

What makes child sexual abuse victims especially vulnerable?

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1. Vulnerability factors are based on the Directive 2012/29/EU and specific features of CSA cases

Child sexual abuse (hereinafter referred to as “CSA”) is an especially serious socio-pathological phenomenon. From the legal perspective, CSA is a crime, and from the point of view of intensity of mental harm, it is a specific trauma, in which the process of the victims’ psycho-social recovery is especially demanding. The manner, in which both layman and professionals handle CSA cases, oftentimes amounts to *secondary victimization*.

Due to the above facts, the Directive 2012/29/EU provides CSA victims with the *status of especially vulnerable victims*¹, based on which they are entitled to a special level of protection and support in all stages of the criminal proceeding and also once it is over. In the CSA context, factors of especial vulnerability of victims include mainly: young age of the victims, the perpetrator’s supremacy, relationship to the perpetrator or dependence on the perpetrator, communication difficulties, and the fact in itself that it is a sexual crime.

CSA has a number of specific features that require a specific response by the criminal justice system – such that reflects and does not ignore these features.² Main features of CSA cases are the following:

- a) The victim is usually **the only witness** and what’s more, the victim is usually **exposed to massive manipulation** (and silencing) on the hand of the perpetrator and also by the surrounding environment.
- b) Young **age** of the victim that can be misused to undermine the credibility of the victim’s testimony despite the fact that the child is more vulnerable to sexual victimization exactly due to his/her young age and is entitled to a special level of protection.
- c) **Lack of forensic evidence** – even in cases of penetration there may be no medical evidence available (due to tissue flexibility and fast healing).
- d) **Counterintuitive reactions** (of both primary and secondary) **victims** – i.e. reactions that do not correspond with the expectations of the average person concerning how a victim should correctly or logically react. Reactions of CSA victims are highly justified in relation to the context of the situation and trauma mechanisms, but the average person (both laymen and professionals) lacks the knowledge about the specificities of CSA trauma, and therefore is biased in assessing the victims’ behavior.
- e) **Multiple assaults**, i.e. the fact that CSA may last days, weeks, months, years. Due to the number of assaults it may be difficult for the child to remember accurately the details of every individual assault.
- f) **Emphasis on the child’s credibility** – a combination of counterintuitive reactions, missing witnesses and/or forensic evidence lead to challenges of the victim’s credibility, which is the core of the defense of the accused.³

¹ Compare: Directive of the European Parliament and Council 2012/29/EÚ, par. 38, 55 - 57, art.. 22.

² Compare: COSSINS, A. Prosecuting Child Sexual Assault Cases, art. 10.

³ Compare: COSSINS, A. Prosecuting Child Sexual Assault Cases, 2006; Compare also with: The Crown Prosecution Service: Guidelines on Prosecuting Cases of Child Sexual Abuse, 2013.

2. Misunderstood counterintuitive reactions as a factor of especial vulnerability of CSA victims before law enforcement authorities (not only) in criminal proceeding

A frequent determinant of the failure in the process of clarification, investigation and prosecution of CSA cases is the *focus on the investigation of the credibility of the victim without a due consideration of the so-called counterintuitive reactions*. Therefore we will try to explain the most frequent forms of *counterintuitive reactions* that include mainly the following: 1) “passiveness” of the victim, 2) a delay in the disclosure, 3) inconsistent testimony, 4) recantation of the testimony, 5) positive attitude to the perpetrator, 6) absence of trauma symptoms and 7) inconsistent reactions on the hand of the protective parent.

2.1 *The victim is “passive”*

The average person would expect that a “normal” reaction when someone is assaulted by an aggressor is a visible and loud defense – a fight or flee reaction, shouting, protest. If the victim does not show such signs of resistance, the average person might believe that it was not a sexual assault.⁴ In this context it is worthwhile mentioning that the typical list of circumstances that must be clarified and proven in the criminal proceeding involving sexual abuse includes **whether the victim defended him/herself**, what was the extent and intensity of the defense, whether there are traces left behind as a result of the defense on the clothes and on the body of the perpetrator.⁵

Such expectations and/or so strictly defined tasks for the investigators may lead to biased conclusions because they don't consider all the options of an organism's instinctive defense. A traumatic stimulus basically leads to **two types of automatic defense reactions** of the organism: 1. *hyperarousal* – overall excitement enabling the organism to actively fight or flee and 2. *hypoarousal* – an overall paralysis, “freezing” of the organism, in which it is impossible to show any kind of an active external reaction. It is important to know that instinctive defense of the organism is not **controlled by the person's will** and does not tell anything about the character and value orientation of a person. This fact is of vital importance to understand the victim's reactions in CSA context.

Based on research, factors automatically inducing a freezing reaction include e.g. fear, perceived helplessness, and mainly the concept of **betrayal** – a child who is abused trusts the perpetrator.⁶ CSA is a specific form of violence, in which an assault may not be aggravated by the use of physical force. The assault has rather unclear contours, since the perpetrator may treat the victim nicely, gently, and kindly⁷ and use various forms of manipulation in order to make the victim cooperate. This fact is

⁴ Compare: The Crown Prosecution Service. Guidelines on Prosecuting Cases of Child Sexual Abuse, Annex C.

⁵ Compare: CHMELÍK, J. et al. Morality, pornography and moral crimes, p. 116 - 117.

⁶ Compare: FREYD, J., BIRRELL, P. Blind to betrayal, p. 26, 57. The authors of the publication note that traditionally, mental trauma was understood as a result of terrorizing, life threatening events that induce extreme fear. But it was found that events including a low degree of terror and fear, but a **high degree of social betrayal** (which is the case in CSA) may be far more devastating for the psyche than other traumas that don't include the element of betrayal. Betrayal trauma is a specific category of trauma that in a completely special way **complicates to the victims the process of evil identification, disclosure (confrontation) and psycho-social recovery**.

⁷ Only 2-5% of CSA perpetrators fall in the category of so-called sadistic individuals, those who intentionally inflict to the child pain and experiences of terror. Victims of sadistic perpetrators are more capable of identifying the perpetrator's action as evil because it has clear contours. (Compare: SALTER, A. C. Transforming Trauma, 1995.)

emphasized also in CSA definitions in important international documents: Criminal acts shall be considered such intentional actions that involve “sexual activities with a child if pressure, force or threats are used” or if the acknowledged **trust, authority or influence** on the child and his/her family is misused; or if an especially vulnerable situation of the child is misused, especially due to mental or physical handicap or due to the child’s dependence.”⁸ “Many children experience sexual victimization that is not accompanied by physical force (...), despite it has a disturbing impact on their psyche, it is predatory and traumatizing”⁹.

If law enforcement authorities don’t have an insight in the dynamics of CSA, they can overlook manipulation techniques used by the perpetrator and the victim’s commonplace reactions to abuse can be incorrectly interpreted as evidence of the victim’s insufficient credibility. Therefore, the list of strategies that should be applied in a criminal proceeding against CSA perpetrators who are the victim’s family members includes in the first place **identification of the perpetrator’s manipulation techniques**.¹⁰

The perpetrator’s primary weapons in committing CSA are trust and love that the victim and the other family members feel for the perpetrator. Individuals who commit CSA in the household are often perceived as less dangerous. Yet they are the more experienced ones, they trespass more limits, they are more protected from disclosure, they betray more and create more family conflicts, they are more mentally and emotionally involved in the abuse. It is very important to realize that the perpetrator manipulates the victim as much as the victim’s family members. Besides love and trust, the perpetrator uses also other untraditional weapons. A powerful weapon is e.g. a pleasant demeanor. When people are nice, it is difficult to confront them, set the limits or mistrust them. The perpetrator counts on the fact that the society believes that kindness cannot coexist with violence, evil or a deviation. The perpetrators use love and trust that are inherent to a relationship to break all the limits and to turn their roles of caregivers into an opportunity for abuse. By using various manipulation techniques they progressively standardize their sexual behavior and intentions, desensitize the child to the trespassing of sexual limits and strengthen the victims’ loyalty to them.¹¹

A victim’s passive reaction is usually interpreted (not only) by the perpetrators as a sign of the victim’s consent and at the same time as evidence that the suspected behavior was nothing serious or harmful. But the difference in power (consisting mainly in rich manipulation possibilities) and knowledge between the perpetrator and the victim are so great that even if the child “cooperated” and even if the child gave some kind of “consent” to the sexual activity, in no way was it a free or informed consent, and thus it was not a valid consent. Consent means nothing and is out of the question if *no* is not one of the options to choose from.¹²

It must be remembered that a lack of external signs of defense does not mean that the defense did not take place inside the organism. As will be explained below, in the state of *hypoarousal* (as well as inside the existence trap victims find themselves

⁸ Convention of the Council of Europe on Child Protection from Sexual Exploitation and Abuse, 2007, art. 18, par. 1).

⁹ United Nation’s Convention on the Rights of the Child: General Commentary No. 13, art. 25.

¹⁰ Compare: LONG, J. et al. 10 Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member, 2011; Compare also: COSSINS, A. Prosecuting Child Sexual Assault Cases, 2006; The Crown Prosecution Service. Guidelines on Prosecuting Cases of Child Sexual Abuse, 2013, Annex C.

¹¹ Compare: LONG, J. et al. 10 Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member, 2011; The Crown Prosecution Service. Guidelines on Prosecuting Cases of Child Sexual Abuse, 2013, Annex C; COSSINS, A. Prosecuting Child Sexual Assault Cases, 2006.

¹² Compare: KARKOŠKOVÁ, S. CSA victims among us, p. 17.

in), highly complex mental defense mechanisms are activated (*dissociation* among others) that make sense of the victim's behavior that is seemingly illogical.

2.2 Delay in disclosure

The average person expects that a “normal” reaction after being assaulted by an aggressor is an immediate search for help. Yet CSA research findings do not correspond with these expectations.

In the EU 20% of children are victims of some form of CSA, whereas approximately 70 to 85% of CSA cases are committed by someone whom the child knows and trusts.¹³ Despite the large prevalence of CSA, it is crime with an especially high degree of latency. Law enforcement authorities are never notified about most CSA cases.¹⁴ Only 4 - 10% of CSA cases are reported to an authority and/or law enforcement authorities.¹⁵ Spontaneous and relatively fast disclosure (i.e. made at the time of the abuse or shortly thereafter) occurs seldom.¹⁶ Less than 1 out of 4 victims disclose CSA immediately¹⁷, **a large number of victims disclose their CSA experience only after some time** (if ever). Researchers found that the typical time span between abuse and disclosure is from 8 to 15 years.^{18 19} Therefore, a short time span between CSA and its disclosure to authorities is not a reliable credibility indicator.²⁰ Or else a delayed disclosure is not necessarily an indicator of a false accusation.²¹

In the context of the above facts it is not surprising that the list of strategies to be applied in criminal proceedings against CSA perpetrators includes the recognition, understanding and explanation of the reasons why the victim disclosed the experience with a delay or refuses to testify (if the CSA case was disclosed by a third party). A CSA victim may have **numerous valid reasons to keep silent**.²²

Some of the reasons to keep silent relate to the **risks** of disclosure – victims may fear that if they speak up, the threat of violence may materialize, they will get in trouble or the disclosure might hurt the perpetrator or the entire family. Another factor that plays a prominent role in silencing CSA victims is the **distortion of reality**²³ through manipulation on the hand of the perpetrator and also by an inadequate attitude

¹³ Compare: Council of Europe. One in Five: Council of Europe campaign to stop sexual..., 2012; CHEUNG, M. Child Sexual Abuse : best Practices for Interviewing and Treatment, 2012.

¹⁴ Compare: LEVENTHAL, J. M. Epidemiology of sexual abuse of children, 1998; HANSON, R. F. et al. Factors Related To The Reporting Of Childhood Rape, 1999; MAY-CHAHAL, C. a HERCZOG, M. Child sexual abuse in Europe, 2003.

¹⁵ Compare: KELLOGG, N. The evaluation of sexual abuse in children, 2005; CHEIT, R.E. a FREYD, J. J. Let's have an honest fight against child sex abuse, 2005; LONDON, K. et al. Disclosure of Child Sexual Abuse, 2007; BOTTOMS, B. L. et al. A Retrospective Study of Factors Affecting the Disclosure of Childhood Sexual and Physical Abuse, 2007; LYON, T.D. a AHERN, E.C. Disclosure of child sexual abuse, 2011.

¹⁶ Compare: HERMAN, J. Father-daughter incest, 1981; SAUZIER, M. Disclosure of child sexual abuse, 1989; LAWSON, L., CHAFFIN, M. False negatives in sexual abuse disclosure interviews, 1992; BRADLEY, A. R. a WOOD, J. M. How do children tell? The disclosure process in child sexual abuse, 1996; SMITH, D. et al. Delay in disclosure of childhood rape, 2000.

¹⁷ Compare: HÉBERT, M. et al. Prevalence of childhood sexual abuse and timing of disclosure..., 2009.

¹⁸ Compare: SOMER, E., SZWARCBERG, S. Variables in delayed disclosure of childhood sexual abuse, 2001.

¹⁹ However, a significant portion of the victims keep silent about CSA also in adulthood: several retrospective researches have shown that approximately 30% of respondents had never disclosed to anyone their traumatic experience prior to the research interview (Compare: FINKELHOR, D. et al. Sexual abuse in a national survey of adult men and women, 1990; SPRINGS, F. E. a FRIEDRICH, W. N. Health risk behaviors and medical sequelae of childhood sexual abuse, 1992; SMITH, D. et al. Delay in disclosure of childhood rape, 2000.

²⁰ The Crown Prosecution Service. Guidelines on Prosecuting Cases of Child Sexual Abuse, 2013.

²¹ Compare: COSSINS, A. Prosecuting Child Sexual Assault Cases, 2006.

²² Compare: LONG, J. et al. 10 Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member, 2011; COSSINS, A. Prosecuting Child Sexual Assault Cases, 2006.

²³ I.e. distortion of reality, reality defined through the optic, needs and wishes of the perpetrator.

of the surrounding environment (that is unable to correctly diagnose the situation because it is subject to manipulation as well).²⁴ An important factor contributing to the silencing of CSA victims are **unsupportive reactions of the nonoffending parent (parents)**. Researchers found that in cases where the perpetrator is a person known to the child, there is an 89% probability that, upon disclosure, the victims will face unsupportive parental reactions; whereas children abused by strangers will face inadequate parental reactions only in 25% of cases.²⁵ In some families the CSA reality is a family secret, a **taboo topic**, which should not be discussed. As if CSA took place in another dimension that is separated from the reality felt by the uninvolved family members. While the trauma takes place in some kind of a “*world of trauma*”, the family has also another “*shared world*”. These two realities are positioned in parallel, but they are divided by clear borderlines that prevent them from merging.²⁶ Family members make efforts to keep at any cost the status and/or the ideal of a good and decent family, therefore they act as if they didn't see anything, they deny the existence of the problem, its severity and their responsibility. “Taboo areas and afflicted persons are surrounded by a wall of silence. In this way, the taboo topics are supposed to remain out of reach of perception: we are not supposed to see them or hear them or feel them. It is “inappropriate” to talk about them – and only those who obey this moral appeal may stay within the community. Those who disobey the order to keep silent will become untouchable as a result of their own actions, i.e. they will be a taboo – they will become something inhuman: nobody will pay attention to them, listen to them and most importantly, nobody will sympathize with and the others will view them as someone they are not (...). And the less of an opportunity to correct such assessment such a person deprived of (...) the feeling of their own value as a perceiving human being (the less they get to talk, the less they are being heard, the less of a chance they have to be recognized), the more the person gets “mutilated” as a result of unilateral pressure (...)”²⁷.

An important role in silencing the victims is played by **ambivalent feelings**. Feelings experienced by CSA victim may not be purely *negative* – it is much more probable that they will be *ambivalent*.²⁸ Especially if the perpetrator is a close person for the child, most child victims are torn between ambivalent feelings. This is one of the primary differences in CSA dynamics if the perpetrator is a parent or a person (known to the child) who is trusted by the child – compared with CSA dynamics when the perpetrator is a person who is a stranger to the child.²⁹ CSA victims are unable to take a decisive action to seek help if they have ambivalent feelings for the perpetrator.³⁰ On the one hand the perpetrator may (within the manipulation tactics) treat the victim nicely, gently and kindly and provide the victim with some privileges, meanwhile the offered “love” is contaminated with betrayal. On the other hand, the victim may be actually dependent on the perpetrator, which makes an open

²⁴ Since manipulation is a common feature of CSA, it is difficult for the victim to understand what's going on. Perpetrators can manipulate not just the child, but also the surrounding environment, as a result of which the parent or another caregiver of the child trusts the perpetrator. (Compare: The Crown Prosecution Service. Guidelines on Prosecuting Cases of Child Sexual Abuse. London, 2013, art. 12) .

²⁵ Compare: LAMB, M.E. et al. Tell Me What Happened: Structured Investigative Interviews..., 2008, p. 201.

²⁶ Compare: IDISIS, Y., OZ, S. Disclosing the Secret: Working with Families..., 2011, p. 402 - 403.

²⁷ PERNEROVÁ, R. A. Taboo in family communication, p. 122.

²⁸ Ambivalence means duality, internal split. In psychological language it designates a special state of the mind when a person has completely contradictory feelings at the same time in relation to the same person, e.g. feelings of love and hatred at the same time.

²⁹ Compare: RYAN, B. et al. Treatment of Intrafamilial Crime Victims, 2001.

³⁰ Compare: CHEUNG, M. Child Sexual Abuse: best Practices for Interviewing and Treatment, 2012; RYAN, B. et al. Treatment of Intrafamilial Crime Victims, 2001.

confrontation too risky (and thus unacceptable). If the perpetrator provides the victim with room and board, clothes and other basic needs, then **keeping the relationship bond is a priority need** and the victim's psyche is forced to activate defense mechanisms that will enable the victim to function in an environment oversaturated with betrayal. In these cases, *dissociation* appears to be the basic mental defense mechanism, which enables information that is too threatening to be pushed out from one's consciousness.^{31 32 33}

Feelings of guilt and shame are other important factors contributing to silencing CSA victims.³⁴ Manipulation techniques used by the perpetrator, experience of sexual excitement (which is a natural physiological reaction to the stimulation of erotogenous body parts), as well as a paralyzing instinctive reaction may cause the victim to feel guilty of not having "defended" oneself. If the victim makes self accusations, it is natural that the victim is ashamed of disclosure.

(Non)disclosure is strongly connected with the fact whether the victim perceives his/her experiences as abuse; in victims that see themselves as victims, the probability that they will disclose CSA doubles. It is alarming that **as many as 40% of all victims fail to see themselves as victims**, and that applies also to cases where their experiences are considered abusive by CSA researchers and experts and they fit the legal definition of abuse. This implies that the perpetrators are quite successful at confusing their victims.³⁵ The victim may not have sufficient information to be able to recognize that what is happening is of abusive nature. What's more, the perpetrator within the manipulation process diligently reassures the victim about the fact that this behavior is normal and harmless. Victim may have difficulties to perceive their experiences as abuse also due to the fact that the perpetrator (contrary to stereotypical beliefs) does subject the victim to physical violence, but uses rather subtle, manipulative strategies. Despite the victim may experience distress in the context of the abuse, the victim will realize only after some time that it was abuse, usually during adolescence.³⁶ In many cases victims need support to recognize the abusive nature of the relationship.³⁷

Despite research has identified CSA dynamics and contributed to identifying the causes of delayed disclosure, professional and lay public alike continues to nurture bias that needs to be removed by explaining the relevant correlations. Understanding the factors contributing to silencing the victims is of critical importance to understanding CSA dynamics and creating an adequate case theory. Clarification of the phenomenon of delayed disclosure may be used to support the victim's credibility – after all, the victim has nothing to gain by opening up about CSA, to the contrary –

³¹ Compare: FREYD, J. a BIRRELL, P. *Blind to betrayal*, p. 53 - 54.

³² In approximately 20% of CSA victims there is even so-called **dissociative amnesia** – a phenomenon of suppressed/forgotten and later renewed memories (Compare: LOFTUS, E. F. et al. *Memories of childhood sexual abuse*, 1994; ELLIOTT, D. M., BRIERE, J. *Posttraumatic stress associated with delayed recall of sexual abuse*, 1995; MELCHERT, T.P., PARKER, R. L. *Different Forms Of Childhood Abuse And Memory*, 1997).

³³ In this context it is undoubtedly topical to state that in the crime of CSA in the criminal proceeding must be clarified and proven (on top of other circumstance) also the form of the victim's dependency of the perpetrator (CHMELÍK, J. et al. *Morality, pornography and morality crime*, p. 116 - 117). At the same time, to "clarify incest, it is necessary to conduct an **analysis of family relations**, relationship of the victim to the perpetrator and to the other parent and/or other persons. Analysis of these relationships provides a basis for a psychological interpretation of the victim's behavior and reactions" (CHMELÍK, J. et al. *Morality, pornography and morality crime*, p. 132).

³⁴ Compare: GOODMAN-BROWN T.B. et al. *Why children tell: a model of children's disclosure of sexual abuse*, 2003; FREYD, J., BIRRELL, P. *Blind to betrayal*, 2013.

³⁵ Compare: BOTTOMS, B. L. et al. *A Retrospective Study of Factors Affecting the Disclosure...*, 2007.

³⁶ Compare: CRISMA, M. et al. *Adolescents who experienced sexual abuse*, 2004.

³⁷ Compare: The Crown Prosecution Service. *Guidelines on Prosecuting Cases of Child Sexual Abuse*, 2013, art. 70.

at least in the victim's perception – the victim has a lot to lose.³⁸ If a child discloses CSA at all, then probably to a person of trust and at a time when he/she feels it is safe to speak up.³⁹

2.3 *Inconsistent testimony*

The average person expects the victims to narrate their experiences consistently and without any contradictions. However, inconsistent testimony is not a rare phenomenon in CSA victims.

The current English directive on the prosecution of CSA cases points out that **CSA victims may not provide their best and most complete testimony during the first (recorded) interview**. Reasons may range from loyalty to the perpetrator, fear for self and family, suspected CSA may have been disclosed by a third party and at this point the victim may refuse to cooperate, the victim does not see self as a victim, fear of distrust on the hand of the law enforcement authorities, initial distrust by the police, use of an interview as a credibility test by the police. Completion of testimony may require several interviews. Hearing process of CSA victims should be more adequately understood as a series of multiple subsequent interviews and/or one interview divided in several phases. The child may disclose the experiences piece by piece (gradually), leaving the worst for the end, once the child is reassured that the interviewer can be trusted. Thoroughly thought through and patient intervention of the police and other institutions can in the end break up the loyalty of the victim to the perpetrator. Seemingly contradictory initial statements are therefore in themselves not a reason to disbelieve the subsequent victim's statements. On the contrary, these contradictory statements should be perceived as symptomatic in relation to CSA.⁴⁰

Children don't have the same standards of logic, understanding and consistency like adults do. They don't have the same life experience as adults do and they are less sophisticated in their understanding of what happened. Children may not fully understand the meaning of sexual activity – and this fact may be reflected in their way of remembering and describing things. Also the **process, in which traumatic information is stored in the memory, may influence the testimony's consistency**. The child might not be able to remember precisely when and in what sequence the events occurred, it may not be able to describe the context, in which the events took place.⁴¹ What we remember and the way we remember it depends on which part of the brain is affected at the time, i.e. which part of the brain is forced to process the incoming information. Psychologists' experiences as well as research conducted by neurobiologists confirmed that traumatic events differ in terms of their quality from other personally significant events in the manner in which they are recorded and recalled in the brain.

Memories of non-traumatic events are explicit, this means that they consist of words and symbols. When people perceive sensorial stimuli, in general they automatically sum up this incoming information into a narrative form and they don't even realize the automatic process of translating (interpreting) these sensorial stimuli in their personal story. On the contrary, **memories of trauma are implicit, i.e. they consist of images, perceptions, emotions and behavioral states**. When an individual is being threatened, his or her consciousness is significantly narrowed and

³⁸ Compare: LONG, J., WILKINSON, J. a KAYS, J. 10 Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member, 2011.

³⁹ Compare: COSSINS, A. Prosecuting Child Sexual Assault Cases, 2006.

⁴⁰ Compare: The Crown Prosecution Service. Guidelines on Prosecuting Cases..., 2013, art. 38 - 40.

⁴¹ Compare: The Crown Prosecution Service. Guidelines on Prosecuting Cases..., 2013.

focused just on the perceivable details. Victims recall trauma in the form of sensorial bits of events, such as visual images, olfactory, sound and movement perceptions and intense waves of emotions. During a trauma, consciousness may be sometimes narrowed down to such extent that the memory of entire events or parts thereof is lost. Thanks to methods enabling to display brain activity, it was found that at the time when people experience traumatic memories, there is decreased activity in that part of the brain that plays a significant role in translating subjective experiences into language – but there is significantly increased activity in those parts of the brain that process intense emotions and visual images. Trauma is thus recorded in that part of the brain that processes emotions and perceptions, but not language or speech. “Explicit” memory simply fails in conditions of high distress. The victim is missing accompanying words and symbols to describe what happened. That is one reason why traumatized individuals (at least initially) are unable to narrate a consistent story of what they experienced. Initially they live with implicit memories of fear, disgust, anger, sadness, confusion, etc., but they have just a few or no explicit memories to explain their feelings or behavior.⁴²

Research focused on child testimony quality assessment reached conclusions that children do not necessarily provide a complete and coherent story of their victimization, despite the truthfulness of their sexual victimization. Their testimonies were characterized as *false denials in 20-60%*, and when they disclosed their experiences, oftentimes they minimized their sexual victimization. Hence, there is an evident risk that although the child is being interviewed by a CSA expert, in a large number of cases it will probably lead to a failure to disclose actual CSA or the disclosure will be less than complete. Denial of actual CSA appears to be a much larger problem than occasionally occurring false CSA accusations by children.^{43 44}

Very interesting findings were reached by researchers who analyzed over 26,000 cases of physical violence and sexual abuse of children who were interviewed just based on the research-validated structured NICHD Protocol.⁴⁵ The overall degree of verbal disclosure during the interview was 65% and in CSA cases the disclosure rate was as high as 71%. However, the children’s willingness to disclose CSA in cases when the suspected perpetrator was a parent decreased to 20.9% in girls and 14.2% in boys. These findings confirm the hypothesis that a close relationship between a child and the perpetrator has a negative impact on the child’s willingness to speak up.⁴⁶ Prosecutors must understand the consequences that the child would face in case it revolts against the perpetrator – and this should be comprised in the strategies

⁴² Description of further differences in memorizing and recalling traumatic and non-traumatic events may be found in: KARKOŠKOVÁ, S. Child sexual abuse victims among us, p. 96 - 99.

⁴³ Compare: LYON, T. D. 2007. False Denials..., 2007; MYERS, J. E. B. Expert Testimony in Child Sexual Abuse Litigation, 2010; BIDROSE, S. a GOODMAN, G. S. Testimony and evidence..., 2000; FALLER, K. C. Criteria for judging the credibility ..., 1988; LAWSON, L., CHAFFIN, M. False negatives in sexual abuse disclosure interviews, 1992; SORENSON, T., SNOW, B. How children tell..., 1991.

⁴⁴ In this context should be mentioned a unique research conducted by Sjöberg and Lindblad in 2002 with the aim to find out to what degree sexually abused children shall disclose information concerning their experiences. Ten children sexually abused by the same perpetrator a total of 102 times were studied. Videos recording CSA were found during a house search. The perpetrator was not a stranger to the children. No child disclosed its victimization prior to the police investigation. The average age of the children was 5.6 years at the time of the last assault and 6.9 years at the time of the police investigation. No child used false CSA testimony (i.e. no child described events that did not happen). The children had a strong tendency to deny or downplay their experiences, the reason of which seemed to be a lack of understanding of the abusive aspects of the events, amnesia and active attempts to forget or avoid CSA memories. Researchers state that professionals will probably never be able to identify all CSA victims through child interviews. (Compare: SJÖBERG, R.L. a LINDBLAD, F. Limited disclosure of sexual abuse..., 2002).

⁴⁵ National Institute of Child Health and Human Development (NICHD) Investigative Interview Protocol.

⁴⁶ Compare: HERSHKOWITZ, I. et al. Trends in children's disclosure of abuse in Israel, 2005.

to resolve the detected non-conformances or anomalies found in the victim's testimony within criminal prosecution.⁴⁷

2.4 Recantation

The average person would expect that if the victim has once said something they will insist on it under any circumstances. However, verbal disclosure must be viewed rather as a process than an event. It is usually not elegant, not brief or tidy; instead, it is oftentimes rather chaotic, entangled and filled with lack of clarity.⁴⁸ Some studies have identified the disclosure pattern, which includes stages of denial, hesitation, disclosure, testimony recantation (i.e. denial of abuse that comes after a previous disclosure) and testimony reaffirmation.⁴⁹

Malloy et al. studied the incidence and **causes of testimony recantation** during a formal or informal interview using a sample of 257 CSA victims (aged 2 - 17 years), whereas all the cases were founded, excluding the possibility that testimony recantation could relate to the fact that the initial testimony was false. The testimony recantation phenomenon occurred on the whole in 23.1% of cases, whereas in the context of a formal interview it occurred in 18.9% cases. It was confirmed in a multidimensional analysis that **family pressure** is the strongest factor contributing to the victims recanting their testimony. Children are most vulnerable to family pressure when they are younger, if the perpetrator is a parent, and if after abuse disclosure the nonoffending parent does not provide the victim with sufficient support.⁵⁰

Other studies show similar findings. Child testimony recantation is especially frequent in cases when the perpetrator is a person close to the victim.⁵¹ Mainly pressure on the hand of the child's family and/or caregiver is the background of testimony recantation.⁵² Probability that the victim will deny his/her victimization is higher if the child's caregiver doesn't support the child in the process of disclosure and case clarification.⁵³ Other authors include the following among the usual motives of testimony recantation: lack of support on the part of the family; family pressure or pressure of others; accusation on the part of the family or others; the victims feel that they are not believed; isolation; giving up on hope; unfair treatment; lack of help; disruption of quality of life; perception that recantation is a way to solve the problem.⁵⁴ One of possible explanations of the phenomenon of testimony recantation is also the fact that children suffering from *post traumatic stress disorder* (PTSD) symptoms who find themselves in the *phase of avoiding*, may in this phase deny or recant their original testimony because they can't stand the anguish induced by traumatic memories.⁵⁵

The list of strategies to be applied in criminal proceedings against CSA perpetrators includes the need to explain and handle the recantation phenomenon. In describing this strategy it is emphasized that CSA perpetrators and unfortunately

⁴⁷ Compare: The Crown Prosecution Service. Guidelines on Prosecuting Cases..., 2013, art. 54.

⁴⁸ Compare: GOODYEAR-BROWN, P. et al. Child Sexual Abuse: The Scope of the Problem, 2012.

⁴⁹ Compare: SORENSON, T. a SNOW, B. How children tell..., 1991; SUMMIT, R. C. The child sexual abuse accommodation syndrome, 1983.

⁵⁰ Compare: MALLOY, L.C. et al. Filial Dependency and Recantation ..., 2007.

⁵¹ Compare: FOYNES, M. M. et al. Child abuse: Betrayal and disclosure, 2009; LYON, T.D. 2007. False Denials..., 2007.

⁵² Compare: SHIU, M. H. Unwarranted Skepticism, 2009; BRADLEY, A. R. a WOOD, J. M. How do children tell?, 1996.

⁵³ Compare: LAWSON, L., CHAFFIN, M. False negatives in sexual abuse disclosure interviews, 1992.

⁵⁴ Compare: MARX, S. P. Victim recantation in child sexual abuse cases, 1996; CHEUNG, M. Child Sexual Abuse: Best Practices for Interviewing and Treatment, 2012.

⁵⁵ Compare: KOVEROLA, C., FOY, D. Post traumatic stress disorder symptomatology..., 1993.

sometime also the nonoffending parent exert extraordinary pressure on the child victim after CSA disclosure. This **pressure** may be **obvious**, e.g. display of rejection, intimidation or influencing of witnesses. However, the pressure can also be **subtle**, not easily detectable or describable, such as when the nonoffending parent continues to keep in touch or stays in a relationship with the perpetrator or the perpetrator continues to have access to the child through the nonoffending parent. Regardless of the type of pressure the impact is the same: the child victim feels pressure to recant the testimony to keep the family together. Therefore, when recantation takes place, prosecutors should search for evidence to rehabilitate and confirm the original truthful statements of the victims. It is very important to submit evidence that explains the context of the child's recantation. E.g. the victim's mother said she doesn't believe the victim or that the family will be destroyed if the perpetrator goes to jail? Prosecutors can also try to submit a statement the child made in front of friends, siblings, relatives, health or social workers or the police.⁵⁶

Next to the above strategy, there is a need to react to intimidation and influencing of witnesses and marring their participation in the proceeding.⁵⁷ Perpetrators, but also the nonoffending parent oftentimes directly threaten the child victim, prompting the child to recant the testimony, or they influence in a different way the child victim's ability to take part in the criminal proceeding. Perpetrators who are related to the victim have extensive access to the victim and information about the victim's person that they try to use to make the victim comply with the perpetrator's desires (either aimed at continuation of the abusive practices or prevention of disclosure and criminal prosecution). Commonplace tactics of the perpetrators include blackmail of disclosing information about the victim concerning some past mistakes, shaming or discrediting the victim. Therefore, in the interest of the victim's protection, systemic measures should be adopted, including, inter alia, **education of victims** and of all the **professionals** coming in contact with CSA victims **about the tactics used by the perpetrators to intimidate** victims and witnesses. This would reinforce the ability of victims and professionals to detect these efforts of the perpetrator and **keep evidence of intimidation** that should be subsequently used by prosecutors to rehabilitate the victim's credibility.⁵⁸

2.5 Positive attitude towards the perpetrator

The average person would expect that a CSA victim will have clearly negative attitudes to the perpetrator. If the victim's attitudes are in contradiction with this expectation, it raises suspicions whether the victim is indeed a victim. These prejudices are common also among law enforcement authorities. The prosecutor in charge used the following argument: *If the child had shown a positive relationship to the father prior to the filing of a criminal complaint by the child's mother, and/or also thereafter, then the father could not have sexually abused the child.*

However, as was already stated above, in CSA victims (especially in cases when the perpetrator is a relative or a person close to the family) there are commonly **ambivalent** feelings and attitudes towards the perpetrator. Abuse on the hand of the perpetrator who is a stranger to the child does usually not cause ambivalent or confused feelings. The situation is clearer and the child can more easily rely on the

⁵⁶ LONG, J., WILKINSON, J., KAYS, J. 10 Strategies for Prosecuting Child Sexual Abuse ..., 2011.

⁵⁷ In this context, textbooks available in Slovakia on the issue of morality crime do state (but don't specify any further) that in the crime of sexual abuse the criminal proceeding must clarify and prove, among other circumstances, also the scope and form of influencing the victim to cover up the crime (CHMELÍK, J. et al. Morality, pornography and morality crime, p. 116 - 117).

⁵⁸ LONG, J., WILKINSON, J., KAYS, J. 10 Strategies for Prosecuting Child Sexual Abuse ..., 2011.

fact that the surrounding environment will provide him or her with emotional support. It is also clear where feelings of anger should be directed. In intra-familial CSA cases however, the situation tends to be much more complex. Family relations are complex and most child victims have ambivalent feelings towards their parents (both positive and negative).⁵⁹ The same person who is harming the child may in many other respects provide the child with care, meet the child's basic subsistence needs and make a number of the child's small or big desires. It is very difficult to give up on the image of a "good" parent (no child wants to have a negative image of their parent). Considering the fact that there have been also good times in the relationship, the victim may doubt oneself whether he/she is not "overreacting" in respect to CSA. Or the abuse may have been the only time when the child was shown some affection. An individual who is thirsty will drink also poisoned water if no other water is available.⁶⁰

A so-called *traumatic bond* may be established between the victim and the perpetrator. This phenomenon occurs in abused children and women, prisoners of war, but also in other situations when people find themselves trapped. The rapist may at the same time be a source of occasional rewards and comfort – and rapists know that this is an effective tool to exert control. An abused individual feels love, gratitude, empathy and loyalty towards the rapist.⁶¹ If traumatic bond occurs in hostages who had never had any previous positive bond with their kidnappers, just imagine how much stronger the bond of a child will be towards a parent who is perceived as a source of life?⁶² A victim who is exposed to massive manipulation on the hand of the perpetrator learns (without a conscious effort) to think in a way that fully meets the needs and the wishes of the perpetrator. So-called *cognitive distortions* develop,⁶³ the eradication of which may require long-term psychotherapy.

Factors contributing to silencing the victim (distortion of reality, missing support, surrounding environment being an accomplice in that CSA is a massive taboo, not seeing self as a victim, need to keep a relationship bond, dissociation), nourish also the victim's ambivalent feelings towards the perpetrator. Absence of negative manifestations in contact with the perpetrator may well be a sign that the victim has activated strong mental defense mechanisms, mainly *dissociation*.⁶⁴

2.6 Absence of or indistinctive trauma symptoms

The average person would expect that a child who is a CSA victim will show distinctive trauma symptoms. Study of CSA consequences (including the type and the extent of victims' harm) is an inseparable part of what should be clarified and proven in this crime.⁶⁵ The question whether a suspected victim suffers from trauma symptoms is a chronic part of the set of questions that need to be answered by the sworn expert – psychologist.

Yet scientific research has found that **asymptomatic victims** make up 40% of all the CSA cases; another 30% of victims show very few symptoms.⁶⁶ The range of possible victims' reactions to CSA trauma is very broad – from a normal positive

⁵⁹ RYAN, B. et al. Treatment of Intrafamilial Crime Victims, 2001.

⁶⁰ Compare: PANDORA'S PROJECT. Adult Survivors Continuing Relationships With Abusive Family, 2010.

⁶¹ Compare: HERMAN, J. Trauma And Recovery, p. 72.

⁶² Compare: PANDORA'S PROJECT. Adult Survivors Continuing Relationships With Abusive Family, 2010.

⁶³ For a more detailed description see: KARKOŠKOVÁ, S. Child sexual abuse victims, p. 69 - 71.

⁶⁴ For a detailed description of various forms of dissociation see: KARKOŠKOVÁ, S. Child sexual abuse victims ..., p. 78 - 81.

⁶⁵ Compare: CHMELÍK, J. et al. Morality, pornography and moral crime, p. 116 - 117.

⁶⁶ Compare: FRIEDRICH, W. Developmental Perspectives on Sexual Behavior..., 2003; KENDALL-TACKETT, K. A. et al. Impact of sexual abuse on children, 1993.

functioning in everyday life without any warning signals, little distinctive signals to obvious, extremely negative signals.

It is possible that at the time of ongoing CSA and *shortly* thereafter many victims show no and/or unnoticeable trauma symptoms and the depth of the trauma will surface only in late adolescence or in adulthood. In this context some authors describe so-called *sleeping trauma consequences*.⁶⁷ The phenomenon of delayed onset of trauma consequences may be explained by the fact that injuries inflicted in the childhood and adolescence, i.e. during a critical period of personality shaping, will be displayed fully only after some time. On top of that, defense mechanisms that are activated under trauma in the victim's organism can "switch the victim into a functioning mode" for some time, during which the damage caused by the trauma is obfuscated, subconscious, in order to assure survival.

The failure to find (based on prejudice) expected trauma symptoms can lead to premature conclusions of the law enforcement authorities that the child suffered no harm. However, paradoxically, also the existence of symptoms can be used to undermine the victim's credibility. Sometime it seems that those assessing the evidence deliberately create their own categories of trauma symptoms – as a part of which they distinguish eligible/ineligible symptoms, tolerable/unacceptable symptoms and symptoms raising sympathy/antipathy. In this way, e.g. a boy who acts aggressively among his peers is not considered a credible victim.

2.7 Inconsistent reactions of the nonoffending parent

The average person would expect that a parent should have known what was happening to the victim and should have been able to stop it and/or should have immediately adopted a clearly protective attitude towards the child. If the parent failed to meet these expectations, it is the parent's fault. Yet what is being forgotten is the fact that if the nonoffending parent knows the perpetrator, if they have a close relationship of trust, then also the protective parent is betrayed and traumatized and is a secondary victim.

A parent might be unable to identify what is happening/what happened. Not only the child, but also the parent is exposed to the manipulation on the hand of the perpetrator, as a result of which the parent trusts the suspected individual. Even if they suspect that something is not quite right, their position may not allow them to protect the child (the perpetrator may control the victim). Even the nonoffending parent may be at risk when they try to protect the child and may need support similar to the child.⁶⁸

The nonoffending parent may show similar mental defense mechanisms as the primary victims do, e.g. dissociation. It may take a long time until the nonoffending parent believes that CSA is reality in their own family. The instinct to protect one's own child may therefore be activated with a delay and may not be crystal clear. Ambivalent reactions are common. Research shows that parents who are trapped in ambivalent feelings towards the perpetrator may not be adequately supportive towards the victimized child. Ambivalent reactions are when the parent shows **inconsistent reactions** of dissent towards the perpetrator.⁶⁹ It was found that even mothers who were in general supportive and protective towards their sexually abused children

⁶⁷ Compare: BRIERE, J. Methodological issues in the study of sexual abuse effects, 1992.

⁶⁸ Compare: The Crown Prosecution Service. Guidelines on Prosecuting Cases..., 2013, art. 12, Annex C.

⁶⁹ Compare: BOLEN, R., LAMB, J. L. Can non offending mothers of sexually abused children be both ambivalent and supportive?, 2007.

sometimes showed inconsistent and ambivalent reactions.⁷⁰ **Ambivalence** and supportive attitude can coexist in a parent and create an opportunity for intervention from time to time.⁷¹

Reactions of the nonoffending parent may differ depending on various factors, such as their relationship to the perpetrator, their own history of CSA, the age and sex of the child. Research found that caregivers are less supportive in situations when there is a close relationship between them and the alleged perpetrator, in domestic violence situations or if the caregiver is depending or was neglected as a child.⁷² It was discovered that mothers were more likely to believe that CSA happened when they were no longer sexual partners of the perpetrator.⁷³ Adolescent victims viewed their mothers as less supportive if they lived with the perpetrator at the time of the abuse and more supportive if they lived separately from the perpetrator.⁷⁴ In describing the dynamics of partnership separations Klimeš states that although individuals “*naturally suffer from the negative characteristics of their partners, the degree to which they mind and whether they are considered bearable, depends on how much the individual accepts the option of separation*”.⁷⁵ It can be deduced from the above that the nonoffending parent may be also trapped in denial and ambivalence, unless he or she accepts the possibility of ending the relationship.

Thoughts, emotions and reactions of the nonoffending parent often change overtime in any direction, depending on the circumstances.⁷⁶ In practice unfortunately these changes are in a biased way interpreted as a sign of lack of credibility of the witness/of the person disclosing the crime. They are not credible if they filed a criminal complaint after some time from when they first learnt about CSA, or if they changed their testimony during the proceeding, or if they later defined the incriminated act using different terminology than initially, or if they failed to file a criminal complaint, or if the criminal proceeding is in parallel with a civil proceeding concerning child visitation arrangements, or if, despite the criminal prosecution has been dropped, they still try, in order to protect the child, to apply legitimate remedies after they learnt with delay information that was not disclosed to them as to the disclosing parent (who is not a party to the proceeding), etc. At times the attitude towards the child appears to be hypoprotective and at other times hyperprotective, in other words in the eyes of those who are not personally involved, the nonoffending parent’s attitude is never adequate or correct.

At the same time there is no doubt that also the nonoffending parent is a victim – a secondary victim. They are in a very difficult situation and they need support to even accept such an overly cruel reality in the first place, in order to subsequently handle it in a way that is in the best interest of the child. Most parents had never encountered CSA until it hit them. They have not been prepared to face such a situation by their upbringing, at school or by the media. Although as a part of their general legal awareness they know what actions probably constitute a crime, they have no idea what a criminal proceeding entails and what legal instruments they have/do not have available within the existing legal system to protect their child. They get acquainted with everything “on the go”, oftentimes they receive contradictory

⁷⁰ Compare: ELLIOTT, A., CARNES, C. Reactions of Nonoffending Parents to the Sexual Abuse..., 2001.

⁷¹ Compare: LEVENSON, J. S., MORIN, J. W. Treating nonoffending parents..., 2001.

⁷² Compare: OLAFSON, E. a LEDERMAN, J. C. S. The State of the Debate About Children's Disclosure..., 2006; PAINE, M. L., HANSEN, D. Factors influencing children to self-disclose sexual abuse, 2002.

⁷³ Compare: ELLIOTT, A., CARNES, C. Reactions of Nonoffending Parents to the Sexual Abuse..., 2001.

⁷⁴ Compare: CYR, M. et al. Predictors of Maternal Support, 2003.

⁷⁵ KLIMEŠ, K. Partners and separations, p. 15 - 22.

⁷⁶ Compare: LEVENSON, J.S. et al. Experiences of nonoffending parents..., 2012.

information or advice and they are lost and try to do their best at the time and under the given circumstances (in terms of finance, time and mental strength). Moreover, the system of socio-legal protection has a hard time coping with a situation when the nonoffending parent doesn't want to initiate criminal prosecution against the other parent, yet wants to protect the child. Biased assessment of the disclosing parent's reactions does definitely not help to clarify and solve CSA cases in a sensible way.

Since the lack of knowledge of counterintuitive reactions can lead to a biased assessment of CSA cases, to an unjustified questioning of the victim's credibility and to secondary victimization, it is necessary to have CSA cases handled by experts who can explain seemingly inappropriate victims' reactions to investigators, prosecutors and judges.⁷⁷ The principle of *presumption of victim status* must be respected regardless of whether the victim's reactions seem to us correct or not. Instructions to cope with trauma are not a part of school curricula or our upbringing. And after all, there is no standard manual to fit all. Reactions of CSA victims depend on the dynamics of the physiological, mental, social and cultural "trap" they are caught in.

3. Failures on the hand of professionals as a factor of especial vulnerability of CSA victims

Probably the most frequent failures on the hand of law enforcement authorities involved (not only) in criminal proceedings are the following: 1) failure to apply special protection measures, 2) inappropriately managed interviews of CSA child victims, 3) inappropriate formulation of questions and expectations addressed to sworn experts and 4) disrespect for the presumption of the victim status if the suspicion is not proven in the criminal proceeding.

3.1 Failure to apply special protection measures

Pursuant to the Directive 2012/29/EU (57) **in victims of (...) violence on the hand of a close person, violent sexual crimes or sexual exploitation, (...) and in child victims** there is usually a higher level of secondary and repeated victimization, intimidation and revenge. Special care must be taken in assessing whether such victims are at risk of such victimization, intimidation and revenge based on **a fixed belief that special protection measures shall be useful for these victims.**

In this context, an especially critical situation is when the suspected CSA perpetrator is the child's parent and if he/she has access to the child also at the time when the case has not yet been duly investigated. After CSA case disclosure, the child in the family is exposed to further abuse, emotional torment and mainly **manipulation of the child** by the perpetrator so that abuse experiences in the child's memory be modified in terms of their meaning, questioned and the perpetrator be "acquitted of guilt".⁷⁸

⁷⁷ Compare: LONG, J.G. *Introducing Expert Testimony to Explain Victim Behavior...*, 2007; MYERS, J.E.B. *Expert Testimony in Child Sexual Abuse Litigation*, 2010; The Crown Prosecution Service. *Guidelines on Prosecuting Cases...*, 2013; LONG, J., WILKINSON, J. a KAYS, J. *10 Strategies for Prosecuting Child Sexual Abuse at the Hands of a Family Member*, 2011.

⁷⁸ Compare: CHMELÍK, J. et al. 2003. *Morality, pornography and morality crime*. Prague: Portal, 2003, p. 125. Compare also: KARKOŠKOVÁ, S. 2014. The issue of suspected CSA / CSA accusations in the context of decision making on arrangements of parental visitations with minor children. In: *Judicial revue*, 66, 2014, part 8-9, p. 957-979.

The above circumstances justify the application of the institute of preliminary injunction, by means of which the court may temporarily prevent child visitations by one of the parents or limit the visitations (by specifying the place of visitation and/or the presence of third parties). Neglecting or underplaying these legitimate measures aimed at protecting the child may lead to far-reaching adverse effects especially in cases when a criminal complaint was filed in connection with a justified CSA suspicion and the matter has not yet been duly investigated, and/or also in cases when the criminal proceeding was discontinued but there are reasons to file a remedy.

Unfortunately there are cases in practice when the child is not sufficiently protected by the competent authorities, whereas such attitude is based on **emphasizing the presumption of innocence**. Yet what they forget is the fact that **when rights collide** (mainly a parent's right to child visitations and the right to protection of good name *versus* the child's right for protection against all forms of violence), the **right of the child is hierarchically higher**. A court's action, by which the court rejects or abolishes a preliminary injunction during the investigation phase – and by doing so “hands the child over” to the parent against whom the criminal proceeding has been instigated, significantly contributing at the same time to marring the investigation of the case – cannot be labeled otherwise than a gross breach of international obligations under the *Convention on the Rights of the Child*.⁷⁹

3.2 Inappropriately managed interviews of CSA child victims

Although a forensic interview is just one piece of the investigation, it is undoubtedly the central piece in terms of importance. The scientific world (using English as the primary language of science) has for well 25 years systematically worked on the development of manuals to interview CSA child victims.

The most significant progress in the development of such manual is the so-called NICHD Protocol (*National Institute of Child Health and Human Development: NICHD Protocol*). This protocol was developed based on international cooperation between USA, Israel, England, Scotland, Canada and Sweden. Extensive research was conducted to develop the Protocol (using a sample of more than 40,000 forensic interviews). Finally this was a field research and not a lab research as before. Currently, there are some 100 articles and 5 books describing the research behind the NICHD Protocol. The Protocol has been translated into Chinese, Finnish, French, Georgian, Hebrew, Italian, Japanese, Portuguese and Spanish. It has influenced a number of other protocols implementing its components in the interview structure.⁸⁰

The NICHD Protocol consists of eleven stages⁸¹. The reviewed version of the Protocol emphasizes on **building rapport with the child⁸² and friendly demeanor**, the feelings of the child must be considered by the professional (without interpreting them though).

Both in the original and reviewed versions of the Protocol, **a break** is an important stage, during which the professional leaves the room and if needed

⁷⁹ For more details concerning this issue, see the study: KARKOŠKOVÁ, S. 2014. The issue of suspected CSA / CSA accusations in the context of decision making on arrangements of parental visitations with minor children. In: *Judicial revue*, 66, 2014, part 8-9, p. 957-979.

⁸⁰ FALLER, K.C. 2015. Forty Years of Forensic Interviewing of Children Suspected of Sexual Abuse, 1974–2014: Historical Benchmarks. In: *Social Sciences*. 2015, 4, 34–65.

⁸¹ The single phases are described in more detail in the Power Point presentation entitled “Interviewing a CSA child victim” (S. Karkošková), see the materials from the seminar in Omšenie, June 29-30, 2015.

⁸² Building rapport with the child is more important than informing the child with the basic rules. This means that after introducing oneself and saying that the interview is being recorded, the professional asks the child what he or she likes to do and tries to get the child to talk. Only afterwards the child is informed about basic interview rules.

formulates specifically focused questions to obtain additional details. This stage has a special importance also in terms of **ensuring the principle of a contradictory hearing**⁸³.

Based on research, when NICHD Protocol is applied, many **children aged 4 or 5 are able** to describe and narrate in detail the substance of the events under investigation. These narrations often lead to the detection of a number of leads that may be used to confirm or overturn the child's testimony. Research shows that the current protocols of a structured interview (also those inspired by NICHD) work best in children who had previously disclosed abuse of their own will. Interviews are **less effective in children who are not yet in the stage of active disclosure**. Structured interviews are **least effective in children who have significant mental barriers or fear** in relation to disclosure. Population aged 3 years or younger cannot be effectively interviewed using the current forensic interview structure.⁸⁴

The current practice of interviews of CSA child victims in Slovakia has several serious shortcomings. Professionals who interview these suspected victims have not been specifically trained to interview suspected CSA victims, (which increases the risk of errors committed during the interview)⁸⁵ and don't have any structured protocol available, the application of which could contribute to conduct the interview effectively. Moreover, the interview is often conducted in inadequate premises, since in Slovakia there are no special interview rooms to interview children. The number of people present in the room where the child is interviewed would undoubtedly scare an adult, let alone a child. There are even cases when the CSA suspect himself was present in the room during the interview of a suspected child victim. A serious shortcoming is also the lack of specialization of investigators, insufficient preparation for the interview, failure to give the child enough time and the misunderstanding of the legislative principle that repeated interviews of the child should be prevented.

In this regard several researchers point out that the prevalent practice concerning the number of interviews (just one child interview) may not be appropriate in the investigation of many CSA cases. Trust in the effectiveness of a single forensic child interview appears to be overrated. Compared to the practice of a single interview applied insofar, the **model of several sequential child interviews is recommended**. Two or three interviews (conducted in a sequence) are recommended for children to be able to provide complete and valuable information. It is important for law enforcement authorities to be aware of this problem in interviewing children

⁸³ For more details concerning the principle of contradictory interview see the article of M. Pirošíková entitled "Most Vulnerable Victims from the Perspective of ECHR Case Law" (prepared for the seminar in Omšenie, June 29-30, 2015).

⁸⁴ Compare: Everson, M.D: 2015. Child Forensic Interviewing: A 30-Year Perspective. In: Children's Services Practice Notes, v. 20, n. 2. Compare also: FALLER, K.C. 2015. Forty Years of Forensic Interviewing of Children Suspected of Sexual Abuse, 1974–2014: Historical Benchmarks. In: *Social Sciences*. 2015, 4, 34–65.

⁸⁵ Common failures of investigators interviewing victims include mainly:

1. imposing the "Me" theory of personality
2. misunderstanding memory
3. misunderstanding lying and truth telling
4. not being self aware
5. not considering multiple explanations
6. not planning ahead
7. not establishing rapport
8. not actively observing and listening
9. timing the questions wrongly
10. phrasing the questions wrongly

The single mistakes are described in more detail in the Power Point presentation entitled "Interviewing a CSA child victim" (S. Karkošková), see the materials from the seminar in Omšenie, June 29-30, 2015.

and in assessing the reliability of CSA allegations. We point out that when it comes to the number of interviews, it is important to **make a distinction between multiple interviews conducted by various professionals** (which is definitely to be avoided) **and multiple interviews conducted by the same professional**, which is appropriate in a high number of cases.⁸⁶

3.3 Inappropriate formulation of questions and expectations addressed to sworn experts

A sworn expert's opinion has the nature of evidence. In proportion to the other types of evidence it doesn't have a privileged or superior status, and yet law enforcement authorities rely extensively on a sworn expert's conclusions in clarifying CSA cases. Among the questions that are expected to be answered by the expert in a way to provide "guidance" there are often questions such as: *Does the child show signs of a sexually abused child? What is the credibility of the child's testimony?* It is however questionable whether these expectations are realistic as they are exaggerated or even misleading.

Hoyano and Keenan, famous lawyers specializing in child abuse cases whose extensive publication entitled *"Child Abuse: Law and Policy Across Boundaries"*⁸⁷ was awarded the prestigious Inner Temple Book Prize in 2008 state that **expert evidence concerning mental signs of CSA or searching for credibility of CSA victims is a controversial topic.**

Using a psychological sworn expert's examination outcome as "**diagnostic evidence**" to confirm or overturn whether CSA took place or not is rather problematic. It is based on the premise that CSA victims show foreseeable behavioral/mental characteristics that may be accurately profiled. Research has shown however that there is no behavior or symptom observable in all or in most CSA child victims, there is not a single constellation of psychological symptoms or behavioral indicators that would be able to confirm that CSA took place. It was found that more than a third of actual CSA victims at least at the time of assessment do not show any external trauma symptoms. Nevertheless, the presence of certain behaviors and symptoms may provide some evidence that may justify the clinical opinion that the child was sexually abused. More reliable however are such symptoms that occur more frequently in CSA victims than in victims of other traumas, mainly sexualized behavior in combination with other symptoms. It must be remembered that in a forensic context, overestimation of the presence or absence of a certain behavior may lead to false positive or false negative conclusions.⁸⁸

⁸⁶ Compare: EVERSON, M.D. 2015. Child Forensic Interviewing: A 30-Year Perspective. In: Children's Services Practice Notes, v. 20, n. 2., Compare also: FALLER, K.C. 2015. Forty Years of Forensic Interviewing of Children Suspected of Sexual Abuse, 1974–2014: Historical Benchmarks. In: *Social Sciences*. 2015, 4, 34–65., MELING, L. 2015. The Timing and Number of Interviews. paper presented at: *Conference on handling child evidence within the framework of a child-friendly justice system 19. – 20. February 2015 in Tallinn.*, HERSHKOWITZ, et al. "Dynamics of forensic interviews with suspected abuse victims who do not disclose." In: *Child Abuse & Neglect* 30 (2006): 753–70, LEANDER, L. 2010. Police interviews with child sexual abuse victims: Patterns of reporting, avoidance and denial. In: *Child Abuse & Neglect* 34 (2010) 192–205, LaROOY, D., & LAMB, M. (2008). What happens when young witnesses are interviewed more than once. Forensic Update. Retrieved from <http://www.larooty.net/FU.pdf>, CARNES, C. N. et al. (2001). Extended forensic evaluation when sexual abuse is suspected: A multi-site field study. In: *Child Maltreatment*, 6, 230–242., DUNN, Sarah E., "Interviewing Pre-school Age Victims of Child Sexual Abuse: Interviewing Methods and Disclosure Outcomes" (2006). *Psychology Theses*. Paper 13.

⁸⁷ it compares legislation in the UK, USA, Canada, Australia and New Zealand

⁸⁸ Compare: HOYANO, L. a KEENAN, C. *Child Abuse: Law and Policy Across Boundaries*, 2010, p. 884-885.

Similarly, expressing a direct opinion about the credibility of the child is viewed by most experts as inadmissible – due to the fact that psychological evidence must be based on factors independent of the child’s testimony about the abuse. Moreover, reliability of the testimony may be distorted by inappropriate interview techniques or circumstances.

An inappropriate (and yet very frequently occurring) question (addressed to experts) is: *Does the suspected parent suffers from a sexual deviation?* The inappropriateness of this question is based on the fact that incidence of pedophilia in individuals committing sexual crimes involving children is approximately 50%. Paraphiliacs, i.e. individuals with a diagnosable sexual deviation represent a heterogeneous group and do not differ in any significant way from other people in most of their socio-demographic or personality characteristics. **Not diagnosing a sexual deviation is not evidence that an individual did not commit illegal sexual activities** nor is it a guarantee that this individual can be allowed (risk-free) unsupervised contact with children.⁸⁹

3.4 Disrespect for the presumption of the victim status if the suspicion is not proven in the criminal proceeding

If through court authority the society clearly declares the victim to be the victim and the culprit to be the culprit, then the judgment is also an act of therapy.⁹⁰ Yet what is the act on the hand of the society and what is the impact of such act if the judgment frees the perpetrator or if the criminal proceeding is marred and discontinued? Truly absurd situations (with far-reaching adverse effects on CSA victims) occur when the state system responsible for protecting children from all forms of violence handles the situation unilaterally – by protecting the perpetrator through the **principle of presumption of innocence**, yet forgetting to protect the victim through the **principle of presumption of the victim status**.

The principle of *presumption of the victim status*⁹¹ is based on the provision of the Directive 2012/29/EU of the European Parliament and of the Council, under which “a person should be considered a victim regardless of whether the perpetrator has been identified, detained, prosecuted or convicted and regardless of their family relation.”⁹²

Not proving guilt of a suspected perpetrator does not automatically mean zero risk for a suspected child victim. In this regard, due attention needs to be paid to risk assessment procedures and appropriate child protection measures must be applied.⁹³

⁸⁹ Compare: KARKOŠKOVÁ, S. 2014. CSA suspicions / accusations in the context of parental child visitation arrangements. In: *Judicial revue*, 66, 2014, no. 8-9, p. 957-979.

⁹⁰ Compare: BRICHČÍN, S. Priests as Seducers of their Wards? In AUGUSTYN, J. et al. *Deeply Hurt: the Church and Sexual Abuse*, 2003.

⁹¹ Compare: JELÍNEK, J., GRÍVNA, T. et al. Crime victim from criminal law and criminological perspective, p. 26.

⁹² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of crime victims, point 19.

⁹³ For more details see the study: KARKOŠKOVÁ, S. 2014. CSA suspicions / accusations in the context of parental child visitation arrangements. In: *Judicial revue*, 66, 2014, no. 8-9, p. 957-979.