



10th IAP Annual Conference Copenhagen, Denmark 2005  
"Witnesses, Experts and Victims"

**Workshop: Vulnerable Witnesses**

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**1. Who are the vulnerable witnesses in your jurisdiction – children, women, others?**

Vulnerable witnesses include children, particularly children under the age of 15, victims of domestic violence and mentally disabled people. I will focus on children and victims of domestic violence but many provisions regarding children as witnesses are also applicable to mentally disabled people.

**2. What provisions do you have to facilitate the giving of evidence by children in court?**

**What other provisions do you have to ensure that children's evidence may be given freely and without further trauma?**

These provisions concern interviewing children and their legal representation.

Children as victims of sexual crimes and domestic violence, or other serious crimes, are entitled to legal representation during preliminary investigation and proceedings in court. Such counsel is appointed by the court. It is the duty of this counsel to look after the victim's interests and to give guidance and support during the preliminary investigation and the trial.

If the injured party is a child under the age of 18 and the suspect is a custodian or there are reasons to believe that the custodian will not look after the child's interests, a qualified legal representative will be appointed by the court. This counsel is entitled to legally represent the child's interest in all matters concerning the preliminary investigation and proceedings in the case.

The victim's counsel has the right to be present when this person is questioned and must be summoned to the main hearing in court and other sessions at which the person is to be examined. He/she is also entitled to put questions to the child during the police interview.

Whenever the evidence of a witness below the age of fifteen is used in a criminal case the court must, taking account of all relevant circumstances, determine whether the child should testify or not. A child under this age may not testify under oath.

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There is no corresponding provision applicable to children who are in the position of being the injured party. Normally a child under the age of fifteen does not give evidence in person before a court. Such evidence is presented to the court in the form of a video recording of the police interview played back during the main hearing in court. According to the Swedish Code of Judicial Procedure the court can allow a statement made to the police or to the prosecutor to be used in evidence in a trial if the person who has submitted the statement cannot be heard before the court.

An older child is required to give evidence in person before court. In order to protect the child and to ensure that the statement is given freely, the court may direct the defendant to leave the courtroom and listen to the statement in an adjoining room. The court will reject questions that are manifestly irrelevant, confusing or otherwise inappropriate.

There are a few cases where children under the age of fifteen have given evidence in person before the court. In such cases the examination may be held behind closed doors and the court may direct that the defendant leave the room and listen to the statement in another room.

**3. What provisions do you have to facilitate the giving of evidence by the victims of sexual crimes and of domestic violence?**

Victims of sexual crimes or domestic violence are, irrespective of age, entitled to a legal representative appointed by the court. This is free of charge for the victim. The legal counsel gives guidance and support to the victim. The counsel for the injured party also looks after the victim's interests in the case. The counsel is entitled to be present and to put questions when the injured party is being questioned in course of the preliminary investigation and proceedings in court.

During the main hearing the court may order the defendant to be excluded from the courtroom during the examination of the victim. This is done if there is reason to believe that the victim will not tell the truth openly in the presence of the defendant or that the defendant will hinder the victim from testifying by interrupting him/her. The defendant will be placed in another room where he/she is able to listen to the statement via a loudspeaker. In cases concerning sexual crimes, the main hearing in court may be held behind closed doors.

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**4. What is the effect of such provisions for the right of the accused to a fair trial?**

**What is the balance of human rights between the vulnerable witness and the accused?**

When the child's statement is presented to the court in the form of a video recording of the police interview played back during the main hearing, the defendant is deprived of the opportunity to have the witness cross-examined before the court.

According to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the defendant shall be given an adequate and proper opportunity to challenge and question a witness against him/her either when he/she is making statements or at a later stage of the proceedings. In practice this opportunity is given to the defendant during the preliminary investigation. Normally more than one police interview with the child witness will be held. Before the preliminary investigation is concluded, the defence is given an opportunity to have their questions put to the child in a police interview. The questions are put to the child by the police officer conducting the interview. The counsel for the defence is offered the opportunity to attend the interview and follow the interview via a monitor. Before finishing the interview the police officer will take a short break to ask the defence counsel if there are any more questions to put to the child. To protect the child, the defendant may not monitor the interview nor will the defence counsel be allowed to put questions to the child in person.

This practice has been examined by the European Court of Human Rights in case of S.N. v. Sweden (Application no. 34209/96). The court stated that there had been no violation of Article 6 §§ 1 and 3 of the Convention.

In cases where the defendant is excluded from the courtroom during the examination of a witness, the court will take a short break during the questioning to give the defence counsel the opportunity to discuss with the defendant as to whether any other questions should be put to the witness. Cross-examining the witnesses is the task of the defence counsel, not the defendant him/herself.

**5. What role does the prosecutor play here?**

Preliminary investigations concerning sexual crimes and domestic violence are to be conducted by the prosecutor. It is the prosecutor's duty to, as soon as possible, make a request to court for a legal representative for the injured party. The prosecutor is also responsible for the preliminary investigation being carried out with proper consideration taken to the human rights of both the injured party and the defendant.

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**6. Are there any specialised authorities within your jurisdiction which deal with these issues?**

In order to improve the way the authorities involved handle matters concerning child assault and sexual abuse of children, the Centre for Abused Children has been started up in Malmö. The idea is to protect children subject to physical and sexual abuse from further trauma during criminal proceedings, to facilitate the giving of evidence and to provide support and treatment. The Centre offers an environment suitable for children and provides rooms for treatment, medical examination, forensic child interviews, conferences and offices for the permanent staff. The permanent staff consists of three social workers with the task of coordinating authorities involved, providing treatment for the victims, support to the family and guidance to other social workers in Malmö in matters concerning assault, sexual abuse and neglect. This means that the child and its family need go to only one place to meet social workers, police, prosecutor, doctors and others involved in the case.