



Procedure on Hearing Children Legal and Psychological Implications

Oana Racołta, notary public
Babes Bolyai University
Cluj-Napoca, Romania

ABSTRACT

Hearing minor children is an interdisciplinary discipline, as it involves both legal and psychological implications. Legal aspects address to a greater extent to all participants within such procedure, whereas psychological implications focus on minor children and the effects they experience following judicial hearing.

Though a simple process from the procedural point of view, in the context of hearing minor children, there may appear complex situations that require special training of the person actually performing this process, the more that the heard children are likely to present mental disorders. In the same time, the maturity level and the age of each heard minor must be considered, as well as the object of such procedure, either civil in case of parents divorce, or criminal, where minor child may present different qualities, such as victim, witness or even the person in conflict with the law.

INTRODUCTION

The states of the minor child in the proceedings of the hearing, namely offender, victim, witness or child heard in divorce proceedings, have very different specific, but in the same time the mental processes involved are similar. Moreover, emotions are undeniable at any age. The functioning of such processes is developed as the child grows up, therefore younger children will have more difficulties in accomplishing the task's components.

In case of most procedures, children need to communicate relevant facts from the legal point of view, that they have perceived directly and that they have remembered.

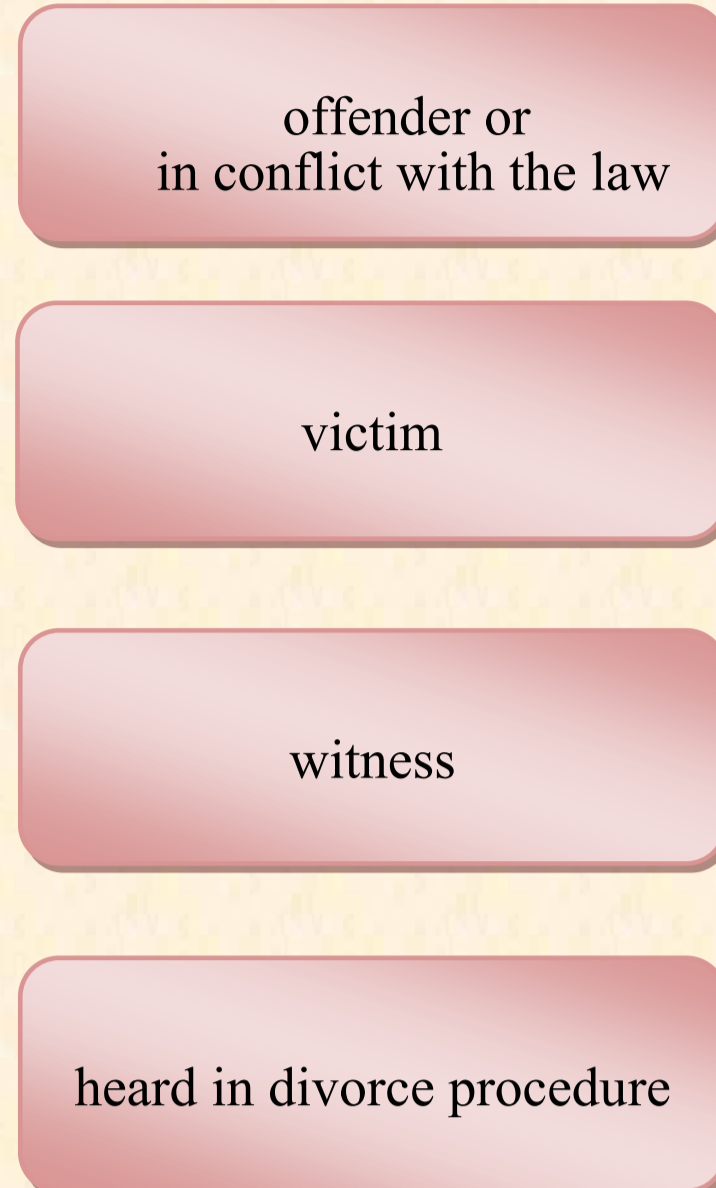
Given the particularities of specific mental processes that have been addressed in the specialty literature, it is stated that minor children are able to participate in trials, but sometimes, when interviewed, there should be considered their development particularities, while the questions should be asked in a such a manner that compensates for difficulties related to the development of mental processes (according to Segovia and Crossman, 2012).

The presence of a psychologist in this legal procedure offers advantages, namely the ease of communication with the child heard and the understanding of any inappropriate behaviour thereof (Pivniceru and Luca, 2009).

The emotional distress minor children that are to be heard on issued related to parental divorce cannot be questioned. The role of psychology is to minimise this state as much as possible, so there is no negative consequence on the appropriate behaviour of the child.



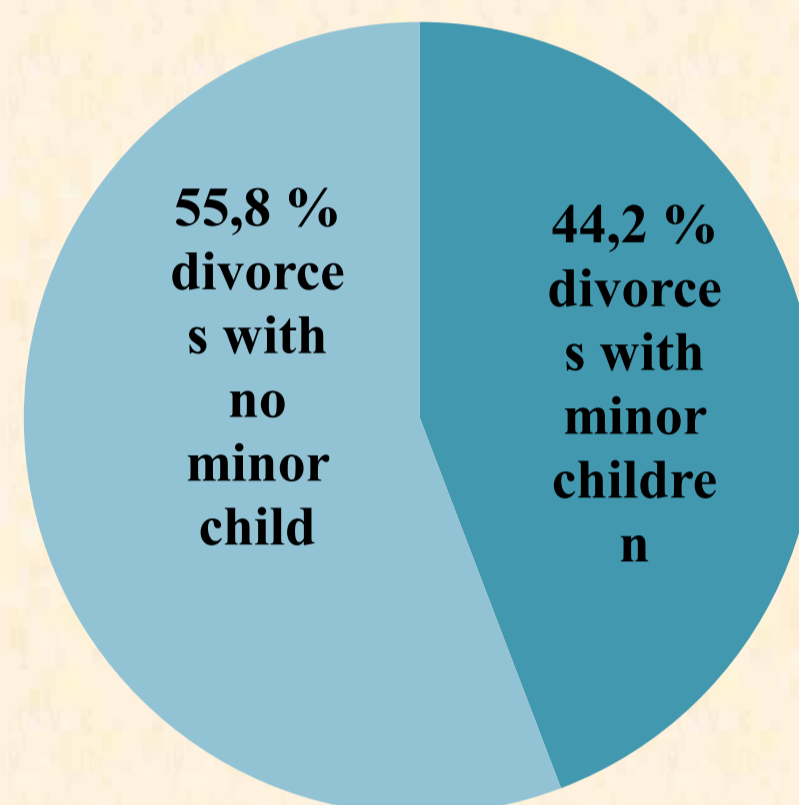
The states of the minor child, involving the hearing procedure:



Type of causes involving minor children:



Frequency rate of divorces involving minor children in an EU member state (Romania) according to www.psychologies.ro



HYPOTHESIS

Minor children receiving psychological counseling prior the hearing process show a lower degree of emotional distress, while minor children that are not psychologically counseled obtain lower scores on emotional distress caused by their parents' divorce.

METHODS

Design:

bifactorial
independent variable - group
dependent variable – emotional distress

Participants:

a number of 50 children, ranging in age from 11 to 14 years, among which 25 girls și 25 boys (according to the Romanian legislation, minor children over 10 years are allowed to be heard). The sample selected is one of convenience.

Procedure:

The legal procedure that integrated the hearing of minor children is the notary divorce by agreement. It is a proposed study that shall be conducted over one year. Thus, 25 children will benefit from a counseling session before the hearing, and 25 children will be heard without the involvement of a psychologist or psychological procedures.

Both before the counseling session and at the end of the legal procedure of hearing, children will be applied emotional distress scale (PAD, Opriș and Macavei, 2007), which aims to highlight the score obtained in measuring the emotional stress variable.

Measurements will result from the application of test – retest, while statistical analysis will be based on test T.

Expected results:

- children who have received counseling session prior to hearing will get higher scores of emotional distress caused by their parents' divorce
- children who have not received psychological counseling session will get lower scores when measuring the emotional distress caused by parental divorce

Objectives:

Following the survey, if the assumptions are confirmed, it is desirable to analyze the opportunity to appeal to psychological counseling of minor children in the procedure of the hearing, in the notary divorce.

DISCUSSION

There are several psychological mechanisms involved both in the granting psychological counseling, as well as in legal proceedings in the hearing process.

In this respect, it should be taken into consideration the focusing degree, the information storage capacity, the risk of suggestibility, the interference of false memories, the emotional changes occurred, as well as the particularities of child development, both physical and emotional.

For example, to assess the child's degree of suggestibility, there are any questions about how suggestible a child is compared to an elder one, as well as how a child is influenced by the way questions are asked (Ekman, 2009).

As for the parents' presence, one may argue that the risk of concealment or the suggestibility degree of heard children would increase.

As for the focusing process, surveys show that, though there are several differences related to information that children and adults reach for, there are similar aspects also. For example, when watching the scene of an offense, both children and adults focus on the weapon that the delinquent uses. (Davies et al., 2008).

The concept of false memories need also to be considered, as they appear in a lower extent to children, compared to adults. (Otgaar et al., 2012).

As they grow up, children succeed more and more to develop scenarios of certain categories of activities that develop, but this ability may interfere with children's ability to describe and to differentiate between several distinct incidents in time, for example, in situations of abuse. For this reason, they may become confused when are asked puntual questions related to a particular specific incident (Roberts and Powell, 2001).

Most of the times, children become confused when they are asked about a specific event of abuse that resembles with other events of the same type. Children's ability to answer open questions like "What happened?" increases with age (Goodman, 2006).

Likewise, if a child is repeated the same question too many times, the answers may not be real every time, as the child may change his initial response, considering that the first answer was wrong or did not satisfied the person performing the interview (Pivniceru and Luca, 2009).

To this end, the psychologist can structure the questions in such a way as to provide enough contextual specific clues specific that help the child to automatically update an event.

The psychologist may also update information by suggesting questions that specifically refer to several contextual clues of the event that the child remembers.

The period of information storage increases with age. This means that it helps if the minor is given the opportunity to update the events at short intervals after they took place (Peterson, Pardy et al., 2005).

The capacity to report an event depends on the ability to remember, as well as to communication and linguistic abilities of the child, that develop in time; younger children rely on adult assistance in the form of questions; the less direct questions are those leading to the most accurate answers, if less rich in details (Bjoerklund et al., 2000).

The psychologist may help build interviewing strategies that provide additional structure and clues to children in order to maximize the events recall, while minimizing false memories.

The psychologist may also contribute to the use of specific techniques of interviewing, as for example the context resettlement (context reinstatement- LaRooy, Pipe & Murray, 2007) or cognitive interview (cognitive interview) (Fisher and Gieselmann, 1992).

In conclusion, the psychologist has the following roles:

- to monitor the interviewing process in order to notice the cases when the child's development particularities put their mark on his ability to provide accurate information or on his credibility;
- to help structure the questions in such a way as to contribute to an accurate remind of the questions, while minimizing false memories;
- to notice emotional changes arising from the information update with a strong emotional charge, in order to give children psychological support.

I chose to apply the divorce proceeding survey, considering the statistical increasing of divorce involving minor children, as well as the lack of legislative regulation of minor hearing in this field.

Although actually marriage and having children is a rule or a norm in modern society, the lack of frequent marriages is obvious, as well as the increase of divorce rate, the reasons of this trend becoming more and more different. Therefore, there are many situations such as: the separation of children from one or both parents, the child growing by one of the parents, concubinage, step families.

In this entire process, legal amendments make a contribution with the simplification of divorce by mutual consent. In this respect, in Romania, once the New Civil Code has entered into force on October 1st, 2011, public notaries were granted to solve divorce cases by mutual agreement of parties having minor children.

In this regard, minor children who have reached the age of 10 are heard by the notary public in the presence of both parents. Being a relatively new procedure in the legislation of Romania, it was received with skepticism and restraint by persons applying the legislation and the procedures in this field, especially because there is no psychological training needed to handle such a task.

For these reasons, the survey aims to analyse the necessity of a person with psychological training in hearing proceedings of minor children, in the current legal context, so that this process be as less traumatic for the children heard, but also to ensure that the international principles of superior interest of minor child, as well as of hearing the child's opinion are observed and taken into consideration, considering also the child's age and maturity level. These principles are enshrined within Treaty Convention regarding child's rights, an objective that can be provided with adequate psychological training of people involved in the hearing procedure.

The prevention of trauma risk should equally regard both children enjoying a normal development, and children with psychological disorders. In all situations, the hearing should be custom and reported to the needs of every child, items that are assessed from the psychological perspective

The purpose of this survey:



REFERENCES

- Ekman, P. (2009). *Why do children tell lies? How can parents encourage them to be honest*. Bucharest: Three,
- Pivniceru, M., Luca, C. (2009). *Guide to hear the children in court proceedings*. Bucharest: Hamangiu,
- Davies, G. M., Smith, S., &Blincoe, C. (2008). A 'weapon focus' effect in children. *Psychology, Crime & Law*, 14(1), 19-28,
- Goodman, G. S. (2006). Children's eyewitness memory: A modern history and contemporary commentary. *Journal of Social Issues*, 62, 811-832,
- La Rooy, D., Pipe, M.-E., & Murray, J. E. (2007). Enhancing children's event recall after long delays. *Applied Cognitive Psychology*, 21, 1-17,
- Otgaar, H., Peters, M., & Howe, M. L. (2012). Dividing attention lowers children's but increases adults' false memories. *Journal of Experimental Psychology: Learning, Memory, and Cognition*, 38, 204-210,
- Chi, M. T. H. (1978). Knowledge structures and memory development. In R. S. Siegler (Ed.), *Children's thinking: What develops?* Hillsdale, NJ: Erlbaum,
- Peterson, C., Pardy, L., Tizzard-Drover, T., & Warren, K. L. (2005). When initial interviews are delayed a year: Effect on children's 2-year recall. *Law and Human Behavior*, 29, 527- 541,
- Roberts, K. P., & Powell, M. B. (2001). Describing individual incidents of sexual abuse: A review of research on the effects of multiple sources of information on children's reports. *Child Abuse & Neglect*, 25, 1643-1659,
- Agafitei, R. (2015, April 1). Impact of divorce on children. *Psychologies*. Retrieved July 28, 2015, from <http://www.psychologies.ro/anchete-si-dosar/impactul-divorțului-asupra-copiilor-2143786>.