

Editorial

In July a group of magistrates, lawyers, psychologists and criminologists has gathered to Noto, in Italy, in order to modernize the first version of the Charter, which was drawn up in 1996 and which has been reproduced in this review (January-June 2002, n. 1, year 3). This document is of the utmost importance because it outlines operating modalities in a field, like that one of the psychological-judicial diagnosis on the sexual abuse on children who are result of a continuous either epistemologic and experimental and forensic experience updating.

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THE NOTO CHARTER REVISION OF 7th July 2002

GUIDELINES FOR THE EXAMINATION OF A MINOR IN CASES OF SEXUAL ABUSE

PREAMBLE

This revision to the Noto Charter of 1996, which has already established itself as a faithful reference text for jurisprudence, literature and doctrine, has been rendered necessary by the legislative developments which have taken place since then and by the progress of scientific research in this area.

The guidelines that follow must be considered suggestions aimed at guaranteeing the trustworthiness of the results of the various technical assessments and the genuineness of witness statements at the same time as assuring the minor of psychological protection, and all this with due respect for the constitutional principles of fair trial and the provisions of international law.

Where these guidelines do not refer to specific professionals they are to be construed as relating to whomsoever establishes any relationship with a minor in the course of legal proceedings.

1) Technical consultancy and examination in cases of sexual abuse must be entrusted to specially trained professionals. This rule applies as much to cases where such a professional is chosen in the public sphere as in the private sphere. Such experts are required to guarantee their constant professional development.

In gathering and evaluating information from a minor such experts must:

- a) utilise methodologies and criteria recognised as being sound by the relevant scientific community;
- b) make explicit the theoretical models utilised so as to permit critical evaluation of their results.

2) A psychological evaluation must not have as its aim the establishment of the facts of the case being tried, which remains the exclusive domain of the judicial authorities. The duty of the expert is to express judgements of a psychological nature, taking into consideration the particularities of the minor's stage of development.

3) In cases of abuse within a family the investigations must be extended to members of the family, including the person alleged to have committed the abuse, and, where necessary, to the social situation of the minor. It is methodologically wrong to express an opinion without having examined the minor and the adults concerned, provided always that the requisite and material opportunity to do so has arisen. Whenever an investigation cannot be conducted to such a degree, full account must be given of the reasons for its incompleteness.

4) Video recording, or at the very least audio recording, of the activities of the gathering of the witness statements and the behaviour of the minor must be employed whenever possible. Such material, in order to be used for judicial purposes, shall be placed at the disposal of the parties and the magistrate. Whenever the minor undergoes any psychological test the notes and results must be produced together in their original form.

5) In order to guarantee in the best way possible the objectivity of the investigation, the expert shall take care to individuate, expound and evaluate the various alternative hypotheses, whether these emerge or not during the course of interview.

6) In any interview with the minor the expert must:

- a) guarantee that it take place at hours, times, places and in ways such as to ensure as far as possible the serenity of the minor;
- b) inform the minor of his or her rights and role in relation to the current proceedings;
- c) permit the minor to express opinions, needs and preoccupations;
- d) avoid questions and behaviour which might compromise the spontaneity, sincerity and genuine nature of the answers, and without involving the minor in responsibility for any eventual procedural development.

7) An ancillary evidentiary hearing (see Article 392 of the Code of Criminal Procedure) is the best way to hear the statements of the minor in the course of legal proceedings.

8) Symptoms of distress which the minor may show cannot by themselves be considered specific indicators of sexual abuse since they may derive from family conflict or other causes; at the same time, their absence does not exclude by itself such abuse.

9) Whenever a problem is encountered or a question is raised regarding the compatibility of the psychological profile of the minor and the hypothesis of a crime of sexual assault, the expert must plainly state, to the person or body that has conferred the duty of investigation on him or her, that the expert's current knowledge of the case does not permit him or her to identify a link of compatibility or incompatibility between the symptoms of distress and the alleged traumatic events. In addition, if not asked to do so, the expert must not offer an opinion on the issue of compatibility, and nor must the expert either offer or formulate any other conclusion.

10) The function of the expert charged with carrying out an evaluation of the minor for judicial purposes must remain distinct from the role of support and treatment. These functions must in any case be assigned to different persons. This distinction between roles and persons carrying them out must be respected even in the case in which these tasks are assigned to the public health and social services. In any case, any information obtained in the course of the activities of support and therapy of the minor cannot by their very nature be considered as having any influence on the determination of fact, which is reserved exclusively to the judicial authorities.

11) Psychological assistance to a minor shall be entrusted to a specialist who shall stay with this role throughout all stages and grades of the criminal procedure. This person must be different from the other expert already referred to and in any case must not interfere in the investigation and formulation of evidence.

12) In the light of the principles expressed in his Charter the relevant institutions are strongly urged to give concrete actuation to the following provisions contained in Article 8 of the PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, New York, 6th September 2000, ratified by law of the State of 11th March 2002, number 46:

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- (a) Recognizing the vulnerability of child victims and adopting procedures to recognizing their special needs, including their special needs as witnesses;
- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
- (c) Allowing the views, need and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- (d) Providing appropriate support services to child victims throughout the legal process;
- (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid inappropriate dissemination of information that could lead to the identification of child victims;
- (f)
- (g)

2.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure the appropriate training, in particular legal and psychological training, for the person who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

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