

*Making child friendly justice a
reality: The key elements for the
professionals*

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Child Friendly Justice



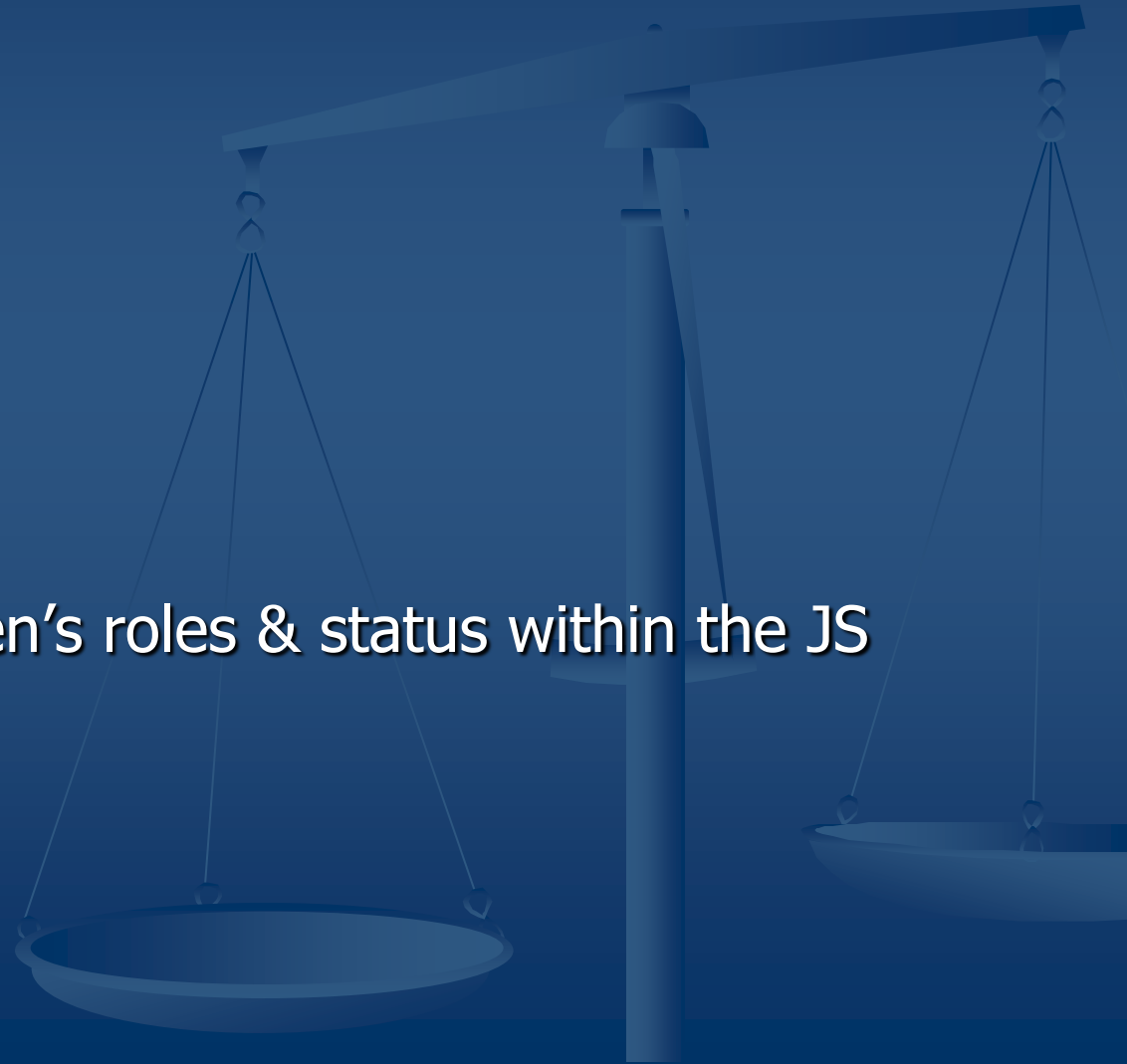
justice systems which guarantee

- a) the effective implementation of all children's rights in the best possible manner,
- b) bearing in mind the following principles: participation, BIoC, dignity, nondiscrimination, RoL
- c) giving due consideration to the child's level of maturity and understanding and the circumstances of the case.

It is justice that is
accessible,
age appropriate,
expeditious

adapted to and focused on the needs and rights of the child,
respecting the rights of the child (right to due process, participation,
understanding of the proceedings, privacy, integrity, dignity).

- Children : particularly vulnerable group - special precautions must be taken to protect and/or assist them
- Need to develop
 - Principles
 - Standards
 - Strategies
 - Legal documents
 - Guidelinesthat address children's roles & status within the JS



The Guidelines on CFJ

- integrated wholistic approach:

they apply to all ways in which children are likely to be, for whichever reason and in whichever capacity (V/W/P/P), brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law or out of court proceedings (custody cases, divorce cases, criminal cases (V/W/P), asylum cases ...)

- declaration of principles + practical guide

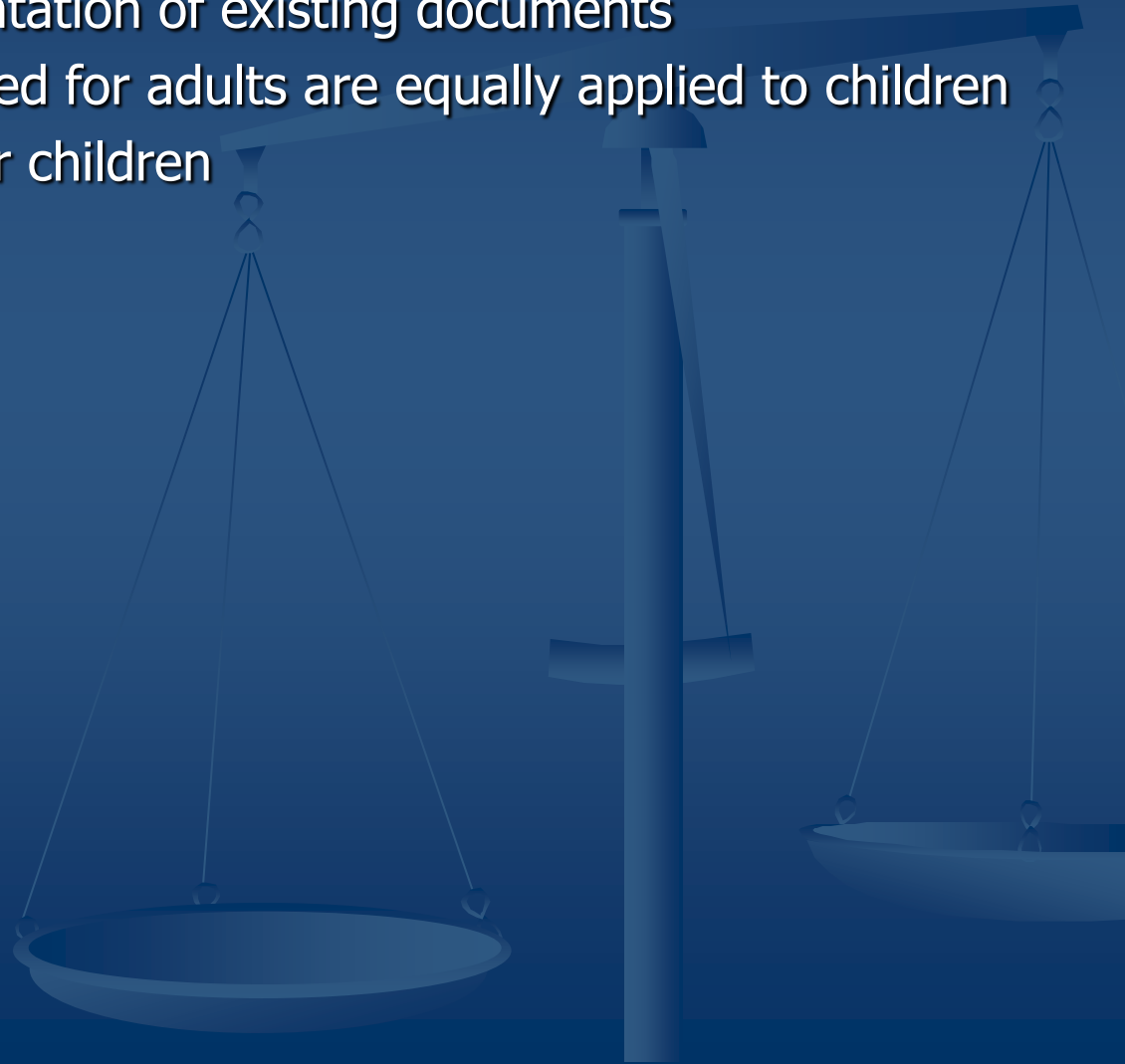
- deal with the status and position of children within the JS

What we did:

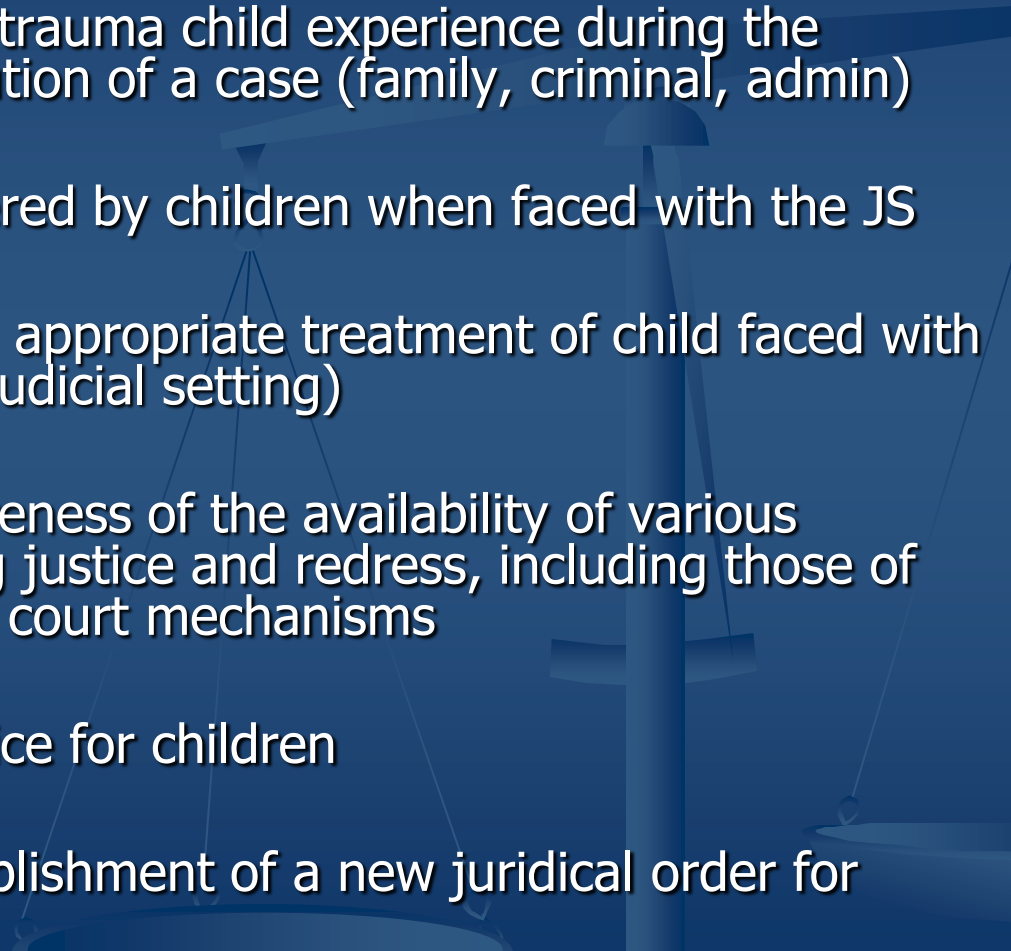
- Identified the **obstacles & challenges** children face when encountering JS (obstacles to access the court, to protect their rights, striking gap between provisions & children's actual rights)
- Understand the children's **needs, experience, satisfaction** with JS
- Evaluate **existing programs & mechanisms** to assist & protect children V/W/P (best practices of child friendly procedures)
- Find to what extent obstacles, challenges & needs of children **V/W** are different from those of **children in conflict with law; criminal cases v. family cases ...**
- Identify the **lacunae** in existing international instruments dealing with children

For what do we need Guidelines?

- Ensure effective implementation of existing documents
- Ensure that rights developed for adults are equally applied to children
- Develop specific rights for children
- Fill in lacuna
- Harmonize law



Aims of Guidelines

- To ensure awareness & protection of children rights in court, out of court proceedings and throughout JS
 - To rise awareness of the trauma child experience during the investigation and prosecution of a case (family, criminal, admin)
 - To reduce the harm suffered by children when faced with the JS
 - To secure the proper and appropriate treatment of child faced with the JS (in judicial & non-judicial setting)
 - To promote general awareness of the availability of various mechanisms for obtaining justice and redress, including those of restorative justice, out of court mechanisms
 - To enhance acces to justice for children
 - To contribute to the establishment of a new juridical order for children living in Europe
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Guidelines on CFJ

- Fundeamental principles
- CFJ in Judicial Proceedings
 - General elements of CFJ
 - Befor Proceedings
 - During Proceedings
 - After Proceedings



Fundamental principles (CRC+)

-guiding status

- should be reflected in implementation of CFJ

■ Participation

- Right to speak
- Opinions must be taken into consideration
- Presumption of capacity
- States discouraged to set the age limits

■ The best interest of the child

- Primary consideration
- Multidisciplinary methods of assessing
- Balancing with interests of others
- Comprehensive approach

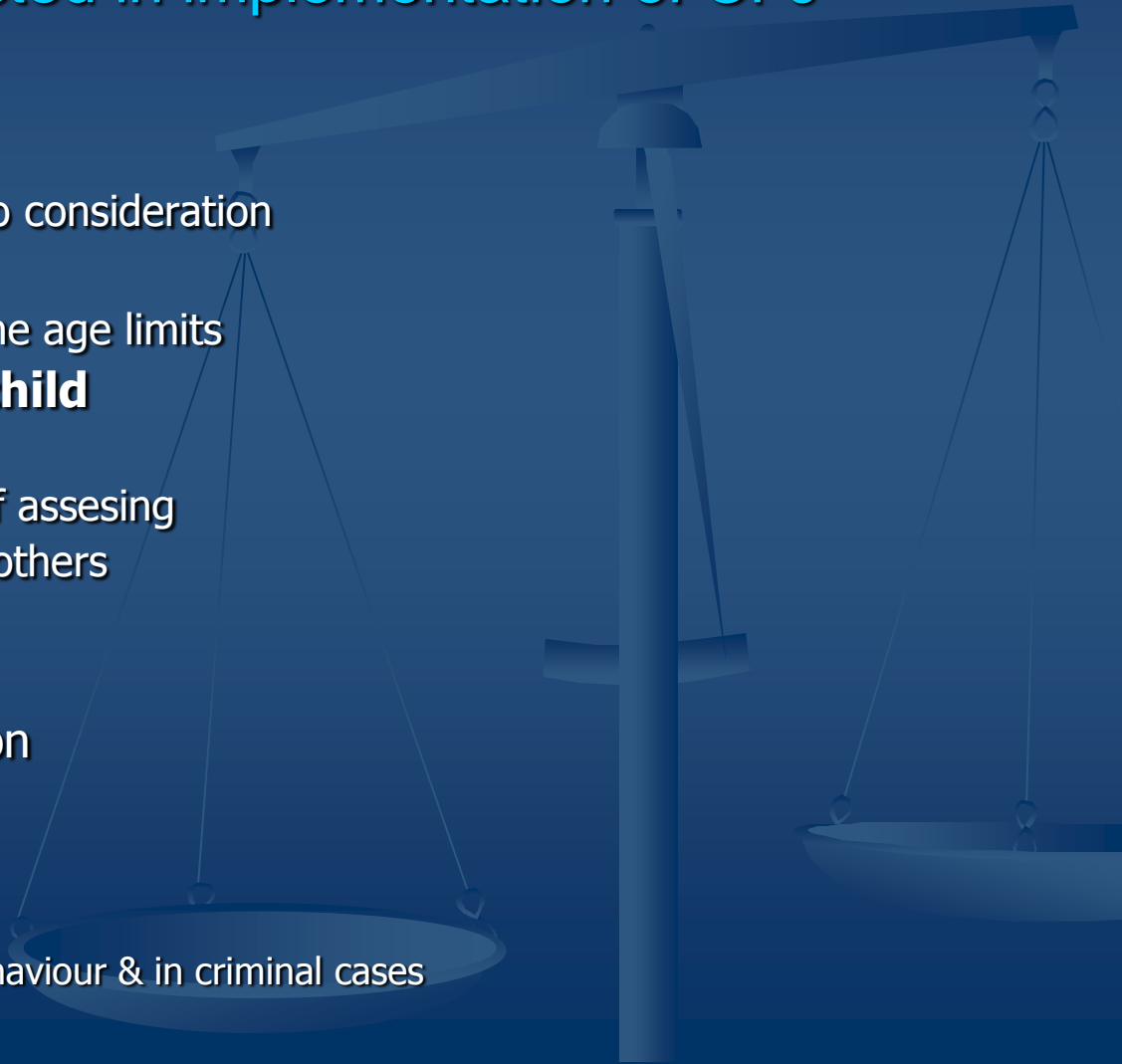
■ Dignity

■ Protection from discrimination

- Age & capacity
- Positive discrimination

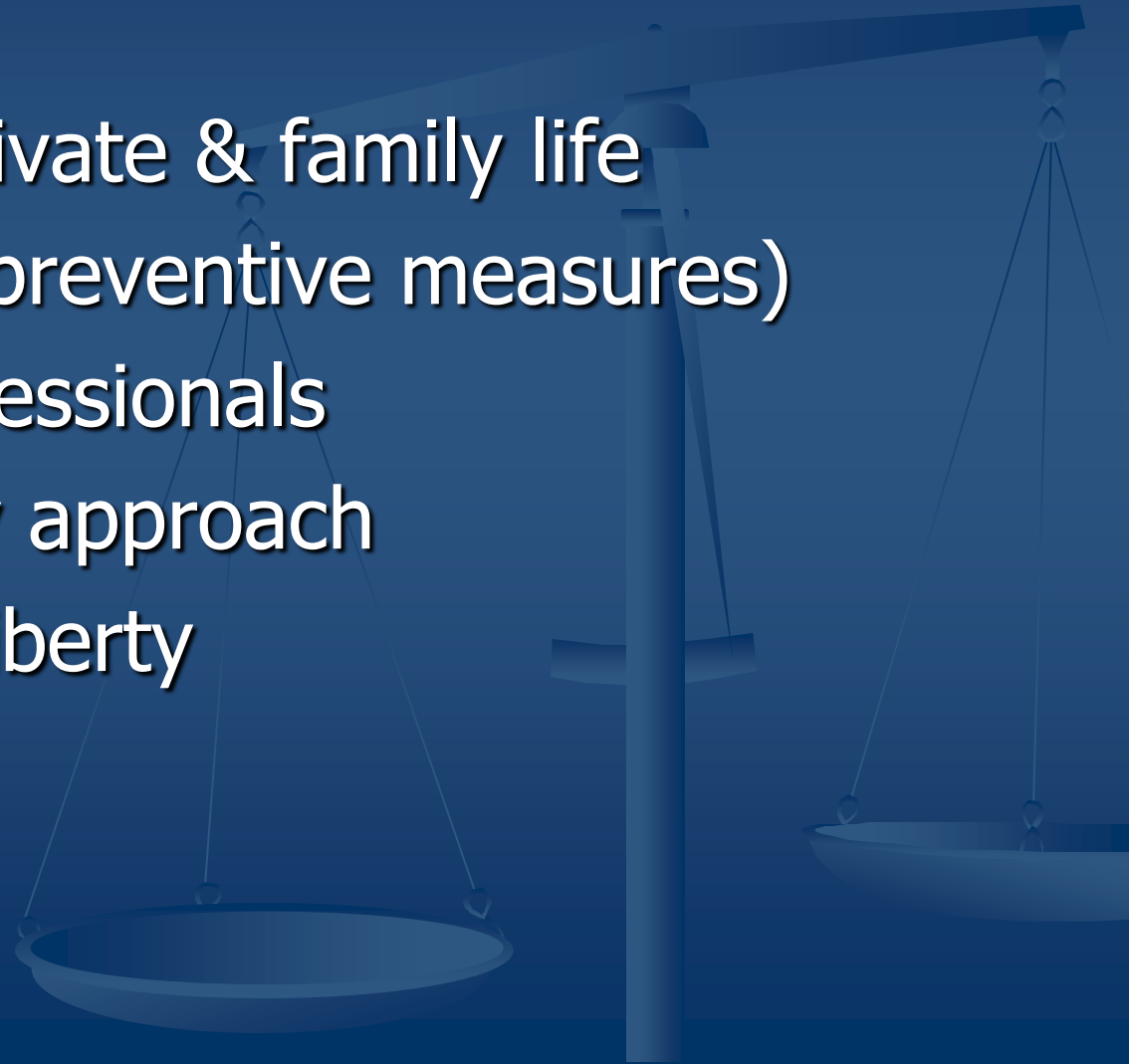
■ Rule of law

- Problematic with anti-social behaviour & in criminal cases



General Elements

- Info and advice
- Protection of private & family life
- Safety (special preventive measures)
- Training of professionals
- Multidisciplinary approach
- Deprivation of liberty



The right to be informed

- Info. relevant for their case
 - the relevant judicial and administrative proceedings
 - the role of the V/W in it
 - the existing mechanisms for review of decisions affecting V/W
 - support mechanisms
 - the cost of legal advice or help
 - the progress of the case
 - the results of relevant stages of the proceedings, the decisions reached, the verdict and sanction

(The wish not to receive such info. should be respected)

- Info. necessary for them to protect their interests and fulfil their rights
 - right to protection,
 - compensation for damages from the perpetrator
 - possibility of compensation by the state or emergency financial support
 - availability of relevant services

- Info. provided in a manner **adapted** to their age and maturity, in a **language** that they can easily understand

■ Children must be informed of

- all the rights that V/W have in general & that they enjoy pursuant to the CRC & other international instruments aimed at protecting children and their rights
- the existing support mechanisms for the child when making a complaint and participating in investigations and court proceedings
- assistance of specialized professional personnel (child protection services, victim advocates)
- the possible consequences of compliance with his/her own views and the possible consequences of any decision s/he makes
- If necessary, when the person prosecuted or convicted is released temporarily or definitively (sexual abuse/exploitation)

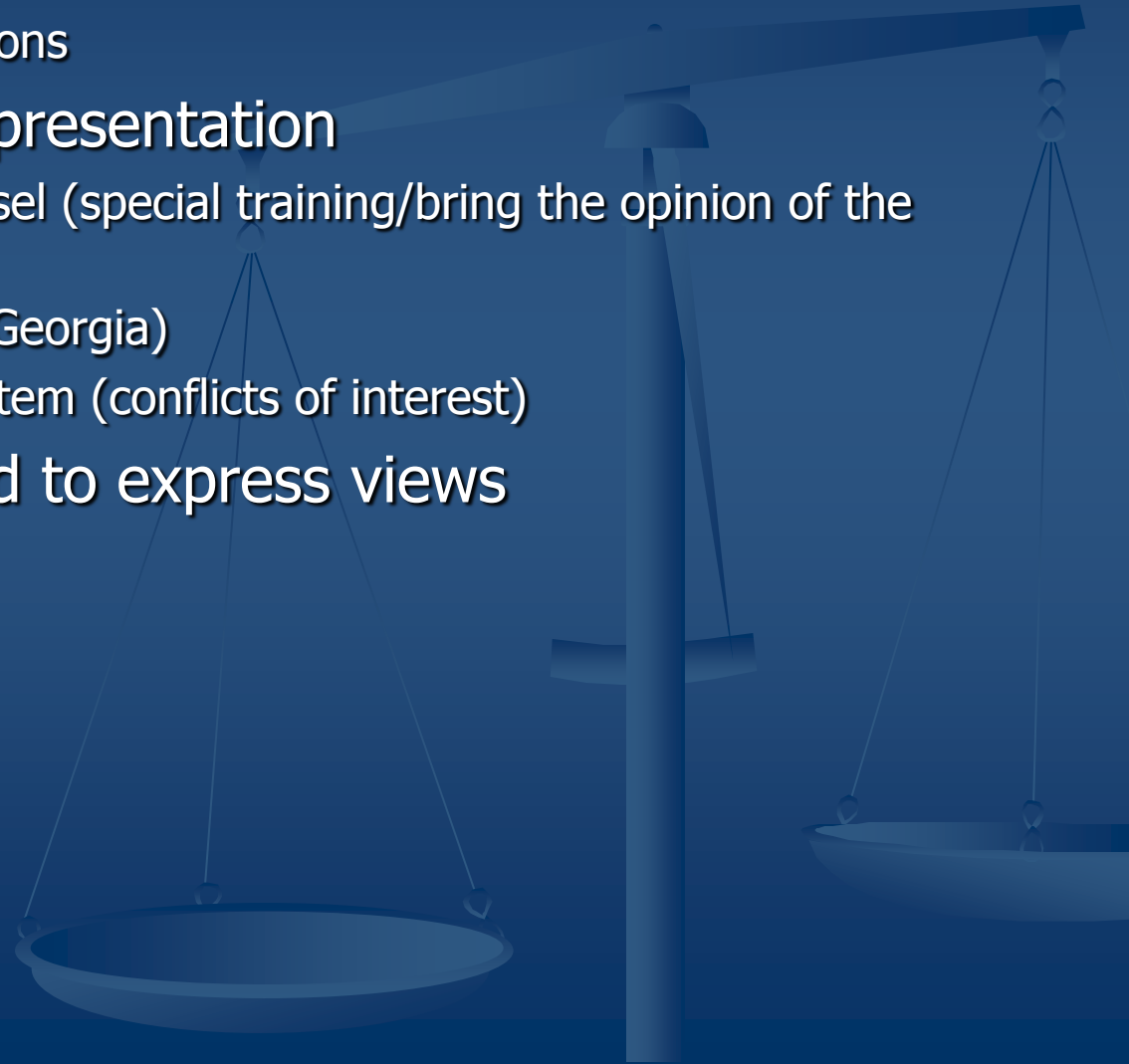
- The setting-up of **information services** (children's telephone or Internet help lines, children's rights shops)

CFJ before JP

- The minimum age of criminal responsibility (set by law, not too low)
- Alternative to JP encouraged, but not obstacle to JP
- Alternatives should guarantee same level of protection
- Children and the police (granted greater rights than adults)
 - Informed why s/he is in custody
 - Provided with access to lawyer
 - Right to contact parents/person of trust/youth protection services (Okaly v. Turkey)
 - Inform parents & ask them to come (Okkaly v. Turkey)
 - Questioned in presence of a lawyer, parent/person of trust (CPT, Salduz v. Turkey)
 - Not detained with adults
 - Conditions safe and appropriate to their needs
 - Prosecutors ensure use of CF approach throughout investigation
 - May introduce special police units

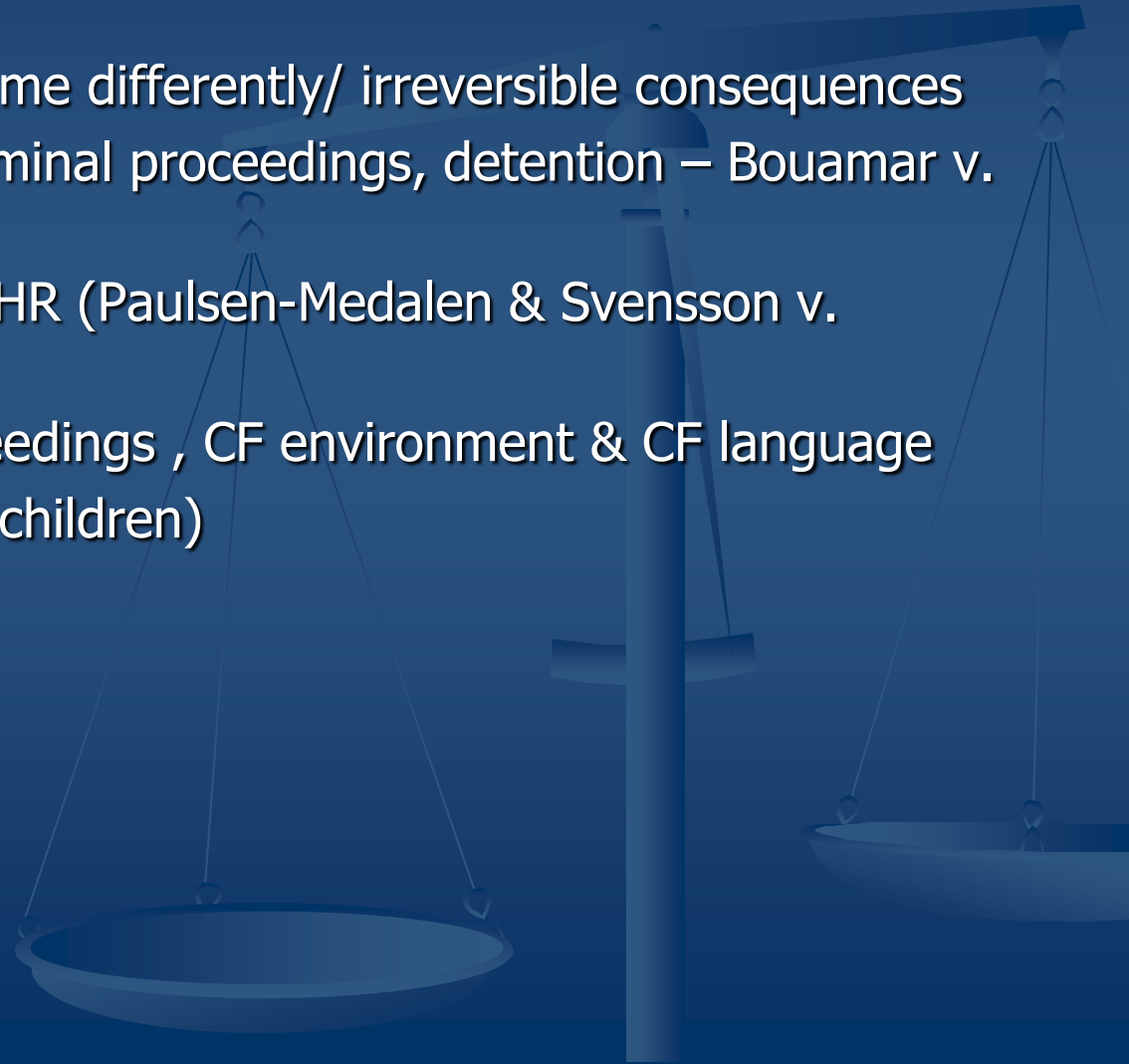
CFJ during JP

- Access to court & to the JP
 - Right to access competent authorities themselves
 - Remove obstacles
 - Extend period of limitations
- Legal counsel and representation
 - Right to own legal counsel (special training/bring the opinion of the child)
 - Access to free legal aid (Georgia)
 - Appoint a guardian ad litem (conflicts of interest)
- Right to be heard and to express views



■ **Avoiding undue delay**

- Children experience time differently/ irreversible consequences
- Need to prioritise (criminal proceedings, detention – Bouamar v. Belgium)
- Violation of art. 6. ECHR (Paulsen-Medalen & Svensson v. Sweden)
- Organization of the proceedings , CF environment & CF language
- Evidence (statements by children)



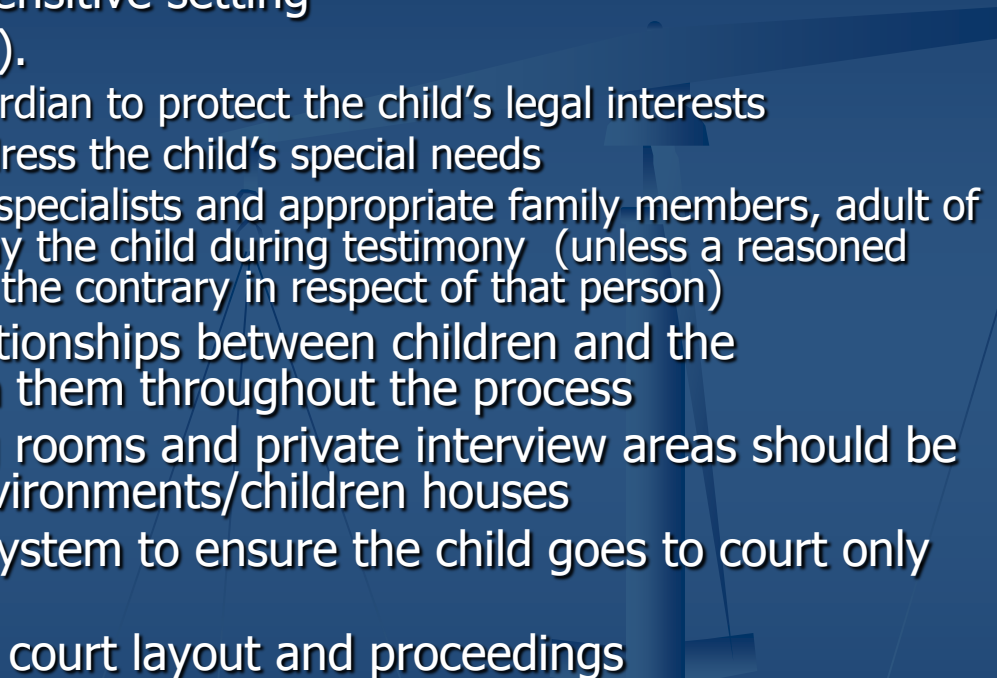
Access by child to proceedings

- A right **to access** competent authorities **themselves**
 - when legal representative does not act; in cases of conflict of interests (*X and Y v. the Netherlands* - even against acts committed by their parent or legal representative;)
 - Certain age limit/ sufficient understanding of their rights, remedies (burden of proof)
 - Designated adults can initiate proceedings in the name of the child
 - child-friendly reporting systems (social services, special police units, child rights institutions, schools, helplines) – Belgium, Denmark, Croatia
 - strong support for establishment of a complaint procedure under CRC
- **Remove any obstacles** (costs, lack of legal counsel, parental consent)
- **the limitation period** should continue to run for a sufficient period of time to allow a child victim to reach the age of majority to file a complaint and to allow prosecutions to be effectively initiated (to meet the requirements of proportionality this rule should apply to a limited number of serious offences - Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse)
- **uncertainty as to the actual age** of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim (Protocol to CRC on the sale of children, child prostitution and child pornography)
- **ex officio prosecution** of cases where child is a victim (Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Art. 32) - should be extended to other offences where the victim is a child (e.g. domestic violence, neglect of children, abduction, etc.).

Right to be heard and express views

- The right not duty to express their views and concerns (sufficient understanding/circumstances of the case):
 - related to their **involvement** in the justice process,
 - regarding their **safety** in relation to the accused,
 - the **manner** in which they prefer to provide **testimony**
 - their **feelings** about the conclusions of the process, directly or through an intermediary
- Child should not be precluded from being heard solely on the basis of the age; could refuse if this is in the BIoC
- Means used should be adapted to the child's level of understanding & ability to communicate (child sensitive) as well as the environment (children's house), omit certain formalities, questioned by specialists/judges (child decision)
- Children should be properly informed of this right & that the judge is not obliged to follow their opinion
- Professionals should give **due regard and weight** to the child's views and concerns and, if they are unable to accommodate them, **explain the reasons to the child**
- Judgement should be duly reasoned and explained to child

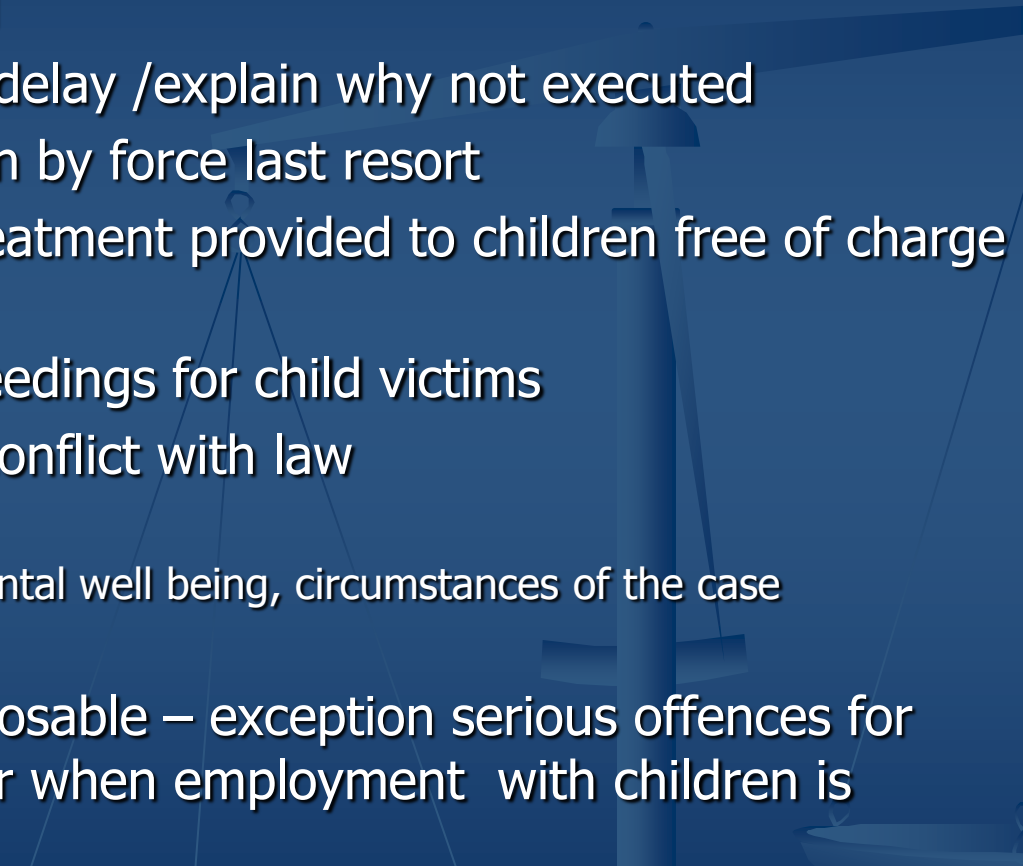
Organization of the proceedings , CF environment & CF language

- Non intimidating and child sensitive setting
 - provide support (when in BI).
 - by legal representative/guardian to protect the child's legal interests
 - child V/W specialists to address the child's special needs
 - support persons, including specialists and appropriate family members, adult of his/her choice to accompany the child during testimony (unless a reasoned decision has been made to the contrary in respect of that person)
 - ensure continuity in the relationships between children and the professionals in contact with them throughout the process
 - separate courthouse waiting rooms and private interview areas should be provided, modified court environments/children houses
 - an appropriate notification system to ensure the child goes to court only when necessary
 - Familiarize children with the court layout and proceedings
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■ Evidence/statemnts by children

- interview rooms designed for children
- interdisciplinary services for child victims integrated in the same location (US, Island, Norway, Sweden)
- guidelines and codes of conduct on interviewing children should be developed and persons conducting interviews should be specially trained (avoid leading questions)
- allow child not to testify
- no requirement for oath - the mere fact that evidence by children is not given under oath should not be a reason for its exclusion
- recesses during a child's testimony
- hearings scheduled at times of day appropriate to the age and maturity of the child
- the number of interviews should be limited so far as strictly necessary for criminal proceedings (same person, same place)
- closed courtroom
- examined out of sight of the alleged perpetrator, use of screens
- questioned in a child-sensitive manner under supervision of judges and with the assistance of psychological experts
- use of testimonial aids
- the use of communication specialists helping the witness understand questions put to them by lawyers and police officers, and to communicate their answers (England)
- alternatives to live in-court testimony (video taped depositions; two ways closed-circuit television)
 - Defendant's rights /Confidentiality- protection orders

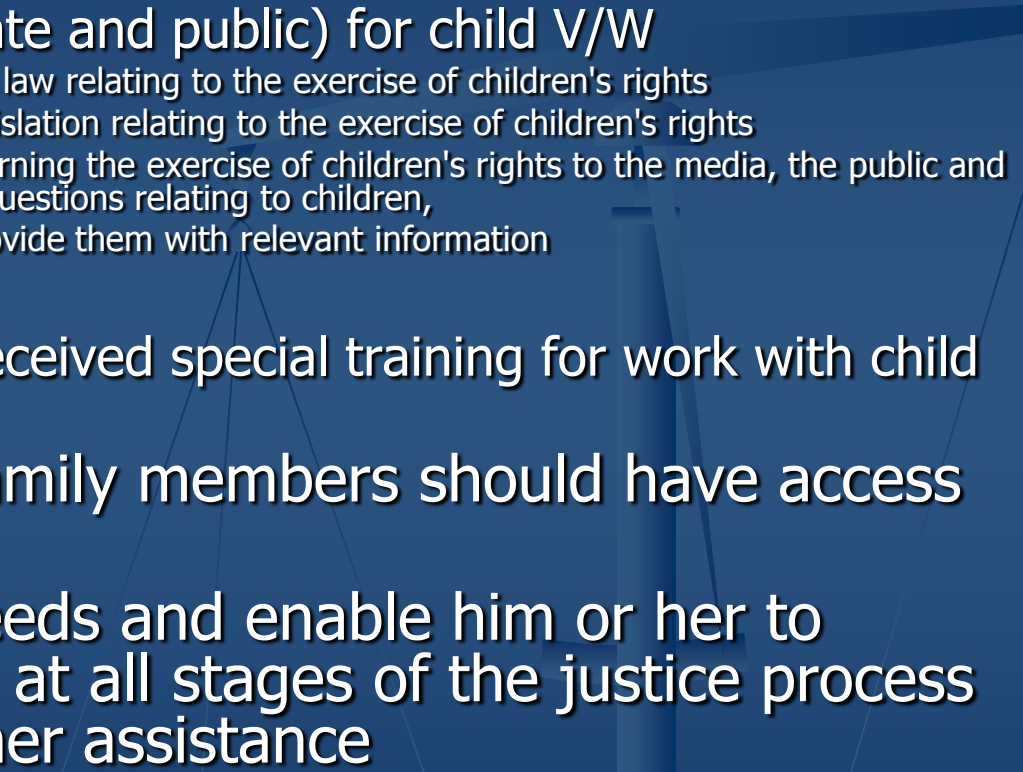
CFJ after JP

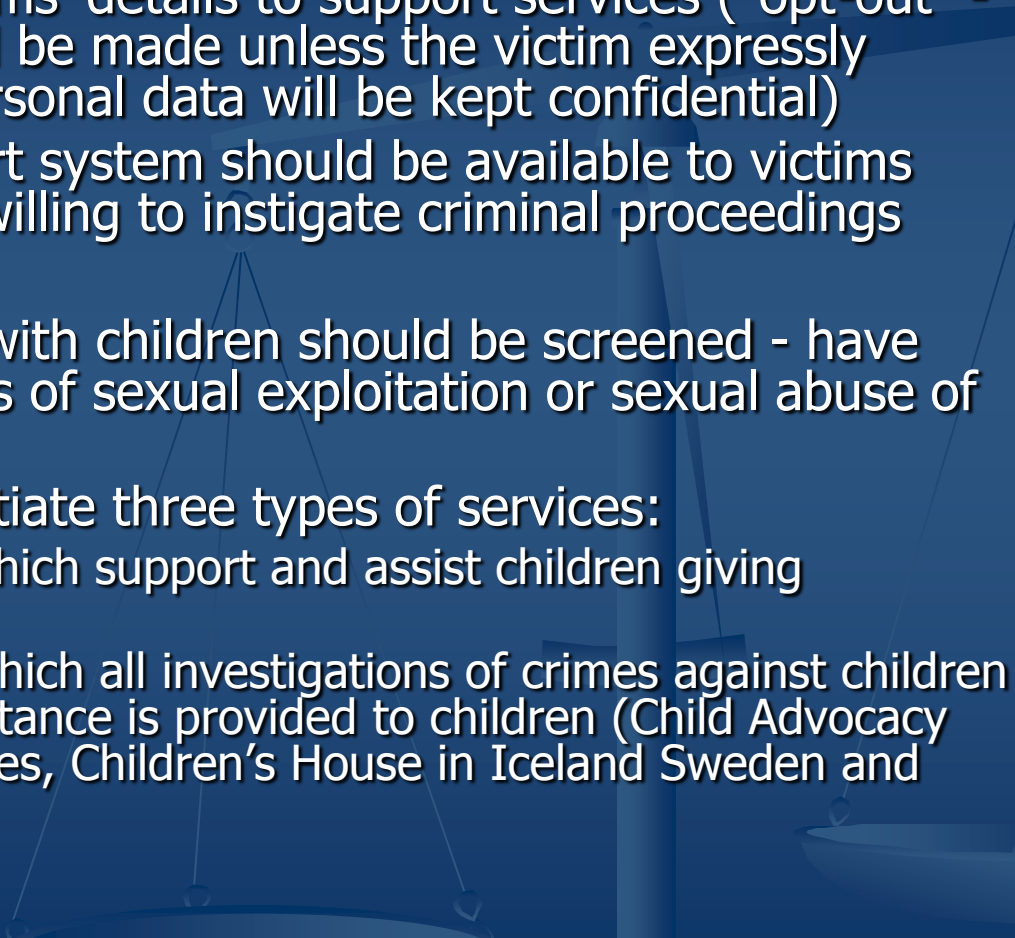
- Explain decision to a child
 - Execute decision without delay /explain why not executed
 - Implementation of decision by force last resort
 - Guidance, support and treatment provided to children free of charge by specialized services
 - State cover costs of proceedings for child victims
 - Measures for children in conflict with law
 - Principle of proportionality
 - Child's age, physical and mental well being, circumstances of the case
 - Educational not punitive
 - Criminal records non disclosable – exception serious offences for reasons of public safety or when employment with children is concerned
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Thank you!



Effective assistance to children

- Specialized services (private and public) for child V/W
 - make proposals to strengthen the law relating to the exercise of children's rights
 - give opinions concerning draft legislation relating to the exercise of children's rights
 - provide general information concerning the exercise of children's rights to the media, the public and persons and bodies dealing with questions relating to children,
 - seek the views of children and provide them with relevant information
 - professionals who have received special training for work with child victims
 - where appropriate, family members should have access to assistance
 - address the child's needs and enable him or her to participate effectively at all stages of the justice process + psychological & other assistance
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- co-ordinate support so that the child is not subjected to excessive interventions (coherent strategy – a single organization or networking of organizations)
 - receive assistance commencing at the initial report and continuing until such services are no longer required
 - automatic passing of victims' details to support services ("opt-out" - referral to services should be made unless the victim expressly refuses, in which case personal data will be kept confidential)
 - the assistance and support system should be available to victims even though they are unwilling to instigate criminal proceedings
 - a multi-agency approach
 - staff/volunteers working with children should be screened - have not been convicted of acts of sexual exploitation or sexual abuse of children
 - roughly we could differentiate three types of services:
 - child witness services, which support and assist children giving testimony
 - child-friendly places in which all investigations of crimes against children are carried out and assistance is provided to children (Child Advocacy Clinics in the United States, Children's House in Iceland Sweden and Norway)
 - help lines
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