during the court hearing and the other actors have to direct their questions through the judge. However, it was mentioned that this rule was not always respected and that more than once the child had to answer to questions addressed directly by the lawyers of the defendant or even by the defendant.

"[...] is then when I saw for the first time, is amazing, ... the trafficker was allowed to directly address questions to the victim. The lady judge attempted to say <Do you have legal representation?>, but when the attorney started to yell that he is not able to put all the

questions, that the trafficker is directly involved and that he should have the right to ask the victim, the judge remained silent, the trafficker addressed the victim directly and I was right next to her and I saw her reaction, she didn't know what to do, to answer or not, especially since the questions formulated by the trafficker weren't related to the offence, but umm to the identity of the victim, his purpose was to find the identity [...] and, at the end, he called her by her name, he said <I know who you are> and he said her name, the child was almost about to faint on the chair."

In court, almost all children meet the defendant, unless he/she was placed under preventive arrest or the judge asked for his/her removal for the period of the hearing. Some interviewee said that the defendant is placed out of the child's sight, in order to make the child feel more comfortable; however, the child remains aware of the defendant's presence.

As presented in section 1.3, the criminal investigation body or the judge can decide, based on certain considerations (i.e. the life, physical integrity or freedom of the victim is endangered), to ensure free legal assistance to child victims, to hear the child by **means of audio/video-link**, to remove the offender from the room during the child hearing, to declare the court session secret etc³⁸.

For example, one psychologist described the hearing of an 8 years old child victim of sexual abuse in which the court used live audio-video transmission, protecting the child's identity. Other interviewees talked about a few cases when the child victims of trafficking were heard by audio-video means.

However, we have seen from the examples provided by the specialists that these measures are rarely used. A number of actors from the criminal field, participating in the interviews, declared that they have never recorded the child hearings or ever conducted hearings through audio-video means, as some police stations, prosecutor's offices and courts are not even equipped in this regard, while others mentioned that they knew about isolated hearings conducted in this manner by their colleagues. Few interviewees supporting children, including a lawyer, mentioned that they have asked for the hearing of the child to take place by audio-video means, but that their request was rejected and that no reason was given. However, the lawyer mentioned that an explanation could have been the poor quality of the audio-video signal from previous hearings or that every now and then the equipment stops working and has to be repaired.

„I can use this technique when there are clues that the physical or mental well-being of the minor is endangered because of past, current or possibly future actions of the accused or intermediated by other persons. It is a protection provision. If there are not such clues, umm in cases with child victims, the session usually is secret, it is separated from other sessions and the only ones present are... the defendants, their attorneys, the court panel and the psychologist or a representative of the Directorate for [Child] Protection”

Even more worrying is that at times, as the focus-group has showed, the recording of the hearing, which could avoid the secondary victimisation and could protect the victim, is not used for these purposes. It is instead used as a way to prove that the victim changed her/his statement or that the initial hearing wasn't conducted in an intimidating manner

“For human trafficking, this [the use of recording equipment] depends on the prosecutor. There are prosecutors who record the hearing and use it as evidence in court, because many

³⁸ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 77¹ and Art. 290.

victims change their statement in court and that is an additional piece of evidence. [...] either under the influence of the perpetrator or of friends, relatives, they change their testimony sometimes and then the prosecutor uses this [recording method] as a precautionary measure... but not all prosecutors do this."

The interviews have talked about cases in which mass-media managed to obtain information about some child victims and also about the date of the court sessions. This led to the children being harassed by press outside the courthouse and their stories ended up in the media.

By analysing the answers of social and legal specialists we conclude that some of the child safety problems are determined, to a certain extent, by the following factors: lack of resources, lack or miss functioning of equipment, insufficient protection services (for example, in Timiș County it was highlighted that only the 'Young Generation' NGO offers protection in secret shelters to child victims of trafficking who are sometimes referred also by the public protection services and the police), staff shortage, insufficient cooperation between institutions and between specialists.

Flaws in legislation also add to this problem, as the legislative framework fails to provide detailed guidance. Moreover, the specialists considered that the current protection measures, stated by law, should be mandatory, especially in the case of children, and not left for the decision of a single person.

Some of the rules regarding the publicity of the court-sessions can have unintended negative consequences. Some information about the court cases is made public on the Internet, on the official web-portal of the courts. Thus, in the context of this report, the author was able to easily find, on the website of the High Court of Cassation and Justice of Romania, details about a case of trafficking in children where the full names of the child victims and their legal representatives (in some cases, clearly their parents or a close relative) were listed. Even if no other identification details were offered, on the webpage it was stated plainly that the child [name] was participating as an injured party. In this situation, we have no choice but to raise the alarm about the protection of these children and also about their chances of reintegrating in their communities and overcoming their trauma, as long as a simple Internet search of their names will reveal, as first findings, their participation as injured parties in a trafficking in children trial.

The presence of the parents during the hearings was considered very important and useful, as children need to be supported by a person they can trust. Examples were given of parents who facilitated in the communication between the criminal investigation bodies and the children who were being heard, by rephrasing the questions in order for children to better understand them or by explaining what children meant to say.

However, several specialists from both justice and the social field highlighted a few cases when the presence of the parents can be detrimental: when the child feels embarrassed to talk in front of the parent (especially when the cases are related to sexual offences), when the parent tries to defend the defendant (usually when the case concerns the other parent or other close member of the family) or when the parent doesn't want the investigation to continue, trying to convince the child to change the initial statement (e.g., when a certain agreement was reached with the defendant or when the parent thinks that the situation will bring shame upon the child and the family). The specialists added that in such cases ensuring the child's cooperation is a challenge. Some professionals said that they even ask the parent to leave the room, calling them back once the child felt relaxed and started talking; if the parents obviously try to change the child's statement, they

might only be allowed back in at the end of the hearing. However, the police officers who talked about this practice thought that they were bending the rules somehow, as the child victim has to be heard in the presence of the parent/legal representative.

Numerous interviewees mentioned that **the manner of conducting the hearing of the child** (that influences the child's participation level) depends on how well trained is the professional (police officer/prosecutor/judge), but more on his/her experience in the field and on communication skills. The idea that having life experience and being a parent influences to a great extent the way the specialist conducts the child hearing was frequently encountered, also.

"There are no norms, no standards, no clear methodologies on child hearings. The hearing is carried out based solely on the experience of the magistrate, on how (s)he knows to do the job [...] there are no institutionalised techniques on child hearings. What I can tell you is that it depends a lot on the capacity and skills of the magistrate or the criminal investigation specialist to build the case and of course, on his/her own experience and training ... if (s)he has training."

The interviews suggest that there is support for the idea of adopting child-friendly communication techniques. However, the lack of standards, guidelines and specialisation in this regard led to significant differences between the approaches of the professionals in charge of the child hearing. For example, some specialists who have an active role in the hearing ask for the presence and support of psychologists, while others don't.

The majority of the interviewees who have a support role highlighted that, in their work, they met specialists who behaved very professionally, being skilled and interested in communicating with the child victim/witness in a pleasant manner,

"very involved police officers [...] after we got with the victim at the police station, very shortly after the first interview, specialized officers came from the County [police department] [...] they used great language, very pleasant, very nice... they even made me have great confidence in that officer. We went in his car [...] and, while he was driving the victim to the Legal Medical Institute, he kept talking to the victim... and the victim did not have time to daydream or think of what happened, how things happened, they were talking all the time, all the time... very, very nice [...] and an astonishing professional, yes"

but also professionals who were cold, rigid, too straight forward or even verbally aggressive towards children. Situations when inappropriate and humiliating terms were used during the child hearings were also described, especially in cases of adolescent girls victims of trafficking or sexual assault.

"There are also situations when it pas..., when the behaviour is out of line. I saw, and not only once, situations when the policeman allowed himself to say 'Ok, come on, I know that you enjoyed it too' or... something similar. Personal preconceptions and stereotypes come in. I'm referring to a young lady of 16, who was looking as she were 19 years old, who had been raped, but who... was also socializing with certain people, but still, she had been raped. And on this issue [she was told] 'Ok, you looked for it too, you enjoyed it too, you deserve it in a way...', this was the message directly or indirectly."

The importance and impact of the child hearing

From the examples and answers provided by the research participants whose work is related to criminal matters, we notice that the police officers and/or magistrates were interested to obtain a better overview on the case or to clarify conflicting information between the parties involved or between witnesses. Therefore, they were aiming to complement the evidence in the case or to overcome their absence.

When asked about the importance of the hearing and the weight given to children's opinions, most of these participants highlighted that children's statements are important, being needed in order to build the case evidence, especially as sometimes children are the only source of information (in the absence of other evidence). A very common conclusion was that children's hearings are important because they can lead to finding the truth, solving the cases and convicting the offenders, as this is the aim of the criminal proceedings.

Only couple of interviewees were able to talk about how the children's opinion can have an impact on the procedures or to provide examples in this regard. Furthermore, some children who wanted to confront their abuser during the court session, were given this option, while other child victims requested not to meet the abusers, their wishes being also respected. However, these situations, in which the child's opinion can influence how the proceedings take place, seem to be isolated examples.

Most specialists thought that the weight given to children opinions, and therefore their impact on the final decision, depends from one case to another, as the child's statements have to correlate with all the other evidence in the case. Some interviewees considered that in deciding the weight given to the statement of the child, the magistrate takes into account the child's age, education, level of maturity or even the social context in which the child lives.

Some professionals thought that child participation in the proceedings can influence the severity of the final ruling, based on the fact that their declarations could be very emotional.

"Because the children are children and if the judges, most of them, are also parents and... after the fact, after such hearing, they relax. After the hearing I talked, and not once, to the judges and the feminine side was felt during the discussion. Everyone was expressing their outrage that the child had been raped and mentioned they gave a conviction of I don't know how many years and what they would do to that one [the offender] and... stuff like this... And it is obvious that they are influenced. They try to keep up the appearance of correctness or of balance or of impartiality, but there is a..., an influence, certainly..."

However, hardly any interviewees thought that child hearings could have a specific impact on obtaining (financial) compensation.

On the other hand, when thinking about the impact on children, almost all the participants considered that child participation in criminal proceedings is a traumatic experience, as the child gets into contact with an unfriendly environment, where highly probable (s)he meets the offender and where (s)he has to repeatedly relive what had happened.

"It is enough for the child to enter the courtroom and see a full room and maybe also a dock full of offenders, because this is the case, it is obvious that this causes harm, it can affect his/her behaviour, as well as the attitude of the other parties to the judicial proceedings..."

and he/she can be affected by repeat hearings and remembering certain issues, possibly traumatic."

Numerous children have to deal with this disturbing experience on their own or with the help of parents, as the specialised support services are scarce.

The impact on child victims or witnesses of trafficking is even more dramatic as, in the context of insufficient protection measures, they are often intimidated or humiliated by the defendants, the defendants' families or even by the lawyers. Moreover, the trials are sometimes extremely long, taking a couple of years, as the interviewees pointed out.

"So this child has been involved in proceedings for 7 years, since she was a minor, of 14 years of age when she came here ... and until she turned 21 or how old she was ... she kept being called to trials and trials... hearings all the time... I couldn't say how many times per year. I know it was a much larger network, with many branches And, practically, from one trial she moved on to another trial, from the trial against the Romanians she went to ... a trial against the Italians who had exploited her. Thus, it was a very long trial, of 7 years ... let's say."

Some child victims of trafficking might feel disappointed after the hearing, because their expectations were not met. Moreover, this dissatisfaction and the long length of the trials in cases of trafficking could make them decide not to participate in future proceedings.

During the discussions on the impact of criminal judicial proceeding on children, we encountered the rare opinion that this experience develops a sense of responsibility within the child. Few interviewees said that children might enjoy the experience because they see themselves as actors in an important and unusual event.

Several interviewees also mentioned that the participation in judicial proceedings could bring a sort of relief to child victims as they'll know that, from that moment onwards, their problems will be resolved or that the offenders are punished.

2.1.2 Right to be heard in the civil justice field

Criteria for deciding the hearing, the age of the child heard and the length of the hearing

In civil matters, children above the age of 10 are heard in court³⁹. The hearing of children under this age is not mandatory, but a judge may hear a younger child if he/she deems it necessary or if one of the parties in the proceedings requests it (with the approval of the judge). The ‘Law no. 272/2004 on promoting and protecting the rights of the child’ states that the child has the right to request to be heard if (s)he desires⁴⁰, but it’s not clear how this provision is enforced. One social worker from an emergency placement centre even said that children are told that they can go to court only if they are 10 years old or above.

Several interviewees said that the child has the right to refuse to be heard, in such cases the court-clerk will record this refusal in the minute of the hearing. However, not all the social professionals seemed aware of this provision, saying that children are compelled to go to court.

A few judges said that they might decide not to hear a child above 10 years of age if the medical documents show that he/she cannot be interviewed (for example, in cases of children with severe disabilities).

Some psychologists recalled cases when they recommended the court not to hear a certain child because they were very affected by what was happening and a hearing would create even more emotional distress; however, the judges disregarded the psychologists’ recommendations (in one of these cases, a young girl cried during the entire hearing which was almost one hour long and all her statements were contradictory, thus the judge wasn’t able to determine the child’s point of view).

The youngest age of a child heard during civil proceedings, mentioned during the research, was 4 years old.

Some judges said that when deciding whether a child younger than 10 can be heard, they look at the documents contained in the child’s file and they take into account the level of cognitive development, the education level and the state of health of the child, letting themselves guided by their personal experience.

Children are usually heard only once, but they might be heard again in cases of appeal. One lawyer recalled a case when a 12 years old girl was heard twice in a custody case, because during the first hearing the child gave contradictory statements and the judge was unable to get a clear grasp of her opinions. The judge decided rather than prolonging the difficult situation for the child, to reschedule her hearing for two trial dates later.

Children under special protection measures (placement in a centre or to a foster parent) might be heard several times because their protection measures are periodically renewed or changed.

Several social professionals said that a practice exists at the case management level of obtaining the views of the child. This involves the child writing and signing, in the presence of a specialist from the GDSWCP (such as the head of the placement centre, the case manager, the psychologist etc.), a

³⁹ The same rule applies to hearings which take place before the Child Protection Commissions or before the immigration officers during the proceedings for asylum.

⁴⁰ Romania, Law 272/2004 on the protection and promotion of the rights of the child (*Legea nr.272/2004 privind protecția și promovarea drepturilor copilului*), 21 June 2004. Art. 24 (5). Available in Romanian, online at http://www.dreptonline.ro/en_resources/en_romanian_child_protection.php

statement saying what are their views regarding the protection measure. This written declaration is also given by children younger than 10 who are supported in writing it. The statement is sent to court, together with the child's file, sometimes even 2 month prior the hearing of the child. One social worker recalled that, in her experience, she saw declarations that seemed to be written by adults and that she is aware of cases of children aged 10-14 who were not called to the hearing (but they gave this written statement).

In asylum cases, according to one psychologist working for a NGO active in the field, after being interviewed by the immigration officers, the children who apply for asylum are seldom heard by the court.

"usually, the (court) hearing is not mandatory, so they are heard only if the lawyer asks that they be heard, umm... or in special cases, I don't know...when the judge thinks that...he/she needs more information, but normally they are not called to court"

Several legal specialists mentioned that the child hearing is scheduled at later stages of the proceedings, after several trials dates in which the judge hears the parties and other witnesses and after taking into account other evidence.

A social professional from an emergency placement in Brașov County said that when an emergency protection measure has to be taken, the child is usually heard during the second trial date and very rarely during the first one. Most trials start within 2 weeks of the child's arrival to the centre, mostly because the file of the child has to be prepared by the specialists (contacting the family, assessing the situation, the most appropriate measures etc.). Although a long-term protection measure should be taken within 30 days from child's arrival at the centre, there are situations when trials last for a month and a half.

Only a few judges mentioned that they ask about the child's school programme before scheduling the hearing, in order to make sure that the child won't miss an important exam or evaluation. However, this concern wasn't reflected in the answers of the other interviewees. One social professional from GDSWCP said that even if the judge would ask such details, the specialist of the protection services representing the case in court is the legal counsellor who doesn't know the child well and would not be in a position to know the child's school programme.

If the child is ill, then his/her hearing is rescheduled.

In the absence of rules about the duration, method or manner in which the hearing should take place, the practices described during the research are various and depend on the experience and tactics developed by each judge.

Thus, the duration of the hearing varies. The interviewees described situations in which children were heard for 5 minutes or even less, but also cases when the hearing lasted up to 60 minutes, depending on the time the judge needs to find out the information he/she wants, on how communicative is the child.

"The duration depends from case to case. There are magistrates who have the possibility to elaborate and a hearing would last for at least 15 minutes, there are magistrates or children who do not handle the stress of this intervention and of this dialogue and the discussion may last for one minute, that is the child doesn't say anything, cries and then the entire hearing is a failure."

The social professionals said that in cases concerning special protection measures, the hearing lasts less time if the child was heard before and longer if the case is more complex or if the child's wishes are challenging the proposal of the GDSWCP.

The opinions of the judges regarding the time needed for hearing a child in custody matters are divergent – some said that they need more time to differentiate between the child's views and parent's influence, while others said that the hearing is shorter if the child already made up his/her mind about the parent with whom (s)he would like to live with. One judge said that the child hearing also depends on the amount of time the judge has.

"Not long, because we don't have much time, at least in cases concerning protection measures they may bring you 10 children and then you can't hear them, spend too much time with them."

Almost all the interviewees said that in case of siblings or in matters relating to special protection measures when more children under institutional care are brought to court, each child is individually heard one at a time. However, there are situations when the chamber is not used, but rather the regular courtroom, which may not be evacuated. One judge even mentioned that, when she runs out of time, she calls two children into the chamber at a time.

The interviews show that some judges schedule the child hearing early in the morning, during the opening of the court session while others ask the child to come in the afternoon, at the end of the court session. However, most professionals said that children have to wait before being heard, 15 minutes to several hours.

Specialists and other people involved

In matters relating to special protection measures, children are brought to the courtroom by a representative of the GDSWCP – usually the psychologist or the social worker. If more children from the same GDSWCP are heard in the same day, and the chamber is used, then the psychologist accompanies one child to the hearing room, while the social worker remains together with the other children who are waiting to be heard.

Some professionals working for the GDSWCP said that besides the psychologist, the legal counsellor of the institution might be present during the child's hearing. Several social professionals who took part in hearings said that sometimes they were asked by the judge if they would like to add anything. The legal counsellor of the GDSWCP is the specialist responsible of presenting the child's file to court. The child's file is built with the support of the psychologist (who carries out a psychological evaluation of the child), of the social worker (who conducts a social assessment) and of the case manager (who make the proposal related to the protection measure, after consulting with all the members of the multidisciplinary team of the GDSWCP).

During the hearings in cases concerning 'Law 272/2004 on promoting and protecting the rights of the child' and 'Law 273/2004 on the legal statute of adoption' the prosecutor is present in the hearing and is also invited by the judge to ask questions.

In adoption cases, a representative of the adoption authorities must be present. One interviewee recalled a hearing of a child in an adoption case, in which several lawyers and other potential

adoptive parent were present – some of them were not involved in that case, but were waiting in the courtroom for their cases to be heard.

In divorce/custody cases, children are brought to court by their parents. Sometimes the lawyers of the parents are present at the courthouse and provide brief information to children. The judge hears the child alone, in the absence of the parent or lawyers who wait outside.

However, one judge said that she knows cases when judges preferred to hear the child in the presence of the parents in order to better understand the relationship between the child and the parents, based on the non-verbal reactions. This situation was also confirmed by one social professional.

In the custody cases the judge asks for a social assessment report. The social assessment is conducted by a social worker from the GDSWCP or from the Guardianship Authority Service (*Autoritatea Tutelara*). When the interests of the child are in conflict with those of the parents, the Guardianship Authority is subpoenaed to represent the interests of the child.

Sometimes, especially in difficult or complex divorce and custody cases, the judge might ask for a psychological evaluation of the child in order to see what the relationships between the child and his/her parents are. Several interviewees stated that they consider it necessary that the parents are also assessed by the psychologists, not only the child.

In divorce/custody cases, the judge may request the presence of the psychologist from the GDSWCP when the child is heard. However, the psychologist meets the child, for the first time, at the beginning of the hearing. Several professionals from GDSWCPs and judges mentioned that it is very rare that a psychologist is called to assist a child involved in a custody/divorce cases. One judge said that it would be very useful to have a psychologist of the court, but unfortunately the court can't afford to have one hired.

"When the Directorate is a party, thus in the cases regarding the special protection measures, [the Directorate's psychologist] always comes. Unfortunately, we don't have the same, the same possibility for the first or second appeals, thus when we hear the child in situations of remedy at law. Then, usually, we don't have a psychologist, because...umm, anyway...the one from the Directorate comes only in their cases and we don't have a psychologist of the court, or the possibility to pay one psychologist if necessary and therefore, in these cases, the psychologist is not present."

In the case of asylum seekers, the hearings are conducted by the judge, and the child is heard in the presence of the guardian/legal representative, an interpreter and the lawyer.

In all the cases described above, the court-clerks are responsible for recording the discussion that takes place during the child's hearing. In appeal cases, panels of judges are organised, thus the child is heard by two or three judges.

When the child is heard in shared offices of the judges or of the court-clerks, other colleagues might be present.

The child might be escorted by a gendarme to the chamber, a fact that was considered by several interviewees as intimidating for the child.

"For example, I noticed in connection to a girl... I've talked to her, I've told her what is going to happen, everything was alright until the arrival of the gendarme who took her by her little

hand to the judge. It was very, very hard [for her] when she saw that a gentleman in a uniform takes and leads her."

The physical settings of the hearings

The interviews revealed a variety of practices related to the physical space used for child hearings in civil matters, illustrating, to a certain degree, the legislative framework presented in section 1.3.

Specialists from both legal and social fields talked about situations when children were heard in **regular courtrooms, during court sessions**, irrespective if children were part of the proceedings or witnesses. Even in family matters some children were heard in courtrooms, despite the legal norms. While in a number of examples provided by the interviewees the court sessions were declared secret and thus the public was asked to leave the room, in other examples the child hearings took place in public sessions. In the court room, the judge sits down at his/her place, which is higher than the rest of the room and the child stands in front of the judge (thus, at a lower level than the judge).

Nevertheless, the interviewees' answers indicate that, in civil matters, the child hearings tend to take place in **chambers**, but the description of these spaces led to the conclusion that, in almost all the cases, the child-friendly environment needed for an appropriate hearing of the child is not ensured.

What the interviewees described as a chamber allows their classification in 2 categories:

- A. Rooms designated for different purposes, also used for hearings. In this category we enumerate: offices of judges or of court-clerks, small chambers right before the magistrates' separate entrance to the courtroom (antechambers) or even regular courtrooms.
- B. Rooms specifically designated for hearings, which have no other use.

A. The situation when **the offices of judges or of court-clerks** are used as chambers is the most frequent one. The offices are sometimes shared with other colleagues that might or might not leave the room during the hearings. Therefore, these chambers were described as regular offices, with different setups – some have one desk, while others have 3 or more desks; some have piles of files stored on the floor or in metal cabinets. Some are painted in grey tones, others are lighter and friendlier; some offer more confidentiality, less interruptions and a warmer environment than others.

Sometimes, right at the beginning of the court-session or during a break, children were called in the **antechamber** of the court-room to be heard.

Several interviewees described situations when **regular courtrooms** were used as chambers, adding that no court-session was taking place in the mentioned room at that time and only those entitled to take part in the hearing were present (thus, the public was absent).

Not even the specialised Tribunal for Minors and Family of Brașov has an adequate chamber. This chamber was described more as a passage room, connecting two court rooms, with people passing through and in which several court-clerks are working. The interviewed judges of the specialised tribunal highlighted the lack of space, adding that sometimes children are heard in the judges' offices and considered that measures need to be taken in order to ensure a child friendly and appropriate environment for child hearings.

"[...] we have a room for child hearings, but is not at all appropriate, it's an office, or not even... more of a passage room between two court rooms, in which three court clerks are working, in which the prosecutor studies the files, in which someone is all the time coming down the stairs, going in one room or another... and with an improper setup [...] we don't have the possibility. As you can see, three courts of law are located within this building, we have major problems with the space... and this is the most disturbing issue, the fact that we don't have a special room for the child to enter only with the... the prosecutor, or, if it's the case, with the psychologist and so on. It's true, when we are hearing children, my court clerk colleagues are either using their headphones and don't disturb us, or leave in order for the hearing to take place in... in an adequate environment"

One other chamber visited by the interviewers was arranged as a meeting room with chairs, tables and libraries for books. Though the chamber was recently refurnished and was described by the interviewer as very spacious, it has no child-friendly elements. (See pictures in Annexes)

B. Some interviewees couldn't tell if the chambers they were referring to were used solely for hearings, but they couldn't indicate what other usages these chambers have either. The participants of one focus-group discussed the newly built tribunal of Vaslui that was designed to ensure an adequate environment for child hearings, including specialised chambers.

"In Vaslui – to give an example – a new tribunal was built, and it was designed from the outset in order to comply with some safety standards and, well, all details that should be operational in cases involving children. They have separate entrances, specialised hearing rooms for child hearings, there is a more hospitable environment or there are toys, or there is light or... well, in general the environment is adequate for child hearings and this concern is visible in the design of the building, to ensure these standards"

An issue highlighted by almost all the participants is the **inadequate waiting spaces**. Children who are about to be heard have no place designated for waiting and, as a consequence, they have to either stand in the hallways or sit on benches in courtrooms (only when allowed) as other potentially disturbing cases are being tried. Taking into account that sometimes the waiting time reaches even couple of hours, children are described as losing their patience and getting tired.

"[...] in order to avoid this unpleasant situation, it would be compulsory that cases involving children be given priority, because in practice, we had numerous cases with children, which were taken at the end of the session, during which time the children were bored and, moreover, they did not want to come to the next trial date or, even worse, they left. [...] They usually waited in the hallway, but... there are different cases, they also waited in the courtroom with their parents."

[Does this mean that they attended other trials?]

Yes, this may be so, because in a public session, they could enter at any time, nobody could control them and forbid their access to the courtroom."

During the administrative proceedings in asylum cases, children are heard in the office of the immigration officer, environment described by one interviewee as austere and unfriendly.

The level of child participation. Techniques of conducting the child hearing

The interviewees described various practices also with respect to how the child hearings are conducted.

Several steps can be taken to make the court room less intimidating for children; however, these steps are not universally followed. While some judges keep their official robes on and remain behind their desks, some judges try to create a friendlier atmosphere by taking off their black robes, stepping down from their chairs, or by meeting the child in the hallways and leading him/her to the chamber. Some offer sweets, fruits or even toys to children (the judges from the specialised Tribunal for Children and Family in Brașov said that the court staff bring toys from their own children, that they offer especially to the children from placement centres).

[...] I personally ask every time. I ask the child how it was, because I am interested to know, for the trial, and I am naturally curious... Most of the times they do not complain about anything, or say, <[the judge] talked nicely to me, he/she asked me if I wanted water>, sometimes I had a child who said, <[the judge] gave me an apple>, he came out with a apple. So they are people like us all, they strive to help them [children] get over this as smooth as possible ..."

The interviewees said that most of the time the judges try to adapt their language to the child's age and level of understanding, but situations exist when the magistrates are talking to the child in a cold manner, addressing blunt questions and lacking empathy. Some interviewees recalled cases in which children started to cry during the hearing, refusing to talk to the judge.

All the judges stated that they start the hearing with a short discussion on neuter subjects (such as every day activities, school or children's friends) to help the child feel comfortable and then they move to the matter of the hearing. Most of the judges said that when deciding what type of question to ask, they take into account not only the child's age, but also his/her level of cognitive development which they asses by talking to the child or, when requested, on the basis of the socio-psychological assessment report. A judge said that he concentrates on making sure the child does not feel guilty for his/her wishes or statements.

The judges mentioned that in custody cases, they avoid asking directly whom the child would like to live with and, instead, they try to explore what type of activities the child carries out with each of his/her parents. However, they knew situations when the hearings conducted by other judges consisted only of asking the child this direct question. Other interviewees confirmed that sometimes this was the only question the child was asked.

[...] as a judge in cases of remedy at law, I saw also cases when the hearing is just a formality, meaning that I saw minutes 2 rows long in which the child was asked <With whom do you want to stay?> and <Good bye!>. Hence this I don't consider normal."

Several interviewees stated that the judges might ask for psychologist support during the hearings. For example, a judge recalled that, for hearing a 4 year old child, she used drawings and had a psychologist to assess the child.

Only one interviewee, a judge from the specialised Tribunal for Children and Family in Brașov, mentioned that the court has used audio-recording in the cases of 2 or 3 children whose case concerned the withdrawal of parental rights.

In the interviewees' opinions, the level of child's participation depends on how much information the child has received prior to the hearing, on the support he/she offered to the child in order to overcome the difficult situation that triggered the court case, on the court environment and on how the judges talk to the child, on the guilt the child has that he/she has to choose one parent to live with, but also on child's personality traits.

The importance and impact of the child hearing

Most of the participants said that hearing the child is important because it allows the judge to better understand what conditions the child is facing, what relationship he/she has with the caregivers/parents and what are his/her wishes (helping the judge to distinguish between child's own opinions and parent's influences) and, in the end, to determine what is best for the child.

Also, the majority of the professionals considered the child hearing is important for children because it helps children to feel responsible and it teaches them that is important to take part in the decisions that are influencing their future.

One social worker and a psychologist stated that the hearings are important because they enforce the right of the child to be heard, to express his/her opinions.

A few professionals said that the child's hearing could have a traumatic impact on the child and presented examples of children who reacted in a negative manner after the hearings – having trouble sleeping, feeling guilty and sad or a child with disabilities reacted aggressively and wanted revenge on the mother.

„The very idea of a trial and court upsets them, the presence before the court even more so, since they come into contact with persons they don't know, persons they consider somehow responsible for the fate of their parents or, whatever, it depends upon...I am referring mainly to civil matters, and they see the Court as mostly a hostile place.”

A judge highlighted that one has to take into account that the child heard has experienced a difficult situation which has brought him/her to court and that needs specialised support in order to overcome it. He was very critical about the fact that some children are being dragged in numerous court cases by parents who can't agree on their custody, pointing out with regret that a local centre in Brașov that was offering counselling services to parents who were divorcing was closed down due to economic reasons.

“[...] here at the Brașov, as part of the Mayor's Office, there was a centre for counselling parents who divorce. There was a psychologist who dealt with them and prepared them especially in connection to their relationship to the child, it was very useful...It was the first thing that disappeared when the crisis came.”

Several participants considered than there are no patterns regarding the impact of the child's hearing on the case, as some judges can relate to the experience of the child, while others see the child's hearing only as a formality, a necessary stage in the proceedings. One social worker recalled two cases in which the judge and the prosecutor took into account the children's wishes even if these were different from the protection measures proposed by the GDSWCP. A lawyer mentioned that in cases of asylum-seeking children, the statements of the child can influence the outcomes of the proceedings, because children might impress the judges by telling their stories.

The overall opinion of the interviewees is that children's wishes are given due weight and are influencing the final ruling as long as these are not against the best interests assessed by the judge.

Hearings conducted by the Child Protection Commission

The hearings taking place in front of the Child Protection Commission (CPC) (*Comisia pentru Protecția Copilului*) are not judicial proceedings, but administrative.

According to law⁴¹, the CPC operates under the subordination of the county council and, respectively, the local councils of the Bucharest sectors, as a specialised body, without legal personality. The CPC has 7 members: the president of the CPC is the Secretary General of the county, respectively of Bucharest sectors; the vice-president is the Director of the GDSWCP (who can delegate his/her responsibility to the Deputy Director who coordinates the child protection matters); and other 5 members – one paediatrician (appointed by the Public Health Department), one psychologist-pedagogue (appointed by the School Inspectorate), one representative of the Police Inspectorate, one representative of the Labour and Social Protection Department and one representative of the civil society organisation (at the suggestion offered by the Secretary General of the county/sector).⁴²

The CPC has several decision-making powers related to the protection of child rights, such as: deciding the special child protection measures in case the parents/legal representatives of the child gave their consent for enforcing the measure proposed by the GDSWCP; deciding on issuing the foster parent certificates, deciding the measures in cases of children who are not criminally liable and who have committed criminal acts etc.. When the parents/legal representatives cannot be traced, are deceased, unknown, deprived of the parental rights or refuse to give their consent on the measures, the decision about the child protection measure has to be taken by the court.

As the present research was focused on the judicial proceedings, little information was provided by the interviewees regarding the proceedings that take place in front of the Child Protection Commission. Only one psychologist, who was also the civil society representative in the CPC, provided more information on the matter, while the discussion that took place during the focus-group on civil matters touched just briefly the subject. The interview with the above mentioned psychologist and the focus-group revealed that the age criteria applying in judicial civil proceedings are used also by the CPC to determine if a child will be heard. Thus, children over 10 years of age must be heard by the CPC, while children younger than 10 may be invited to express their opinions. The psychologist mentioned that, recently, cases of child victims of abuse, aged 1 to 3 years old, were brought to the attention of the CPC.

Before the CPC hearing, the child is assessed by a multi-disciplinary team within the GDSWCP; thus, a psychologist writes a report (which presents, *inter alia*, the child's level of cognitive and emotional development) that is submitted to the CPC. Both the interview and the focus-group showed that the child is accompanied to the CPC hearing by the case manager (social worker), and not by a

⁴¹ Romania, Law no. 272/2004 on promoting and protecting the rights of the child (Legea nr. 272/2004 privind protecția și promovarea drepturilor copilului), 21 June 2004 and Romania, Government Decision no.

1437/2004 on the organisation and functioning of the Commission for Child Protection (Hotărarea de Guvern nr. 1437/2004 privind organizarea și funcționarea Comisiei pentru Protecția Copilului), 2 September 2004.

⁴² Romania, Government Decision no. 1437/2004 on the organisation and functioning of the Commission for Child Protection (Hotărarea de Guvern nr. 1437/2004 privind organizarea și funcționarea Comisiei pentru Protecția Copilului), 2 September 2004, Article 5.

psychologist, this aspect being considered problematic because the child cannot benefit from specialised psychological support during the hearing. Thus, a distinction was made in comparison with the court hearings, during which the child might benefit from the support of a psychologist.

The interviewee stated that he asks the child present in front of the CPC if (s)he wants to speak with the Commission's members, and he highlighted that the answers were usually positive. However, similar to the answers of some of the specialists who talked about the child's lacking the information that (s)he can remain silent in the context of the judicial hearings, the psychologist stated that the members of the CPC will address questions to the child no matter if (s)he wants it.

"Either (s)he [the child] wants it or not, one way or the other, (s)he will be questioned."

The physical setting for the CPC hearing was considered by the psychologist as rigid and inappropriate for such a hearing. Thus, the CPC takes place in a meeting room, which was described as a large, amphitheatre shaped room, with many chairs and a presidium where the members of the CPC sit. While answering the questions (s)he is asked, the child sits in front of the 7 CPC members, on a chair positioned at a lower level than the presidium. The interviewee stated that he tries to behave in a child-friendly manner when communicating with the child.

The psychologist stated that when he is involved in a case that needs a protection measure, he provides information to the child and his/her family about what will happen. However, no specific methodologies or materials for informing the child about the hearings conducted by the CPC and the relevant administrative proceedings were mentioned.

Overall, the psychologist concluded that the child protection proceedings are not child-friendly and are not centred on the child as a person, but rather on the file/case.

2.1.3 Concluding assessments on the right to be heard

The hearing of the child in civil cases seems driven by the judge's need to better understand the child's situation, in order to pass the final ruling in accordance with what the judge considers to be the best interest of the child.

The hearing of the child in criminal cases seems driven by the need to solve the case, while **insufficient measures are taken to protect the child victim or witness**. The child is seen by the police officers and magistrates primarily as a source of information that could bring evidence to the case. Because of the procedural requirements, the child has to be involved in different stages of the proceedings (criminal investigation and court) and thus to take part in **repeated hearings that expose him/her to secondary-victimisation**. Despite the fact that the law provides the possibility to **record the hearings by audio-video means**, the situations when these provisions are used are an exception rather than common practice. Interviewees said that some criminal investigation bodies and courts are not even equipped in this regards. Even in Iași, where the civil society organisations contributed equipment to police stations, prosecutors' offices and courts, the research didn't indicate a higher prevalence of child's hearings conducted by audio-video link. Moreover, examples were provided in which the recorded hearings were *not* used to prevent secondary victimisation, but to prove that a child victim of trafficking changed his/her statement or that the criminal investigation officer didn't behave in an intimidating manner towards the child.

The lack of consideration for the child's protection extends as far as the acceptance of police officers or prosecutors to organise **confrontations between the child victim and the offenders**.

The interviewees recalled criminal cases in which the **children** were **harassed by the mass-media** who managed to obtain details of their cases. Some information about the court cases is made public on the official web-portal of the courts – for example, the full names of a child victim and of her legal representative (most probably one of the parents or a close relative) were listed in the details of a case of trafficking in children, in which were also clearly mentioning that the child was an injured party. Such situations are very detrimental to the efforts of helping the child victim to integrate in the community and cope with the trauma.

Most of the interviewees complained that **the legal provisions are not strong enough**, leaving the protection of the child to the determination of the magistrates, instead of stipulating mandatory procedures that must be followed. The research worryingly shows that **not even the existing regulations are fully respected**. Thus, situations were described in which the child victim or witness is asked to respond to the direct and sometimes humiliating and intimidating questions of the offender's lawyers or even of the offenders, despite the fact that their questions should have been addressed through the judge. It's not surprisingly in these condition that some children change their initial depositions or even refuse to take part in the proceedings (by not coming to the next hearings or by going missing).

Numerous interviewees complained about the **poor legal representation offered by the *ex officio* lawyers** who behave in a disinterested manner. In Iași, children might have a different *ex officio* lawyer from one hearing/court session to another, depending what lawyer is on duty that day. Because of this lack of consistency, the child's interests are not properly defended.

In civil proceedings, the judge must hear the child who is over 10 years old, and may hear a child younger than 10, while in criminal proceedings no mandatory age is stipulated.

Children victims/witnesses are heard at all the stages of the criminal proceedings (investigation by the police, investigation by the prosecutor, court). As opposed to criminal matters, **children taking part in civil proceedings are usually heard only once**, except if their special protection measure has to be reviewed of if they have to be heard in appeals.

The **child's hearings are usually shorter in civil matters** (a couple of minutes, rarely reaching one hour), compared to those from criminal matters that could last several hours (especially those carried out by the criminal investigation bodies in more complex cases, such as child trafficking, when child victims/witnesses might be heard for an entire night).

Both in civil and in criminal matters **children can wait several hours to be heard** in court, spending their time in the hallways or in the courtrooms where they get into contact with other potential disturbing stories. However, in criminal matters, the child victims and witnesses meet, in many cases, the offenders and/or their family members, resulting in the child being exposed to their **intimidations and threats**.

Child victims and witnesses might be heard in **various settings that, with very few exceptions, are unfriendly, cold and solemn, failing to offer privacy and safety**: during the criminal investigation

stage - in the offices of the police officers and prosecutors, rarely in the child's home or on the premises of the protection services or of the NGOs; during the court proceedings – in the courtrooms, sometimes in the absence of the public, other times in public session, rarely in special rooms equipped for hearings by the audio-video link. On the other hand, **children involved in civil cases are heard only on court premises**: in chambers (mostly the offices of the judges or court-clerks) or in the regular courtrooms also sometimes in secret session and other times, despite the rules, in the presence of the public.

Both in civil and criminal matters, the interviewees talked about **differences between the approaches of the professionals in charge of the child hearings**. Thus, the participants met professionals who put effort into creating a friendlier environment for children, who adapted their language and showed empathy towards children. The participants recalled also professionals who were cold, rigid and too straight forward. **Some children involved in criminal judicial proceedings might be subjected to aggressive and even humiliating language from some professionals** who make the child feel guilty and somehow responsible for the trauma suffered (most common in cases of adolescent girls who are victims of sexual offences or trafficking). The differences in professionals' approaches are the result of lack of clear guidelines that should be put in place in order to ensure that each child is supported in expressing him/herself, being treated with respect and in a manner adapted to his/her level of emotional and cognitive development.

Analysing the interviewees' perception on the **weight given to children's opinions** we notice similarities, but also differences between the civil and the criminal trials. The similarities refer to the fact that the weight given to the child's opinions changes from one case to another, based on the interpretations of the judge. The differences consist of the fact that, in criminal proceedings, the opinions receive weight as long as they correlate with other evidence in the case (according to the principle of equal weight of the evidence in the criminal trial) while in civil matters, the opinions and wishes have impact on the final ruling as long as they are in line with what the judge sees as the interest of the child.

We notice that numerous **interviewees working in civil matters looked how the final ruling might affect the child's future**, saying that sometimes, civil justice gives the child the possibility to decide on an issue that will influence his/her future (for example which parent to live with).

The interviewees working in the criminal field analysed the impact of the child's opinions from a 'case perspective', rather than how the trial could affect the child. Thus, almost all the interviewees said that a child might contribute to solving the case and finding the truth, but they didn't look at how the trial might affect the child's future. For example, hardly any interviewee thought that child hearings could have an impact on obtaining financial or moral compensations or mitigating the damage suffered by the child.

Both in civil and criminal cases, children need to receive support in order to make use of their right to be heard, in conditions of protection against emotional distress or trauma. However, we see that **not all children participating in judicial proceedings benefit of the support of the social professionals**, having instead to deal with disturbing experiences on their own or with the help of

parents in the best case. Moreover, even when provided, the specialised support doesn't cover all the steps before, during and after the proceedings.

The research showed also **good practices** and efforts made in order to protect the child and to ensure child friendly justice, sometimes even by challenging or going beyond the existing rules and procedures. Some professionals and institutions from both the social and legal fields are proactive, developing good practices or concluding formal or informal partnerships aiming to pursue the best interest of the child. Some judges, for example, take the child victim to their offices before being heard, in order to avoid meeting the offender while waiting. In Timișoara, some of the child victims of trafficking are heard by the police on the premises of a NGO that provides assistance to these victims.

Overall, the procedures on child hearing both in criminal and civil matters are not child-friendly and fail to make the child feel safe and protected, the appropriate practices and the friendlier approaches of the professionals being developed on individual basis.

2.2 Right to information

2.2.1 Right to be informed in the criminal justice field

Rules and procedures

The rules regarding the provision of information to the child in the context of criminal judicial proceedings are limited. The interviewees were talking mainly about the right of the victim to be informed about the provisions of the 'Law no. 211/2004 concerning measures for the protection of victims of crime' and 'Law no. 678/2001 on preventing and combating trafficking in persons'. Thus, several interviewees (mainly from the legal field) mentioned that child victims are informed generally before the hearing, either by the police officer, the prosecutor or judge, that they have the right to receive: legal aid, compensation, psychological counselling, support for social and educational reintegration as well as the right to refuse cooperation and to be included in a victim protection programme. This is noted in a minute (*proces-verbal*) which is signed by the legal representatives of the child and which is handed to them.

Very few of the interviewees added that children are also informed about the steps they have to follow in order to access these services (e.g., to contact the Bar Association and Probation Services or GDSWCP).

The witnesses are informed that if they are under 14 years old they have the right to be assisted by a legal representative, alongside this is the explanation that they have to tell the truth and declare everything they know about the case. Two prosecutors highlighted that the children are warned that they can be charged with perjury if they don't tell the truth. Very few legal specialists mentioned that they also inform the child witnesses that they can refuse to testify if they are related to the offender.

If the child is assigned a lawyer, it is possible that this specialist might also have a role in informing the child on his/her rights and responsibilities.

Several professionals (especially judges) stated that the judges open the court hearing by informing the individual who is about to be heard, child or adult, about the reason why they were called to court.

Social professionals mentioned that children referred to the relevant services – child protection, probation or NGOs – are informed by the representatives of these institutions. The type of information and the manner of communicating it depend on how far advanced the judicial proceedings are at time of referral, as most of the children were already heard by the criminal investigation bodies before reaching these services.

In cases of trafficking, a professional from the regional anti-trafficking authorities has also the role of informing and supporting the child victim.

When present, the child's parents are also informed and are asked to explain the information to their children as well.

Practices

One major conclusion reached after analysing the responses of the research participants is that there are major **discrepancies between the procedures as explained** by these professionals. Moreover, some professionals providing information to children are not entirely familiar with the legal provisions. For example, several social professionals and even a lawyer mentioned that they are telling the child that the hearing is compulsory and that it is in the child's interest to make the statement. When saying this, they made no distinction between children participating as victims or as witnesses and thus, most probably, they are saying the same thing in both cases. This comes into conflict with what other specialists mentioned about the right of the victim to remain silent.

There is **uncertainty on behalf of the specialists in terms of who exactly has the responsibility to inform the child** and thus the ball seems to be passed from one specialist to another, usually between fields – social and legal. Furthermore, professionals working in the same field seem unable to agree. For example, we encountered prosecutors who pointed at judges, but also judges pointing at prosecutors. Other professionals from both the legal and social fields confirmed that the judges are not in a position to offer too many details because they have little time at their disposal due to the heavy caseload and moreover they don't know the child, as they meet him/her for the first time at the hearing. Similarly, some social workers said that the psychologists and lawyers are those responsible for informing the child, while some psychologists said that case managers (who is usually a social worker) and lawyers have this role. Several participants stated that it's a shared responsibility or that a child is informed at each stage of the proceedings, by the specialists in charge of that particular stage.

The practice of filling-in a minute (*proces verbal*) , where the rights and obligations of the victim are described, was referred to. However, most of the social professionals providing support to child victims or witnesses of trafficking noticed that children tend not to understand the information

provided by the legal specialists during the criminal investigation stage and that the signed minute (*proces-verbal*) is too technical and formal. One anti-trafficking professional said that she has to explain again to the victim what is written in the minute.

"Subsequently, because that minute is more about laws and is formulated in legal terms, we explain ...I explain [to children] exactly what are their rights that they can benefit of more services offered by the state."

According to the social professionals, the *ex officio* lawyer informs the child about what will happen during the hearing only a few minutes before it starts. A lawyer highlighted **differences between a child victim and a child witness**. Thus, the lawyer said that child witnesses receive less information than the child victims because lawyers are reluctant to talk to witness in order not to be accused of trying to influence their statement.

Few legal professionals said that they can't find significant differences between how they inform a child victim and a child witness.

The social professionals stated that **the moment when the child reaches the protection services** has a direct impact on how the child is informed. There are cases when there is no time to properly inform the child and therefore the child receives information directly in the police/prosecutor's offices or in the hallways of the court. Also, there are differences between the **types of information provided** to children, as it is detailed below.

Generally, social professionals try to secure some time prior to the hearing in order to explain to the child what would happen and why, what (s)he would see and experience.

A child might have already been heard by the criminal investigation bodies before reaching the social protection institutions or NGOs. The NGO social professionals mentioned that children referred to them had been told very little and therefore their understanding of the procedures was limited. Some of the social specialists offering support to child victims noticed that the children were given only a small amount of information and that sometimes were even made to believe something else (such as when they are not informed that they have the right to remain silent and thus they think it is mandatory to give a statement). For example, one psychologist said that many victims of trafficking referred to the NGO she works for were not informed that their personal information was collected and stored in the national database on trafficking in persons. There are also cases when the child victims or witnesses were not informed that repeated hearings might take place or about the roles of the people present during their hearing.

"I witnessed it in our office, when they brought the minor, they forgot to...that she has to be informed about the rights she has – the right to be included in a protection programme, to benefit from reintegration, from school reinsertion. She receives no explanations why, because in the Law 678 [from 2001 on preventing and combating trafficking in persons] are written – you have the right to refuse, you have the right to accept – no one explains it. A paper is put in her face; it happened in my office also, the girl signed it and I...I flipped the paper over and I asked her <Now, tell me what have you signed.> and she started laughing and <I don't know what I have signed>, <But why did you sign?>, <Well, because the police officer gave it to me >."

Only a few specialists mentioned that they try to keep the children up to date with the progress of the case. Some social specialists said that the information they provide to child victims or witnesses refers to the rights children have, the roles of the professionals involved in the hearing and what children should expect to happen and how they could react (for example, children are told that intimidating questions can be asked by the offender's lawyer, but that they have to answer only the questions of the judge).

"Look, you will be ..., you might happen to be verbally assaulted by that lawyer, you don't need to take it personally, you are not asked the questions directly, but the questions are directed through the judge who, if he/she wants, he/she rephrases them... It depends very much on the judge's nuance too... so you don't know in advance how the climate is there, but you try to prepare him/her for a pretty tense climate, even if the tone is low. The climate is tense because the responsibility is very big, it is about the freedom of some other people, so, and the things are extremely pressuring"

One social professional stated that discussion notes are taken when the family receives counselling regarding the proceedings. The notes include a statement, signed, at the end of the session, by both family and child care specialists, that the family was counselled regarding the proceedings and the effects of the proceedings.

The police officers mentioned that the information they give to the child may refer to the role of the child in identifying the author, but also the fact that the child can ask for the support of a psychologist from the social protection authorities.. There is also data that only a brief introduction will be provided.

"Yes, he is informed what he has been called for, so about the fact that he was called to be heard in a criminal case, where he is to be heard as – and now it depends on the role he has – and everything will take place at...at the Police station he is informed. Orally. <Mate, you are being heard>."

The majority of the judges said that the information they give to the child is not very detailed and they consider that the responsibility of informing children lies with the protection services, parents or NGOs.

"In general ... no, we do not have responsibilities in this respect. There is a specialized body, the Child Protection Directorate and, before the parent comes to the child, they visit the parent, they have the means to talk with the parent they even have a psychologist. [...] Perhaps for you, this looks like a problem, but this is not a problem for us. Nobody informs anybody. We simply ask for the child to be brought in for interviews. As for the rest, it is up to us, the magistrates, the judges, to, interview the child [...] let's look at, umm, the real picture. It is hard to say that a judge should prepare the child, as the judge does not have any contact with that child..."

One psychologist mentioned that before the hearing of an 8 years old child victim of sexual abuse, scheduled to take place through live audio-video transmission, the judge explained to the child what was going to happen, what the procedures were and how the technology functioned.

It was mentioned that the language used by the legal professionals when informing the child is sometimes too rigid and not adapted to a child. The social professionals added that even when they see that the child doesn't understand the legal terms used by the judge, they are not allowed to

intervene. This is also true in circumstances in which the judge does not realise that the child has difficulties understanding what (s)he was asked.

The majority of the interviewees who provide information to children highlighted the important role of the parents, seeing their absence as a difficulty (frequently in cases related to child trafficking, or when parents are the offenders). Thus, when present, the parents are informed about the proceedings, in order for them to further guide their children. However, some legal professionals tend to inform only the parents, assuming that they will convey the information to children. Parents can also help the specialist to better understand what the child tries to say. A lawyer highlighted that there are situations when the child prefers to address the question to the parent who pass it on to the lawyer.

Materials and techniques used for informing the child

The information is provided **mainly verbally /orally** to children.

Almost all the participants who are informing the child said that no materials are used, as there is nothing available in this regard.

Alternative Sociale Association, together with the Association of Magistrates from Iași, produced a leaflet that explained what the justice system is about, where the courthouses were and other such general details (nothing specific on the procedures), but unfortunately there are no more copies left. Another non-governmental organisation, Reaching Out Romania, has produced a brochure based on the national legislation concerning the trafficking in human beings, presenting the rights of the victim and covering 10 major topics which are explained in couple of words. Once the brochure was produced it was decided that the prosecutors will have the main role in disseminating it to the victims whom they come in contact with (the NGO also kept some copies for the children they work with). Nevertheless, the interviewee considered that, provided alone, such written information is not very useful and that it has to be explained during the counselling programme.

The representatives of anti-trafficking authorities referred to the minute (*proces verbal*) drafted when the child victim is informed about his/her rights.

A few other specialists also indicated the existence of raising awareness materials covering various subjects such as rights of the child (posters and leaflets) or domestic abuse (brochures).

Surprisingly, a couple of LP interviewees believed that the subpoena for the hearing is an informative material. The subpoena is an official document, couple of sentences long, used to communicate hardly any details regarding the hearing (such as the date, the time, the place, the case number etc.), that is sent to the domicile of the child.

“The only written information is that subpoena.”

Some say that the written information would be more useful for parents and that for children some short movies or cartoons would be more efficient.

Only one psychologist mentioned that she is drawing the court settings when she explains to the child what is going to happen (people are drawn on a board and the specialist talks about the role of

each person). Another social worker said that she has some photos of a courtroom that she shows to the child.

Two social professionals declared that they are sometimes using games and role play (to both deliver the information, but also when assessing if the child understood), especially in the case of younger children or of children with learning difficulties.

"At the end of the meeting we stage a role-play [...] the child is asked <do you know what that one does?>. For instance we have a puppet on a chair who does certain things, it is the presiding judge and the child knows <this person will ask me questions>, a sort of a theatrical representation is staged [...] the child is asked to say if (s)he knows what to expect from each of those people, if (s)he can say whom should (s)he talk to and what is their role. Then is when the child has understood. As a specialist, I am interested that, when the child leaves the cabinet, he has a real representation of what is going to happen."

All the interviewees involved in informing the child stated that they are using age-appropriate language, that they are rephrasing the sentences if the child seems confused.

The physical settings where the child is informed

Before the hearings, children benefiting from the support of public institutions (GDSWCP, Probation Services) or NGOs can be informed within the premises of these institutions/organisations: in the counselling rooms, in the offices of the specialists or in other rooms (such as in meeting rooms, in secured houses/flats or in dorms of the placement/emergency/reception centres).

One interviewer visited the headquarters of a DGSWCP, including one of their emergency placement centres. The psychologists' office located in the DGSWCP's headquarters is about 30 m² large and has natural lighting; there are 6 desks located in this room, for the interviewee and five of her colleagues; the furniture is shabby and damaged; in addition, the room was messy.

Within an emergency placement centre there is a 'children's club' where the information might be communicated to the child. The 'children's club' room has a very long table (over 5 m long), several chairs and sofas, a table used by the painting teacher and few plush toys. There are also a couple of TVs and radios stored in the room and, overall, the 'children's club' looks more like a stockroom which offers little privacy to speakers. (See pictures in Annexes.)

The emergency centre's psychologist's office might also be used for meetings and for informing the child. This office is very small (no more than 4m²), has natural lighting and is furnished with two tables and two chairs and a stand with books shelves. Toys and games are available. During the interview, the interviewer noticed that all the noise made by the guardians can be heard inside, because the office is located right at the main entrance. (See picture in Annexes.)

One interviewer visited a Probation Services's office and described the probation counsellors' office as a friendly space, with posters on the wall (one of them laying out the rights of the child) and big windows. However, no toys or other materials for children could be found in the office. (See pictures in Annexes.)

The probation counsellor from Iași mentioned also that, after discussions with the court management, the Probation Service is allowed to use a room of the courthouse in order to sit and talk to the victim prior to the hearing. However, so far, the room wasn't used because the Probation Service was not notified to assist a new case yet.

Child victims of trafficking assisted by one of the NGOs are informed and prepared for the hearings in an office of the psychologist which is used also as a counselling room. The interviewee said that this room has a couch, two armchairs, a cupboard in which cups for tea and coffee are kept (as the teenagers are asked if they would like some), a locked cabinet with the files of the beneficiaries, and recently a small swing/cradle (bought because one of the victims assisted by the NGO recently gave birth).

Children might also be informed right at the beginning of the hearings, by the legal professionals (police officers, magistrates, lawyers) or by some social professionals summoned to the hearing (psychologist, social worker). Therefore, the same location used for the hearings is also used for informing the child: the police officers' rooms, courtrooms or even on the hallways of the courthouses. For a description of these settings, please see section 2.1.2.

The importance and impact of informing the child

With respect to the importance of informing the child in the context of criminal judicial proceedings, the most frequent aspects highlighted by the specialists from both the social and legal fields are:

- Children will **gain more trust in themselves and in the judicial system, will feel more secure**, especially if they are informed about the stages of the proceedings, the role of the professionals involved, about what to expect during the hearing, as the predictability reduces stress. In the absence of information, the children won't feel comfortable to talk about their experiences and thus won't provide all the necessary details that could help build a case.
- If they are adequately informed, children **will be more active and will be more cooperative** with the criminal investigation bodies and the judges. They will provide more accurate and precise answers, will tell the truth and will contribute to the successful prosecution of the offender and will have an impact on. The opposite of this situation is that the child lacking information might not trust the police officer/prosecutor/judge and might not understand what is happening, refusing thus to co-operate; a confused child might make statements that could lead to a wrong conviction of a person.
- A child will **cope better with potential harassment or intimidation**, if (s)he is warned about such possibility and taught how to react. Otherwise, the child will be traumatised by the experience of the hearing and might get scared and refuse to provide answers or to take part in the following stages of the judicial proceedings.

Only one interviewee, a social worker, stated that **it is a need of the child** to know what is about to happen. A psychologist from the anti-trafficking authorities considered that it is important to make sure that the specialists are informing the child about his/her rights during the judicial proceeding **because a child has no other sources of information** and no other means to obtain this information.

"[The information] is very important because if we wouldn't communicate his/her rights, (s)he could not find out about them from other place. [...] I believe it is an advantage for the

child to know that (s)he can benefit of something, allowing him/her to want and wish to benefit of it."

The same psychologist mentioned above and a lawyer from Bucharest considered that by being informed, the **child is empowered to choose** what to say and how to behave during the judicial proceedings **and to ask for his/her rights**.

"It's extremely important because by having information they know how to choose the source of information, to choose, if you want, the way of expressing themselves. Yes, because if you inform him/her, then (s)he will be aware and could make a choice, (s)he will have an option: <I will tell or I won't tell what I know>, <I remember or I don't remember; I will make an effort or I won't make an effort>. These are things concerning them as individuals and also about observing the law, yes, you must inform the child."

In the opinion of interviewees, the extent to which the child understands the information depends upon: the language used (adapted to the child needs); his/her age and level of maturity; fear, trauma or state of shock the child may be in; upon the shame felt by the child; the existence of supportive adults such as the parents; the level of trust the child has in the person that gives the information and moreover the length of the time the specialists have to establish a proper relationship with the child.

While some interviewees believe that, overall, children understand the information provided to them, others think that their understanding is limited because not even the adults can fully understand the judicial proceedings. Some social professionals gave examples when children didn't understand what they were told by the legal specialists or the documents they signed.

2.2.2 Right to be informed in the civil justice field

Rules and procedures

Almost all the interviewees, from both the legal and social fields, stated that they don't know any rules that might exist on informing the child involved in civil judicial proceedings.

"Our judicial system does not have procedures for informing the child. We don't even have an information guide available for justice users, either adults or children, concerning the judicial proceedings. The fact that the rules of conduct in court are posted on the door of the court, this does not represent an information of the user about his/her rights and duties, let alone for the child."

Two professionals working in the area of migration mentioned that in case of accompanied migrant children, the parents should be present when the child is informed about the asylum proceedings and about how these proceedings will involve and affect the child. In case of unaccompanied migrant children, the legal guardian (from the protection services) should attend the information session and should also support the child by providing further information. A translator should always be provided in case the child doesn't speak Romanian.

One other specialist, a psychologist from a General Directorate for Social Work and Child Protection mentioned that, according to the 'Law no. 272/2004 on promoting and protecting the rights of the child', children must be informed before any court hearing. The psychologist didn't provide any other procedures regulating how this should be implemented.

The specialists from the GDSWCPs said that children under their institutional care are informed and prepared for the court hearings.

Many interviewees indicated that children participating in custody matters are mainly informed by the parents and sometimes by the lawyers of the parents. Some psychologists from GDSWCPs are sometimes called to support children involved in custody matters and on this occasion they also provide some information to the children.

During the initial stages of the court hearings, the judges might offer some information to children about the purpose of the hearing.

One lawyer who stopped working in cases involving children 10 years ago stated that back then it wasn't mandatory to inform the child and parents were the ones in charge with this task.

Practices

The interviewees from the GDSWCPs said that **children subjected to special protection measures** are informed by the professionals of this institution. We notice from their answers that the practices might differ – sometimes one specialist has the main role in providing information to children (usually it's the psychologist or, when he/she is not available or the hearing is an emergency, the social worker/case manager or even the head of the placement centre take the roll) and other times the task is shared between several professionals from the multi-disciplinary team of the GDSWCP. A relevant example is that of a child who arrives in an emergency placement centre and who might be informed first by the case manager or the head of the centre and afterwards by the psychologist whose role is to try to comfort the child experiencing an unpleasant situation. The legal counsellor of the GDSWCP might also inform the child. When children are placed in a protection centre, they might talk to each other about the hearings.

In this context, the information provided to the child concerns the fact that a special protection measure is to be taken, changed or renewed and that this involves going to court if the child is older than 10. Furthermore, the child is informed: what a court is, what is about to happen in the court, which specialists are going to be present and how long the hearing will last. A few interviewees said that the child is also taught to respond truthfully to the judge.

One social worker from an emergency placement centre didn't see the likelihood of younger children asking to be heard in court, because in her opinion children are already informed that only children older than 10 are allowed to go to court. This opinion runs counter to the legislative framework which states that the judge can hear children younger than 10, therefore the information these children may receive from the social professional is inaccurate.

The information is provided to children cared by the social services either during a counselling session or a meeting of the multi-disciplinary team of the GDSWCP. Some professionals mentioned that, usually, the members of the multidisciplinary team meet first to discuss the case and after a while they bring the child in the room to inform him/her about the case and the protection measure, to ask for his/her opinion on the matter and to let him/her know that it involves going to court. Right before the hearing, when they are about to enter the court, children are reminded some of the aspects discussed during the counselling session/meeting of the multi-disciplinary team, encouraging them to speak openly with the judge

Asylum-seeking children are informed about the administrative and judicial proceedings in which they have to participate, by the specialists from the NGOs active in the field. A lawyer working for a NGO complained about the fact that the legal guardians (from the protection services) appointed to

the unaccompanied migrant children are often not present at the counselling and informing sessions, and that their role is formal. The interviewee highlighted that it was important that she regularly visited the asylum seekers/refugee centre, because this has helped build a trust-based relationship with the children and with their parent.

"In my case, so in my experience, for me it was a bonus, so to say, the fact that I went to that accommodation centre, because by going frequently, I have the possibility to practically, I don't know, to weekly discuss with the mother, the father, with the child, to tell him/her <look, we will be interviewed>, you explain that he/she must not worry, there is a lady or a gentleman who will ask some questions, yes, a trustful climate creates, now I don't know about the case of other lawyers who really don't go to the accommodation centre, only meet the asylum seeker, I don't know, on the hallways of the court house for a few minutes, how much this trust relationship develops."

Another specialist mentioned that migrant children are very inquisitive and might be informed also on an ad-hoc basis by whoever they come into contact with.

"The children who come to me ask me what happens and I explain to them what happens as far as I know...then they go to...there are social workers or the Romanian teacher or so on...so they try to find out as much as possible from each one of them in order to...fill in the blanks."

Most of the participants working in civil matters expressed worries regarding the low level of information and support available to **children taking part in divorce/custody cases**, in which the main actors who prepare the child are the parents and, sometimes, the parents' lawyers. The professionals working for the GDSWCP said that they are rarely called to provide support in these cases.

The lawyers involved in the research stated that they try to prepare not only the parents but also the children for the hearing. The practices of informing children differ from one lawyer to another. Some said that they only have the time to meet with the children before the hearing, thus they inform the child at the courthouse. Others said that they meet the child with couple of days before the hearing. Most of the lawyers highlighted that they prefer to have a first meeting with the child's parent in order to make sure that he/she understands the proceedings and could support the child by providing information to him/her whenever it is needed. All the lawyers mentioned that in all the cases when they are informing the child about the hearing, the parent is present.

One lawyer who collaborated with a NGO active in the child's right area mentioned that when she was informing the children assisted by the NGO, she used to have a distinct meeting with the child, in which the psychologist of the NGO was also present. The meeting with the child used to be organised after a consultation with the social worker and the psychologist of the NGO.

The information provided by the lawyers aims to present the court settings, the people involved in the hearing and their roles (with a focus on the judge and the court-clerk), the way in which the hearing will take place, the reasons for the child hearing and the consequences. Some of the lawyers said that they start by talking about things unrelated to the case, such as school, hobbies or friends, in order to connect with the child.

The interviewees also highlighted that parents who divorce are deeply affected by what is happening and it's hard from them to be objective. Thus, many judges trying family matters said that most of the children whom they have contact with are influenced by their parents (usually by the parent whom they live with). Moreover, parents convey not only information but also their feelings and

stress. A somewhat similar idea was debated during the focus group on civil matters, but with respect to children cared by the GDSWCP, who might also be influenced by the specialists working for the protection services.

When the GDSWCP is subpoenaed to assist a child involved in a custody case, the first contact between the specialist from the GDSWCP and the child takes place in the courthouse, before the hearing, only allowing a short time for informing and preparing the child.

One psychologist from a GDSWCP described a situation in which she and the children who she was supporting were waiting on the hallways of the court room, a court clerk came to ask if there were any psychologist available. Thus, she was informed that a child had started crying during the hearing and she was called inside the judge's office, even though she wasn't involved in that case. The psychologist talked to the girl in question and explained to her that the judge would like to know her opinion and that her views matter, and thus the child finally agreed to talk.

The interviewees said that **the judges might offer some information to the child, at the start of the hearing**. In most of the cases, this information is about the purpose of the hearing. Several lawyers described that the judges are asking the child if (s)he knows why (s)he is there and if the child seems confused, the judges explains briefly the reasons.

Some lawyers mentioned that the judges don't have the time to inform the child about the proceedings or about his/her rights due to the large number of cases that they have to deal with. The same idea was also highlighted during the focus-group, when the lawyers referred to the dialog between the judges and the children being more like an introduction, stating that in some cases there was no information whatsoever provided by the judge.

"When 5 children must be heard in half an hour, or 20 minutes, we would be naive to believe, no matter how much good will the judge has, that the judge can explain to the child what his/her rights are and why (s)he is there and... I don't think this happens."

One judge participating in the research mentioned that judges don't have the responsibility of verifying whether the child has been informed about the hearing by other institutions or people. Most of the judges interviewed believed that this task is carried out by the specialists from the GDSWCP, by lawyers or by parents/foster parents/legal representatives. However, some examples provided by the judges show that children brought before the court might have no information about what is about to happen and don't know what to expect from the hearing.

"My opinion is that they are quite scared and frightened about coming here and they don't actually know what is happening to them, why are they brought here and they are scared, this is the child's perception. For instance, a little girl once asked me: "Will you do me an injection?"

Several judges involved in the research said that they start the child hearings with a brief talk, letting the child know that they are interested in understanding his/her point of view and wishes.

The physical settings where the child is informed

The professionals working for the GDSWCP mentioned that children who are under institutional care are informed about the civil judicial proceedings at the premises of the GDSWCP or in different residential settings – (emergency) placement centres, family type apartments. The spaces used might be: the counselling rooms, the offices of the case manager, head of the centre or of other specialists, the dorms or other rooms. These physical settings are the same with those presented in section 2.2.1.

In the context of an interview with a specialist from a GDSWCP, who works in civil matters, the interviewer had the opportunity to visit the psychological counselling room where children are sometimes informed about the court hearing. The room is clean and friendly, furnished with a colourful sofa and armchairs, as well as with little chairs for children. (see picture in Annexes) There are board games for children and colouring pencils. (see picture in Annexes) The natural lighting is limited as the room is situated within the roof space of the building which constrains the window placement. (see picture in Annexes)

A number of social professionals mentioned that some children are very curious about the evolution of their case, asking for information each time they have the chance – thus they might be informed even in the institution's car that takes them to and from the hearing or in the hallways of the institution.

Before the hearing, when are brought to the court, children are reminded about some aspects that were previously discussed.

The interviewees working with migrant children indicated that they inform the child during their visits to the accommodation centre where asylum seekers and refugees are placed.

Some of the lawyers are informing the children right before the hearing, in the court's hallways, while others ask the parent to bring the child into their offices. A few lawyers stated that, when they have time, they prefer to meet the child in a more relaxed setting – like a cafe or fast-food restaurant or in other public places. One lawyer who collaborated with an NGO promoting child's rights stated that she was meeting the children at the NGO's headquarters, in a friendly environment, in a space similar to that of a classroom, equipped with furniture for children and young people, with toys and games.

When the psychologists from the GDSWCPs are called to assist children who are to be heard in custody cases, they inform the children on the court's premises – on the hallways or in the room where the hearings take place.

When judges are providing information to children, the physical locations are the same as those where the hearings take place (due to the fact that children receive information as part of the hearing, not at a separate stage). The court rooms, council rooms, judge's offices, were described in section 2.1.2.

Materials and techniques used for informing the child

The interviewees said that there are no materials that could be used to better inform the child about their participation in civil judicial proceedings.

One interviewee, a representative of a NGO who talked about his personal experiences related to the custody of his children, mentioned that he has downloaded some online materials in English and gave them to his daughter in order to prepare her for the second hearing that took place when she was 12 years old. He added that as there are no specific materials in Romanian for children regarding their participation in judicial proceedings, he is currently working to translate and make such materials available online.

A few interviewees mentioned that they only saw some materials on children's rights in general.

Several specialists stated that written materials are not appropriate for young children who need information in a simple form.

"To give him/her a brochure to read...no, this is an approach for an adult"

The interviews showed that, in the absence of adapted materials on child's participation in civil judicial proceedings, the information is communicated verbally to children.

Most of the interviews who are preparing the child for the hearing stated that they adapt their language to child's age and level of development and, in order to see if the child has understood, they use verbal verification and watch the nonverbal communication as well as the child's reactions. When needed, they rephrase the information.

Many specialists highlighted that the most efficient way to prepare a child for the judicial proceedings is to provide them gradually with information and to keep them updated on the evolution of their case. However, the lack of a court psychologist who could carry out this task in cases of children involved in custody matters was frequently criticised.

A few psychologists mentioned that by role-playing the hearing they are able to get through to younger children and thus allow them to understand concepts and ideas that would be incomunicable if delivered just verbally.

One lawyers said that when she meets the child at the courthouse, she accompanies the child to take a peek at the courtroom in which he/she will be heard (when other cases are in progress) in order to see what the room looks like

During the focus group, the participants agreed, first, that the child's background does not, generally, influence the measures taken to inform him/her. As for the child's ethnic background, sometimes special attention is given if they belong to the Roma minority. If the child has a disability, the information should be presented in a way the child understands and, if the case, special interpreters should be used. Children with a different cultural or religious background may need extra measures or explanations.

"Because, for instance, they come from Muslim religions, from very traditional societies and, for instance, being a man or a boy, the one who is interviewed won't speak to a woman and then you must take all this into account. Either you explain or you find a man, because the time is so short that you don't have any time to prepare him and give him a cultural orientation tour [...]"

The importance and impact of informing the child

Almost all the interviewees stated that it is important to inform the child about the judicial proceedings in which he/she will be involved. Professionals' overall answers show that when the information is properly provided to children, it will help them to:

- understand what will happen, reducing their anxiety, confusion, stress and fear;
- be aware of the consequences of their statements, to understand that their opinions are important, but also to avoid the feelings of guilt and disappointment;
- speak freely and to formulate relevant and useful answers during the hearing, letting the judge know their feeling and wishes;

- understand what measures can be taken in their interest, giving informed consent and knowing how to make use of their rights.

Most of the specialists thought that if a child is not informed, (s)he might refuse to go to court or to participate actively during the hearing.

A few interviewees stated that children have the *need* to be informed or that children must be involved in the decision making process.

Only two specialists, a psychologist and a lawyer (both working/collaborating with the same NGO), clearly stated that the child has the *right* to information and opinion.

"[...] it's his/her [child's] right to be informed and I think this aspect is very important."

The specialists working in civil matters have divergent opinions about how much children understand in the context of their participation in judicial proceedings. While some interviewee believed that children understand the information as long as it is adapted to their age, others thought that children, especially the younger ones, understand only that they are involved in something important for their future.

A striking comment came from a psychologist who considered that children, with few exceptions, are not even eager to be informed as long as there is an adult with them, adding that children are not curious about the judicial proceedings. Her opinion comes in opposition to the opinions of many other social professionals who described children as inquisitive and eager to find news about their cases.

"[...] in many cases, children are not interested to find out, which I don't find abnormal at all, because it's normal that as long as you have the adult next to you, you prefer to continue to be a child and to let the adults inform themselves, not you. They are told, but I don't think that they give too much importance, as far as I noticed. This doesn't mean that there are not also cases in which the child is actually interested in what is happening to him/her, I would lie to say such thing, I know that it exists, but no... [...] I don't think that there is such thing as them not having information, so it can't, because you have to go with the child, the child cannot be forced somewhere where he doesn't want to go, he/she starts yelling, screaming, kicking and punching as any child, so if..."

Among the factors mentioned by the interviewees as influencing the child's capacity to understand the information provided to them on the civil judicial proceedings are: the age of the child and his/her level of maturity, the manner in which the information was presented to the child, the emotional stress caused by the difficult situations experienced by the child (parent's divorce, children's placement in an institution etc.) or the fear of being in the cold and unfriendly environment of the courthouse.

2.2.3 Concluding assessments on right to information

The research shows that, both in criminal and civil matters, the child's right to information is not properly enforced. Despite the existence of legislative provisions stating that children have to be informed, we notice that no working methodology is used in order to make sure that a child is

informed and prepared for participating in the judicial proceedings. Thus, the manner in which children are informed and supported varies considerably and depends on the practices developed by some professionals or institutions, the level to which professionals act proactively, on the cooperation between specialists or even on professionals' level of information. Thus, some children receive information mainly related to the legislative aspects of their hearings without being psychologically prepared for the experience, while others receive more psychological and social support, lacking information that would allow them to understand their rights and roles in the proceedings. It's worrying to see that **there are children who are left in the dark** because they don't benefit of the support of the child protection system or of any NGO, and the information received from the legal professionals they meet during the hearings is brief and incomplete. These might be children victims or witnesses, but also children participating in custody cases.

In both civil and criminal area, we see important discrepancies between the procedures explained by professionals involved in the research, caused sometimes by the fact that some professionals providing information to children are not entirely familiar with the legislative provisions. The interviewers noticed that 6 social professionals (from both the public and the non-governmental sector) had a very limited knowledge of the procedures regulating the hearing of the child, and that 2 legal professionals (a prosecutor and a judge) requested time to browse through the legislation to make sure that they will provide the correct answers. It was striking to see that some professionals working with children don't even see the importance of informing the child about the judicial proceedings. It came out of the interviews that **some children might be misled, might receive incorrect or contradictory information or might not even be informed about some or their rights** (such as the right not to testify in criminal cases, or that children younger than 10 involved in civil matters might ask to be heard if they wish).

Other similarities between criminal and civil justice are:

- **No single specialist has the responsibility or oversight on whether or not the child involved in judicial proceedings has received any information.**
- **The judicial proceedings are complex and unfriendly** and the language used is difficult for children to understand; **there are no adapted materials** to be used in order to make the language and the rules more accessible to children.
- Most of **the physical spaces** used for informing and preparing the child for the hearings **are not adequate** for this activity, being cold and unfriendly.
- Some specialists are focused on their area of specialisation or only on the stages of the proceedings that necessitate their involvement, providing incomplete information to children, thus children are not presented with the entire picture of their involvement; there are lawyers who are somehow **focused mainly on parents** and less on informing the child.

"[...] an NGO or... adults do not have a picture of... not even hired lawyers, or on rare occasions do hired lawyers tell the parties to the proceedings <This stage follows, that stage follows, we must go through this, it would last approximately... this is what it will be like here, this is what it will be like there, and it will end in... approximately x months, after we have gone through all these stages of the proceedings.> So, even adults lack this information, let alone children."

Children participating as witnesses in criminal matters seem to receive less support and information. Sometimes, children victims are not informed that other hearings may follow.

The fact that children involved in criminal matters receive a copy of the minutes (*proces verbal*) in which their rights are stated in judicial language or that they are sent a subpoena to be called to the hearing are considered ways of providing information to children by some of the specialists who took part in the research. The social professionals who support the child during the hearing are usually not allowed to intervene, even when they see that the child doesn't understand the legal terms, or that the judge does not realise that the child has difficulties understanding what (s)he was asked.

In custody matters, there are fewer chances for a child to receive information from specialists. Thus, their information is provided mainly by parents and, sometimes, by the lawyers of the parents. There are rare cases when the court decides to ask a psychologist from the protection services to assist the child.

A recurrent recommendation was that all children participating in judicial proceedings should benefit of the support of a psychologist throughout the proceedings and also afterwards.

2.3 Training and cooperation of professionals

The interviewees didn't provide detailed answers regarding the type and topic of training they received. When talking about this subject, the professionals ***referred mainly to seminars, workshops, roundtables, study visits or other experience exchange activities and rarely to specialised training sessions.*** As a consequence, we consider that is more accurate to use the expression 'training and other similar activities' in the following sections. ***Not all these activities/training programmes were focused on children.***

2.3.1 Training and cooperation of professionals in the criminal justice field

- From the total of 23 professionals working only in criminal matters, 16 (more than 2 thirds) had participated in different training session or similar activities. Some of these activities and training sessions were not focused on children. With respect to their professional background, 10 specialists are from the legal field, while 6 are from the social field.

Some didn't indicate the institution or the organisation that carried out the training.

Only 7 of them specifically mentioned that the training received was organised by different public institutions, such as the National Institute of Magistracy, different courts of law (e.g., appeal courts) and prosecutor's offices. These are usually short sessions of 2 or 3 days. One prosecutor mentioned that she took part in a 3 months traineeship. One police officer stated that he participated in several training programmes, on different topics, without providing more details in this regard. Also, 2 judges and 4 prosecutors said that they participated in a training session called 'Juvenile Justice' organised by the National Institute of Magistracy (a judge mentioned that one of the session's topics was the hearing of the child; the other judge said that some psychologists were also present to talk about how to relate to children).

Other 4 professionals recalled that they took part in different national and international seminars and work-shops organised by UNICEF (on the rights of the children) and the non-governmental organisations Alternative Sociale Association (on child abuse related issues) or Save the Children Romania (on juvenile justice and on proceedings in case of juvenile offenders; an experience exchange activity was mentioned, with the participation of judges from Romania and Republic of Moldova). One social professional said that she attended training courses in Italy and Sweden.

- 9 specialists working both in criminal and civil matters benefited from training or similar activities. They make up to almost two thirds of the total of 15 specialists working in both areas. In this case, the social field is better represented (with 7 professionals who benefited of training/similar activities) than the legal field (with only 2 professionals who participated in such activities).
- 7 specialists working solely in criminal matters didn't participate in any form of training, seminar, experience exchanges or other similar activities. 3 of them are from the legal field and 4 from the social field. One psychologist mentioned that she had to learn by herself, as she was accompanying and supporting children in court.
- Other 6 legal professionals working both in criminal and civil matters didn't benefit from any type of training /similar activities.

During the focus-group on criminal matters, the participants mentioned that through several projects coordinated by NGOs, in partnership with public institutions, justice professionals were trained in the field of juvenile justice and several police stations, prosecutor's offices and courts were equipped for child's hearings. However, the participants expressed worries regarding the fact that some of the specialists trained are no longer working in the field (or with children) and that some of this equipment is not currently used in accordance with its primary purpose and, moreover, several participants declared that they didn't see it during their work.

"During previous projects, starting in ... 2007-8-9 we have ensured such rooms with unidirectional window and so on at all police departments and, if I am not mistaken, also at the Prosecutor's Office and at the Municipal level. The problem is that because there is not enough space, these institutions have only one room used only for this purpose. In fact, it's a wall between two offices where a window has been added and ... in some cases ... the colleagues get out ... the police officers get out of there and they use the window in that manner. [...] I guess it is difficult to take it them [the police officers] out and use that window on a regular basis, but this facility exists. Also, with regard to audio-video recording equipment ... computers and ... the entire recording system, at the court and at the Prosecutor's Office, yes, I guess also at the Prosecutor's Office there have been installed such facilities. I am talking about projects that took place in uhm ... 2003-4-5-6 and I don't know to what extent this equipment is ... up-to-date or functional anymore."

The role and interaction of and between the different legal and social professionals were presented in more details in section 2.1.1, thus we will refer below to the overall opinions of the research participants regarding the cooperation of professionals during criminal judicial proceedings.

A few professionals criticised the insufficient cooperation between institutions, stating that each specialist is focused on fulfilling his/her particular duty, in accordance with his/her procedural role and without asking support from other specialists or institutions. Several specialists stated that they never took part in a multidisciplinary experience exchange event as they never had such opportunity.

However, most of the interviewees described various forms of cooperation, with different institutions, sometimes expressing appreciation and other times discontent regarding the quality of the experience.

For example, some magistrates appreciated the professionalism of the specialists from the Probation Services or from the General Directorates for Social Work and Child Protection, while other magistrates criticised the same type of specialists for not showing up for the child's hearings when they are subpoenaed. On the other hand, several social professionals complained that they were rarely called to support children during hearings, while others weren't even allowed to participate to the hearing of the child they were assisting.

Some interviewees said that the cooperation with other professionals is sometimes good, other times poor, and that the quality of collaboration depends: on the level of specialisation and training of each specialist (some being less prepared than others); the financial, material (including equipment) and human resources of each institution; in the extent to which each actor understands the role and limitations of other actors, but also on the personal relationships developed over time.

The lack of resources is an issue affecting both the public and non-governmental sectors, which results in the lack of continuity in terms of good practices developed. The focus-group participants mentioned that NGOs have specialists that benefited from special training, but they are not always available, being involved in different other projects and not working only in cases of children involved in judicial proceedings. For example, Save the Children Romania has had an interdisciplinary department, composed of a lawyer specialised in child's rights, a psychologist, a social worker and an educational psychologist, to assist the child victims before, during and after the judicial proceeding. However, despite that the activity of the team was appreciated by the representatives of the relevant public institutions, the members of the team had to be involved in other projects, affecting their availability to respond to all the requests for support.

Another 'good practice' refers to the fact that meetings between judges, prosecutors, police officers and specialists of the child protection authorities used to take place in Brașov. However, the interviewee talking about this practice couldn't remember the last time such a meeting was organised.

In the case of three of the four police officers, who took part in the research, a pro-active attitude was noticed in relation to the cooperation with the specialists from the General Directorate for Social Work and Child Protection (GDSWCP). In situations when children are victims or witnesses of severe crimes or when they are at a young age, both police officers from Iași mentioned that they are asking for psychologists support and one of them is conducting the child hearing mainly at the GDSWCP premises. One police officer mentioned that he has been asking for the support of specialists from GDSWCP in cases of children in difficult situations and indicated that the local child's helpline was very useful because he was able to get into contact immediately, at any hour, with specialists from the social protection services and to ask them to be present at child's hearings. However, due to the reorganisation of the child's helpline, the police officer found it difficult lately to ensure the presence of a psychologist for the emergency hearings which take place at night.

In conclusion, the interviews led us to a long list of institutions that might co-operate in the context of criminal proceedings – police units, prosecutors' offices, courts, lawyers, child protection authorities, probation services, anti-trafficking authorities, guardianship authority services, migration authorities, gendarmerie, NGOs etc. The interactions between all these actors are taking various forms that, most of the time, differ from one specialist to another, from one county to another or are influenced by the available resources. Therefore, no clear methodology of intervention and cooperation was described, only sporadic joint interventions or isolated partnerships.

2.3.2 Training and cooperation of professionals in the civil justice field

- From the total of 17 professionals working only in civil matters, 7 (less than a half) have participated in training or similar activities (but not necessarily focused on children). With respect to the professional background, 5 specialists are from the legal field and only 2 from the social field.
3 judges mentioned that the training sessions/activities to which they took part were organised by the National Institute of Magistracy, the Association of Magistracy, the Romanian Office for Adoption or by Save the Children Romania. They didn't indicate the duration of these activities

and only one of the judges talked about the frequency of these opportunities. She mentioned that she takes part in training/similar activities usually once per year and sometimes even twice. One lawyer mentioned that she participated in training/similar activities organised by NGOs and she wished lawyers' bars to be more active in providing such opportunities. The lawyer also stated that she had to learn by herself.

One legal counsellor said that the training courses she attended were focused on trauma, without providing more details in this regard.

The 2 specialists from the social field are working in non-governmental organisations and their training opportunities were offered by other NGOs from Romania, Italy, UK, the Netherlands or USA. The topics of these training seminars and work-shops were related to psychotherapy, child protection, rights of the child, child abuse, children in conflict with the law etc.

- 10 professionals working only in civil matters (3 lawyers, 1 judge and 6 specialists from social field) received no training, nor mentioned their participation in seminars/workshops/meetings.
- As presented in section 2.3.1 also, from the total of 15 professionals working both in criminal and civil matters, 9 have participated in training/similar activities while 6 haven't benefited from these types of activities. One judge from this category mentioned that he took part in a study visit to a tribunal in Germany, at the invitation of a German foundation. Several social professionals said that they had to learn by themselves or from their colleagues. One social worker recalled that Alternative Sociale Association organised interdisciplinary meetings and training seminars, bringing together legal and social specialists.

Compared to the situation described in criminal matters, fewer institutions and professionals were mentioned by the interviewees in relation to the cooperation in civil matters: court, prosecutor's office, General Directorate of Social Work and Child Protection (GDSWCP), guardianship authority services (*autoritatea tutelara*), lawyers and rarely police or migration authorities. Their particular roles were described in section 2.1.2.

As noticed in sections 2.1.2 and 2.2.2, the professionals supporting children for whom a protection measure was or is about to be decided can also prepare and inform them for the court hearings. The GDSWCPs have inter-disciplinary teams composed of specialists such as case managers, social workers, psychologists, educational specialists/educators, legal counsellors. Each member of the team is responsible for specific tasks, according to their specialisation – the social worker is conducting a social assessment of the child's situation, the psychologist evaluates the child, the legal counsellor presents the child's file in court. According to GDSWCP professionals, the inter-disciplinary team meets to talk about the child situation and about the appropriate protection measure. Most of the interviewees working within GDSWCPs rated the cooperation between the team members as good and very good. Few stated that the cooperation might differ from one team to another or complained about a lower level interest from the legal counsellor who, sometimes, is not even meeting the child who he/she represents in court.

In custody matters, the court asks the child protection authorities to conduct a social assessment of the child's situation and, sometimes, a psychological assessment. However, none of the professionals conducting these assessments has the clear duty to inform and prepare the child for the court experience, nor to support him/her before, during and after the court hearings. The task of informing the child is sometimes carried out by the parents' lawyers.

Most of the interviewees said that, in civil matters, the cooperation between legal and social professionals is good because every specialist is fulfilling her/his role and responsibilities. Nevertheless, other interviewees stated that the collaboration is not efficient if each specialist is concerned only about his/her responsibilities and area of action.

A professional working within an NGO providing services for unaccompanied children indicated superficial cooperation with the legal guardians who are rarely involved in supporting the child.

Some judges showed their appreciation towards the involvement of psychologists who are submitting the child's psychological assessment if requested by the court, even in the absence of any legal provisions compelling them to do so. However, other specialists indicated gaps in the cooperation, such as the failure of the GDSWCP to report a child assessment at the deadline set by the court, or that some of the social assessment reports are superficial and inconclusive.

A few social professionals and lawyers were intrigued by the fact that sometimes, in custody cases, a psychological assessment is requested for the child, but not also for the parents.

One specialist from Brașov mentioned that meetings between the court and the GDSWCP's specialists are taking place now and again, and a judge recalled visiting a placement centre, in order to understand how the children live. However, other professionals from the same county stated that they didn't take part in meetings between the legal and social institutions.

One interviewee said that a judge visited one of the GDSWCPs from Bucharest to talk to the head of the institutions, but not also with the specialists who prepare children's files for court.

2.3.3 Concluding assessments on training and cooperation of professionals

From the total of 55 professionals who participated to interviews and focus groups, 32 took part in training or similar activities (seminars, workshops, study visits, experience exchanges etc.), while 23 didn't benefit from such activities.

7 interviewees clearly mentioned that they took part in interdisciplinary training/similar activities organised only by non-governmental organisations. However, the initiatives and training sessions organised by NGOs are not ongoing activities, but rather ones depending on time specific projects and on the funding opportunities. The NGOs representatives mentioned that is a challenge to involve magistrates in such activities, because these are mostly informal training sessions for which no official certification can be issued and because the judges and lawyers have a heavy caseload that limits their ability to attend.

The National Institute of Magistracy provides an annual training programme comprised of sessions focused on different subjects. These sessions can be attended only by judges and prosecutors⁴³. One such session is on the subject of "Juvenile Justice"⁴⁴. However, not all the magistrates included in our sample took part in this specific training session.

⁴³ According to the norms, each magistrate has to participate in a training course at least once in 3 years. See: Romania, Law 303/2004 regarding the status of judges and prosecutors (*Legea 303/2004 privind statutul judecătorilor și procurorilor*), Art 37(1).

⁴⁴ In 2012, the National Institute of Magistracy organised 8 training sessions on 'juvenile justice'; each of these sessions was 3 days long and open to 25 participants; out of 266 magistrates who showed their interest in

Analysing the distribution of the professional categories in the case of those 21 interviewees who didn't participate in any training/similar activities, we notice that lawyers are the most numerous (7).

We draw the attention to the fact that the overall picture of training described for the professionals who took part in the research should be interpreted carefully, keeping in mind that vague answers were provided with respect to the training activities and that the research sample is not representative at the national level. Therefore, we might expect a different situation nationally. However, **numerous interviewees complained about insufficient training and the lack of specialisation among the professionals working with children involved in judicial proceedings.**

Moreover, several participants highlighted that **a distinction should be made between professionals 'specialised' in cases with children and professionals 'designated' to handle such cases.** Though specialised panels or sections might exist, the magistrates designated to work within such panels/sections might or might not have a special training on working in cases involving children. (See also the information provided in this report, in section 1.3.)

"No, despite that I worked many, many years...and I still work in specialised panels. Unfortunately, training wasn't given to judges specialised in ... working with children."

It can be noticed from the interviews that in the case of professionals designated to work in cases involving children, the cooperation with other actors seems to be stronger. These professionals become easier to contact because, with time, they get to be better known by the other actors and because personal contacts are thus developed.

The interviewers reported that not all the participants found it easy to talk about cooperation between specialists. Some limited their answers to their own roles and stated that they are not in a position to talk about the work of other professionals, while others weren't able to provide any response at all or seemed not to understand the question.

Moreover, no clear cooperation mechanism is in place in order to ensure that a child receives support before, during and after the hearing. Unfortunately, this lack of coordination between professional is reflected more clearly by the insufficient protection ensured to children or by the lack of continuity in intervention. With the exception of children victims of trafficking, sexual abuse or domestic violence, as well as children looked after by the local child protection authorities or specialised NGOs, the children do not benefit from any support services.

2.4 Horizontal issues

2.4.1 Discrimination

participating, 201 were selected to attend. In the same year, the Institute organised a 2 days long session on the same topic, open to 20 participants; 200 magistrates showed their interest in the latter seminar. See: Romania, the National Institute of Magistracy, *The selection of the participants to the NIM seminars from the Annual Training Programme 2012 (Selectia participantilor la seminariile INM incluse în Programul de formare continuă 2012)*. Available online at http://www.inm-lex.ro/fisiere/pag_115/det_1566/8756.pdf

Legal professionals' overall opinion is that there is no discrimination between children involved in judicial proceedings. Some of the social professionals interviewed during the research shared the same view. However, it was difficult for participants to think about support measures took in order to avoid the discrimination of some children who have particular needs that might affect their access to justice or participation. Being guided by the interviewers, some respondents stated that for children who don't speak Romanian (including migrant/asylum-seeking children) a translator is provided and that children with physical disabilities can access the courthouses by using the special access ramps, being heard in rooms situated at the ground floor. Similarly, some magistrates, including judges, stated that they could travel outside their institutions or could hear the child in the car which transports him/her, but it wasn't clear from their answer if this has actually happened so far.

Some judges said that, based on the medical certificates or the psychological evaluation provided in the child's file, they decided not to hear some children, considering the hearing inappropriate or detrimental, or thinking that it would have been very difficult to communicate with the child. For children with speech impediments, a speech therapist might be asked to be present during the hearing.

Most interviewees stated that there is no discrimination of Roma children participating in criminal proceedings as witnesses or victims, or in civil proceedings and some of the specialists mentioned that generally one needs to be aware of the situation of these children has to be kept in mind, as they are in need for more protection. However, few professionals recalled situations when child offenders of Roma ethnicity were treated harsher during the criminal investigation phases.

It was worrying to notice that one of the interviewees displayed, during the interview, a discriminatory attitude towards Roma children. Several times she showed lack of empathy towards children who find themselves in need of assistance, considering that, for them, the difficult socio-economic background is not an issue, as this is the only reality they know and the problems are thus seen only by the people outside the group. More worrying is that the interviewee is a psychologist who works in an area with a large Roma community.

Several social professionals talked about cases when adolescent victims of trafficking or sexual offences were treated in a humiliating and aggressive manner by criminal investigation bodies, by specialists from legal medicine institute, or in court.

The interviewees working within NGOs active in the field of migration highlighted that the situation and background of the asylum-seeking and the unaccompanied foreign children require specific measures for ensuring that the rights of these children are respected and enforced. Translators and interpreters are assigned in order to support the child in overcoming the language barrier. However, the interviewees complained about the poor quality of some translations, highlighting that the paid interpreters are doing their job better than the ones appointed *ex officio* (who, for example, tend to summaries the answers/questions). One interviewee presented a case when the child's background was not taken into account when appointing an interpreter: the child and the interpreter refused to talk to each other because one was Turkish and the other Kurdish (such situations can be triggered by the fact that, sometimes, the child's background can be established only by conducting a first interview). The interviews showed that while the child's background was not always taken into account during the measures for informing the child, when the application was analysed, the background of the child was considered. The gender perspective was mentioned as being taken into

account (for example, a female immigration officer is appointed to conduct the hearing if the applicant is a child, a pregnant women or a person in a vulnerable situation).

One social professional working in a public child protection directorate said that the lack of resources and the overcomings in the protection centres are major challenges that eventually lead to a 'selection' of children who will receive support (for example, a child in the intensive therapy unit of a hospital will receive priority compared to a child in a village who is not getting enough food). The situation presented by this social professional might explain why some children involved in judicial proceedings are not benefiting of support services although they need them.

In a couple of interviews and in the focus-group on criminal matters, problems related to the costs of the examinations performed by the Institute of Legal Medicine emerged. These examinations are required sometimes for the case files of the victims and for the evaluation of child's age in case of late birth registration. The specialists stated that these examinations are an issue because the costs are mandatory and no public body has any special budget allocation for them. The identification of appropriate resources has been carried out with civil society's input and, although the NGOs do not refuse to pay the fee on the child's behalf, this is done without a proper budget dedicated to such situations. Thus, the existence of mandatory costs for the examinations performed by the Institute of Legal Medicine affects the access to justice of children with vulnerable socio-economic backgrounds.

Several specialists stated that the law itself creates discrimination between children involved in judicial proceedings. Thus, special mandatory provisions for the protection of children exist in the case of victims of trafficking (such as the fact that the legal assistance of the child victim of trafficking has to be ensure and, in the trials involving children victims of trafficking, the court session shall not be public⁴⁵), but not in the case of child victims of other crimes (see section 1.3 for further clarifications). The specialists highlighted that the legislation stipulates mandatory legal assistance and secret court sessions⁴⁶ in the case of juvenile offenders, fact that was seen as discriminatory, because these provisions are not extended to all children participating in criminal judicial proceedings (thus, also to victims and witnesses).

In conclusion, when discrimination was indicated, its origins were seen mainly in the legislative framework, the lack of resources, shortage of adequate trained professionals, or the prejudices, of some professionals, in connection to victims of trafficking or sexual offences. Roma children participating in civil proceedings or in criminal proceedings as witnesses or victims are equally treated, according to most of the respondents; however cases of Roma child offenders treated harsher were indicated and, worryingly, one of the interviewees displayed a discriminatory attitude towards Roma children. Several respondents talked about measures taken (or that could be taken) in order to avoid child's discrimination, but most of the time only after being guided by the interviewer.

⁴⁵ Romania, Law No. 678/2001 regarding the prevention and fight against the human trafficking (*Legea nr. 678/2001 privind prevenirea și combaterea traficului de persoane*), 21 November 2001, Art. 24 and 44.

⁴⁶ Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997, Art. 485 (2).

2.4.2 Best interest of the child

The research showed that numerous professionals have a poor understanding of the ‘best interest of the child’ concept. For some of them it was difficult to provide an explanation of its meaning. Others offered very confusing definitions, such as limiting the concept only to child’s basic needs or to child’s ‘personal interest’ (the child’s wishes and expectations), or even referring to child’s obligations.

When asked to estimate if the child’s best interest is ensured in the context of judicial proceedings, specialists’ opinions outlined a distinction between the criminal and civil field.

Many legal professionals active in the criminal field emphasised that, despite the principle of the best interest of the child, the most important thing in an investigation is to find the truth, convict the offender and apply the legal procedures. Others went as far as saying that the best interest of the child is automatically met by solving the case. Several social professionals complained that the child is often treated as an instrument for solving the case, not as a person.

“Well, from my point of view, with regard to criminal matters ... the interest is mine in the first place, as police body, as criminal investigation body, to find out the truth. And then, naturally, [inaudible] I try to interact with the child in such a way that (s)he helps me. It is in his/her interest only when (s)he is the injured party. And when (s)he is injured party, when (s)he assists ... when (s)he is beaten by his parents, for example. And then you have to talk to him/her differently.”

Some legal and social professionals from the criminal field highlighted again the lack of safety and the secondary victimisation of children, considering that, despite the efforts made so far, the judicial proceedings are far from ensuring and observing the child’s best interest, as they fail in protecting children.

“Within the judicial proceedings, even if the special laws tell us to consider the best interest of the child, one must act in order to find out the truth in that proceedings, in compliance with the procedural rules. Therefore, the criminal investigation body makes sure to comply with the legal procedures, first of all to give information of the rights and obligations that a person has in a certain case. In parallel, it would be good to pursue the best interest of the child and act so that compliance with the procedures should not conflict with the child’s feeling of comfort, safety, not cause trauma, negative feelings, it is rather difficult, but one must attempt to keep this balance.”

Other concern shared by several interviewees is that the best interest and other rights of the child victim or witness are often surpassed by the interests and rights of the defence (having in mind that the child victim or witness can be easily intimidated by the accused), or even by the interests of different public institutions.

“but no ... these institutions are not cooperating in the child’s interest, these institutions are arguing in their own interest, how to get rid of one more problem.”

In the framework of civil judicial proceedings, several professionals, including judges, emphasised the importance of the court to separate the best interest of the child from the interests and influences of the parents.

Only a few specialists with an active role in the proceedings mentioned that the child's best interest has led them to better understand the needs of the child and to identify the most appropriate solution when in doubt. Even fewer seemed to be guided by the best interest of the child in overcoming legislative and institutional gaps. These specialists proved to be more interested in cooperating with other professionals, in searching for solutions to protect the child and in adapting their approaches when working with children.

In the opinion of several specialists, mainly from the social field, the best interest of the child is difficult to be met in the context of judicial proceedings as it has to be based on a good understanding of the child and of his/her needs. However, the lack of time and the heavy caseload frequently leads to a superficial analysis of child's situation.

2.4.3 Potential patterns with regard to differences and similarities in regional, national and international context

The North-East region of the country benefits from stronger involvement of the civil society organisations in the area of juvenile justice.

Thus, meetings between the relevant professionals, from both the legal and socials field were organised, materials and guides were produced in conjunction with public authorities and distributed not only locally, but also nationally. The Alternative Sociale Association, in partnership with the National Institute of Magistracy, produced a guide on hearing the child in judicial proceedings, which is addressed to professionals and used during the training sessions organised by the National Institute of Magistracy. During the focus-group on criminal justice, one specialist pointed out the collaboration between different professionals from public institutions in North-East Romania was enhanced through the joint activities, considering that the professionals from southern part of the country who are less prepared to collaborate.

The Iași Branch of Save the Children Romania was also active in the field, implementing local and trans-national projects (involving the Republic of Moldova), carrying out studies on the matter and organising meetings of the main stakeholders. An inter-disciplinary department of the organisation was created in order to assist the child victims before, during and after the judicial proceeding. However, due to the lack of continuity of funds, the members of the team had to be involved in other projects, a fact that affects their availability to respond to all the requests for support.

The interviews reflected to a certain degree the openness of some professionals in that region to co-operate in the field of juvenile justice (for example, the cooperation between some police officers and psychologists from the GDSWCP in Iași), but unfortunately also situations when this cooperation is absent.

We can conclude that the good practices developed in this area are insufficiently capitalised and the cooperation remains at the inter-personal level, rather than being transposed in inter-institutional mechanisms.

The research also covered Brașov County which has the only specialised Tribunal for Children and Family in Romania. Numerous interviewees, from Brașov and also from the other localities covered

in the research, referred to the specialised Tribunal as a model of good practice that should be implemented at national level. One judge from the Court of Appeal of Brașov mentioned that in the cases of remedies at law, she noticed that the judges from the specialised Tribunal for Children and Family are more concerned with the fate of the child regardless of their status (victims or defendant), compared to the judges working in other courts in the same geographic area covered by the same Court of Appeal. Another judge from the same Court of Appeal made references not only to the specialised Tribunal in Brașov, but also to the existence of similar specialised tribunals for children in the UK and Italy, which he believes are examples of good practise that should be implemented throughout Romania.

Europe's first emergency transit centre for refugees is located in Timișoara, area covered in our research. Therefore, the interviews from this city, together with the interviews of the specialists working for NGOs active in the field of migration from Bucharest, allowed us to present in this report also aspects concerning the participation in judicial proceedings of asylum-seeking children.

The interviews showed, within each region, that professionals developed their own approaches when working with children in judicial proceedings and that these approaches may thus vary within the same region. Thus clear regional patterns or differences could not be identified.

2.5 Coe Guidelines⁴⁷

The research participants have a very low level of awareness of the Council of Europe Guidelines on Child-friendly Justice. Thus, 36 interviewees had never heard of the Guidelines, 13 declared that they have limited knowledge of the matter and only 4 interviewees seemed familiar with this tool. (See Table 2, in Annexes)

Analysing the responses of those **13 participants who stated that they had heard of the Guidelines**, we notice that the information provided is very vague, that generally valid statements were used and that, in few cases, the details offered have nothing to do with the content of the Guidelines. We therefore conclude that most of these answers can be interpreted as **socially desirable responses** (as, most probably, the interviewees considered that such international tools should be well known by those working in the area, including by themselves).

[To what extent are you familiar with the Council of Europe's Guidelines on child-friendly judicial proceedings?]

Starting from concrete cases, whenever I needed examples of case law, to access information from the domestic and international legislation and judicial practices, I accessed specialized materials whenever necessary.

[How applicable do you find these Guidelines?]

In theory, the provisions of international conventions to which Romania is a party should prevail over domestic law. It would be advisable to make reference to, because one cannot only say that the best interest of the child was taken into account in the outcomes of cases ...

[Has it worked?]

Yes ... it was not very useful, but in the indictments I did for ill treatment towards children, I had to define abuse and this proposal of law helped me a lot, providing me with specialized opinion in order to prove consequences."

Specifications need to be provided also in the case of the **4 participants who are familiar** with the CoE Guidelines.

Two of them – a prosecutor and a lawyer– stated, when asked directly, that they know the Guidelines, without providing more details about how and if these are integrated in their work. Thus, one of the professionals referred to them in a more general manner, only stating she knows some recommendations regarding the principles that should lead the judicial proceedings involving children. The second specialist answered that the CoE Guidelines are useful and that the national legislation should look more closely into the international tools, but she offered no other details. The latter answer might be interpreted as a desirable response also.

Two other specialists have made references to the Guidelines before being asked directly about them. One social professional (SP) mentioned that the approach of the NGO which he is working in was updated when the Guidelines were adopted, in the sense that this tool has been mentioned during their training sessions, workshops or meetings with professionals. He, however, stated that the Guidelines were adopted by the Committee of Ministers of the European Commission, confusing the Council of Europe and the European Commission. The other specialist (a LP) who spontaneously talked about the CoE Guidelines (before being asked directly) is a lawyer who has been closely

⁴⁷ This section reflects only the findings from the interviews, due to the fact that the CoE Guidelines topic was not distinctly covered during the focus groups.

collaborating with the NGO mentioned earlier, which confirms that the tool is indeed used. She referred to the provision on communicating the final court ruling to children in child-friendly language, appreciating it very useful but wondering how it could be implemented. However, when asked directly about the CoE Guidelines, both declared that they don't know them. An explanation for their answer might be that the interviewer used the Romanian title for the CoE Guidelines which the participants might not be familiar with. The document has not been officially translated into Romanian and because of this it can be found under different Romanian titles⁴⁸.

The existence of more than one title in Romanian, under which the CoE Guidelines on Child-friendly Justice can be found, should be taken into account when analysing the low awareness showed by the research. However, not one of the participants who have no knowledge on the Guidelines asked for clarifications when the question was addressed.

Analysing the number of specialists familiar or somewhat familiar with the CoE Guidelines, we notice that those working in criminal area (8) are more numerous than those working in both civil and criminal matters (5), while the fewest are those working only in civil matters (4).

We find that a larger number of legal professionals are familiar or somewhat familiar with the CoE Guidelines (11), than social professionals (6). However, one has to take into account that the pressure for desirable responses is higher in the case of legal specialists, as this tool is seen as more relevant for their field of work. In the support of this idea comes an answer provided by a social professional who said that she has no knowledge on these Guidelines as it's not her field of work.

Irrespective of participants' knowledge of CoE Guidelines, we notice that child-friendly language was often mentioned as a method used sometimes by the professionals when working with cases involving children. Other elements of the CoE Guidelines on Child-friendly Justice – such as ensuring a child-friendly environment, better training and specialisation of professionals, ensuring child's safety and protection against secondary victimisation, avoiding undue delay etc. – were mentioned mainly as 'changes needed' or recommendations for child-friendly justice.

⁴⁸ In order to better understand this situation, the researcher identified that the CoE Guidelines can be found under different Romanian titles. Thus, in the official Romanian text of the 'An EU Agenda for the Rights of the Child' we can find a title for the CoE Guidelines (available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:ro:NOT>). In a publication prepared by two university law teachers from Republic of Moldova, the Guidelines are mentioned under a different Romanian title: Dolea I., Zaharia V. (2011), "Studiu de fezabilitate privind instantele specializate în cauzele cu implicarea copiilor în Republica Moldova", Bons Offices SRL, p. 9, available online at http://irp.md/files/1321452456_ro.pdf. Two unofficial translations into Romanian of the CoE Guidelines were found by the researcher on the Internet, under different Romanian titles: one was provided by an NGO from Republic of Moldova (available online at http://www.cnpac.org.md/files/ChildFriendlJustice_ro.pdf) and one by an NGO from Romania (available online at DREPTURILE_COPIILULUI_Guidelines_Of_The_CM_Of_The_CE_on_child_friendly_justice_EN_RO.pdf - Google Drive). All these titles are different from each other and also different from the one used by the interviewer.

3. CONCLUSIONS

3.1 Overarching issues

Romania doesn't have a juvenile justice system. Therefore, children participating in judicial proceedings are coming in contact with a world of adults, which is tailored for adults.

The piloting of the specialised Tribunal for Children and Family in Brașov wasn't followed by the replication of the model nationwide, despite an initial agreement that such specialised tribunals are needed. The projects of the civil society organisations aiming to strengthen the inter-institutional cooperation and to set up a pilot court for children in Iași didn't benefit from the support needed to reach their final goals. Therefore, Romania's efforts of putting in place a justice system adapted to children remain at the incipient stage, being rather attempts, unfinished actions, isolated progress and good practices insufficiently capitalised.

The most important enemies of a juvenile justice system seem to be the insufficiency of resources, the absence of a long-term plan that should include concrete milestones and, last but not least, the lack of political will. These obstacles are leading to the fact that most children are inadequately informed and prepared for the judicial proceedings, are heard in improper settings, by insufficiently specialised professionals who lack the guidance and the time to pursue the best interest of the child.

Improper infrastructure and the lack of resources, time, training and guidelines are problems faced also by the professionals from the social field who, in cooperation with those from the legal field, should ensure that each child is protected and supported before, during and after his/her participation in criminal or civil proceedings.

The criminal and civil proceedings are mostly carried out in accordance with the rules and procedures designed for adults. Too few special provisions for children can be found and, moreover, some of these are not strong enough (because they are not mandatory) or are applicable only to certain categories of children. This situation led several interviewed specialists to say that the law itself creates discrimination between these categories of children involved in judicial proceedings, despite the fact that it tries to ensure better protection to some categories of vulnerable children.

There are no national methodologies that could guide the cooperation of professionals, nor the way of conducting the child hearing. There is no methodology for informing and preparing the child for the proceedings, either.

In the absence of clear guidelines, each legal professional developed his/her own approach towards the children whom (s)he works with. The research shows a large variety of professional approaches and significant differences between specialists (the interviewees provided examples that range from aggressive and humiliating behaviours towards children to the supportive, child-friendly and protective attitudes). Patterns cannot even be found among specialists from the same profession.

A gap between the professionals from legal and social fields was noticed during the research. Some of the social professionals working with children involved in judicial proceedings showed a limited knowledge of the relevant procedures and practices. Sometimes, their availability to intervene is hampered by the heavy workload and by the limited capacity of the services. On the other hand, the involvement and participation of social professionals is not always requested by their counterparts in the legal field, leaving numerous children who take part in judicial proceedings without the needed socio-psychological support. Several social professionals complained that even if they are present, they are not allowed to have an active participation throughout the proceedings. A few legal professionals expressed a similar concern, highlighting that, in most of the cases, the law doesn't stipulate a fully active role for the social experts.

The flaws in legislation and cooperation in conjunction with heavy caseloads (of an average 1.100 cases/year/judge) are also reflected by the research findings.

Summarising, the main gaps identified by the research are:

- **The existing regulations are not always respected** (sometimes due to lack of resources/infrastructure);
- **The right of the child to protection is not fully ensured:** many children don't benefit of the presence and support of a psychologist or other relevant social professionals; repeated hearings are exposing the child to secondary-victimisation; most of the time, children victim/witnesses meet the offender; the hearing of the child by audio-video means is an exception, rather than common practice; confrontations between the child and the offenders are sometimes organised; children might be exposed to intimidation and threats; children are not protected against mass-media harassment and details about their participation as an injured party in a trial might be found on the official web-portal of the courts; the legal representation offered to children by the *ex officio* lawyers might be superficial or even absent, the lawyers of the offender or even the offender are allowed sometimes to ask direct question to children (despite the law provisions);
- **The right of the child to be treated with dignity is not fully ensured:** situations were described in which the adolescent victims were addressed in an aggressive and humiliating manner by some professionals;
- **The right of the child to information is not fully ensured:** there are children left in the dark, receiving no information and support from specialists; no single professional has the responsibility or oversight on whether or not the child involved in judicial proceedings has received any information; some children might be misled or might receive incorrect or contradictory information (as some of the professionals, especially from the social field, who provide information to children have a very limited knowledge of the procedures, or even make mistakes when talking about the rules); there are no adapted materials to be used in order to make the language and the rules on the judicial proceedings more accessible to children; some professionals are focused mainly on parents and less on informing the child; sometimes, the social professionals who supports the child during the hearing are not allowed to intervene even if they see that the child has trouble understanding the legal terms or, that the judge misunderstood what the child said;

- Children's vulnerabilities and particularities are not taken into account and they have to wait even up to several hours before being heard or, for some of them, the length of the hearing is extremely high (several fours, half a day, an entire night).
- Most of the children are heard in **inadequate spaces** (unfriendly, cold, not ensuring safety and privacy); there are no special adapted waiting areas.
- Some children go through extremely **long trials** (especially in trafficking cases);
- Many of the interviewees have **no accurate knowledge of the notion of 'the best interest of the child'** and therefore **do not implement this principle in their daily work** with children: most of the specialists were unable to explain the concept or offered confusing definitions and only a few seemed to be guided by the best interest of the child in overcoming legislative and institutional gaps; striking answers were given by several interviewees who highlighted that the best interest of the child is surpassed by the need of the criminal investigation bodies to find the truth, convict the offender and apply the legal procedures; in criminal cases, **children are seen primarily as a source of information**;
- There is **insufficient training and specialisation of professionals**: the magistrates designated to work within specialised panels/sections on children might or might not have special training on working in cases involving children (although they are referred to as 'specialised' magistrates, thus a distinction has to be made between professionals 'specialised' in cases with children and professionals 'designated' to handle such cases); lawyers seem to have fewer training opportunities; the interviewees complained about the low level of training of some police officers; numerous social professionals working with children involved in judicial proceedings have no training of legal subjects;
- **No cooperation mechanism between the relevant professionals/institutions is in place**: some professionals don't interact with other specialists, being limited to their tasks and roles; most of the times the cooperation is not efficient, failing to ensure that child's rights are followed and implemented.
- **The access to justice for children with vulnerable socio-economic backgrounds is sometimes hampered** by the existence of mandatory costs for the examinations performed by the Institute of Legal Medicine that are required for the evaluation of child's age (when the child's lacks identity documents) or sometimes for the case files of the victims.

Nevertheless, **the research findings show the existence of good practices and efforts** to protect the child, to create friendlier spaces for child hearings, to use child-friendly approaches (such as judges taking off their official black robe, offering sweets or apples to children, court personnel bringing toys belonging to their own children, social professionals showing pictures of a courtroom to the child that will be heard etc.) or to enhance the cooperation between institutions. Moreover, few professionals mentioned that they have to make 'improvisations', sometimes in partnership with the civil society actors, in order to overcome the structural gaps. Looking from the context of the justice system described above, we notice that **these efforts are triggered by proactive and dedicated professionals or by small scale isolated initiatives, rather than prompted by the system**.

The present study's findings are relevant not only for the 4 geographical-administrative areas covered by the research, but they can be further extrapolated. Thus, given the fact that the judicial system is similarly organised throughout the entire country and that the main problems faced by the

specialists are of structural nature, the probability to find a similar situation of the child's participation in judicial proceedings in the remaining areas of Romania is very high.

When reading the report, one has to keep in mind that the research findings reflect to a smaller extent the situation of children participating in proceedings as offenders, as this category was not part of the target groups and was not included in the research sample. There are several specific rules and proceedings for children coming in conflict with the law and the problems faced by them during and after the proceedings are distinct.

3.2 Research

With few exceptions, the participants considered that research with children would be very interesting and useful, as it could help obtaining a better view on the proceedings, on how children perceive them and on what needs to be improved.

Some participants suggested: to identify how the court ruling affected the child's life (to what extent it was beneficial and to what extent detrimental), to include several counties from Romania in the research in order to reveal particularities and, with respect to the information about judicial proceedings, to compare between children involved in the proceedings and those who had no contact with the justice system. Mentions were made about using the same variables as in the current research, in order to compare between the views of professionals and children.

Such research was considered feasible as long as the research instruments are going to be developed carefully, by being adapted to children. It was highlighted that, first of all, children have to be willing to participate.

"I believe that it would be useful, we might learn something from them [the children], we might adopt certain methods or certain ... rules or ... which in the future ... might help them, so they might be less affected, so they might trust the justice system, that's what I think."

However, several striking answers were provided. Thus, some specialists were confused about this type of research and seemed taken aback by the idea that children could be asked to give their opinions on the judicial proceedings. A judge had doubts that a child's opinion might be relevant. Similarly, a lawyer said that it won't be relevant to conduct research with children because they are not capable of assessing what has happened to them, recommending instead research with adults who were involved in proceedings when they were children. A prosecutor said that this type of research is pointless because a child's perception is not of relevance and that the circumstances of the case are the only things that matter.

"No. I don't believe that it is needed, I don't believe that it is feasible because here, it all depends on the file, do you understand? How may children have an influence? Here I do not believe this is important."

The biggest challenge was seen in the methods of identify children who could participate in the research, as court files are not public and can be consulted only by the parties involved. Even if the publicity of court sessions is ensured by court lists being available in courthouses as well as on the

internet, the information offered concerns the file's number and names without other contact details. The suggestions for reaching children were:

- Asking for the support of institutions and organisations working with children involved in judicial proceedings: such as the General Directorates for Social Work and Child Protection (for child victims, but also for children involved in civil proceedings for whom special protection measures were decided), the Probation Services or NGOs offering support to child victims. However, a limitation is that the children contacted in this way would have benefited from special support and their perceptions would reflect a situation different than of those who never received such help;
- Asking for the support of schools: teachers and school counsellors could facilitate the contact with parents in order to ask for their help in contacting children. Based on this suggestion, we are also thinking that Parents' Associations could be contacted directly (not through schools) as there is an active national structure (federation) of Romanian associations of parents;
- Asking the support of lawyers' Bars, including the National Bars Association in order to facilitate the contact with parents;
- Asking for the support of detention facilities accommodating children (only for children in conflict with the law);
- Asking the involvement of other institutions, such as Police Inspectorates, Prosecutor's Offices, Courts, Family Doctors or Guardianship Authority Services (*Autoritatea tutelara*).

Another vulnerability of such a research was identified through the participation of child victims who might be affected because they have to recall and discuss their experience. It was highlighted that if child victims are going to be included, than the support of a psychologist is needed and all the participating children have to have dealt with their trauma before getting involved in the research. In this regard, the example of research which was conducted with child victims of trafficking was provided⁴⁹.

⁴⁹ The research was generically mentioned, without providing the exact references.

3.3 Any other issues not covered in previous sections

Recommendations: Towards a Romanian justice system adapted to children

- Institutional and legal framework
 - Reviewing the rules and procedures in the view of ensuring that the judicial proceedings involving children are in accordance with the rights of the child and are adapted to children (in this regard, the CoE Guidelines should serve as a source of inspiration);
 - Ensuring the specialisation of courts and also of the criminal investigation units;
 - Improving the infrastructure needed for a child friendly justice (special child-friendly council rooms and waiting spaces);
 - Capitalising the good practices and the successful initiatives in the area of juvenile justice;
 - Adopting a long-term plan for setting up a justice adapted to children, with concrete milestones and an adequate budget.
- Training
 - Both initial training and further special training opportunities for professionals working with children participating in judicial proceedings (judges, prosecutors, police officers, lawyers, legal counsellors); The training of the legal professionals working with children should go beyond the legal aspects, by including aspects such child (developmental) psychology, communication with children, the rights of the child and victim psychology;
 - The social professionals working with children in judicial system (psychologists, social workers, probation officers and staff members of NGOs active in this field) should benefit of training on the relevant legal aspects;
 - Both initial training and further training opportunities should enable the specialists to have a in depth knowledge and understanding of the principle of the best interest of the child as well as to empower them to implement in practice this principle in every judicial procedure involving children.
- Cooperation
 - Agreeing on a cooperation methodology and enhancing the collaboration, coordination and networking among different categories of specialists working with children in judicial system, especially between the legal professionals and other relevant categories of professionals;
 - Appointing a specialists who should assist the child throughout all the stages of the judicial proceedings (thus in relation to all the institutions involved), on whom the child could rely on, ensuring this way a continuity between the specialists encountered by the child during the proceedings;
- Enforcing the right of the child to information
 - Establishing/improving practices, regulations and mechanisms for informing and preparing the child in view of his/her participation in judicial proceedings;
 - Designating a professional who has the responsibility to ensure that the child receives information and support;
 - Creating child-friendly materials that could be used when informing the child;

- Ensuring the protection of children involved in judicial procedure
 - Better and wider use of the technology in case of hearing the child victim or witness to crime, in order to prevent the secondary-victimisation of the child caused by contact with the offenders and their relatives;
 - Identifying procedural solution and cooperation mechanisms for reducing the length of the proceedings (especially in cases of child trafficking) and for avoiding the unnecessary repeating hearings of the child throughout the judicial proceedings;
 - Better protecting the identity of the child victims on the official web-portal of the courts, in order to make sure that the names of the victims cannot be associated with the subject matter of the case;
 - Ensuring that all children involved in judicial proceedings receive psychological and social support in order to reduce the stress, to make the child feel more comfortable with the experience and to help the child overcome the difficult situation that triggered his/her participation in judicial proceedings; the support offered to children should cover the period before, during and after the judicial proceedings;
- Mediation
 - When appropriate, promoting mediation for civil and family law disputes involving children, in order to avoid the involvement of the children in conflicting and long lasting judicial proceedings.

ANNEXES

Documentation

Quotes

- “There are no norms, no standards, no clear methodologies on child hearings. The hearing is carried out based solely on the experience of the magistrate, on how (s)he knows to do the job [...] there are no institutionalised techniques on child hearings. What I can tell you is that it depends a lot on the capacity and skills of the magistrate or the criminal investigation specialist to build the case and of course, on his/her own experience and training ... if (s)he has training.”
- “[The child] can wait up to 6 hours, right? It depends a lot on what's going on. Usually all the children leave [from the placement centre] towards the court at a certain hour, in order to arrive at 8-8.30, but that doesn't mean the hearing ends at 9 o' clock, no, it may last until 12-1 o'clock.”
- “[...] at least in Romania, the legal framework is one thing and the practice is another thing, in the sense that one must use the resources available in the best and most effective way, so that things be fluent and the process ... smooth, as it should be, because we don't always have access to what the legal framework establishes. [...] such as this audio-video recording equipment, which people from the Police don't have either or if they have, they don't use it all the time, or that the Tribunal has but does not use all the time, and so on.”
- “Sometimes I think they consider it to be too complicated, because I think the equipment we have is not of very, very high quality or, how to say, sometimes the equipment makes it difficult to understand the questions and it breaks down too. I don't know, once I think [the judge] said that something was not working, it was broked and the [victim] was heard like that, in the courtroom...”
- “The council room has...I don't know, at least one desk or...umm I know that usually it's the judge's office and umm there are 2-3 desks, there is a court-clerk, there may also be someone else...umm...another judge or another court-clerk [...] or it happened that I had to go and ask for the court room to be evacuated in order to hear the child exactly in the court room, right?, most of the times when special protection measures are decided, this is what happens, or umm...to...the hearing takes place in a little room, I don't know, immediately near the door usually used by the judge to enter the court room umm...I have entered in there and I reached a little room, and it was ...somehow inappropriate, I don't know, for hearing the child but...the information was obtained and...”
- “We could think of 'n' cases ... the protection measures which can be taken for the victim, how protected she feels within these judicial proceedings, so she will talk and declare ... completely, without hesitations, if we have a perpetrator under preventive arrest, so taken out of ... she should feel protected and feel that what happened to her could no longer repeat itself or be even worse in the future, and then, yes, one might have declarations. But in the event that they continue to be ... in the same family, all together....or the trafficker is still free, less likely [to obtain statements].”
- “Yes, there is a clear unbalance between the rights of the accused in the court room and the rights of the victim”

- “[...] we attend the confrontation not in our locality. Attention! Because we have girls from all the country, we are travelling 120 km, 200 km for the famous confrontation. We are waiting on the hallways of the prosecutor’s office to be informed by the prosecutor that one of the umm trafficker’s attorneys can’t attend and that the confrontation is postponed. We were coming back home and we were called again in 2 weeks, and this time we were informed that is the trafficker who is now very sick and can’t come to the confrontation and then, yes... we were always announced then, when we were there already, we have never been informed in time or... I guess that neither the prosecutor knew that he/she got sick, waited for half an hour, noticed that he/she is not coming, made a phone call to find out that he/she is sick.”
- “There was a situation when the police came with the child victim to the courtroom, in the public session, the witness... no, the victim was left there and the police officers left, it’s not their fault, it’s because they are... there is no special training, the victim sat in the courtroom for 3 hours, where the offenders were also present. I didn’t know what she looked like so I didn’t realise what was happening. The clerk and the ex officio lawyer pointed her out to me, I requested that she be escorted out of the courtroom but it was too late because her entire statement changed.”
- “I’m referring to a situation related to that criminal investigation of the rape case. So we were there, in the same office, victim and perpetrator, we were with the police officer in charge of the investigation, and at that moment, either the driver kept coming in, saying he must hurry and buy gas, so [the officer] should give him money... where will he find money to go... at some point I got upset and told them ‘Gentlemen, please stop!’. A colleague came in to ask something. ‘Don’t you have a room, can’t we go there?’... ‘Well, we don’t have, these are the conditions’. So the outcome of the case was affected to a large extent I think, because they didn’t have conditions allowing us to focus ...what we needed, they were thinking about gas and what the chief had asked and they were telling us that they were in a rush. This is not possible [...] I mean they weren’t to blame for this either... the environment was inappropriate, the conditions were inadequate for the hearing. And when it comes to us, as lawyers, we have to pay a lot of attention in such situations, meaning that we have to be a thousand time more vigilant, to pay attention to what is happening, to continue our idea from where we left it. [...] So, this is how it is here, I don’t know if it’s the same in Bucharest, but here there are no proper conditions.”
- “[...] is then when I saw for the first time, is amazing... the trafficker was allowed to directly address questions to the victim. The lady judge attempted to say <Do you have legal representation?>, but when the attorney started to yell that he is not able to put all the questions, that the trafficker is directly involved and that he should have the right to ask the victim, the judge remained silent, the trafficker addressed the victim directly and I was right next to her and I saw her reaction, she didn’t know what to do, to answer or not, especially since the questions formulated by the trafficker weren’t related to the offence, but umm to the identity of the victim, his purpose was to find the identity [...] and, at the end, he called her by her name, he said <I know who you are> and he said her name, the child was almost about to faint on the chair.”
- “There are also situations when it pas..., when the behaviour is out of line. I saw, and not only once, situations when the policeman allowed himself to say ‘Ok, come on, I know that

you enjoyed it too' or... something similar. Personal preconceptions and stereotypes come in. I'm referring to a young lady of 16, who was looking as she were 19 years old, who had been raped, but who... was also socializing with certain people, but still, she had been raped. And on this issue [she was told] 'Ok, you looked for it too, you enjoyed it too, you deserve it in a way...', this was the message directly or indirectly."

- "[...] she has prepared herself for our coming, in their house – at ..at the prosecutor's office – umm, she knew to take some time to create a minimal connection with the child, a minimal relationship, umm she befriended the child, umm she was prepared with toys, with colouring pencils. Umm...she cooperated very well with the psychologist, yes?, umm there was more a non-verbal communication between psychologist and prosecutors. And umm... for the child it was more like a meeting with a person he didn't know but with whom he established a connexion, he befriended someone and ...umm he was asked about an unpleasant experience, umm but umm...he left there without ...without taking, I don't know, one more burden on his shoulders."
- "No, each [child] enters in turns [in the chamber]. Separately. [...] ... two at the most if there are a lot of them and tend to lose their patience, than two at a time, they enter two at a time, but each of them on separate minute of discussion [proces verbal] and they take turns when they speak, because there are two of them in the room, two children, but not all of them at once. Technically, they usually stay together even though I record their opinions separately, but technically I hear them together."
- "From the perspective of a child-friendly environment, I think there should be continuity between the persons who conduct the criminal investigation, those who interact with the child during the proceedings, so that the child should not - how to put this? - go through too many hands... there should be continuity or at least... at least this same person should be a professional who accompanies the child from the beginning towards the end, going through all judicial procedures, because the child does not have anybody to relate to, this is what I could tell you. And there should be a higher availability of the professionals working in these cases, in terms of time, energy..."
- "[...] at a certain moment, a social assessment is carried out and the report of the assessment is submitted to the court file. The paper that arrives from the social assessment is a predefined form that tells absolutely nothing characteristic about the relationship between the child and the parents. The information concerns issues such as the existence of an apartment which is well kept and heated, that the child lives with the grandmother or without the grandmother. There is no relevant information about the child's proper development, emotional and not only..."
- "When the Directorate is a party, thus in the cases regarding the special protection measures, [the Directorate's psychologist] always comes. Unfortunately, we don't have the same, the same possibility for the first or second appeals, thus when we hear the child in situations of remedy at law. Then, usually, we don't have a psychologist, because...umm, anyway...the one from the Directorate comes only in their cases and we don't have a psychologist of the court, or the possibility to pay one psychologist if necessary and therefore, in these cases, the psychologist is not present."
- "In general... no, we do not have responsibilities in this respect. There is a specialized body, the Child Protection Directorate and, before the parent comes to the child, they visit the parent, they have the means to talk with the parent, they even have a psychologist. [...]

Perhaps for you, this looks like a problem, but this is not a problem for us. Nobody informs anybody. We simply ask for the child to be brought in for interviews. As for the rest, it is up to us, the magistrates, the judges, to, interview the child [...] let's look at, umm, the real picture. It is hard to say that a judge should prepare the child, as the judge does not have any contact with that child..."

- "Yes, he is informed what he has been called for, so about the fact that he was called to be heard in a criminal case, where he is to be heard as – and now it depends on the role he has – and everything will take place at...at the Police station he is informed. Orally. <Mate, you are being heard>."
- "I witnessed it in our office, when they brought the minor, they forgot to...that she has to be informed about the rights she has – the right to be included in a protection programme, to benefit from reintegration, from school reinsertion. She receives no explanations why, because in the Law 678 [from 2001 on preventing and combating trafficking in persons] are written – you have the right to refuse, you have the right to accept – no one explains it. A paper is put in her face; it happened in my office also, the girl signed it and I...I flipped the paper over and I asked her <Now, tell me what have you signed.> and she started laughing and <I don't know what I have signed>, <But why did you sign?>, <Well, because the police officer gave it to me >."
- "My opinion is that they are quite scared and frightened about coming here and they don't actually know what is happening to them, why are they brought here and they are scared, this is the child's perception. For instance, a little girl once asked me: "Will you do me an injection?"
- "No, despite that I worked many, many years...and I still work in specialised panels. Unfortunately, training wasn't given to judges specialised in ... working with children."
- "Well, from my point of view, with regard to criminal matters ... the interest is mine in the first place, as police body, as criminal investigation body, to find out the truth. And then, naturally, [inaudible] I try to interact with the child in such a way that (s)he helps me. It is in his/her interest only when (s)he is the injured party. And when (s)he is injured party, when (s)he assists ... when (s)he is beaten by his parents, for example. And then you have to talk to him/her differently."

Annex 2 - Pictures

Location: Court of Appeal

Description: Chamber – Civil matters

The chamber was arranged as a meeting room with chairs, tables and shelves for books. Though the chamber was recently refurnished and was described by the interviewer as very spacious, it has no child-friendly elements.



Location: Prosecutors' Office

Description: Prosecutors' Office – Legal matters

The office where the prosecutor conducts the child hearings was not considered child-friendly by the interviewer, because it couldn't ensure confidentiality or privacy and because the environment created by the piles of files stored was cold.



Location: Municipality Police station

Description: Police officers office – Legal matters

The police station office visited during the research has some desks, a cupboard, a sofa and a TV. It is old-furnished and unfriendly.



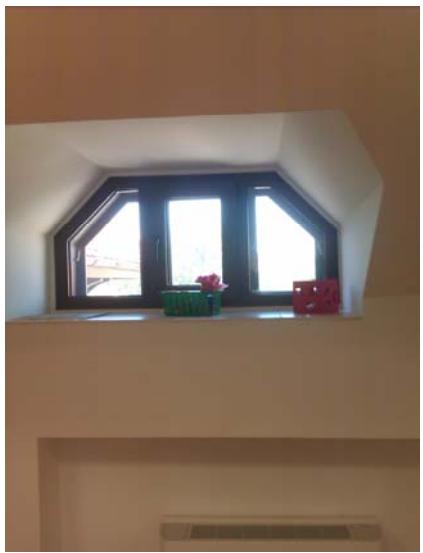


Location: General Directorate of Social Work and Child Protection,

Description: Psychological counselling room – Civil matters

The room is clean and friendly, furnished with a colourful sofa and armchairs, as well as with little chairs for children. There are board games for children and colouring pencils. The natural lighting is limited as the room is situated within the roof space of the building which constrains the window placement.





Location: Probation Service

Description: Probation counsellors' office – Criminal matters

A friendly space, with posters on the wall (one of them laying out the rights of the child) and big windows. However, no toys or other materials for children could be found in the office.



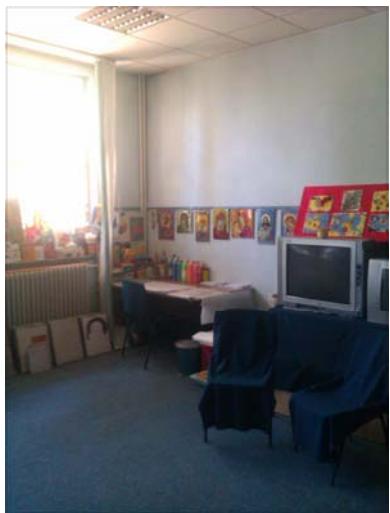
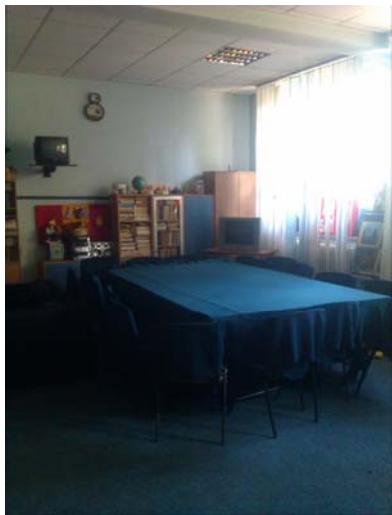


Location: Directorate of Social Work and Child Protection, Emergency Placement Centre for children

Description: The 'Childs club' a room in which children might be informed – Criminal and Civil matters

The 'children's club' room has a very long table (over 5 m long), several chairs and sofas, a table used by the painting teacher and few plush toys. There are also a couple of TVs and radios stored in the room and, overall, the 'children's club' looks more like a stockroom which offers little privacy to speakers.





Location: Emergency Placement Centre for children

Description: The emergency centre's psychologist's office, a room which might be used for informing the child.

The psychologist's office is very small (no more than 4m²), has natural lighting and is furnished with two tables and two chairs and a stand with books shelves. Toys and games are available. During the interview, the interviewer noticed that all the noise made by the guardians can be heard inside, because the office is located right at the main entrance.



Annex 3 - Resources

Materials targeting professionals on child-friendly justice

Romania, the National Authority for Protecting the Rights of the Child (Autoritatea Națională pentru Protecția Drepturilor Copilului) (2006) *Rolul judecătorilor și al procurorilor în protecția și promovarea drepturilor copilului*, Bucharest, Editura Trei. Available in Romanian, online at www.copii.ro/Files/2.Manualul_judicatori_si_procurori_20074195351796.pdf

All hyperlinks were accessed on 11.02.2013.

The Alternative Sociale Association and the National Institute for Magistracy, Luca C., Pivniceru M. (2011) *Interviewing children throughout the legal proceedings: handbook*, Bucharest, Editura Hamangiu. Available in English online at www.unicef.org/romania/AAS_2011_Interviewing_children Throughout_legal_proceedings.pdf

Asociația Salvați Copiii Filiala Iași, Asociația Magistraților din Iași (2008), *Justiția pentru minori în interesul superior al copilului – Practici de lucru cu copilul victimă*. Available in Romanian, on line at http://salvaticopiii.ro/upload/p00030007_Justitia_pentru_minori.pdf

Smarandache C., Vădan A. *Ghid practic pentru grefieri. Dreptul familiei și protecția minorilor*). Available in Romanian, on line at www.grefieri.ro/docs/200802/20080215GHID-Dreptul_Familiei.pdf

Asociația Română pentru Custodia Comună (Romanian Association for Joint Custody), database of different international studies, articles and researches related to child's custody and juvenile justice, translated in Romanian, available at www.arpcc.ro/biblioteca

National research or reports on child-friendly justice

Asociația Alternative Sociale, Asociația Magistraților din Iași, UNICEF Romania (2010) *Analiză privind sistemul de justiție pentru copii din România*, Iași, Editura Samia. Available in Romanian, on line at www.unicef.ro/wp-content/uploads/analiza-privind-sistemul-de-justitie-pentru-copii-din-romania_web.pdf

Asociația Salvați Copiii Filiala Iași, Tarlion L., Stoica N.-V., Turcan A., Grigore C., Magurianu L. A., Iuroaia F. (2012), *Justiția juvenilă în România și Republica Moldova – Studiu comparativ*, Iași. Available in Romanian, on line at
http://justitiajuvenila.ro/documents/12998/0/SalvatiCopiii_BRS_Interior_ART.pdf/7fba71de-37ea-4b3e-9d96-e7f9d065d578

References (national research)

Romania, Ministry of Justice, *Raport Final sur le Jumelage RO03/IB/JH09*. Available in French and Romanian, online at

www.just.ro/Sections/PrimaPagina_MeniuDreapta/JustitiepentruMinori/tqid/426/Default.aspx

Romania, The Ministry of Justice, ‘Information’ (*Informare*), 20 September 2012. Available in Romanian, online at

www.just.ro/Sectiuni/Comunicate/Comunicateseptembrie2012/20septembrie2012v2/tqid/2237/Default.aspx

Romania, the Ministry of Justice, ‘Info-press regarding the coming into force of the new Civil Procedure Code’ (*Informare de presă cu privire la intrarea în vigoare a noului Cod de procedură civilă*), 30 January 2013. Available in Romanian at

www.just.ro/Sectiuni/Comunicate/Comunicateseptembrie2012/30ianuarie2013v1/tqid/2390/Default.aspx

Romania, The Superior Council of Magistracy, ‘Report on the justice system 2011’ (*Raport privind starea justitiei 2011*). Available in Romanian, online at

www.membricsm.ro/wp-content/uploads/2012/03/raportjustitie2012.pdf

Romania, The Superior Council of Magistracy, the online database ‘Nominal evidence and sections repartition – January 2012’ (*Evidenta nominală și repartizare pe sectii – ianuarie 2012*). Available in Romanian, online at www.csm1909.ro/csm/index.php?cmd=080101

Romania, the National Institute of Magistracy, ‘The selection of the participants to the NIM seminars from the Annual Training Programme 2012’ (*Selectia participantilor la seminariile INM incluse în Programul de formare continuă 2012*). Available in Romanian, online at www.inm-index.ro/fisiere/pag_115/det_1566/8756.pdf

Asociația Alternative Sociale (2005) *Ghid de practici instituționale în instrumentarea cauzelor cu minori*, Iași, Asociația Alternative Sociale.

Alternative Sociale Association and the National Institute for Magistracy, Luca C., Pivniceru M. (2011) *Interviewing children throughout the legal proceedings: handbook*, Bucharest, Editura Hamangiu. Available online at

www.unicef.org/romania/AAS_2011_Interviewing_children_throughout_legal_proceedings.pdf

Dolea I., Zaharia V. (2011) *Studiu de fezabilitate privind instantele specializate în cauzele cu implicarea copiilor în Republica Moldova*, Bons Offices. Available in Romanian, online at
http://irp.md/files/1321452456_ro.pdf

Legal references

Council of Europe, Committee of Ministers (2010), Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 1098th meeting of the Ministers' Deputies, 17 November 2010.

Unofficial translations in Romanian:

'Liniile directoare pentru justiția prietenoasă copiilor, adoptate de Comitetul de Miniștri al Consiliului Europei', translation by the National Center for Child Abuse Prevention, Republic of Moldova, available online at www.cnpac.org.md/files/ChildFriendlzJustice_ro.pdf

'Liniile directoare ale Comitetului de Miniștri al Consiliului Europei privitoare la o justiție prietenoasă cu copiii', translation by the Romanian Association for Joint Custody, Romania, available online at www.arpcc.ro/liniile_directoare

European Commission (2011a), An EU Agenda for the Rights of the Child, COM(2011) 60 final, Brussels,

15 February 2011

Official translation in Romanian:

Comisia Europeană (2011), Comunicare a Comisiei către Parlamentul European, Consiliu, Comitetul Economic și Social European și Comitetul Regiunilor, O agenda a UE pentru drepturile copilului, COM (2011) 60 final, Bruxelles, 15 February 2011. Available in Romanian at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:ro:NOT>

Romania, Criminal Procedure Code (*Codul de Procedură Penală*), 30 April 1997.

Romania, Civil Procedure Code (*Codul de procedură civilă*), 26 July 1993.

Romania, New Civil Procedure Code (*Noul Cod de Procedură Civilă*), 01 July 2010.

Romania, Law No. 135/2010 on the Criminal Procedure Code (*Legea nr. 135/2010 Codul de Procedură Penală a României*), 01 July 2010.

Romania, Law No. 211/2004 regarding some measures to ensure protection for the victims of crimes (*Legea nr. 211/2004 privind unele masuri pentru asigurarea protecției victimelor infracțiunilor*), 27 May 2004.

Romania, Law No. 272/2004 on the protection and promotion of the rights of the child (*Legea nr.272/2004 privind protecția și promovarea drepturilor copilului*), 21 June 2004. Available online at www.dreptonline.ro/en_resources/en_romanian_child_protection.php

Romania, Law No. 287/2009 on the Civil Code (*Legea nr. 287/2009 privind Codul Civil*), 17 July 2009.

Romania, Law No. 303/2004 regarding the status of judges and prosecutors (*Legea nr. 303/2004 privind statutul judecătorilor și procurorilor*), 28 June 2004

Romania, Law No. 304/2004 concerning the Organization of the Justice System (*Legea nr. 304/2004 privind organizarea judiciară*), 28 June 2004.

Romania, Law No. 678/2001 regarding the prevention and fight against the human trafficking (*Legea nr. 678/2001 privind prevenirea și combaterea traficului de persoane*), 21 November 2001.

Romania, Government Decision No. 49/2011 regarding the approval of Framework Methodology on prevention and intervention within multidisciplinary team and network in situations of child and family violence and of the Methodology of multidisciplinary and inter-institutional intervention for exploited and at risk children for labour exploitation, children victims of trafficking in persons and Romanian emigrant children victims of other forms of violence on territory of other states (*Hotărâre de Guvern nr.49/2011 pentru aprobarea Metodologiei cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și violență în familie și a Metodologiei de intervenție multidisciplinara si interinstitutionala privind copiii exploatați și aflați în situații de risc de exploatare prin munca, copiii victime ale traficului de persoane, precum și copiii romani migranți victime ale altor forme de violență pe teritoriul altor state*), 19 January 2011.

Romania, Government Decision No. 1437/2004 on the organisation and functioning of the Commission for Child Protection (*Hotărâre de Guvern nr. 1437/2004 privind organizarea și metodologia de funcționare a Comisiei pentru Protecția Copilului*), 24 September 2004.

Annex 4 - Tables

Table 1: Research Sample*

Professional Group	Gender		Location		Age Group			Total
	Male	Female	Rural/small municipality	Urban/big cities	< 45	45-65	> 65	
Legal	11	19	2	28	27	3	0	30
Criminal	4	9	2	11	12	1	0	13
Civil	4	5	0	9	8	1	0	9
Both areas	3	5	0	8	7	1	0	8
Social	6	19	1	24	23	2	0	25
Criminal	1	9	0	10	8	2	0	10
Civil	2	6	1	7	8	0	0	8
Both areas	3	4	0	7	7	0	0	7
Mixed	NA	NA	NA	NA	NA	NA	NA	NA
Criminal	NA	NA	NA	NA	NA	NA	NA	NA
Civil	NA	NA	NA	NA	NA	NA	NA	NA
Both areas	NA	NA	NA	NA	NA	NA	NA	NA
All professionals	17	38	3	52	50	5	0	55

*The table includes the participants to interviews and focus groups.

(The recording of one interview was lost and therefore it wasn't taken into account for describing the sample.)

Table 2: Familiarity with CoE Guidelines on Child-friendly Justice

Ad CoE guidelines: Profession	Familiarity with Guidelines*			
	Familiar with CoE guidelines	Just heard of them/somehow familiar	Never heard/not familiar	Total

Legal	3	8	17	28
Civil	1	1	5	7
Criminal	1	5	7	13
Both areas	1	2	5	8
Social	1	5	19	25
Civil	0	2	6	8
Criminal	0	2	8	10
Both areas	1	1	5	7
Mixed	NA	NA	NA	NA
Civil	NA	NA	NA	NA
Criminal	NA	NA	NA	NA
Both areas	NA	NA	NA	NA
All professionals	4	13	36	53*

*among the participants to interviews only (as this issue was not distinctly covered during the focus groups)

Table 3: Participation to training or similar activities

Profession	Training Participation*		Total
	no	yes	
Legal	13	17	30
Civil	4	5	9
Criminal	3	10	13
Both areas	6	2	8
Social	10	15	25
Civil	6	2	8
Criminal	4	6	10
Both areas	0	7	7
Mixed	NA	NA	NA
Civil	NA	NA	NA
Criminal	NA	NA	NA
Both areas	NA	NA	NA
All professionals	23	32	55

*includes also the training on broader subjects, unrelated to children issues (such as social reintegration, legal training in other areas etc); includes not only training sessions but also seminars, work-shops, roundtables, study visits, experience exchanges and other similar activities.

Table 4: Participation to training or similar activities on type of training

Professional Group	Type of Training*				
	Legal	Social/ psychological	Specific justice issues	Specific child issues	Methods/ procedures
Legal	8	2	3	0	3
Social	0	7	5	2	1
Mixed	NA	NA	NA	NA	NA

All professionals	8	9	8	2	4
-------------------	---	---	---	---	---

* The interviewees didn't provide detailed answers regarding the type and topic of training received. As a consequence, the information provided in the table is based on researcher's assumptions and interpretations and thus it cannot be considered accurate. We therefore recommend avoiding using the figures on type of training for in depth analysis or comparisons.

ⁱ "Singura informație scrisă este citatea"