

Technical Specification Versus Criminal Procedure Law

Gediminas Buciuнас,

Dr, in position of assoc. prof., Academy of Public Security at Mykolas Romeris University, Law Faculty of Vytautas Magnus University, Kaunas, Lithuania, ORCID: <https://orcid.org/0000-0002-1826-0527>,
e-mails: gediminas1967@mruni.eu, gediminas.buciuнас@vdu.lt,

The author of this paper is going to present specifics of an interview with children at the court during pre-trial investigation stage. Main focus is technical specifications of interview premises, technical equipment in usage for conducting pre-trial investigative actions and its impact on provisions of criminal procedures laws on peculiarities of a child interview. The author shares his observations obtained during his performance of prosecutor's functions during interviews of children mainly victims who suffered sexual violence in the Republic of Lithuania. The interview procedure of a child is regulated in detail by criminal procedures laws, and standard operation procedures approved by the order of the General Prosecutor of the Republic of Lithuania. It creates an illusion that the rights of the child victim are protected, and no way for revictimization. Although practice proves once more that detailed and precious legal regulation of an interview procedure vulnerable group of human beings can't stop from becoming a victim once more. Questions may arise. Why? What are the reasons stand behind it? The answer to above-mentioned questions is simple. Technical specifications of equipment in usage during an interview, location of an interview room at the court, an interview room location in the building, an acoustics of premises may create suitable conditions for revictimization.

Keywords: a child; criminal procedure; interview; technical equipment; green room.

Технічна характеристика в контексті кримінально-процесуального законодавства Гедимінас Бучунас

Автор цієї статті має намір висвітлити специфіку інтерв'ю з дітьми в суді під час досудового розслідування. Основний акцент зроблено на технічних характеристиках приміщень для інтерв'ю, технічному обладнанні, яке використовують для проведення досудових слідчих дій, та його впливі на положення кримінально-процесуального законодавства щодо особливостей інтерв'ю з дитиною. Автор ділиться своїми спостереженнями, отриманими за час виконання функцій прокурора під час інтерв'ю з дітьми, які є жертвами, зокрема тими, хто зазнав сексуального насильства в Республіці Литва. Процедуру інтерв'ю з дитиною ретельно врегульовано кримінально-процесуальним законодавством, а також стандартними робочими процедурами, затвердженими розпорядженням Генерального прокурора Республіки Литва. Це створює ілюзію, що права дитини-жертви захищені та повторна віктимізація не має місця. Однак практика знову доводить, що докладне та точне правове регулювання процедури інтерв'ю з уразливою групою людей не може вберегти від повторної віктимізації. Чому? Якими є причини цього? Відповідь на зазначені вище питання проста. Технічні характеристики обладнання, використовуваного під час інтерв'ю, розташування приміщення для інтерв'ю в суді, розташування приміщення для інтерв'ю в будівлі, акустика приміщення можуть створити сприятливі умови для повторної віктимізації.

Ключові слова: дитина; кримінальний процес; інтерв'ю; технічне обладнання; «зелена кімната».

The one who knows all the answers has not been asked all the questions
Confucius

Main legal document — the Constitution of many countries contains a provision on the protection human being's dignity. For example, Article 21 of The Constitution of the Republic of Lithuania states that *the person of the human being shall be inviolable. The dignity of the human being shall be protected by law. It shall be prohibited to torture, injure a human being, degrade his dignity, subject him to cruel treatment as well as establish such punishments.* The author of this paper is going analyze how the specification of technical equipment, and location of an interview room and its acoustics can impact the main principle of a child

interview set up in criminal procedure laws. The article 1 of the United Nations Convention on the Rights of the Child states that *a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*. International and national legal acts set up additional safeguards for protection a child during criminal proceedings. For example, Article 186 of the Criminal Procedure Code of the Republic of Lithuania set up rules for minor witness and victim interviewing *1. A minor witness or a minor victim shall be questioned by the pre-trial judge in accordance with the procedure laid down in Article 184(3), (4), (5) of this Code, when his representative, the public prosecutor or the defence counsel requests it in the interests of the child, or in the cases provided for in Article 184(1) of this Code. 2. A minor witness or a minor victim shall be questioned during a pre-trial investigation in premises adapted for the questioning of children and, as a rule, not more than once. In cases where it is necessary to re-interview a minor witness or a minor victim during a pre-trial investigation, they shall normally be interviewed by the same person. A video and audio recording shall be made of their questioning. A minor witness and a minor victim shall be summoned to the hearing only in exceptional cases. 3. The examination of a minor witness or a minor victim at all times, as well as the examination of a minor witness or a minor victim in connection with offences against human life, health, liberty, freedom and inviolability of sexual decision, child and family, profiting from prostitution of a minor, or involvement of a minor in prostitution, or in any other cases, when requested by the parties to the proceedings or on the initiative of the pre-trial investigation officer, the public prosecutor or the pre-trial judge, a psychologist must be invited to assist in the questioning of the minor, taking into account the minor's socio-psychological maturity, as well as a representative of the State authority for the protection of the rights of the child, who shall observe from a different room to check that the rights of the witness or the victim of the proceedings are not being infringed during the questioning of a minor. ...4. The suspect and other participants in the proceedings, with the exception of the psychologist and the representative of the minor witness or the minor victim, shall not be allowed to be present in the room where the interview is being conducted. In such a case, an audio-visual recording must be made and the suspect and other participants in the proceedings must be able to observe and hear the interrogation from another room and to ask questions of the person being interrogated through the pre-trial judge.*

Paragraph 1 of Article 3 of the United Nations Convention on the Rights of the Child states that *in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*.

Although reality sometimes differs from legal rules. The author of this paper is an acting prosecutor and participated many times as a prosecutor during a child interview conducted by pre-trial investigation judge at first-instance courts in the Republic of Lithuania. A pre-trial investigator, a prosecutor has two options when it comes to recording interviews of victims, or witnesses: bring them into premises and record testimony of participants of criminal procedure or record them remotely over a phone or video chat. Remote interview and onsite interview during criminal proceedings comes with its pros and cons in terms of convenience.

The author of this paper is going to analyze onsite interviews from the point of view of the best interest of children through the lenses of practitioners. An onsite interview contains some elements of a remote interview due to the simple fact that an interviewee is in a separate premise during interview, the same time other participants of criminal proceedings are in another premise. They have the right to ask questions through an official who conducts an interview. For example, an investigating judge conducts the interview. In a given case all questions have to be given to an interviewee only through a an investigative judge (the author's notice — according to the Criminal Procedure Code of the Republic of Lithuania an investigative judge is a passive participant in criminal proceedings and may be involved in procedure only if one of the participants of the criminal case initiated it through submission of a request to a first instance court to interview at the court. During

interview, the principle of the best interests of the child must be followed. It means that pre-trial investigation bodies, and prosecution offices should take all possible and impossible steps to prevent a child from revictimization. It leads us to the next provision of criminal procedure law that an interview should be conducted only one time through all stages of criminal proceedings set up by international and national laws.

The author of this paper would like to highlight the importance of technical elements of interviews, which hugely impact the legal part of the interview procedure and human rights. The success of a child interview depends on many various by its nature technical specifications related to the interview premise and technical equipment. The author would like to raise a simple question. Do we have clear rules describing requirements for the interview room, entrance to it and its location in the building of institution. For example, the premise for the interview has to be located in a calm area of the building. It should be located far from the noisy street, if possible with a good panoramic view. The next important issue is safeguards which allows one to avoid any contact even visual with other participants of criminal proceedings mainly with suspects in the interview room and around it. It prevents from revictimization of a child-victim. Another important issue is the room itself: acoustics, colour of walls and ceiling, lighting, soundproofing of premises, furniture etc. An effective acoustic premise should create the right and comfortable conditions for the interview. Another essential element for onsite interviews which may bring the maximum audio and/or video quality is a microphone. The author of this paper would like to highlight the importance of microphones during the interview of a child. There are many kinds of microphones. They can be classified into two categories: directional and omnidirectional. Directional microphones pick up sound from a specific direction, while omnidirectional microphones capture sound from all around. Each kind of microphone has its own advantages and disadvantages. Directional microphones are better for isolation the interviewee's voice from background noise, and unwanted sounds going from different sources of noise. For example, prevent noise going into the interview room from the noisy street. Above mentioned kind of microphone requires one to be close to an interviewee. Omnidirectional microphones are more versatile and flexible, but they can also pick up unwanted sounds and create an echo. Due to the interview room size, specifics of the functioning microphone (the author's notice – a microphone catches or does not catch unwanted sounds, echo effects in the premise) during the interview of a child on circumstances of sexual violence could hardly be understandable for an investigating judge, other participants including a suspected. It leads to the following steps – to ask a victim to repeat the same part of testimony once more and once more the same thing several times in a row. It creates huge stress for a child. Why does an official ask the same question several times? The answer is in paragraph 3 article 6 of the the European Convention on Human Rights. It states that *everyone charged with a criminal offence has the following minimum rights. (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.* The European Court on Human Rights in case *Al-Khawaja and Tahery v. the United Kingdom* 2011, § 118 states that *the admissibility of evidence is a matter for regulation by national law and the national courts, the Court's only concern under Articles 6 §§ 1 and 3 (d) of the Convention is to examine whether the proceedings have been conducted fairly.* The European Court on Human Rights in cases *Hümmer v. Germany*, 2012, § 38; *Lucà v. Italy*, 2001, § 39; *Solakov v. the former Yugoslav Republic of Macedonia*, 2001, § 57 state that pursuant to article 6 § 3 (d), *before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument.*

Criminal proceedings concerning sexual offenses are often conceived as an inquisition by the victim. The choice of the proper kind of microphone to use during an interview of a child, the peculiarities of the interview room, acoustic effects have an enormous affect on a victim's mental health. It also can be considered as revictimization done officially by an investigating judge, a police investigator or a prosecutor.

The author of this paper would like to highlight the importance of requirements for an interview room and technical equipment as essential preconditions for successful interview of a child suffering from sexual violence, and the same time as a preventive measure against the revictimization of a child. It also leads to sum up that principles on interview of a child who suffered sexual violence must prevail under technical requirements for premises, and technical equipment.

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Observations on the Principles of Activity in the Field of Judicial Expertise in the Republic of Moldova

Olga Cataraga,

Doctor of Legal Sciences, National Centre for Judicial Expertise Ministry of Justice, Mun. Chisinau,
Republic of Moldova, e-mail: olga.cataraga@justice.gov.md

Victoria Prisacaru,

National Anticorruption Center, mun. Chisinau, Republic of Moldova, e-mail: victoria.prisacaru@cna.md

Peter Petkovich,

National Centre for Judicial Expertise Ministry of Justice, Mun. Chisinau, Republic of Moldova,
e-mail: piotr.petkovici@justice.md

This article aims to explain the activity of judicial expertise in the Republic of Moldova. The central problem of the paper is the principles that guide the judicial expert in his professional work and how to approach them. The activity of judicial expertise in the Republic of Moldova is a licensed one, however, in some circumstances, the legislator provides for the possibility of training persons with recognized competence as ad hoc experts. The benefits of this provision are obvious, but it is necessary to discuss the risks generated, starting from the approach of judicial practice in the sense presented. In this sense, in this article the authors present reasoning on how to approach the principles of activity in the field of judicial expertise, their impact