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# Rights of Child Victims and the Role of the Police



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How can the police contribute to making justice in Austria more child-friendly? Children who have been victims of violence need special attention and appropriate measures to be effectively protected from secondary and repeated victimisation. The police, as the first point of contact, are a key player in ensuring this protection. The following article discusses the role of the police in safeguarding the rights and needs of child victims. First, the legal framework of the individual assessment is described, followed by the practical challenges of implementation. Finally, the project results are used to suggest concrete ways of improving police practice.



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## 1. INTRODUCTION

Criminal proceedings are based on the clarification of the offence and the punishment of the perpetrator. This orientation must not lose sight of the fact that the rights and needs of the victims must be respected. Above all, children who have been victims of violence need special attention and appropriate measures to be effectively protected from secondary and repeated victimisation. Finally, the protection of victims is also essential for determining the truth, since the child's testimony is the central evidence in the criminal proceedings. This evidence can be strengthened by child-friendly questioning.

This article considers the results of the two-year research project "Enhancing the Protection of Child Victims of Crime" (E-PROTECT) and focuses in particular on the role and responsibility of the police in dealing with child victims in criminal proceedings. The main question discussed in the context of the research paper was

how to identify the specific need for protection of a child victim in a particular case (referred to in the following article as an individual assessment in accordance with the wording of the EU Directive) as well as to determine what competences and abilities the involved practitioners require for this. This question was first examined within the framework of research reports and then discussed in seminars with practitioners in a participatory manner. The empirical research results show that victims' rights in Austria are very well developed, but the system is complicated and its practical implementation needs improving.

The second section describes the project and research methods used. Subsequently, the third section is devoted to the development of victims' rights in Austria. The fourth section describes the rights of child victims and the role of the police. It first explains the legal framework of the individual assessment (4.1) and then addresses

the practical challenges of implementation. Moreover, concrete possibilities for improving the practice of individual assessment are given (4.2). Finally, the fifth section summarises the key research findings for police practice.

## **2. E-PROTECT: METHODS AND RESEARCH PROJECT**

E-PROTECT was an EU-funded research project running from August 2017 to September 2019. Its aim was to raise awareness of the rights of child victims and promote expert exchange in the field of victim protection. Central to the project was the question of how to determine what kind of protective measures a child victim is entitled to in a specific case. Another focus of the project was to find ways to improve current practices. Five EU Member States participated in the research: Bulgaria, Greece, Italy, Austria and Romania. In Austria, the private, non-profit research institute Vienna Centre for Societal Security (VICESSE) was responsible for the project implementation.

In the first year, a total of thirteen research reports were produced. The first eleven studies examined the legal implementation of the Victims' Directive (Directive 2012/29/EU) and the practical implementation of the individual assessment of child victims within the meaning of Articles 22 to 24 of the Victims' Directive.<sup>1</sup> The Austrian project reports were based on the findings of secondary literature as well as on the empirical survey of three interviews with experts. Subsequently, comparative reports were prepared on the legal and practical implementation of the individual assessment. The purpose of these studies was to highlight common challenges and identify promising practices. Based on these results, a first draft of a rights-based approach was developed for the individual assessment of the needs of child victims.

In the second year of the project, three seminars were held in each of the partner countries. The research results were presented during these events, and building on this, challenges and best practices in protecting child victims were identified together with practitioners. For this purpose, the latter were divided into small groups and, guided by a questionnaire, discussed a specific case study. The participants came from the areas of victim protection, law, police, psychology and medicine. In Austria, these seminars took place in Vienna, Linz and Graz. After the seminars, all participants were sent minutes containing the main discussion points and were asked to validate them.

Based on the findings from the seminars as well as the research results of the first project year, a method for a rights-based approach for the individual assessment of the needs of child victims was finally developed. This method can be understood as a guideline for dealing with child victims in the sense of child-friendly justice.<sup>2</sup> In addition, concrete suggestions for improvements in the protection of child victims in criminal proceedings were formulated in all five partner countries. The method was discussed in subsequent events in June and July 2019 with practitioners in Vienna, Linz and Graz in order to evaluate them.

The results of the research project should be considered against the background of some methodological limitations. On the one hand, there were no judges involved in the development of the method and the suggestions for improvement in Austria. Moreover, the growing strengthening of victims' rights should be achieved with due regard to the rights of the accused, in order to prevent the right to a fair trial from being jeopardised.

### 3. AN OVERVIEW: THE DEVELOPMENT OF VICTIMS' RIGHTS IN AUSTRIA

The strengthened position of victims within criminal proceedings is a recent development in Austria.<sup>3</sup> A milestone in the area of victims rights was reached in particular by the re-codification of parts of the Austrian Code of Criminal Procedure, which came into force<sup>4</sup>, in 2006 and 2008 (cf. Stangl 2008). As part of these reforms, victims – as well as the accused and the prosecutor – received the status of an independent party in criminal proceedings. In addition, victims were granted a number of rights previously reserved for defendants. These include, for example, the right to participate in the criminal proceedings, the right to defence and protection as well as the right to reparation (cf. Stangl 2008; Hilf/Anzenberger 2008). The integrated system of psychosocial and legal proceedings support pursuant to Section 66(2) of the Code of Criminal Procedure also dates back to 2006. The latter was first developed in model projects and finally implemented in January 2006 (cf. Haller/Hofinger 2008).

Austria has been playing a pioneering role in the area of victim protection for some years, in particular through the development of proceedings support. The system of psychosocial and legal proceedings support serves as an inspiration for other Member States to reform their own structures.<sup>5</sup> In Austria, psychosocial proceedings support entails supporting and counselling the victim in the criminal proceedings and, in the course of this (especially for children and adolescents), explaining the effects of a report to the police and the importance of a court ruling. The staff are specially trained to deal with child victims and are responsible for monitoring psychosocial factors in a case. The psychosocial proceedings support can accompany a victim to a hearing

as a trusted third party pursuant to Section 206 of the Code of Criminal Procedure (cf. Fachstelle für Prozessbegleitung Kinder und Jugendliche 2016), however, they cannot represent the victim during the main trial (cf. Amesberger/Haller 2016, 25 ff). This task falls to legal proceedings support, which is responsible for the legal consultation and representation of the victim. The task of legal proceedings support is to ensure that the rights of the victim are maintained at all times during the criminal proceedings. Psychosocial and legal proceedings support are voluntary. This means that every victim is free to make use of even just a part of the support services. The overarching goal of implementing voluntary proceedings support is to enable victims, especially those who are vulnerable, to be given due consideration in criminal proceedings and thus to prevent secondary victimisation (cf. Anzenberger 2014, 754 ff). Proceedings support thus represents very good Austria-wide practice in protecting the rights and needs of child victims.<sup>6</sup>

Due to its already extensively developed structures for victim protection, recent developments at EU level, in particular the Victims' Directive, did not require a high level of implementation in Austria. The Victims' Directive was transposed by the Criminal Procedure Amendment Act I 2016 (Code of Criminal Procedure Amendment Act) (cf. Österreichisches Parlament 2016), which, among other things, created the new category, "Victims with Special Protection Needs" and systematically summarised their rights in Section 66a(2) of the Code of Criminal Procedure. Moreover, an additional procedural principle has been established, according to which the Criminal Intelligence Service, the Public Prosecutor's Office and the court are obliged to take due account of the special protection needs of the victims

(Section 10(2) of the Code of Criminal Procedure). However, the research results of E-PROTECT show that this amendment has had little impact on practice.

#### **4. THE ROLE OF THE POLICE IN PROTECTING THE RIGHTS OF UNDERAGE VICTIMS**

Victims' rights are fully developed in Austria, but the system is extremely complicated. On the one hand, there are rights to which all victims are entitled, such as the right to participate in the criminal proceedings (Section 10(1) of the Code of Criminal Procedure), the right to reparation (Section 67 of the Code of Criminal Procedure) and the right to access records (Section 68 of the Code of Criminal Procedure). On the other hand, the Code of Criminal Procedure divides victims into three categories, which in particular determine whether a victim is granted the right to free psychosocial and legal proceedings support.<sup>7</sup> In addition to this "categorisation of victims", the Code of Criminal Procedure defines certain vulnerable groups, to whom specific protective measures are expressly attributed due to their particular vulnerability. One example of this are victims who have not yet reached the age of fourteen and may have had their sexual integrity impaired. In any case, they have a right to psychosocial and legal proceedings support pursuant to Section 66 of the Code of Criminal Procedure. Ultimately, a new victim category "victims with special protection needs" was created in the courses of the implementation process of the Victims' Directive, as well as a catalogue containing all the rights to which this victim group might be entitled (Section 66a of the Code of Criminal Procedure). Whether this right actually applies is checked individually in each case.

In most instances, individual assessment is done by the police, as in most of cases,

they are the first point of contact for both the victims and the alleged perpetrator. Although victim protection agencies are above all concerned with the welfare of a child victim and have to pay particular attention to respecting the rights of the child, the primary role of the police as first contact point is to protect child victims. The following part discusses the legal framework of the individual assessment as a practical challenge of implementation for police officers.

##### **4.1 The legal framework: the two steps of individual assessment**

The Victims' Directive provides that an individual assessment of victims consists of two steps: First of all, it has to be determined whether a victim has a special need for protection. Then, it has to be decided which protective measures a victim is entitled to. This means that even if the particular vulnerability of a victim is determined, not all protective measures are automatically applied. Which protective measures are to be applied have to be determined on a case-by-case basis based on an "individual ad hoc basis" (cf. Europäische Kommission 2013, 46). This division of the "individual assessment" also exists in Austria and, in practice, is usually carried out by the police.

The first step of the individual appraisal is regulated in Austria in Section 66a(1) of the Code of Criminal Procedure. According to this, victims have the right to "the earliest possible assessment and determination of their particular vulnerability depending on their age, mental and physical condition as well as the nature and specific circumstances of the offence". The wording of this provision makes it clear that all three cumulative conditions must be present for a victim in order to be covered by the paragraph (cf. Kier 2016).<sup>8</sup> Furthermore, the Code of Criminal Pro-

cedure recognises three groups of victims, which are classed as victims with special protection needs (Section 66a(1) lines 1 to 3), namely victims who

- “1. could have had their sexual integrity and self-determination injured,
- 2. could have been exposed to violence at home (Section 38a of the Security Police Act)<sup>9</sup>,
- 3. are minors (Section 74(1) line 3 of the Austrian Penal Code) (Section 66a(1) lines 1 to 3 of the Code of Criminal Procedure)”.

Therefore, child victims are considered victims with special protection needs ex lege within the meaning of the provisions of the Victims’ Directive (Article 22(4) of the Victims’ Directive). The victims must be minors at the moment of exercising the right. This follows from the wording of the provision as well as the purpose of the extended rights pursuant to Section 66a(2) of the Code of Criminal Procedure (cf. Kier 2016).

There are, with some exceptions,<sup>10</sup> no legal provisions in the Code of Criminal Procedure for the second step of the individual assessment – i.e. the decision on which protective measures a victim is entitled to. Thus, Section 66a of the Code of Criminal Procedure, which regulates the individual assessment, was already criticised in the assessment phase – mainly its suitability for practical application.<sup>11</sup> Experts point out that the Austrian provisions do not clearly state who should carry out the individual assessment of the special vulnerability of victims, and whether and how qualified experts should be included (cf. Nachbaur/Unterlerchner 2016). In fact, the Explanatory Notes to the Code of Criminal Procedure do not include any information about the specific procedure for individual assessment (Österreichisches Parlament 2016).

#### **4.2 The challenges of individual assessment for the police in practice**

As first point of contact for victims and suspects, the police are generally responsible for the individual assessment. The implementation of the individual assessment of a victim is the responsibility of crime prevention, whose main focus is the prevention of violence. Violence prevention includes discussions with the victims and the suspected perpetrators. The task of the police is to take an objective view, which means that it not only determines the perspective of the victims, but also the perspective of the suspected perpetrators. However, the special focus is on protecting the victim in a specific situation.

Many skills are required in order to adequately protect child victims – to strengthen them and to secure evidence. While the victim’s age can be easily ascertained in most cases, identifying vulnerability and meeting the needs of the victim in a child-friendly manner requires specialised knowledge and skills. Appropriate training and courses are necessary in order to be able to interview child victims in a particularly gentle manner. It is important not only to protect children, but also to recognise their developmental skills, increasing autonomy and their individual personal resources (such as resilience), and include them in individual assessment. Focusing only on the vulnerability of a child may adversely affect a process that also aims to strengthen and empower the child (Guerreiro/Sedletzki 2019, 53 ff).

Although the criminal proceedings are fundamentally oriented towards clarification of the offence and the punishment of the perpetrator, knowledge and authority about the rights and specific needs of victims in the sense of victim protection are also important. In practice, however, it cannot always be guaranteed that the police officer who conducts the first survey

and thus the first individual assessment has the qualifications and knowledge to first recognise the need for special protection needs and then to meet the needs of the child sufficiently. Our research results show that although there are specific operational guidelines for conducting individual assessments, they are rarely used. In all discussion rounds, the practitioners emphasised that practical knowledge is mostly based on professional experience and decisions are, accordingly, based on it. This opens up greater scope for ambiguities and uncertainties, especially for new recruits, which can ultimately manifest themselves in practices that are not child-friendly.

The following therefore deals with three specific areas that have proved to be central to the protection of child victims within the framework of the two-year research project E-PROTECT: I. competences and skills for interviewing child victims, II. child-friendly rooms and III. cooperation as an important foundation of child-friendly justice.

#### **4.2.1 Competences and skills for interviewing child victims**

Whether children feel safe, listened to and supported depends primarily on the people who interact with them and make decisions about their situation and well-being (cf. Guerreiro/Sedletzki 2019, 70). Thus, additional training and courses are required to interview child victims in order to avoid secondary victimisation and traumatising of the victims. For example, it is essential that the person carrying out the interview knows that temporal terms are not yet anchored in child development in the same way as in adult use of language. Time can be and is perceived differently by children. Without this knowledge, statements by a child can be misunderstood. This can subsequently lead to inadequate

measures being taken. Therefore, new recruits should have specialist know-how, especially in the areas of developmental psychology, trauma psychology and memory psychology.

This knowledge is supplemented by a multitude of practical know-how, which the interviewer should have. Various communication techniques are helpful in promoting the child's understanding and building trust. Moreover, the interview can be adapted to the child's level of development using alternative communication techniques. Depending on the child's age, level of development and preferences, emotion cards or role-playing games with dolls can be used as alternative means of communication (cf. Guerreiro/Sedletzki 2019, 57).

Falling back on this know-how and communication techniques learned is also hugely relevant when police officers are informing child victims about their right to proceedings support. Our research shows that these informational discussions tailored to the child often get lost in the stress of the situation. There is a difference between whether only information is provided or whether care is taken to ensure that the child has understood the information (cf. Amesberger/Haller 2016). Since proceedings support is voluntary, it is all the more important that a child victim understands what the right to proceedings support entails and what making use of it means.

Guidelines for creating minutes of the interview are also important for the preservation of evidence and the further process. Our research results show that clear regulations only exist in a few regions in Austria. Practitioners argue that minutes should be taken verbatim. This means that the question and the answer must be recorded separately. A verbatim record helps to get to the truth, as the statement

and not the summarised statement made by the interviewer, made understandable and distorted by evaluation, is recorded. It may also be helpful if the interviewer logs his or her own perceptions of the interviewee's peculiarities (shame, guilt, opinion about his or her role, etc.), so that this information is seen before another interview is carried out.<sup>12</sup>

The central question of individual assessment is how to determine which protective measures a child victim is entitled to. In practice, there are usually no, or impracticable, operational guidelines, which means that decisions are generally made and acted upon based on experience. An "assessment catalogue" of possible protective measures is not considered useful by interviewed practitioners, since the victims' needs are so heterogeneous that a checklist could never do them justice. However, many of the seminar participants wanted action guidelines that could serve as support to ensure that all relevant factors are taken into account.

The comparative federal state studies carried out as part of the project show that regular training courses accompanied by ongoing training activities are an important prerequisite for child-friendly justice. This training and further education should be mandatory for those who interview child victims. Although it may make sense to offer special training activities for one profession, it is also essential to hold further education or training activities for various professional groups in order to lay the foundation for an inter- and multi-disciplinary understanding of the protection of child victims.

One measure proposed by practitioners in Austria to ensure these measures in the police force would involve the restructuring of the police organisation: a specialised police unit responsible for all contacts with minors would be preferred. This would en-

sure that all children – whether the accused or the injured party – are always looked after by a children's department of the police.

#### 4.2.2 Child-friendly rooms

Children, just like adults, often do not feel comfortable in the rooms of the criminal justice system. To counteract this, some Member States have already established rooms specifically for minors involved in criminal proceedings. One example of this is the Barnahus Model<sup>13</sup> in Iceland (cf. Guerreiro/Sedletzki 2019, 61).

In Austria, child-friendly rooms at the police and court are a rarity. In this context, Andreasgasse in Vienna is an example of Austrian best practice. The police station is child-friendly, has comfortable seating, toys for children of various ages and is equipped with cameras and audio equipment. Recordings of interviews in Andreasgasse can be used during further criminal investigations as well as in court proceedings. However, they do not replace adversarial hearing in court. The team of police officers working in Andreasgasse is specially trained to carry out interviews of child victims and must be consulted on all interviews of victims under the age of ten in Vienna. Similar rooms exist at the State Criminal Investigation Service in Upper Austria, which are equipped with comfortable seating, toys and moveable cameras and audio equipment.

Although Andreasgasse is a promising practice in Austria, there is still room for improvement, particularly in two aspects. Firstly, the age limit of the victims, whose interview must involve trained police officers, should be increased to 14 years. Secondly, the police officers at Andreasgasse should be involved in the case for longer and should not only be involved as assistants in the interview. Child-friendly rooms and the toys provided can give



children a feeling of calm and composure. However, the attitude of the police officers towards the child, especially that of the person who conducts the interview, is also a major factor influencing the child's well-being. A combination of the various child-friendly circumstances can ultimately lead to children being able to go through the legally required procedure with as little fear as possible.

#### **4.2.3 Cooperation as an important foundation of child-friendly justice**

Cooperation is an essential prerequisite for well-functioning victim protection as well as for effective investigation and information processes. Well-functioning and cross-departmental cooperation can protect children more effectively against secondary victimisation. In particular, optimal forwarding and referral to other institutions can reduce multiple interviews and repetitive tests, thus having a positive impact on child victims.

Cooperation means that different opinions on a case are obtained and expertise from different areas is used bundled together. For example, social workers tend to focus on psychological factors, while the police and judiciary focus more on the case's operational and legal dimensions, which in turn helps protect the victim and convict the perpetrator. Including expertise from the various professional groups enables the diverse factors influencing the child's situation to be better taken into account. Furthermore, cooperation permits practitioners to take a holistic view of the child's living environment and needs. Practitioners can see themselves as part of the child's personal environment and thereby not only better address the child's needs but also the needs of the relevant environment of the child (family, friends, school, etc).

However, multidisciplinary and cross-departmental cooperation is often not con-

sidered a priority, since the far-reaching benefits are frequently not immediately apparent. There is often a lack of financial resources and, consequently, personal commitment to actively promote multidisciplinary and cross-departmental cooperation. However, cooperation should take place at a formal and informal level, on a case-dependent and case-independent basis, and on several hierarchical levels. A "superstructure" for networking appears feasible for this, i.e. a body that organises and coordinates the meetings. Even within one institution or organisation, it is expedient to entrust one person with the internal coordination. Clear competences and responsibilities facilitate coordinating cooperation (cf. Guerreiro/Sedletzki 2019, 23 ff).

#### **5. CONCLUSION: THE ROLE OF THE POLICE IN IMPLEMENTING CHILD-FRIENDLY JUSTICE**

How can the police contribute to making justice in Austria more child-friendly? The question of how child-friendly justice must be designed and what it takes to implement this has been investigated in the E-PROTECT project over the last two years. Interviews and group discussions with practitioners in five EU member states focused in particular on how child victims are currently protected in criminal proceedings and how current practices can be improved.

The results show that victims' rights in Austria are very well developed, but the system is extremely complicated. There is room for improvement, primarily in guaranteeing the rights of child victims in practice. Furthermore, it should be determined at the legal level who should carry out the "individual assessment" and what knowledge and skills are required by the person who should determine the needs of the child victim.

In practice, the individual assessment, i.e. the decision as to whether a victim has special protection needs and what kind of protective measures a victim is entitled to, is often the responsibility of the police as first point of contact. Hence, the police play a key role in protecting child victims. Although there are already good practices in Austria – for example Andreasgasse in Vienna –, it is not guaranteed Austria-wide that interviews with child victims are only conducted by specially trained police officers.

Special training in the areas of developmental psychology, trauma psychology and memory psychology as well as conversation and communication techniques, for example regarding alternative means of communication such as drawings, emotion cards or role plays with dolls, is required to conduct the first interview. Knowing how

the right to support during proceedings can be explained and what aspects should be included in the individual assessment is essential to ensure that the rights of child victims are respected. Moreover, clear rules on what to look for when taking the minutes of an interview with a child are needed. In addition, child-friendly rooms create a safe atmosphere and thus help prevent the retraumatisation of the experience during the interview. However, such rooms are still a rarity in Austria.

The comprehensive assessment of the needs of a child victim requires the efforts of all persons and organisations involved in the process. In the first step and in the investigation process, the police are central figures in child-friendly justice and thus lay the foundation for successful multidisciplinary and cross-departmental cooperation in the protection of child victims.<sup>14</sup>

<sup>1</sup> A total of thirteen research reports were created in the first year of the project: six studies on the legal implementation of the Victims' Directive in Bulgaria, Austria, Romania, Greece and Italy; a pan-European report on the legal situation in Germany, Finland, Portugal, Spain, England and Wales; a comparative study of the country reports; six studies on the implementation of individual assessment in practice in Bulgaria, Austria, Romania, Greece and Italy; a pan-European report on implementation in Germany, Finland, Portugal, Spain, England and Wales. All reports are available online at the project website [www.childprotect.eu](http://www.childprotect.eu).

<sup>2</sup> The German version of the method is available on the VICESSE website: <https://www.vicesse.eu/news/eprotect>.

<sup>3</sup> For a more detailed analysis of the development of victims' rights, see Sautner 2017.

<sup>4</sup> With this law, Austria also implemented the Council Framework Decision 2001/220/JI on the status of victims in criminal proceedings from 2001. Federal Law, with which the Code of Criminal Procedure was redesigned in 1975, Federal Law Gazette I No. 19/2004.

<sup>5</sup> For example, Germany implemented the Victims' Directive through the 3<sup>rd</sup> Victims' Rights Reform Act and used the Austrian experiences to codify the right to psychosocial proceedings support.

<sup>6</sup> The 2009 Protection Against Violence Act extended these provisions to victims in civil proceedings. See also Anzenberger 2014.

<sup>7</sup> The legal definition of victims pursuant to Section 65(1) of the Code of Criminal Procedure divides victims into three categories: particularly affected victims (point a); certain relatives of a person whose death was caused by an offence (point b) and other persons who could have suffered damage through an offence (point c). Pursuant to Section 66(2) of the Code of Criminal Procedure, only victims who fall into the categories of points a and b are entitled to free proceedings support insofar as it is necessary to exercise their procedural rights "with the greatest possible consideration necessary for their personal involvement". This means that, for example, children who were not a direct victim but were a witness to domestic violence are not covered

by this requirement (Section 66(2) of the Code of Criminal Procedure).

<sup>8</sup> However, Kier assumes that the increased presence of one criterion should compensate for the reduced presence of another (Kier 2016).

<sup>9</sup> Many victim protection experts criticise this provision because it only covers those cases that occur at home. The decree of the Federal Ministry of Justice (Bundesministerium für Justiz 2016) clarifies that this provision only applies to victims who live in the same household as the alleged perpetrator.

<sup>10</sup> The Code of Criminal Procedure defines special protective measures for certain vulnerable groups.

<sup>11</sup> See statements on the Criminal Procedure Law Amendment Act No. I/2016 [Strafrechtsänderungsgesetz 2016] (including Fachstelle für Prozessbegleitung Kinder und Jugendliche 2016).

<sup>12</sup> However, it is important that the interviewer is not allowed to make any psychological assessments.

<sup>13</sup> The “Barnahus”, originating from Iceland, has been developed over the last twenty years and now exists in some EU member states. The main goal of the model is to establish a cross-institutional and interdisciplinary, standardised and child-friendly approach to avoid the re-traumatisation of child victims as far as possible. A central aspect of this is to create a common competence and care centre for children who have been victims of violence. In these “children’s homes” (Barnahus), all steps necessary for the investigation are carried out by specially trained experts from the respective areas in child-friendly rooms.

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