CHILDREN AND JUSTICE: OVERCOMING LANGUAGE BARRIERS

Cooperation in interpreter-mediated questioning of minors

Edited by
Katalin Balogh and Heidi Salaets

intersentia
Cambridge – Antwerp – Portland
CONTENTS

Preface ........................................................................................................... ix
Biographies of the authors .......................................................................... xiii

Chapter 1. Introduction ................................................................................. 1
1.1. Definitions and general framework .................................................. 1
   1.1.1. The CO-Minor-IN/QUEST project ........................................... 1
   1.1.2. Research scope and definitions ............................................. 5
   1.1.3. Literature review .................................................................. 12
   1.1.4. Conclusion ........................................................................... 20
1.2. Legal framework .................................................................................. 25
   1.2.1. International and European legislation ................................. 25
      1.2.1.1. Introduction ................................................................. 25
   1.2.2. Children’s rights in relation to criminal procedure and child
      friendly justice ......................................................................... 35
      1.2.2.1. A child-friendly and child-centered justice system ........ 37
      1.2.2.2. Principles of child-friendly justice according to the
         judicial procedure ............................................................. 45

Chapter 2. Interpreted interviews with minors ........................................... 47
2.1. Case 1: Child victim .......................................................................... 47
2.2. Discussion .......................................................................................... 50
   2.2.1. Discussion: Legal actor (police officer) ............................... 50
   2.2.2. Discussion: Psychologist ..................................................... 60
   2.2.3. Discussion: Interpreters ........................................................ 64
      2.2.3.1. Spoken language interpreter ...................................... 64
      2.2.3.2. Signed language interpreter ..................................... 69
2.3. Overview Table Case 1 ...................................................................... 74
Chapter 3.
Interpreted interviews with highly vulnerable children .......................... 77

3.1. Definitions and vulnerability factors ........................................ 77
  3.1.1. Definitions ........................................................................ 79
     3.1.1.1. Vulnerability ............................................................. 79
     3.1.1.2. Legal approach to vulnerability ................................. 80
  3.1.2. Vulnerability factors ......................................................... 83
     3.1.2.1. General considerations and classifications ................. 83
     3.1.2.2. Factors ................................................................. 87

3.2. Highly vulnerable children in the justice system ............................. 94
  3.2.1. Highly vulnerable children ............................................. 94
  3.2.2. The concept and models of disability, the disability process ...... 94
  3.2.3. Disabilities and special educational needs (SEN) .................. 96
     3.2.3.1. Groups of children with special educational needs ..... 97
  3.2.4. Highly vulnerable children and crime ............................... 104
  3.2.5. How to identify highly vulnerable children ......................... 106
  3.2.6. Meeting the needs of highly vulnerable children ................. 108

3.3. Developmentally appropriate interviewing of highly vulnerable children: A developmental psychology perspective ..................... 113
  3.3.1. Children’s vulnerabilities in legal contexts ...................... 113
     3.3.1.1. Linguistic considerations ..................................... 113
     3.3.1.2. Memory factors .................................................. 114
     3.3.1.3. Difficult concepts .............................................. 115
     3.3.1.4. Socio-emotional .................................................. 116
  3.3.2. Pre-substantive considerations ....................................... 116
     3.3.2.1. Ground rules ..................................................... 117
     3.3.2.2. Rapport building and importance of social support .... 116
  3.3.3. Open prompts ............................................................. 118
  3.3.4. Focused questions ....................................................... 120
  3.3.5. Closed-ended questions ................................................. 120
  3.3.6. Suggestibility .............................................................. 121
  3.3.7. Psychology perspectives regarding the use of interpreters in forensic interviews ............................................. 123

3.4. Case 2: Highly vulnerable child suspect ....................................... 132
  3.4.1. Discussion: Legal actor (police officer) ............................ 134
  3.4.2. Discussion: Legal actor (lawyer) ...................................... 139
  3.4.3. Discussion: Child support worker .................................... 146
  3.4.4. Discussion: Interpreters .................................................. 153
     3.4.4.1. Spoken language interpreter .................................. 153
     3.4.4.2. Signed language interpreter .................................. 158

3.5. Overview Table Case 2 ......................................................... 166

3.6. Overview Tables Case 1 and 2: Key ideas and concepts ................. 169
Chapter 4.
CO-Minor-IN/QUEST research findings ............................................. 175

4.1. Summary of the survey findings ................................................. 175
   4.1.1. Introduction ................................................................. 175
   4.1.2. Motives and first steps towards a questionnaire: the workshop ... 175
   4.1.3. The distribution of the questionnaire: where and when? ......... 178
   4.1.4. The questionnaire: Design ............................................. 179
   4.1.5. The questionnaire: Respondents ..................................... 183
   4.1.6. Methodology for results processing: mixed methods ............. 187
   4.1.7. Results and discussion based on the quantitative method ....... 188
   4.1.8. Results and discussion based on the qualitative method ......... 202
   4.1.9. Seating arrangement: quantitative and qualitative approach ... 212
   4.1.10. Summary of the needs expressed by the different professional
           groups ............................................................. 222
   4.1.11. Conclusion ............................................................... 224
4.2. Issues of role in interpreting for minors .................................... 228
   4.2.1. Introduction ............................................................... 228
   4.2.2. Conceptualisations of the interpreter’s role in face-to-face
           encounters ............................................................. 229
   4.2.3. Interpreting for minors in an investigative context ............... 234
   4.2.4. Recommendations ...................................................... 239
       4.2.4.1. Preparatory phase .............................................. 239
       4.2.4.2. Pre-substantive phase ....................................... 240
       4.2.4.3. The substantive phase of the interview .................... 241
       4.2.4.4. Post-interview phase ....................................... 242
       4.2.4.5. Adapting the process for children with specific
                 communication needs – sign language users ............... 242
4.3. Briefing, debriefing and support ............................................. 247
   4.3.1. Introduction ............................................................... 247
   4.3.2. The CO-Minor-IN/QUEST survey results ......................... 248
       4.3.2.1. The sample ..................................................... 248
       4.3.2.2. Briefing ......................................................... 250
       4.3.2.3. Debriefing ..................................................... 256
       4.3.2.4. Support and counselling .................................... 265
4.4. Interpreting techniques ....................................................... 281
   4.4.1. State of the art .......................................................... 281
       4.4.1.1. Consecutive interpreting ................................... 282
       4.4.1.2. Whispered interpreting .................................... 285
       4.4.1.3. What about simultaneous interpreting? .................. 285
       4.4.1.4. Interpreting for minors ................................... 287
4.4.2. Interviews. .......................................................... 290
  4.4.2.1. Mode ....................................................... 293
  4.4.2.2. Who decides? .............................................. 295
  4.4.2.3. What about simultaneous interpreting? .............. 296
  4.4.2.4. Summary .................................................. 296
4.4.3. Initial exploratory study ................................. 298
  4.4.3.1. Methodology ............................................. 298
  4.4.3.2. Observations ............................................ 302
  4.4.3.3. Limits of the experiment .............................. 309
  4.4.3.4. Discussion ............................................... 310
4.5. Joint training ................................................. 313
  4.5.1. Legal practitioner’s perspective ....................... 313
     4.5.1.1. Introduction .......................................... 313
     4.5.1.2. Multidisciplinary training of all professionals in EU
documents ......................................................... 315
     4.5.1.3. The scope of the appropriate training ............ 318
     4.5.1.4. Conclusion ............................................ 319
  4.5.2. Psychologist’s perspective ............................. 319
     4.5.2.1. So why is psychology relevant? .................... 320
     4.5.2.2. Why joint training? ................................. 321
  4.5.3. Interpreter’s perspective ................................ 323

Annexes ................................................................. 327

Annex 2. CO-Minor-IN/QUEST survey (interpreters: spoken language) . 347
Annex 3. CO-Minor-IN/QUEST survey (interpreters: signed language) . 359
Annex 4. CO-Minor-IN/QUEST survey (justice and policing) ........... 371
Annex 5. CO-Minor-IN/QUEST survey (psychologists) .................. 383
Annex 6. CO-Minor-IN/QUEST survey (other professionals) ............ 395
Annex 7. Mind Map: Main Factors of high vulnerability among child
interviewees ........................................................... 407
PREFACE

This book is the result of a research project entitled CO-Minor-IN/QUEST (JUST/2011/JPEN/AG/2961), carried out under the supervision and with the support of the Criminal Justice Programme (DG Justice) of the European Union.

The project was developed in response to Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JH. Within the group of victims, we decided to focus on a particularly vulnerable group: minors. Once the project started, it became clear that was not easy to completely set victims apart from other procedural categories in criminal proceedings (e.g. suspects and witnesses). A suspect may ultimately appear to be a victim, or a victim can be an important witness, or a witness can even become a suspect upon closer investigation. Along the way, it also became less self-evident to define vulnerability as a concept as such in an interview context involving minors. Children are vulnerable by definition and that is why it was particularly difficult to draw the line between vulnerability and extreme vulnerability. In this publication, however, we try to offer some suggestions on the subject without pretending this to be the absolute truth.

First, the project acronym requires some further explanation: cooperation in interpreter mediated questioning of minors. The meaning of the CO-prefix can be read in a double way. It first of all symbolises the cooperation between the members of the project’s research consortium located in six Member States: Belgium, France, Hungary, Italy, the Netherlands and the United Kingdom (Scotland). Secondly, it represents the cooperation between the different professionals involved in interpreter-mediated questioning of minors: legal actors (ranging from police to judges and lawyers in court), child support workers, psychologists, other professionals (e.g. paediatricians) and of course – specific to this context – interpreters.

It is clear that the term “Minor” in the title refers to children and young people under the age of 18, as defined in the 2012/19/EU Directive.

The abbreviation IN refers to the figure of the interpreter. Both letters are capitalised because in this particular setting the interpreter may often be considered a rather unexpected participant, one you do not think of at first. However, one can easily imagine that the presence of this key participant is
absolutely crucial when young child interviewees do yet not master the language of the host country (e.g. unaccompanied minors) or when traumatized children simply cannot understand and speak the language of the proceedings and cannot express their deepest feelings in a language and a culture that is not (yet) their own.

QUEST is an abbreviation that stands for the questioning itself, an interview with a minor (either as a suspect, victim or witness) as part of criminal proceedings. At the same time it is also a reference to a quest – not for the Holy Grail, of course! – but definitely a search. Together we are searching for the best possible way to provide the necessary support to these young people who come into contact with justice and do not speak the language of the proceedings. Our second aim is to improve collaboration in this delicate context where not only the interviewer and the interviewee are involved, but also other professionals can be present in the room (e.g. a lawyer, trust person and/or a psychologist). The interpreter is visibly present as well. In total, up to five people can sit next to the child. The child does not know anybody of them, except maybe for the trust person.

Another important question is: do all the professionals in the room know each other? Do they really know how the other professionals actually work and what the rules of their profession are? Are they aware of the role boundaries of each participant? In short: do they know how to work as a team in the best interest of the child? Our research project revealed much goodwill, but also showed that there is a great need to improve cooperation and to get to know each other better as professionals.

Before jumping to conclusions already, we briefly want to outline the content and structure of this book. The contributions in this publication are written from different angles. This resulted in a constructive ‘constellation’ of co-authors from six different countries and various professional backgrounds: academics, interpreters, and people from the working field with daily experience in psychology, psychiatry, child support work, policing and juvenile justice.

In the introduction, the research coordinators (Katalin Balogh, Heidi Salaets and Dominique Van Schoor) extensively describe the general framework of the Co-Minor-IN/QUEST-project. Subsequently, the legal framework surrounding the project will be explained by Eric Van der Mussele and Szilvia Gyurkó.

The next part of the book contains a concrete case with an interpreter-mediated child interview (scenario written by Hans De Wiest). By means of this case, we aimed to give practitioners the opportunity to comment on this situation and to explain how they would handle this particular case, while offering suggestions for best practices from their point of view. A police officer (Hans De Wiest),
a psychologist (Beatrice Bessi) and a spoken and signed language interpreter (Katarzyna Skrzyniarz and Ann Davis respectively) will shed their light on case 1.

The second part of the publication deals with highly vulnerable children involved in interpreter-mediated questionings. As stated before, we first need to clarify what is meant by ’highly vulnerable’ (György Virág). An overview of possible disorders and disabilities can be a first step to a protocol that can be used by interviewers to detect whether children are highly vulnerable (Ágota Szekeres). It is also important to know how interviewing techniques can be adapted to this group of highly vulnerable minors (David La Rooy).

Here again, a second case of an interpreter-mediated questioning (written by Hans De Wiest), this time involving a highly vulnerable minor, is commented on by different practitioners: a police officer (Hans De Wiest) but also a youth lawyer (Eric Van der Mussele), a child support worker (Éva Kerpel) and two interpreters (Carmen Tonitza, a spoken language interpreter, and Catherine King, a signed language interpreter).

Finally, the CO-Minor-IN/QUEST research findings will be discussed by the research team. Szilvia Gyurkó has taken on a major part of the quantitative research (e.g. generating statistics, cross tables and explaining the representativeness). Heidi Salaets and Katalin Balogh present the preparatory phase of the research (the expert workshop) and the methodology of the survey. The questionnaire was distributed in the six project partner countries, but had a larger outreach thanks to the snowball-method (non-probabilistic sampling method).

Thanks to a mixed method, the researchers collected both quantitative and qualitative results and were able to uncover the doubts, opinions and needs of all professional groups involved in interpreter-mediated questioning of minors (ImQM): interpreters, legal actors, child support workers and psychologists. Since the researchers were confronted with a massive amount of data, they decided to provide a summary of the most salient findings and most frequent needs expressed by all professionals.

Christine Wilson and Ursula Böser then focus on the role and position of the interpreter in the ImQM, while Amalia Amato and Gabi Mack examined the data collected on briefing, debriefing and support of the interpreter.

Lucie Solem analyses in depth the best suitable interpreting techniques in an ImQM. Her conclusion is that there are no fixed rules: each individual case must be treated differently.

At the end of this publication, György Virág (psychologist), Eric Van der Mussele (youth lawyer) and Christiane Driesen (legal interpreting expert) suggest, each from the point of view of their own profession, possible ways to organize joint training on ImQM. This joint training would enable the
professionals involved to both learn from each other and inform each other about their professional roles and ways of working.

Designing these joint trainings would be an exciting new step that could lead to more efficient and more professional ImQM, which would definitely serve the best interest of the child, the most vulnerable participant throughout the entire proceeding.

The project coordinators
Heidi Salaets and Katalin Balogh

The project research assistant
Dominique Van Schoor

For further information, visit our project website:
BIOGRAPHIES OF THE AUTHORS
(in alphabetical order)

Amato, Amalia (Italy)
Amalia Amato is currently research fellow at the Department of Interpreting and Translation (DIT) of Bologna University where she teaches interpreting. As a freelance interpreter and translator, she is member of A.I.I.C. (Association Internationale des Interprètes de Conférence) and I.T.I. (Institute of Translation and Interpreting).

Balogh, Katalin (Belgium)
Katalin Balogh is the coordinator of the Legal Interpreting and Translation (LIT) training programme at the Faculty of Arts of the University of Leuven (Antwerp Campus). She teaches Intercultural Studies to the students of the Master in Interpreting. She was and still is involved in several European projects on legal interpreting and translation, together with Heidi Salaets.

Bessi, Beatrice (Italy)
Beatrice Bessi is psychologist, psychotherapist and child psychoanalyst. She is also consultant for law enforcement agencies and Head of the juvenile Unit of the Associazione Artemisia in Florence. This association deals with children and women who are victims of violence or other forms of abuse or neglect.

Böser, Ursula (UK, Scotland)
Ursula Böser is Professor of Intercultural Studies in the Department of Languages and Intercultural Studies (LINCS) at Heriot-Watt University, Edinburgh, and a member of the Center for Translation and Interpreting Studies in Scotland (CTISS). She teaches Public Service Interpreting, Conference Interpreting and Audiovisual Translation. Her teaching is informed by her extensive interpreting experience.

Davis, Ann (UK, Scotland)
Ann Davis has many years of experience as a BSL (British Sign Language)/English interpreter, interpreter trainer and as the manager of an interpreting unit. She works in Scottish and UK contexts.

De Wiest, Hans (Belgium)
Hans De Wiest is Chief Inspector at the Technical and Scientific Department of the Federal Police in Belgium. He is working at the Behavioral Science Unit, more specifically at the Department Interviewing of Minors where he develops and delivers training on interviewing techniques used in investigative child interviews.
Driesen, Christiane (France)
Christiane Driesen is a legal translator and interpreter as well as a conference interpreter. She currently directs continuing training courses in court and legal interpreting at the University of Applied Sciences of Magdeburg-Stendal and the University of Hamburg. She is the convener of the AIIC Committee for Court and Legal Interpreting. Christiane Driesen is also Vice-President of EULITA (European Legal Interpreters and Translators Association).

Gyurkó, Szilvia (Hungary)
Szilvia Gyurkó is a child rights expert and her main activities are advocacy, consultation, research and lobby work. She worked as a senior researcher on the field of domestic violence, child abuse and neglect, juvenile justice and sexual exploitation. Until 2014, she was advocacy director of the Hungarian National Committee for UNICEF.

Kerpel, Éva (Hungary)
Éva Kerpel currently works as an international family mediator. She is a macroeconomic analyst with international education and experience, author and editor of books, studies, articles. Trained as a trainer, mediator and coach, she worked in leading roles as a child protection expert in Hungarian and international NGOs. Her special interests include translation, she also acquired a diploma as a literary translator.

King, Catherine (UK, Scotland)
Catherine King has been a practicing interpreter since 1994 and was in the first cohort of British Sign Language (BSL)/English interpreting students to graduate from Heriot-Watt University in the year 2000. Over the course of her career she has worked across a range of domains including tertiary education, social services, police and courts and academia. An independent practitioner since 2001, she has contributed to a number of research projects and been an interpreter trainer in both the academic and continuing professional development context.

La Rooy, David (UK, Scotland)
David La Rooy has received specialist training on child forensic interviewing, as well as training in the assessment of the quality of investigative interviews conducted with children alleging abuse. He is a Chartered Psychologist, Chartered Scientist, and Associate Fellow of his professional governing body, the British Psychology Society. He was awarded a Scottish Institute for Policing Research Lectureship in 2008 and conducts research related to investigative interviewing.

Mack, Gabriele (Italy)
Gabriele D. Mack is associate professor in German language and linguistics at the Department of Interpreting and Translation (DIT) of Bologna University where she teaches interpreting. She coordinates the MA Conference Interpreting Programme and the German interpreting section. Until 1996 she worked as free-lance conference interpreter and editorial translator.
Salaets, Heidi (Belgium)
Heidi Salaets is the head of the Interpreting Studies Research Group at the Faculty of Arts of the University of Leuven (Antwerp, Brussels and Leuven campus). She trains interpreters in the Master and also conference interpreters (Italian-Dutch) in the postgraduate interpreting programme. Heidi Salaets is also responsible for the evaluation procedure in the LIT-training (Legal Interpreting and Translation). She was and still is involved in several European projects on legal interpreting and translation, together with Katalin Balogh.

Skrzyniarz, Katarzyna (UK, Scotland)
Katarzyna Skrzyniarz is an experienced interpreter working between Polish and English. She has also worked as a police officer and received training to work as a joint-interviewer.

Solem, Lucie (France)
Lucie Solem holds a master in Conference Interpreting from ISIT, Paris, and a master in Research in Translation Studies from ESIT, Paris. She works as a conference interpreter (French/Spanish, German, English and Portuguese) and a Spanish lecturer at ISIT Paris and IPLV Angers.

Szekeres, Ágota (Hungary)
Ágota Szekeres is assistant professor and head of the Department of Learning Difficulties and Intellectual Disabilities at the Faculty of Special Education of the Eötvös Loránd University. She also is a disability equality mentor. Her research focuses, among others, on SEN (people with Special Education Needs), project-based educations and the development of digital learning tools.

Tonitza, Carmen (France)
Carmen Tonitza is a French-Romanian legal interpreter and co-founder of ASTRID (Association Traducteurs, Interprètes et Déontologie).

Van der Mussele, Eric (Belgium)
Eric Van der Mussele is a certified youth lawyer in Antwerp, member of the Council of the Flemish Bar Association and also a trainer in juvenile law courses. He runs his own law firm and participates as an expert in various research projects.

Van Schoor, Dominique (Belgium)
Dominique Van Schoor holds an MA in English and Italian Literature and Linguistics from Ghent University and an MA in Interpreting (with specialization in legal interpreting) from KU Leuven, Antwerp campus. She has also completed the postgraduate programme in Conference Interpreting at KU Leuven, Antwerp campus and currently works as research assistant at the same university.
Virág, György (Hungary)
György Virág is a forensic psychologist and currently deputy director of the NIC (National Institute of Criminology) in Budapest. He is one of the main founders of the ESZTER Foundation.

Wilson, Christine (UK, Scotland)
Christine Wilson is an Associate Professor/Senior Teaching Fellow in Languages, teaching translation and interpreting in the department of Languages & Intercultural Studies at Heriot-Watt University. She is course coordinator of the postgraduate public service interpreting (legal settings) option. She was responsible for the design and delivery of training for public sector staff on working with interpreters (police officers, trainee advocates, judges and mental health specialists).