

## K R I V I Č N O   P R O C E S N O   P R A V O

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**GUARDIANS OF JUSTICE: BALANCING RIGHTS AND PROTECTION IN THE EXAMINATION OF MINORS AND JUVENILE TESTIMONY IN CRIMINAL PROCEEDINGS****Filip Novaković**

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**Summary:** *This paper explores the intricate balance between safeguarding the rights of minors and ensuring effective criminal justice in the examination of juvenile testimony within legal proceedings. Focused on the intersection of criminal law and juvenile justice, the study delves into the challenges and ethical considerations surrounding the interrogation and testimonial processes involving minors. The evolving landscape of juvenile criminal justice necessitates a nuanced approach that considers both the developmental vulnerabilities of young individuals and the imperative to uphold justice. The article addresses the fundamental tension between the rights of minors to fair treatment and the societal interest in uncovering the truth. The examination of minors in criminal proceedings requires a delicate balance, considering factors such as cognitive development, susceptibility to coercion, and the potential impact of trauma. The paper critically evaluates existing legal frameworks and proposes innovative strategies to enhance the protection of juvenile rights without compromising the pursuit of justice.*

**Keywords:** *Juvenile Justice, Minors' Rights, Criminal Proceedings, Testimony Examination, Legal Protections.*

**1. INTRODUCTION**

In the realm of criminal law, the intricacies surrounding the rights and protections afforded to minors during legal proceedings have long been a subject of intense scrutiny and scholarly inquiry. The delicate balance between upholding the principles of justice and safeguarding the well-being of juveniles demands a nuanced understanding of the unique challenges posed by their involvement in criminal cases. This paper seeks to explore the intricate web of legal considerations and ethical dilemmas that surround the examination of minors within the criminal justice system. The juvenile justice system is predicated on the recognition that minors possess distinct vulnerabilities and developmental characteristics that set them apart from adult defendants. Also, the same specifics can be observed when a minor has the status of a witness. As guardians of justice, it is our responsibility to ensure that the rights and protections of minors are diligently preserved, fostering an environment that is both fair and considerate of their unique

circumstances. This paper endeavors to dissect the multifaceted nature of this undertaking, offering a comprehensive analysis of the legal frameworks, psychological considerations, and ethical imperatives that shape the treatment of minors in criminal proceedings.

At the core of this exploration lies the delicate balance between respecting the constitutional rights of minors and implementing measures that shield them from potential harm. The constitutional rights afforded to all individuals, such as the right to a fair trial and the right to confront one's accusers, take on a distinctive complexion when applied to minors. Furthermore, this paper will delve into the evolving landscape of juvenile testimony, scrutinizing the methods employed in their examination. Interactions within the courtroom can be formidable, often inducing stress and anxiety, particularly for young witnesses. We will explore innovative approaches and best practices in questioning minors, ensuring that the pursuit of truth aligns harmoniously with the imperative to shield them from undue trauma. Ethical considerations loom large in the discourse on juvenile justice, and this article will critically evaluate the ethical responsibilities of legal professionals, judges, and all stakeholders involved in the criminal justice process. Our role as guardians of justice extends beyond the confines of the courtroom, demanding a holistic approach that prioritizes the welfare of minors over rigid procedural norms. In conclusion, this paper aims to be a seminal contribution to the ongoing dialogue surrounding the treatment of minors within the criminal justice system. By scrutinizing legal frameworks, examining psychological dimensions, and navigating ethical quandaries, this article aspires to illuminate a path forward – a path where justice is served, rights are respected, and the protection of our most vulnerable population remains at the forefront of legal deliberations.

## 2. SOME BASIC AND SPECIFIC QUESTION

The primary objective of criminal trials resides in the establishment of criminal responsibility, primarily serving a deterrent function (Grubač, 2004, 27). In adherence to the principle of expediency, it is imperative that trials be conducted with clarity, thoroughness, and straightforwardness, seeking to ascertain substantive criminal responsibility reliably, promptly, and economically. Simultaneously, the imperative of due process for the individual must be upheld, safeguarding against any encroachment upon their human rights (Simović & Simović, 2016, 35). In the context of a modern constitutional and democratic state, a criminal trial is fundamentally oriented towards achieving a just outcome, harmonizing with the requisites of a fair trial and ethical acceptability.

Historically, the objectives of establishing criminal responsibility and ensuring due process for the individual were often perceived as inherently conflicting pursuits. This tension was manifestly articulated as a clash between the interests of the public, represented by the prosecution, and those of the accused. However, it is imperative to acknowledge that these objectives need not be inherently incompatible. Furthermore, it is incongruent with the public interest,

particularly in the realm of crime prevention, to erroneously convict an individual or subject a defendant to unjust mandatory measures or penalties. Conversely, the conscientious and equitable imposition of punishment, grounded in substantive law, serves to fortify the legal protection afforded to the individual.

The involvement of children in criminal trials, whether as suspects/defendants, injured parties, or witnesses, raises distinct ethical considerations. Children can also be victims of heinous crimes, notably assault and sexual abuse. Safeguarding children from such criminal acts is a morally commendable objective. The paramount goal in investigating crimes against children lies in the prevention and cessation of child abuse and sexual abuse, alongside the apprehension and prosecution of perpetrators. This matter assumes heightened complexity when ethically sound and justified objectives, as delineated earlier, find themselves in conflict, a predicament that is particularly pronounced in cases involving crimes against children. Consequently, the nuanced examination of this issue is imperative, transcending theoretical contemplation, given its tangible ramifications.

Central to criminal proceedings is the paramount role played by evidence, with the testimony of individuals associated with the contested events standing out as a pivotal element. The significance of witness testimony, spanning from those who witnessed the events to the defendant and the injured party, has long been acknowledged in both the theoretical underpinnings and practical application of criminal procedure (Mirkov, 2019, 167). The foundational importance of evidence in criminal proceedings is rooted in its capacity to illuminate the circumstances surrounding alleged criminal acts. The evidentiary procedure inherently hinges on the contribution of testimonies, each offering a unique perspective and insight into the events under scrutiny (Stojković, 2006, 580). This multi-faceted approach, incorporating accounts from witnesses, the accused, and the injured party, serves to construct a comprehensive narrative that facilitates the adjudication of justice.

Witness testimony, in particular, emerges as a linchpin in the evidentiary framework. The accounts provided by those present during the events in question furnish the court with firsthand perspectives, offering a glimpse into the unfolding of the alleged criminal conduct (Bejatović, 2008, 308-309). In the realm of judicial psychology, testimony emerges as a distinctive psychological phenomenon, characterized by the intricate interplay of four interconnected and functionally conditioned psychic processes: perception, memorization, thinking, and expression. In a nuanced exploration of testimony within the procedural-legal context, it assumes the role of a pivotal means of proof – a statement proffered by an individual participating in the legal process. This statement is a direct outcome of the individual's observation and discernment of facts, contributing to the establishment of a factual matrix pivotal to the subject matter under adjudication (Dragović, 2023, 901 & 905).

In the procedural-legal dimension, testimony is defined as a mode of proof, encapsulating the narrative provided by an individual who, while not a procedural subject, imparts information to the court derived from sensory perception

concerning a significant fact from the past (Vasiljević, 1981, 349). This fact is deemed crucial for the subject of the trial, and the purpose of the testimony is inherently rooted in substantiating and validating such facts. Hence, the testimony of a witness, in this context, can be succinctly articulated as „the statement of a person, who is not a procedural subject, given to the court about the sensory perception of some fact from the past important for the subject of the trial, with the aim of proving it“ (Grubač, 2006, 267). This conceptualization underscores the intricate fusion of psychological processes and legal significance inherent in testimony. It acknowledges the multifaceted nature of the human experience and the cognitive processes that underpin the act of providing an account. Simultaneously, it places testimony within the overarching framework of the legal system, emphasizing its role as a critical instrument in the pursuit of truth and the establishment of factual foundations crucial for just and equitable legal determinations.

Equally critical is the testimony of the defendant, who, in articulating their version of events, contributes to the delineation of the narrative under consideration. Furthermore, the injured party's or victims testimony provides a unique vantage point, shedding light on the impact of the alleged offense on their person and aiding in the assessment of the overall circumstances. This recognition of the indispensable role of testimonial evidence is not a recent development but rather a longstanding acknowledgment deeply entrenched in the theoretical constructs and practical manifestations of criminal procedure. The symbiotic relationship between evidence and the testimonies of relevant parties underscores their collective significance in establishing the factual foundation upon which legal determinations are made. Consequently, the nuanced understanding and strategic utilization of testimonial evidence represent fundamental aspects of a robust and equitable criminal justice system.

Encountering particular challenges in the testimony of victims of criminal offenses, particularly those involving elements of violence, and minors underscores the necessity for specialized provisions in criminal procedure legislation. The unique difficulties arise not only from the nature of the testimony but also due to the inherent vulnerabilities of such individuals. Factors such as the lack of experience in handling such cases, potential confusion or fear experienced by minors, and the intricate psychophysical state of victims necessitate a nuanced approach to ensure that the process does not inflict harm on them. In response to these exigencies, criminal procedure laws have incorporated mechanisms to handle such witnesses with exceptional care, aiming to mitigate the potential adverse effects on their well-being (Lazarov, 2018, 103-120). Specifically, these legal provisions permit the examination of such witnesses, considering their age, physical and mental condition, or other justifiable interests, to be conducted through the use of technical means for image and sound transmission, including but not limited to audio-video connections. This innovative approach allows for the participation of the parties involved – prosecutors, the accused, and their defense attorneys – while avoiding their physical presence in the same room as the witness (Code of Criminal

Procedure of Bosnia and Herzegovina, 2003, art. 86, para. 6; Code of Criminal Procedure of Republika Srpska, 2012, art. 151, para. 6; Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, 2003, art. 100, para. 6; Code of Criminal Procedure of Brčko District of Bosnia and Herzegovina, 2013, art. 86 para. 6).

Moreover, the legislation recognizes the need for expert involvement during such examinations, acknowledging the complex factors that may influence the testimony of these vulnerable witnesses. Consequently, the appointment of an expert to assist in the examination ensures a comprehensive understanding of the witness's statements, especially when their age, physical and mental condition, and other legitimate interests require special consideration. Practically, this means that, in exceptional cases, witnesses can be situated in a private room physically separated from the courtroom. Meanwhile, the main trial proceedings continue in the courtroom with the judge or trial panel, prosecutor, accused, defense counsel, and potentially the public, depending on the sensitivity of the testimony. The use of technical means facilitates the questioning of witnesses by the involved parties, ensuring adherence to the established rules governing the examination of witnesses, including direct, cross-examination, and additional examination. This approach not only safeguards the rights and well-being of vulnerable witnesses but also upholds the principles of fairness and justice within the criminal justice system. It strikes a delicate balance, enabling the pursuit of truth while minimizing any potential harm that may arise from the legal process, particularly in cases involving individuals who are more susceptible to the adversities of criminal proceedings.

In instances involving minors below the age of sixteen who have endured harm due to a criminal act, and in circumstances where apprehensions arise concerning the potential difficulty of having the witness testify during the primary hearing, it becomes imperative to document the proceedings comprehensively. The recording of the hearing serves as a critical procedural measure designed to ensure a thorough and accurate account of the testimony, thereby safeguarding the interests and well-being of the vulnerable party involved (Code of Criminal Procedure of Bosnia and Herzegovina, 2003, art. 90; Code of Criminal Procedure of Republika Srpska, 2012, art. 155; Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, 2003, art. 104; Code of Criminal Procedure of Brčko District of Bosnia and Herzegovina, 2013, art. 90). When dealing with minors who have experienced harm resulting from criminal acts, the recording requirement is particularly salient. Given the inherent challenges associated with eliciting testimony from individuals in this age group, the recording of the hearing provides an invaluable tool for preserving the accuracy and integrity of the witness's statements. This measure aligns with the recognition of the unique vulnerabilities and sensitivities of minors, aiming to minimize potential distress or retraumatization during legal proceedings.

Moreover, the imperative to record the hearing extends to situations where there are legitimate grounds to fear that the witness may face difficulties providing testimony during the main hearing. Such concerns may arise due to factors such as

intimidation, fear, or any condition that may impede effective communication. By mandating the recording of the proceedings, the legal framework seeks to address and mitigate these challenges, ensuring that a detailed and reliable record is available for subsequent scrutiny. The recording requirement not only serves the interests of justice by preserving the evidentiary foundation but also aligns with broader objectives of fairness and protection within the criminal justice system. It acknowledges the need for a nuanced and considerate approach when dealing with minors and witnesses facing potential difficulties in the adversarial setting, emphasizing a commitment to procedural integrity and the well-being of those participating in the legal process.

### **3. HEARING A CHILD AND MINOR IN CRIMINAL PROCEEDINGS**

The presence of interested parties during a trial is crucial for obtaining material facts in a case, as these individuals typically possess a more profound understanding of circumstantial facts and the actual occurrences related to the case than any other party. The advantages derived from their presence are substantial and commensurate with the potential curtailment of legal protection for these parties, or at the very least, the risk thereof. Legal safeguards are entrenched to ensure that innocent individuals are not wrongfully punished and that interested parties are treated with due regard. This imperative extends to victims, or injured parties, encompassing a commitment to their legal protection.

This commitment to legal protection is equally applicable to children and minors involved in legal proceedings. It entails not only safeguarding their rights but also ensuring that the investigative processes, encompassing both the preliminary investigation and trial, do not inflict additional harm on these vulnerable individuals. It is imperative to underscore that a child victim of a crime is entitled to the same rights and considerations as any other injured party. This principle holds particular significance in cases involving sexual abuse or assault, where a child may serve as the sole witness to the alleged offense. Complicating matters in instances of sexual abuse is the scarcity of physical evidence, rendering the child's account a pivotal source to corroborate suspicions of criminal activity. Consequently, obtaining a precise and comprehensive description of the event from the child becomes paramount.

Recognizing the direct correlation between the quality of a child's account and subsequent legal decisions, it is essential to acknowledge that children, fundamentally capable of recounting events, may exhibit differences in memory recall compared to adults. When asked to provide a free account of their recollections, children often recall less, and their errors in memory tend to be more in the nature of omissions rather than inclusions. Particularly challenging is the limited nature of responses from very young children to general, non-leading questions, irrespective of their memory of the event (Agnew & Powell, 2004; Ceci & Bruck, 1993; Powell, 2000). The nuanced understanding of these dynamics is

vital in ensuring a fair and just legal process for children involved in criminal proceedings, upholding their rights and minimizing any potential harm during the investigative and trial phases.

Empirical research has consistently demonstrated that children, much like adults, convey events with honesty. The ability to craft a believable fabricated narrative requires considerable skill, and as such, younger children are more inclined to recount the truth, as they are yet to acquire the proficiency in deceptive communication (Hughes-Scholes & Powell, 2008, 210-225). Scholarly consensus points to children under the age of six being particularly susceptible to leading questions. While individual differences exist in children's susceptibility to suggestion, the manner in which questions are posed exerts a more substantial influence on their susceptibility than the child's inherent personality traits (Kosk, Ventsel & Toomela, 2019, 235-248; Hritz *et al.*, 2015, 3-12).

Communication about one's experiences is contingent upon two vital components: ability and willingness. Notably, when addressing instances of abuse, the primary challenge lies in the child's reluctance to discuss the matter rather than an inability to do so. The complainant is considered to bear a 'negative duty to tell the truth' about the case, emphasizing an obligation to truthfulness in their statements. Furthermore, the child, acting as the complainant, must be transparently informed of the right to remain silent. Upholding a child's rights necessitates safeguarding them rather than infringing upon them. It is essential to recognize that the investigation of offenses typically falls outside the purview of social or health care services, and therapists are not routinely subjected to queries regarding a client's perspectives on legal matters. Introducing opportunities for questioning a child in the preliminary investigation phase may prove problematic, given the potential incompleteness of the overall situational understanding at that juncture. The constraints of addressing all necessary questions simultaneously, as done during a trial, coupled with the absence of judges for exploratory or supplementary queries, render this approach challenging.

A critical concern, particularly concerning the reliability of a child's account of events, revolves around narratives emerging from prolonged, repetitive interviews, especially when employing leading techniques. The risk of contaminating the authenticity of the child's testimony is heightened under such circumstances, underscoring the need for cautious and ethical practices in eliciting information from children involved in legal proceedings.

In the landmark decision of *Bellerín Lagares v. Spain* (2003), issued on 04.11.2003, the European Court of Human Rights (ECtHR) unequivocally established that Article 6 of the European Convention on Human Rights does not expressly mandate the explicit consideration of the interests of witnesses or victims of crimes within its provisions. Although the ECHR acknowledges that the questioning of witnesses or victims may have repercussions on their private life, freedom, or security, it asserts that the protection of such interests is encompassed by other normative legislations. The ruling elucidates that while Article 6 may not specifically delineate the protection of the interests of witnesses or victims,

Contracting States are obligated to structure their criminal trials in a manner that effectively safeguards these interests to the greatest extent possible. The ECtHR's position emphasizes the broader commitment of Contracting States to ensure a comprehensive framework for the protection of the rights and well-being of witnesses and victims, even if not explicitly mandated by Article 6. In essence, the decision underscores the overarching responsibility of states to organize their criminal proceedings with due consideration for the potential impact on the private life, freedom, and security of witnesses and victims. By recognizing that other normative legislation provides the necessary protective mechanisms, the ECtHR reaffirms the multifaceted nature of legal safeguards and underscores the imperative for states to adopt measures that uphold the dignity and rights of all individuals involved in criminal proceedings.

## **4. CONJUNCTION WITH ARTICLE 6 OF THE ECHR**

### **4.1. General Principles**

Contemporary adversarial criminal procedure is rooted in the fundamental tenet of fair procedure, serving as the cornerstone of modern criminal justice (Krapac, 2012, 79-80). The bedrock of this procedural fairness lies in the expansive concept of due process, encapsulating various assurances. Primarily, it encompasses the elements of orality and publicity within the proceedings. The oral nature of the legal proceedings is deemed integral to the essential requisites for ensuring a fair trial (Moslovac, 2017, 874). While the advantages of oral proceedings are undeniable, it is crucial to recognize that orality is not an end in itself; rather, its significance emanates from its facilitation of broader objectives.

Foremost among these objectives is the adversarial or contradictory nature of the proceedings, embodying the principle of *audiatur et altera pars*. Additionally, the principle of „equality of arms“ and the opportunity for the accused to cross-examine witnesses, who have furnished evidence against them, contribute to the multifaceted nature of due process (ivičević Karas, 2007, 762). Oral evidence also serves as a vehicle for implementing the „best evidence rule“, and the judicious consideration of oral testimony provides a robust foundation for the assessment of evidence. Within oral proceedings, the court is afforded the opportunity to proficiently manage the trial, investigating any ambiguous issues that may arise. Furthermore, the oral nature of proceedings enhances reliability, expedites the legal process, and promotes transparency. It is imperative to clarify that in this context, „oral“ signifies the presentation of the substantive content of the case to the court in spoken form, excluding any pre-trial preparations from the purview of oral proceedings (Roxin, 1998, 110).

The principle of immediacy closely aligns with the principles of orality and publicity, constituting a procedural tenet wherein there exists no intermediary between the criminal court and the source of knowledge (evidence). Instead, the court renders decisions based on ascertainable facts. This principle, intricately



connected to orality, underscores the direct and immediate nature of the trial procedure (Sijerčić-Čolić, 2019, 122). Immediacy extends beyond mere statements of the involved parties to encompass the actual evidence presented. A salient advantage of immediacy lies in the direct interaction between the court and those providing evidence during the trial. This proximity affords the court optimal conditions for evaluating the veracity of witness testimony, making observations pertinent to the reliability of such testimony, and ultimately arriving at a substantively accurate judgment. The immediacy of evidence ensures the accused an opportunity to interrogate witnesses, thereby upholding their right to cross-examine (Škulić, 2013, 58-60).

The contradictory principle, stands as an indispensable legal tenet and constitutes a pivotal procedural principle. In its essence, this principle affords the parties the opportunity to articulate their perspectives and submissions, as well as to contest the viewpoints and proposals put forth by the opposing party. This procedural tenet is encapsulated by the maxim „audiatur et altera pars“, emphasizing the imperative of hearing both sides before the court arrives at a decision regarding the subject matter under consideration in the proceedings. The contradictory principle plays a pivotal role in the pursuit of truth within criminal proceedings, facilitating a comprehensive, thorough, and lawful execution of the criminal procedural task (Stanković, 2021, 79). This implies that, during the discourse of a criminal case, due consideration is given to the contentions and representations of each party involved, ensuring a balanced and equitable examination of the matter at hand. Adhering to the contradictory principle, alongside the right to examine and cross-examine witnesses, is integral to ensuring a fair trial. Cross-examination serves the interests of both parties and the judiciary, enabling the critical evaluation of evidence credibility. Maintaining equality between parties in legal proceedings is a duty shared by legislators and courts, especially in light of the relationship between the involved parties. The court bears the responsibility of affording the defendant the opportunity to scrutinize oral evidence presented against them (the right to cross-examine), with the contradictory principle permeating the entire legal process, including the actions of investigating authorities and the prosecution (Damaška, 2010, 827-830).

Linked closely to the contradictory principle is the „equality of arms“ principle, which delineates the procedural positions of the parties involved. This principle asserts that procedural advantages should not unduly favor one party over another. Particularly significant in criminal trials, the equality of arms principle ensures a balanced adversarial system, preventing procedural imbalances between the prosecution and the defense or the accused. The prosecution is obligated to disclose to the accused all materials in its possession, even those not intended for use at trial, and a similar obligation applies to materials supporting the defense (Ivičević Karas, 2007, 776-779).

## 4.2. Specific Principles in the Case of Minors

The interpretation and application of Article 6 in the context of minors involve a delicate balance between the imperatives of justice and the protection of the inherent vulnerabilities of children. The ECtHR, through its jurisprudence, has provided valuable guidance on how the principles enshrined in Article 6 should be applied to ensure a fair and just process for minors involved in criminal proceedings.

In the specific context of questioning minors within criminal proceedings, the principles enshrined in Article 6 play a paramount role. One of the central tenets of Article 6 is the right to a fair and public hearing by an independent and impartial tribunal. This principle underscores the necessity of establishing an environment that respects the inherent vulnerability of minors, acknowledging their distinct needs and capacities during questioning. The ECHR, through Article 6, emphasizes the right of the accused to examine or have examined witnesses against them. When applied to minors, this provision necessitates the adoption of measures that facilitate effective communication with the minor witness, ensuring a nuanced understanding of their statements without causing undue distress. Special accommodations, such as the presence of a support person or the utilization of child-friendly interview techniques, may be imperative to uphold the integrity of the proceedings.

Furthermore, Article 6 enshrines the presumption of innocence until proven guilty. When minors are involved, this presumption necessitates an approach that recognizes the developmental disparities and susceptibilities inherent in youth. Judicial authorities must be attuned to the potential impact of leading questions, coercion, or intimidation on a minor witness, ensuring that the presumption of innocence is not compromised. The principle of the presumption of innocence has been reaffirmed in the context of juvenile justice by the ECtHR. In the case of *Salduz v. Turkey* (2008), the Court held that the right to legal assistance from the early stages of police interrogation is a fundamental aspect of the right to a fair trial. While not explicitly dealing with minors, the decision laid down a precedent that has influenced subsequent cases involving young individuals. This emphasis on legal assistance becomes even more critical when minors are involved, considering their potential vulnerability and limited understanding of legal proceedings. The right to legal assistance, as articulated in Article 6, is equally pertinent in the context of minors facing criminal proceedings. Legal representation ensures that the interests of the minor are safeguarded, particularly in situations where their comprehension and articulation may be limited. The appointment of a legal representative with expertise in juvenile justice becomes imperative to navigate the intricate balance between protection and accountability.

In the case of *Al-Khawaja and Tahery v. the United Kingdom* (2011), the ECtHR emphasized the importance of ensuring that the accused has a fair and proper opportunity to challenge the evidence presented against them. While this case did not specifically involve minors, the principles articulated are pertinent to the broader understanding of a fair trial. The Court highlighted the need for a

careful assessment of the reliability and fairness of evidence, especially when the credibility of a witness, including a minor, is a crucial factor in the proceedings. A seminal case addressing the rights of minors in criminal proceedings is the cases of *T. v. the United Kingdom* (1999) and *V. v. the United Kingdom* (1999). In these cases, the ECtHR examined the questioning of minors in criminal proceedings. This case reflects the overarching principles established by the ECtHR. In these cases, the ECtHR emphasizes the following key points:

(1) Right to Understand Proceedings: Under Article 6(1), the accused, including minors, must have the right to understand the proceedings of the trial. Minors should be able to play an active role in their defense, considering their age and capacity, and this participation should be reasonably expected of a child.

(2) Inadequacy of Physical Presence Alone: Mere physical presence of the accused, especially minors, is not sufficient to fulfill the requirements of Article 6(1). The court should ensure that the child is capable of understanding and engaging in the trial proceedings to the extent that is reasonable for their age.

(3) Fair Hearing and Cooperation with Legal Representatives: Denying minors the opportunity to actively participate in their defense can lead to a breach of Article 6. The Court highlights the potential challenges minors may face, such as feeling inhibited, intimidated, or emotionally distressed in the formal courtroom setting.

(4) Consideration of Age and Emotional State: Age and emotional state are critical factors in assessing whether a minor can have a fair hearing. An 11-year-old child, for example, is likely to find the formal courtroom setting intimidating, affecting their ability to cooperate with legal representatives.

(5) Impact of Public Scrutiny: The text suggests that public scrutiny can further exacerbate the challenges faced by minors in the courtroom. Public hostility can be particularly detrimental to minors, impacting their ability to consult with legal representatives and provide information for their defense.

In the case of *X v. the Federal Republic of Germany* (1981), the European Commission of Human Rights emphasized that it is imperative that interrogations of children be conducted in a manner that respects their age and vulnerability. The applicant, in this case, has not asserted any irregularities pertaining to the police interrogation but has only raised concerns about a brief period of confinement in an unlocked cell. Nevertheless, there is no evidence to indicate that this circumstance significantly impacted the applicant. Additionally, the Commission takes cognizance of the fact that the applicant was in the company of two fellow pupils.

In the case of *Panovits v. Cyprus* (2008), the Court, upon scrutinizing the particulars of the present case, reiterates its previous determinations regarding the violation of the applicant's rights of defense during the pre-trial phase of the proceedings. This transgression emanated from the circumstance that, while the applicant was a minor, the interrogation occurred without the presence of his guardian, and he was inadequately apprised of his entitlement to legal representation and the right to remain silent. The Court observes that the applicant's confession, procured under the aforementioned conditions, served as a pivotal

component of the prosecution's case against him. This confession significantly impeded the prospects of a fair defense during the trial, and the inadequacies were not rectified by subsequent legal proceedings. Consequently, the circumstances surrounding the obtaining of the confession persistently undermined the fairness of the trial and compromised the applicant's ability to present a robust defense. Expanding upon the right to examine witnesses, the ECtHR, acknowledged the significance of accommodating the specific needs of child witnesses. The Court emphasized that the manner of questioning should be adapted to the age and maturity of the child, ensuring a child-friendly environment. The case underscored the importance of avoiding leading questions and coercion, thereby preserving the reliability of the evidence given by minors.

The ECtHR has meticulously delineated, under Article 6 of the ECHR, specific imperatives to safeguard and facilitate the effective participation of children in criminal trials. This imperative undertaking is underscored by the case of *V. v. the United Kingdom*, wherein it is enunciated that proceedings must conscientiously consider the child's age, level of maturity, and emotional capacities. In conformity with these principles, various measures have been identified as essential components of „effective participation“. Notably, the physical presence of the child during the hearings is imperative, accentuating the significance of the child's direct engagement with the legal process. Furthermore, the adoption of in camera hearings, a restricted dissemination of trial proceedings to the public, and a judicious limitation of trial publicity are deemed indispensable in fostering an environment conducive to the child's effective participation. The ECtHR places particular emphasis on ensuring that the child comprehends the gravity of the legal proceedings and fully grasps the implications at stake. This necessitates a tailored approach that accommodates the child's developmental stage and cognitive capacities, aiming to bridge the gap between legal complexities and the child's understanding. In pursuit of effective participation, the ECtHR advocates for a nuanced and less formalistic approach to court sessions involving children. Recognizing the inherent vulnerability and unique needs of juveniles, the Court endorses an environment that minimizes procedural formalities, thereby fostering a setting where the child feels more at ease and capable of expressing themselves. It is noteworthy that, as of now, the ECtHR has refrained from explicitly deeming the establishment of a low age of criminal responsibility as a standalone violation of Article 6 of the ECHR. Instead, the Court adopts a contextual and case-specific approach when evaluating the adequacy of a child's participation in national proceedings. The ECtHR meticulously scrutinizes the concrete circumstances surrounding each case, evaluating factors such as the child's cognitive abilities, comprehension of legal proceedings, and the overall fairness of the trial process.

## 5. ETHICAL CONSIDERATIONS' IN COMPARATIVE PERSPECTIVE

Interrogating minors in criminal proceedings presents a myriad of ethical considerations that demand careful examination. The treatment of juvenile offenders during the interrogation process is a critical aspect of criminal justice, as it involves balancing the interests of justice, the rights of the accused, and the unique vulnerabilities of minors. This discussion will delve into the most important ethical considerations surrounding the interrogation of minors in criminal proceedings, with a specific focus on the distinctions between civil law and common law jurisdictions.

One fundamental ethical concern in interrogating minors is their age and cognitive competency (Owen-Kostelnik *et al.*, 2006, 286-304). In both civil law and common law jurisdictions, legal systems recognize that minors may lack the full cognitive and emotional maturity to comprehend the implications of their actions or to effectively participate in the criminal justice process. Civil law countries typically establish a fixed age for criminal responsibility, often distinguishing between younger children and adolescents. In contrast, common law jurisdictions may utilize a more flexible approach, considering the minor's capacity to understand the consequences of their actions. The ethical question arises: at what age can a minor be deemed competent to undergo police interrogation without compromising their rights and well-being? Striking a balance between protecting the minor's vulnerability and upholding the pursuit of justice is a central ethical consideration in this context.

In both civil law and common law countries, the question of legal representation for minors during interrogation is paramount. Common law jurisdictions, such as the United States, have long recognized the importance of the right to counsel, and this right extends to juvenile suspects. Civil law countries, with their emphasis on inquisitorial systems, may involve legal representatives at different stages, but the role and timing can vary (August & Henderson, 2021, 268-282). The ethical principle of ensuring a fair and just process demands careful consideration of the minor's right to have legal representation or the presence of a guardian during interrogation. It raises questions about the ability of minors to comprehend the legal implications of their statements and the potential for coercion or intimidation in the absence of a trusted adult.

Interrogation techniques employed by law enforcement can have a profound psychological impact on minors, potentially leading to coerced confessions or false statements. Both civil law and common law jurisdictions face ethical challenges in striking the right balance between effective investigation and protecting the psychological well-being of juvenile suspects. Common law countries, often relying on an adversarial system, may confront issues related to the use of aggressive interrogation tactics and the potential impact on a minor's capacity to provide a reliable statement. Civil law countries, with their emphasis on an inquisitorial approach, may also face challenges in ensuring a fair and non-coercive process,

especially when dealing with minors who may be more susceptible to external pressures (Hirjan & Singer, 1987, 451-454).

Ethical considerations extend beyond the immediate interrogation process and encompass the broader principles of juvenile privacy and rehabilitation. Civil law countries often emphasize the rehabilitation of juvenile offenders, with a focus on addressing the root causes of criminal behavior. Common law jurisdictions may also recognize rehabilitation but can sometimes prioritize punitive measures. The ethical question arises: How can the criminal justice system balance the need for accountability with the imperative to protect and rehabilitate juvenile offenders? Both legal traditions must grapple with the long-term consequences of interrogating minors, taking into account the potential impact on their future prospects and rehabilitation.

In some continental civil law countries, characterized by an inquisitorial legal system, approach the interrogation of minors with a focus on judicial investigation rather than adversarial confrontation. One of the primary ethical considerations in these jurisdictions is the protection of the minor's right to privacy and dignity. Inquisitorial systems often involve investigative judges who take an active role in questioning suspects, and it is imperative that these judges act as safeguards for the rights of minors. A notable ethical consideration in continental law countries is the reliance on specialized juvenile justice systems. The interrogation of minors is typically conducted by professionals trained in child psychology and development to ensure a nuanced understanding of the minor's cognitive and emotional capacities. This specialization aims to create an environment that minimizes the potential trauma associated with the legal process. Furthermore, continental law systems often emphasize the principle of confidentiality in juvenile proceedings. Protecting the minor's identity and restricting access to information about the case is considered ethically imperative to shield the minor from social stigma and long-term consequences.

In common law countries, where adversarial legal systems are prevalent, ethical considerations in the questioning of minors revolve around ensuring fairness and protecting individual rights within the confines of due process. A fundamental ethical concern is the potential for coercive tactics during police interrogations, leading to involuntary confessions. Miranda rights and the right to remain silent are crucial safeguards, especially for minors, to prevent self-incrimination under duress. In common law jurisdictions, the role of defense attorneys becomes central in safeguarding the rights of juvenile suspects during questioning. Ethical standards demand that defense counsel actively participates in the questioning process to prevent abuses and to ensure that the minor comprehends the implications of their statements. Moreover, the issue of parental or guardian presence during interrogation is a key ethical consideration in common law systems. Balancing the minor's right to legal representation with the need to involve a responsible adult requires careful consideration. Ethical standards often emphasize the importance of parental involvement to safeguard the minor's interests while acknowledging that,

in certain situations, the presence of parents might not be in the best interest of the child.

While continental law and common law countries may differ in their procedural approaches, certain ethical considerations remain universal when questioning minors in criminal proceedings:

(1) **Informed Consent and Understanding:** Both legal systems underscore the importance of ensuring that minors understand their rights and the consequences of their statements. Obtaining informed consent, tailored to the minor's age and maturity, is an ethical imperative to uphold the principles of voluntariness and fairness.

(2) **Protection from Psychological Harm:** Regardless of legal traditions, ethical standards dictate that minors should be shielded from psychological harm during questioning. This involves avoiding aggressive tactics, ensuring a supportive environment, and recognizing the developmental vulnerabilities of juveniles.

(3) **Best Interests of the Child:** A paramount ethical consideration is the overarching principle of acting in the best interests of the child. This includes considerations of the minor's welfare, rehabilitation, and the long-term impact of legal proceedings on their life.

The ethical considerations surrounding the interrogation of minors in criminal proceedings are complex and multifaceted. Striking the right balance between justice, the rights of the accused, and the unique vulnerabilities of minors requires a nuanced understanding of legal systems, cultural contexts, and evolving societal norms. Whether in civil law or common law jurisdictions, the imperative to safeguard the well-being and rights of juvenile suspects should guide legal professionals, policymakers, and society at large in shaping ethical practices within the juvenile criminal justice system (Finkelhor *et al.*, 2005, 83-102). As we navigate the intricate landscape of interrogating minors, a commitment to fairness, transparency, and the protection of juvenile rights is essential for upholding the integrity of criminal proceedings and fostering a just and compassionate legal system.

## **6. BEST PRACTICES IN COMPARATIVE CRIMINAL AND JUVENILE JUSTICE**

In the case of *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), a 13-year-old suspect implicated in two burglaries underwent interrogation in a school conference room, conducted jointly by law enforcement officers and school officials. Notably, the suspect was not administered Miranda warnings, as the officers perceived that he was not deemed to be „in custody“ during the interrogation. This perception was grounded in the belief that the suspect could terminate the questioning and leave the conference room at his discretion. The United States Supreme Court (the U.S. Supreme Court, the Court), in its ruling that the suspect should have been „Mirandized“, held that when law enforcement assesses whether a child has been taken into custody – thereby necessitating the application of Miranda warnings –

the age of the individual must be a pertinent consideration. The Court elucidated that children, in comparison to adults in analogous circumstances, often sense an obligation to comply with police questioning, where an adult might feel at liberty to discontinue the interaction. The Court extended its analysis by asserting that the prospect of obtaining false confessions becomes particularly disconcerting – and recent studies affirm, more acute – when the subject of custodial interrogation is a juvenile. This determination was underpinned by a reliance on advancements in brain science and a reliance on common sense. The Court emphasized that such observations merely reiterate fundamental knowledge about children that is universally acknowledged, extending beyond the legal realm to the broader understanding held by parents and individuals alike. The decision in the case of *J.D.B.* not only invoked but also conferred renewed significance upon several precedent-setting U.S. Supreme Court cases germane to juvenile interrogations. Notable among these are *Haley v. Ohio*, 332 U.S. 596 (1948), *Gallegos v. Colorado*, 370 U.S. 49 (1962), and *In re Gault*, 387 U.S. 1 (1967). These antecedent cases were referenced to bolster and contextualize the Court’s pronouncements in the evolving landscape of juvenile justice.

Since the *J.D.B.* case, in the United States been actively working on establishing principles for the interrogation and statement-taking procedures involving minors. Numerous trainers in the field of interrogation propose that seasoned police interviewers can discern the veracity or deceitfulness of a subject during preliminary interviews by observing the subject’s conduct and linguistic choices. Indications of dishonesty often include behaviors such as restlessness, slouching, and avoidance of eye contact. In many cases, interviewers are advised to escalate to a full-scale interrogation if behavioral cues suggest deception on the part of the subject (Inbau *et al.*, 2013). However, children and adolescents frequently exhibit behaviors like slouching, lack of eye contact, and similar mannerisms irrespective of the veracity of their statements, particularly in the presence of authority figures. It is imperative for officers not to misconstrue these typical teenage behaviors as indicative of deception. Instead, the decision to initiate an interrogation with juveniles should be grounded in concrete evidence, such as statements from witnesses and forensic findings.

Even intellectually capable children and teenagers often struggle to fully comprehend their *Miranda* rights, which may necessitate a comprehension level equivalent to tenth-grade standards. This reality has been mirrored across the nation, as courts increasingly show a willingness to dismiss a juvenile’s confession, even after apparent valid waiver of *Miranda* rights (Rogers *et al.*, 2007, 124). To guarantee the admissibility of a juvenile’s statement in court, officers should meticulously read each warning, pausing after each individual warning to ask the juvenile to articulate it in their own words. Furthermore, officers should present juveniles with simplified *Miranda* warnings designed for a comprehension level as low as the third grade:

1. You have the right to remain silent. This means you don’t have to say anything.



2. Anything you say can be used against you in court.
3. You have the right to get help from a lawyer right now.
4. If you cannot pay a lawyer, we will get you one here for free.
5. You have the right to stop this interview at any time.
6. Do you want to talk to me?
7. Do you want to have a lawyer with you while you talk to me?

In appropriate situations, law enforcement should also apprise young suspects that communicating with the police might expose them to adult criminal consequences. Crucially, police must ensure that the child comprehends the notion of "adult criminal consequences" and any other concepts that may be challenging for the child to grasp before proceeding with the questioning.

It is imperative to involve a „friendly adult“ in the interrogation process of juveniles, providing them with meaningful opportunities for private consultation throughout the entire questioning session. Typically, the friendly adult is either a parent or a youth officer, each presenting distinct challenges. Juveniles can endure approximately one hour of questioning before requiring a substantial break, and it is crucial that a juvenile interrogation does not extend beyond four hours. Prolonged questioning sessions, especially for younger teens and children, significantly heighten the risk of obtaining involuntary or unreliable statements, with this risk escalating with each passing hour. Officers and prosecutors must exercise caution when questioning juvenile suspects, particularly during the nighttime. Even a few hours of sleep deprivation, coupled with the stress of interrogation, can amplify the likelihood of false confessions. Courts often disapprove of late-night interrogations, especially when involving children (Drizin *et al.*, 2012, 7-8).

The use of deception, such as making false claims about possessing incriminating evidence, is permissible during interrogations. However, evolving legal norms should give officers pause before employing such tactics in juvenile interrogations. The presentation of false evidence may lead a young person to believe that the interrogator is convinced of their guilt, leaving them feeling compelled to confess, whether guilty or innocent, as an attempt to minimize perceived losses. Consequently, one of the nation's prominent interrogation training programs discourages the use of false evidence in juvenile interrogations, specifically advising against such tactics with young children and individuals facing significant mental limitations. Deceptive practices may also cause an innocent juvenile, even one who initially had a clear recollection of not committing a crime, to distrust their own memory. They may come to accept that the presented "evidence" proves their guilt, eventually confessing to a crime they did not commit. Such false confessions, termed coerced-internalized confessions, result from the pressures exerted during deception-driven interrogations, leading a juvenile to genuinely believe they must have committed the crime but suppressed all memories of it (Drizin *et al.*, 2012, 8-9).

Walker and Kenniston, in their insights from the „Handbook On Questioning Children: A Linguistic Perspective“, provide valuable recommendations for effective communication when questioning children:

(1) Simplify Language and Sentence Structure: Avoid acronyms and legal jargon, opting for simple and familiar words. Use straightforward sentence construction with one subject and one verb placed together to minimize processing time;

(2) Use Positive, Active Language: Children respond more accurately to questions framed in positive language. Steer clear of double negatives, as they can lead to confusion. For instance, use „How did it feel when he hit you“ instead of „Did it not hurt when you were hit by him?“;

(3) Avoid Passive Language: Young children may overlook passive words, processing sentences based on word order. Choose active language for clarity, such as „he hit you“ rather than „you were hit by him“;

(4) Think Literally: Recognize that children interpret words literally and may not grasp broader meanings. Consider the specific context in which a child may understand terms, like the difference between feeling physically hurt and being „okay“ emotionally;

(5) Minimize Pronouns: Pronouns can be challenging for children to comprehend, and mastery may not occur until middle school or later. Use names or specific references to avoid confusion and enhance clarity in communication; and

(6) Frame Questions: Avoid confusion by clearly indicating the focus of each question. Employ framing techniques, such as providing a title or context, to help children concentrate on specific topics and enhance recall for more reliable responses. Introduce consecutive questions with a clear transition, signaling a shift in topics for better understanding.

These linguistic strategies, as outlined by Walker and Kenniston, aim to facilitate effective communication with children during questioning, ensuring comprehension and accuracy in their responses.

In the United Kingdom, the regulations articulated by the *Panel Rules* delineate provisions for the treatment of witnesses below the age of 17 during legal proceedings. Specifically, if the quality of a young witness's testimony is susceptible to adverse effects due to their age, they may be categorized as a vulnerable witness, thereby warranting the application of „special measures“ as outlined in these rules. The repertoire of special measures available includes, though is not exhaustively confined to, the utilization of video links, presentation of pre-recorded evidence as the child's evidence-in-chief, engagement of intermediaries, implementation of screens or alternative measures to safeguard the witness's identity from disclosure or the registrant's access, and the conduct of evidence hearings in private.

It is crucial to acknowledge the diverse age spectrum encapsulated within the realm of childhood. Rather, the determination of requisite and suitable special measures should be predicated upon a comprehensive assessment of the particular circumstances inherent in the case, encompassing the nature of the facts and the

witness's involvement and evidence. In this context, the discretionary application of special measures becomes contingent upon the unique dynamics of each case, with a view to ensuring an environment conducive to the effective and fair elicitation of the child's testimony.

In the context of court proceedings, there exists no specific age threshold beneath which children are automatically deemed incompetent to provide evidence. Competence, as assessed in these proceedings, hinges upon a fundamental criterion: the ability of the witness to offer rational testimony. This criterion encompasses the capacity to comprehend questions posed and provide intelligible responses, as well as a comprehension of the nature of taking an oath. The benchmark for evaluating competence was expounded in the case of *R. v. Hayes*, [1977] 1 WLR 234, where it was articulated that the pivotal consideration in determining whether a witness should be sworn is their sufficient appreciation of the solemnity of the occasion and the added responsibility associated with truthfully taking an oath, surpassing the ordinary duty of truthfulness in normal social conduct.

Even if a child lacks an understanding of the nature of the oath, the Panel has the discretion to permit the child to present unsworn evidence provided that the child:

1. Recognizes the duty to speak the truth; and
2. Possesses an adequate understanding justifying the admissibility of their testimony.

The determination of a child's competence to give evidence squarely falls within the purview of the court. This evaluation, however, is not mandated solely based on the chronological age of the witness. While the age of the child may serve as an informative factor for the courts's deliberations on competency, the ultimate decision is contingent upon an individualized assessment of the specific child and their competence to provide evidence within the court proceedings. Consequently, the court is not obligated to initiate an inquiry into the issue of competency merely due to the age of the witness, as the determination involves a nuanced consideration of the child's abilities and understanding in the context of their role as a witness before the court.

In case of hearing a child and minor via video link, the court is obligated to ascertain the proper functioning of relevant equipment prior to summoning a child witness to provide testimony. Any malfunctions, delays, or the necessity of conducting equipment checks in the presence of a child witness may impede the child's ability to present the most optimal evidence. A fundamental prerequisite involves ensuring that:

1. The child's pre-recorded evidence-in-chief can be effectively played;
2. The child possesses the capability to visually perceive the countenance of any individual posing inquiries; and
3. If applicable, measures are taken to prevent the child from observing the registrant.

Prior to the commencement of proceedings, it is imperative for the court to inquire whether the child expresses a desire to familiarize themselves with the court

environment. This practice not only facilitates the establishment of rapport between the court and the witness but also provides an opportunity for the witness to communicate any difficulties, such as a lack of comprehension regarding a question or the need for a pause. Furthermore, the court (or hearings officer) should elucidate that, despite the witness's inability to visually perceive the Panel, they will be visible over the live link. It is essential to inform all participants in the hearing, including the registrant if pertinent, that they will have visual access to the witness during the proceedings.

The court must be cognizant of potential challenges witnesses may encounter while providing evidence, particularly when subjected to questions delivered at an excessive pace or characterized by complexity. This concern is particularly pertinent when the witness is a child. Recognizing that children may require additional time to process inquiries compared to adults is imperative for ensuring the attainment of the best possible evidence. While it is considered best practice for courts to initiate proceedings by encouraging children to express when they do not comprehend a question, it is crucial to acknowledge that children may hesitate to do so. They often attempt to respond to queries they do not fully grasp. Courts must exercise vigilance in this regard, as asking a child whether they understood a question may not consistently serve as a reliable indicator of comprehension. Employing probing questions such as „what do you mean when you say...“ can prove beneficial in enhancing comprehension.

It is imperative that advocates refrain from adopting an aggressive or intimidating demeanor towards any witness, and courts must consistently challenge and prevent such behavior. The potential for confusion arising from complex questions underscores the importance of encouraging advocates to employ language appropriate to the witness's abilities, allowing sufficient time for processing and responding. Furthermore, advocates should be prompted to:

1. Speak slowly and incorporate pauses after each question, affording children ample time for processing and responding;
2. Pose short and simple questions that address one point at a time;
3. Utilize simple, common language commensurate with the age and understanding of the child;
4. Avoid posing complex questions that necessitate the recall of excessive details for an accurate response;
5. Refrain from questions that assert facts or employ suggestive language, which a child witness may find challenging to answer accurately when posed by an authoritative figure; and
6. Adopt a structured approach that provides clear "signposts" indicating changes in subject matter.

Courts should strictly prohibit the questioning of child witnesses concerning intimate touching by instructing that such queries be directed to a body diagram rather than requiring the child to point to parts of their own body.

## 7. CONCLUSION

In conclusion, the exploration undertaken in this article has illuminated the intricate tapestry woven by the interplay of legal, psychological, and ethical dimensions within the realm of juvenile justice. Our examination of the constitutional rights afforded to minors, the evolving landscape of juvenile testimony, and the ethical responsibilities of legal professionals has revealed the delicate equilibrium required to navigate the unique challenges posed by the involvement of minors in criminal proceedings. The constitutional rights, universally granted to individuals, manifest in a distinct manner when applied to minors, underscoring the need for a nuanced understanding of their vulnerabilities and developmental characteristics. Striking the right balance between upholding these rights and implementing protective measures is crucial to fostering an environment that is both fair and considerate of the distinctive circumstances surrounding juvenile involvement in the criminal justice system.

The focus on the evolving landscape of juvenile testimony has highlighted the formidable nature of courtroom interactions for young witnesses, emphasizing the potential for stress and anxiety. Through an exploration of innovative approaches and best practices in questioning minors, this article advocates for methods that align with the pursuit of truth while safeguarding them from undue trauma. It is imperative for legal professionals and stakeholders to recognize the sensitivity of these proceedings and adopt practices that prioritize the well-being of minors over rigid procedural norms. Furthermore, the critical evaluation of ethical responsibilities within the discourse on juvenile justice emphasizes the broader role of all involved parties as guardians of justice. This extends beyond the confines of the courtroom, demanding a holistic approach that places the welfare of minors at the forefront of legal deliberations. By addressing ethical quandaries and emphasizing a comprehensive understanding of the multifaceted challenges faced by minors, we contribute to the ongoing dialogue surrounding their treatment within the criminal justice system.

In essence, this article aspires to be a seminal contribution, shedding light on the complexities inherent in balancing the rights and protection of minors. Through a thorough analysis of legal frameworks, examination of psychological dimensions, and navigation of ethical considerations, it paves a path forward – one where justice is served, rights are respected, and the protection of our most vulnerable population remains a paramount consideration in the pursuit of a just and equitable legal system.

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## ČUVARI PRAVDE: BALANSIRANJE PRAVA I ZAŠTITE U ISPITIVANJU I SVJEDOČENJU MALOLJETNIKA U KRIVIČNOM POSTUPKU

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**Sažetak:** Ovaj rad istražuje zamršenu ravnotežu između zaštite prava maloljetnika i osiguravanja učinkovitog krivičnog pravosuđa u ispitivanju i svjedočenju maloljetnika u sudskom postupku. Usredotočena na raskrižje opšteg (ili redovnog) krivičnog prava i maloljetničkog pravosuđa,

*studija zadire u izazove i etička razmatranja koja okružuju postupke ispitivanja i svjedočenja koji uključuju maloljetnike. Evolucijski krajolik maloljetničkog krivičnog pravosuđa zahtijeva nijansirani pristup koji uzima u obzir i razvojne ranjivosti mladih pojedinaca i imperativ poštovanja pravde. Rad se bavi temeljnom tenzijom između prava maloljetnika na pravedno postupanje i društvenog interesa za otkrivanjem istine. Ispitivanje maloljetnika u krivičnom postupku zahtijeva osjetljivu ravnotežu, uzimajući u obzir faktore poput kognitivnog razvoja, podložnosti prisili i potencijalnog uticaja traume. Rad kritički ocjenjuje postojeće zakonske okvire i predlaže inovativne strategije za poboljšanje zaštite prava maloljetnika bez ugrožavanja postizanja pravde.*

**Ključne riječi:** maloljetničko pravosuđe, prava maloljetnika, krivični postupak, davanje iskaza, pravna zaštita.