

INVESTIGATIVE INTERVIEWING OF CHILD WITNESSES IN ESTONIA

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Keywords: investigative interviewing, child witnesses, Barnahus, criminal proceedings

DOI: ...

ABSTRACT

In 2004, the first unit was formed in the Estonian Police and Board Guard specialising in investigating crimes against children. To celebrate 20 years from this event, we reflect on how the investigative interviewing of child victims and witnesses in Estonia has developed over the years from a psychological perspective. We cover the relevant literature and research concerning this topic in Estonia along with the changes in legislation regulating the area. We also focus on interview training and the opening of the Children's House (Barnahus) service and highlight some important issues to keep in mind in this field for the future.

INTRODUCTION

On 1st of April 2004, the first unit specialising in investigating crimes against children was formed in the Estonian Police and Board Guard. To celebrate 20 years from this event, this paper aims to give an overview of this area, focusing on the psychological perspective of the investigative interviewing of child witnesses. The paper seeks to answer the following questions: (i) how has the investigative interviewing of child witnesses in Estonia developed over the years; and (ii) based on new initiatives in the field, what important developments must be kept in mind for the future?

To reach this aim, we first give a brief overview of the main legislative changes along with the research from a psychological perspective. The Barnahus service, which opened in 2017, is described, as are the best practices of interview training. Finally, some new initiatives in the field are introduced.

1. LEGISLATION REGULATING INTERVIEWING CHILD WITNESSES

In 2022, 530 sexual crimes against children were committed, of which 280 were contact crimes and 250 non-contact crimes (Ministry of Justice, 2023). Concerning contact crimes, the most reported crimes were rape and acts of a sexual nature against a child's will. The average age of the victims was 11 years (86% girls). In 46% of the cases, these crimes were committed by a family member, in 35% by acquaintances, and in 19% by someone the child did not know. Regarding non-contact crimes (88% of these were on the web or using the means of info technology), the most registered crimes were those concerning the creation of child pornography or activities enabling creation.

In Estonia, one important part of the state's priorities for fighting crimes is fighting sexual crimes against children, especially on the web and across borders (Priorities of legal protection, 2024). Fighting child sexual abuse is also a priority in the European Union. On 12 July 2007, the European Committee adopted a declaration on defending children from sexual abuse and sexual violence, which gives member states guidelines

on how to proceed with such cases (Council of Europe, 2007). Several recent presidencies have taken this into focus. During the Spanish Presidency agenda from 1 July to 31 December 2023, the aim was to develop a proposal for the Regulation of the European Parliament and of the Council establishing rules to prevent and combat child sexual abuse (EU Council Presidencies and their impact on children, 2024). From 1 January to 30 June 2024, the Belgium Presidency will evaluate and update the European and international policy agenda on children, youth and children's rights. It also plans to advance the work on preventing and combatting child sexual abuse and push for the implementation of the European Child Guarantee (EU Council Presidencies and their impact on children, 2024).

The new Code of Criminal Procedure (CCP) was adopted in 2004. According to the CCP, it was possible to video record interviews with children younger than 14 years of age in pre-trial criminal proceedings, but the children still had to testify in court proceedings as well unless a combined psychiatric and psychological expert assessment stated that testifying in court would have a negative impact on the child's mental health.

Several important changes to the CCP regarding the investigative interviewing of children were introduced on 11 September 2011. Subsection 1 of § 70 (Special rules for interviewing or examining an underage witness) states that "the proceedings authority may require a child protection official, social worker, teacher or psychologist to be present when it is interviewing or examining an underage witness" and subsection 2 states that "if the proceedings authority has not received appropriate training, enlisting the assistance of a child protection official, social worker, teacher or psychologist for interviewing or examining a minor is mandatory if: 1) the witness is younger than ten years of age and interviews or examination may have a harmful effect on the minor's mental well-being; 2) the witness is younger than fourteen years of age and the interview or examination relates to domestic violence or to sexual abuse; 3) the witness has a speech or sensory impairment or an intellectual disability or suffers from mental disorders". Subsection 3 adds that "where this is needed, the interview with, or examination of, the minor is video recorded and in a situation mentioned in subsection 2, the interview with the minor is video recorded if – for the reason that the minor's

first-hand examination in court is not possible due to the minor's age or the minor's mental state – the intention is to use that interview as evidence in judicial proceedings”.

Two CCP sections regulate the examination of child witnesses in court proceedings: § 290 (Special rules for examining an underage witness) and § 290¹ (Special rules concerning statements made during pre-trial proceedings by an underage witness). Section 290 points out that for a witness younger than fourteen years of age, an adversarial examination is not used (subsection 1) and the court “may use the assistance of a child protection official, social worker, teacher or psychologist of who may put questions to the witness with the permission of the judge” (subsection 2). The examination of a minor under the age of 14 can begin with the judge's invitation to tell the court everything they know concerning the criminal case (subsection 3). After that, the minor is examined by the prosecutor and defence counsel in the order determined by the court. The accused may ask questions to the witness through the defence counsel (subsection 4). With the permission of the court, leading questions may be put to the witness (subsection 5). Taking into consideration the mental or physical condition and age of the witness, the court may interrupt their examination by the parties to judicial proceedings and examine the witness of its own motion or based on written questions submitted by the parties (subsection 6).

According to subsection 290¹ (1) of the CCP, on a motion of a party to judicial proceedings, the court may decide not to summon a minor and to allow a statement made by the minor during pre-trial proceedings to be presented as evidence, provided the statement was video recorded and the defence counsel had the opportunity to put questions to the witness during pre-trial proceedings about the facts constituting the subject matter of evidence, where clauses 70 (2) 1)-3) of the CCP are applied. However, subsection 290¹ (2) states that “if the court, having examined an item of evidence mentioned in subsection 1 of this section, finds that it is necessary to question a minor about any further circumstances, the court may question the witness of its own motion or based on written questions submitted by the parties to judicial proceedings”.

To summarise, this all indicates that (i) when the investigators have completed special training on the investigative interviewing of children

and (ii) when the interview with a child, regarding the aforementioned circumstances, is video recorded, said video recording can be used as evidence later in court proceedings. In this case, the child has to be interviewed only once, which has a great impact on diminishing the secondary victimisation (Classen & Clark, 2017) of the child by preventing repeated interviews in preliminary and/or court proceedings. We have to remark that some studies do not demonstrate the adverse effects of repeated interviews (Quas et al., 2007). Duron and Remko (2018) note that even though single interviews remain the 'gold standard' of investigative interviews with children, sometimes it is necessary to conduct multiple interviews, which is especially important when interviewing vulnerable children suspected to be victims of sexual abuse. Still, to conclude, interviews should be conducted in a child-friendly manner and be carried out according to the principles of the NICHD protocol (Orbach et al., 2000, see also Fernandes et al., 2023).

2. INVESTIGATIVE INTERVIEWING LITERATURE

Literature from a psychological perspective on this field in Estonia has been scarce. In 2016, a handbook on the investigative interviewing of children was published in Estonian (Liivamägi-Hitrov and Kask, 2016); it contains an overview chapter in English on the current state of affairs regarding interviewing victims and/or witnesses (Kask, 2016). From a legal perspective, several papers have been published over the years. In 2006, a paper was published about interviewing minors in pre-trial proceedings in criminal cases (Rammo, 2006). Kask (2011) examined the changes adopted by the CCP on 1 September 2011 and found that they were in accordance with the European Committee declaration (Council of Europe, 2007) and also with the practice of the European Court of Human Rights. A judge of the Supreme Court has also published a paper in Estonian concerning the credibility of child witnesses in criminal proceedings from the point of view of a legal professional (Randma, 2022). Just recently, the special treatment of minors using the example of the Police and Border Guard Board was analysed (Kajo & Rohuniit, 2023). In addition, there have been some overview studies and analyses in both Estonian (Kask, 2009; 2015) and English (Kask, 2012; Kask et al., 2022; Pompemma et al., 2021).

A few studies have been conducted regarding the quality of investigative interviews in Estonia during the 20 years since the unit's introduction. In 2012, the first analysis was published (Kask, 2012), where interview transcripts with 66 children from 2004 to 2008 (mean age 9 years (range from 4 to 14); 65% female, mean length 27 minutes) were examined. In his analysis, Kask found that the investigators preferred to ask open (who, what, where, how) and option-posing questions (did it happen once or twice?). However, the children's answers to invitations (tell me...) were lengthier. He suggested based on these results that structured interview methods such as the NICHD protocol should be implemented in training Estonian investigators and that the training should be followed by continuous supervision and feedback (Kask, 2012). This could all manifest in increasing the quality of interviews.

The next analysis regarding the quality of investigative interviews in Estonia was published in 2015 (Kask, 2015), in which 10 interview transcripts from 2011 to 2014 (child mean age 10 (range 5 to 17); 5 girls; mean length 42 minutes) were compared. The study aimed to examine the differences between investigators who have completed the two-week specialised training compared to those who have not. Only a small number of interviews were provided: seven by the specialised investigators and three by those without specialisation (interviews conducted within the presence of a specialist such as a psychologist, child protection worker, social worker or teacher). Although the number of interviews was small, it was found that specialised investigators asked a higher proportion of invitation questions and open questions, whereas those not specialised asked more suggestive and closed questions. Kask summarised the need to continuously give feedback on the interviewing skills of investigators.

3. BARNAHUS OPENS IN 2017

In 2016, the Ministry of Social Affairs started to make preparations to implement the Children's House (Barnahus; in Estonian, *Lastemaja*) concept in Estonia based on attempts in the Nordic countries (Iceland, Norway, Sweden). The Barnahus model is a service whereby different specialists, such as child protection officials, the police, prosecutors, psychologists and many others, work together to ensure the welfare of

children (Social Insurance Board, 2023). The Barnahus team assesses the child's health, social situation and need for further assistance, carries out the investigative operations necessary to resolve the case and offers the child the help they need (read more about applying the Barnahus model in Nordic countries in Johansson et al., 2017). In Estonia, the focus of Barnahus is mainly on children who are victims/witnesses of sexual abuse or who practice harmful sexual behaviour.

In Estonia, the Barnahus service is coordinated by the Social Insurance Board. Barnahus now has four different locations in Estonia (the first opened in January 2017 in Tallinn). In 2022, the Barnahuses in Estonia were contacted 631 times (Social Insurance Board, 2023), mostly with suspicions of sexual abuse (53%) or harmful sexual behaviour (24%). The average age of the children was 11 years (66% girls).

According to the current CCP, interviews with witnesses can be used as evidence when conducted by investigators. Since the first unit specialising in crimes committed against children was formed in 2004, the Police and Border Guard have implemented and modernised child-friendly interview rooms in several prefectures. Currently, investigators also conduct interviews with child witnesses in Barnahus premises. As alleged child sexual abuse victims and witnesses can contact Barnahus directly, their personnel has to plan for many activities, including interviews with children to find out what happened and future activities in case the child needs further help.

Thus, the child can be interviewed and video recorded (if the child agrees) by a Barnahus specialist. If references to a crime (or crimes) are present, the Barnahus specialist stops the interview and the police investigator begins to interview the child as a procedural act. If no references to a crime are present but the child still needs psychosocial help, the Barnahus specialist finishes the interview. This Barnahus video recording can be used later by other specialists who are working with the child to better understand what has happened to the child without repeatedly asking questions about the same topic over and over again to prevent secondary victimisation.

4. INVESTIGATIVE INTERVIEW TRAINING

Research has shown that children recall the most accurate information when asked certain types of questions (Lamb et al., 2018), such as free recall (tell me what happened...), open questions (what, where, who, how), or facilitators (demonstrating active listening skills, such as saying ‘uh-uh’ or mirroring the child’s previous phrase). In contrast, forced-choice questions (did it happen once or twice?), suggestive questions (he touched you, didn’t he?) or closed questions (did you...?) result in less accurate answers by children. Thus, it is recommended by the literature that the interviewers should use structured interview protocols such as the NICHD protocol (Hershkowitz et al., 2007; Orbach & Lamb, 1999).

It is also important that interview training includes multiple practice sessions (Lamb et al., 2002) as well as continuous, immediate and detailed feedback (Lamb et al., 2002; Smith, 2008). It is known that theoretical training in child witness interviewing skills increases knowledge of the topic, but the knowledge transfer to practical investigative interviewing skills may not take place (Johnson et al., 2015).

However, theoretical training that involves practice with real cases or mock interviews with colleagues or actors pretending to be children has been demonstrated to be effective (Lamb et al., 2002). When detailed feedback is given on the investigators’ performance, the use of open questions increases and suggestive questions decreases. Still, Benson and Powell (2015) summarised the training studies, stating that the training effects will fade within six months after the training has finished or if feedback is not given.

At the beginning of the 2010s, specialised adult training for investigators started on how to interview child witnesses. The introductory training lasts approximately two weeks. During that time, the investigators gain a theoretical overview of the memory principles regarding interviewing, and the NICHD protocol is introduced (Orbach et al., 2000). The training ends with a one-day practical skills session, where roleplays are used to practice the NICHD protocol in a safe environment (see also Kask, 2016, for an overview). Since 2022, there have also been advanced two-day training sessions in place for investigators who have completed the introductory training. Two-day investigative interviewing training

for judges (also prosecutors, lawyers and police investigators) on how to interview children in court in criminal and civil proceedings has also repeatedly taken place since the end of the 2010s (organised by the Supreme Court).

In addition, a novel way to implement rapid and detailed feedback is to use serious gaming solutions, which have been created to simulate child witness interviews (Pompedda et al., 2015; Dalli, 2021; Baugerud et al., 2021). One of the first solutions of this kind was Empowering Interviewer Training (EIT, Pompedda et al., 2015), which was quickly translated and adapted for the Estonian language and cultural context. The Estonian version of EIT was first tested among a student sample to examine whether only changes in question type when interviewing avatars in EIT software would differ from the control group when the feedback for the questioning styles was given after every avatar interview (Pompedda et al., 2021). They were also interested in whether the knowledge transfers to practice as well in real mock interviews with real child mock witnesses conducted a week later. They demonstrated that the proportion of recommended questions (invitations, open-ended questions, and facilitators) was higher in the feedback group compared to the control group in both EIT training interviews and real interviews with mock child witnesses (among 5–7-year-old children).

A similar procedure was then replicated among 17 Estonian police investigators (Kask et al., 2022). The Police and Border Guard Board gave access to 36 anonymised real video recorded interview transcripts (predominantly from 2018) before and after EIT training (mean age of children 9 years (range from 3.5 to 13); 39% girls; average length 30 minutes; 32% child sexual abuse and 68% physical abuse allegations). Per interview, approximately 7.5 invitations, 33 facilitators, 41 open-ended questions, 36 option-posing questions, six suggestive questions, five multiple questions and 12 long or confusing questions were asked. The proportion of recommended questions in the feedback group was 59% after EIT training compared to 48% before EIT training. Thus, it can be concluded that this type of training is effective in increasing the proportion of recommended questions among the investigators.

5. SUGGESTIONS FOR THE FUTURE AND NEW INITIATIVES

Several changes in criminal proceedings have been put in place since 2004. Currently, the law enforcement personnel regarding minors in criminal cases is specialised. In the best-case scenario, a child is interviewed once by a specialised investigator, the evidence collection is done by a specialised prosecutor, the court proceedings are led by a specialised judge, and the child is represented in pre-trial and court proceedings by a specialised lawyer.

All the parties (judges, prosecutors, lawyers, and investigators) must be trained in a similar manner. The main aim of these training courses has so far focused on interviewing and video recording the interviews of children younger than 14 years. So far, structured interview methods such as the NICHD protocol (Orbach et al., 2000) have emphasised investigating contact crimes. However, as the proportion of non-contact crimes against children is also increasing (NSPCC, 2023), it is important to guide investigators to investigate these crimes in criminal proceedings as, by their nature, the details differ considerably from those of contact crimes. Recently, a handbook for forensic child interviews in presumed cases of trafficking has also been released (Korkman, 2024).

It is also encouraged to video record interviews with children aged 14 to 18 in preliminary proceedings for use in court proceedings. The current CCP provides a legislative solution for this in § 291¹ (Earlier witness statement as evidence in court when agreed by the parties) by saying “where the Prosecutor’s Office, the accused and the defence counsel have reached the corresponding agreement, the court may decide not to order an adversarial examination of the witness and to accept, as evidence, the statement made by the witness during pre-trial proceedings”.

In court proceedings, we urge the court to use subsection 290 (3) of the CCP more extensively by allowing the child witness to first say in their own words what has happened as free recall provides the most accurate details (Lamb et al., 2018). When the child witness is vulnerable in age or mental/physical state, we urge the court to use subsection 290 (6) of the CCP to examine the child on their own (or based on written questions submitted by the parties).

As a new international initiative (COST Action CA22128 Establishing Networks to Implement the Principles on Effective Interviewing for Investigations, IMPLEMENTENDEZ), from the psychological perspective of investigative interviewing, an extensive number of suggestions on legislation, practice and training are presented in a document created in the lead by Professor Juan E. Méndez, former UN Special Rapporteur on Torture, published in May 2021 (hereafter the 'Méndez Principles', Principles on Effective Interviewing for Investigations and Information Gathering, 2023). The document consists of six principles covering recommendations for good practices, vulnerability, training and implementation of the principles. The document states that effective interviewing is instructed by science, law and ethics. It notes that interviewing is a process by which to gather accurate information while implementing legal safeguards. It states that interviewing requires identifying and addressing the needs of the interviewees in situations of vulnerability and that interviewers should receive specific training. Furthermore, interviewing requires transparent and accountable institutions as well as national measures for the implementation of these principles. In 2024, the United Nations launched a manual on investigative interviewing for criminal investigation (United Nations, 2024). Both of these documents focus on investigative interviewing broadly covering not only witness but also suspect interviews.

In addition, scientists belonging to the European Association of Psychology and Law recently published a joint White Paper with ten key recommendations on how forensic child interviews should be conducted (Korkman et al., 2024), reviewing the literature on how to conduct and protocol the interviews and how investigators should be trained. The paper states that children should be interviewed by specialised professionals who use evidence-based child interviewing methods, such as the NICHD protocol or other protocols based on scientific research. The authors emphasise that the interviews should be child-friendly and the interviewer must establish good contact with the child, investigating alternative hypotheses as to what may have happened. Electronic recording of the interviews is essential and it is recommended that only the child and the interviewer are in the interview room. Cultural aspects should be taken into account and if interpreters are needed, the interviews should be planned accordingly. Regarding the training of interviewers, specialised training should be in place, including the continuous

assessment of their interviewing style and feedback to guarantee good quality during these interviews.

The documents cited above provide research-based evidence on how effective information gathering should be carried out. It is suggested that these principles should be taken into account as the gold standard of best practices in Estonia when conducting investigative interviews and training. Based on the above, training for law enforcement personnel should be science-based according to the latest available literature. Training should be conducted and law enforcement personnel should be given feedback on their performance (interviewing quality) continuously. The literature finds that continuous feedback on performance prolongs the effect of training and facilitates the transfer of theoretical knowledge from training to practice (Lamb et al., 2002; Smith, 2008).

CONCLUSIONS

This paper gave an overview of the development of the investigative interviewing of child witnesses in Estonia from a psychological perspective. First, several changes to legislation have been made during the last 20 years concerning the preliminary and court proceedings of child witnesses. During this timeframe, the way investigators are trained in Estonia has also changed considerably based on the results of scientific research. In addition, in cases of suspicion of sexual crimes against children, the victims can use the services of Barnahuses in several locations in Estonia. The Méndez Principles (Principles on Effective Interviewing for Investigations and Information Gathering, 2023), the United Nations manual on investigative interviewing for criminal investigations (United Nations, 2024), and especially the White Paper by the European Association of Psychology and Law (Korkman et al., 2024) provide guidelines for the science-based best practices of interviewing witnesses that should be applied in practice when investigating crimes involving child victims and/or witnesses.

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