

# Recorded interviews as evidence in child sexual exploitation and abuse – Barnahus model in Finland and Sweden

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## Abstract

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The Nordic Barnahus model promotes child-friendly criminal procedure. An important aspect of the Barnahus model is that child victims of sexual exploitation or physical abuse do not testify in court, but an interview recorded in the pre-trial investigation is used as evidence instead. The article analyzes how the Barnahus model is implemented in Finland and Sweden using a comparative method.

The criminal procedure in child sexual exploitation and abuse is very similar in Finland and Sweden. The children are interviewed conclusively in the pre-trial investigation, and they are not present in the trial. Ensuring the suspect's right to cross-examination in the pre-trial phase is a prerequisite for using recorded interviews as evidence. There is no direct contact between the defense and the child victim because the defense's questions are presented by the interviewer.

The Finnish and Swedish Barnahus variations differ mostly in the legislative stance towards recorded interviews and the organization of Barnahus activities. In Finland, using recorded interviews is strictly legislated whereas in Sweden the approach is more flexible case-by-case discretion. In Finland, forensic psychologists interview young children and older children are interviewed by police officers trained in child forensic interviews. In Sweden, trained police officers conduct all interviews.

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## 1. Introduction

In this article, a *recorded interview* refers to an audio and video recording of the victim's interview in the pre-trial investigation in which the victim testifies on the alleged crime. In the Korean criminal procedure, it is possible to use recorded interviews of child victims of sexual crime if the defendant confesses to the crime.

According to Article 30 (6) of the Korean Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes: "If a victim of a sexual crime is under the age of 19, the statements made by a victim in a video recording may be admitted as evidence only

When they are duly authenticated by a statement of the victim himself/herself, a person in a relationship of trust with the victim who was present in the investigative process, or an intermediary on a preparatory hearing date or a hearing date". However, according to a recent ruling by the Korean Constitutional Court (23/December/2021, 2018 헌바 heunba524), it is currently unclear if recorded interviews can be used as evidence if the defendant does not confess to the crime.

Therefore, Korean child victims often have to testify physically in court. I argue that this is not in the best interest of the child or beneficial for reaching the material truth in criminal procedure. Firstly, children are an especially vulnerable group of victims and a full-scale criminal procedure can be a traumatizing experience. Children have to be protected from further trauma. Secondly, from a legal psychological perspective, the quality of evidence is better if the interview is recorded as soon as possible after the alleged crime has occurred because the child's memory is more reliable compared to hearing the child in court after several months. Thirdly, the questions to the child should be presented by trained professionals in child forensic interviews instead of criminal justice professionals. Utilizing special expertise decreases the risk of unintentional improper influence such as leading questions which may even lead to the development of false memories (See la Rooy et al., 2016 about the legal psychological perspective of interviewing children; see also Väisänen & Korkman, 2014, pp. 729–732 and referred literature).

Using recorded interviews of children as evidence in criminal proceedings is an established practice in the European legal regime, especially in the Nordic countries (Iceland, Denmark, Norway, Sweden, and Finland). The rights of the defendant have traditionally been at the core of criminal law, and for a good reason. However, in recent decades the rights of the victims have drastically improved. The Nordic legal systems have produced functional solutions to balancing the rights of the defendant and victim protection measures. This article aims to facilitate discussion in South Korea by presenting the Nordic Barnahus model<sup>1</sup> to a Korean audience by analyzing how the Barnahus model is implemented in two Nordic countries, Finland and Sweden. The focus is on describing the legal framework and practice of using recorded interviews of children as evidence in criminal proceedings.

Bragi Guðbrandsson, the head of the Icelandic Government Agency for Child Protection and “father of the Barnahus model”, describes the concept well in the foreword of the 2017 Barnahus book (Johansson et al., 2017a, pp. v–xii). According to Guðbrandsson, the Barnahus model (Children’s House in Icelandic) establishes child-friendly service centers for child victims of sexual exploitation and abuse. He further elaborates that the Barnahus model aims to make the procedure as easy as possible for the child victim by gathering all services from criminal justice professionals to social and medical workers in the same facility. This is based on the realization that the needs of the child victim are not fulfilled only by facilitating the criminal procedure, but smooth cooperation with child protection and medical services is crucial for the well-being of the child. The Barnahus units are not necessarily separate buildings, and it is important to highlight that child-friendly furniture and toys are not the point of the Barnahus model. Instead, the concept refers to established cooperation structures.

Guðbrandsson explains that the idea behind this multidisciplinary approach is originally from the United States (National Children’s Advocacy

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1 I have chosen to use the concept “Barnahus model” to refer to Nordic approaches to child-friendly criminal procedure in cases of child sexual exploitation and abuse. The Barnahus concept is nowadays commonly used in Nordic countries and increasingly in the European context as well. I acknowledge the fact that the practice of using recorded interviews has slightly different historical backgrounds in all Nordic countries and the practice predates the Barnahus concept. Furthermore, I am aware that the term is not commonly used in Finland.

Centre in Huntsville, Alabama), but it was further developed in Iceland since the mid-'90s. Guðbrandsson points out that the Barnahus model differs from the US predecessor in one important aspect: recording the children's interviews in Barnahus units is an official institutional practice and embedded in the criminal procedure and therefore, the child does not have to testify again in court. According to Guðbrandsson, the Barnahus model spread from Iceland, first to other Nordic countries and then further to Europe in the 2000s.

In recent years there has been much development on a European level. The PROMISE<sup>2</sup> Barnahus Network consisting of local Barnahus units in European countries was founded in 2019. PROMISE divides the Barnahus Model into four components often referred to as rooms: Child Protection, Criminal Justice, Physical Wellbeing and Mental Wellbeing (PROMISE Barnahus Network Website, 2022). The European Barnahus Quality Standards, which set out minimum requirements and guidelines for Barnahus activities, have been developed in the framework of the PROMISE projects (for more information in English see the original report by Lind Haldorsson, 2017).

Barnahus Quality Standard 6 is titled Forensic Interview and it gives guidance on how to conduct the interview in a child-friendly manner while also safeguarding the procedural rights of the suspect. The child's interview is video recorded for future use in the trial and the suspect's right to a fair trial is respected by providing a possibility of cross-examination in the pre-trial investigation. The standard requires that the interviews are carried out according to evidence-based practice by specialized staff members and the interview is adapted to the child's developmental stage. Other professionals follow the interview through a video connection. Recording the child's interview is important because multiple hearings are potentially traumatizing for the child and according to research, the quality of the child's story weakens as evidence if it has to be told numerous times. (Lind Haldorsson, 2017, pp. 76–88)

The article starts with a methodology section in Chapter 2. The results

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2 PROMISE is an acronym for "Promoting child-friendly multi-disciplinary and interagency service". In addition to the Network, it has also been the name of three EU-funded projects between the years 2015 and 2022.

of the comparative study are described in Chapter 3. First, the obligations set out by European law are examined. Then, the Finnish and Swedish Barnahus models are analyzed in detail. The results of the study are followed by discussion and conclusions in Chapter 4.

## **2. Methodology**

The study utilizes a comparative method. I draw upon the thoughts of Finnish comparatist Jaakko Husa concerning the methodology of comparative law. According to Husa (2014), comparative law is essentially a hermeneutic process that aims to understand the research subject and make justifiable conclusions based on this understanding. Husa (2014, p. 66) notes that it is important to avoid bias even though it may not be possible to completely prevent the subconscious influence of the author's own legal culture. Therefore, it is worth mentioning explicitly that the author's native legal culture is Finnish.

In comparative law, it is important to explain and reason the author's methodological choices. All Nordic countries have implemented the Barnahus model but there are differences in how this is done in practice (for information on Barnahus approaches of different Nordic countries see Johansson et al., 2017a, pp. 353–371; Kaldal, 2020). Finland and Sweden were selected as objects of study mainly due to the author's language skills and the fact that the author is most familiar with these two legal systems. One further reason is the fact that both of these countries are member states of the European Union (for example Norway and Iceland are not). Therefore, examining the European law dimension is important because it is an inseparable part of the Finnish and Swedish legal order and hierarchically above national law. The comparison is conducted on the same horizontal level (i.e., country – country). The vertical European law dimension does not change this setting because it affects both comparison countries equally.

Finland and Sweden also provide an interesting starting point for comparison because the countries have taken very different legislative stances toward increasing the use of recorded interviews in criminal procedures. In

Sweden, the modernization reforms of the criminal procedure have shifted the focus of criminal procedure towards the pre-trial phase by widely accepting recorded interviews (Swedish Government Bill, 2020), whereas in recent Finnish modernization reforms the stance has been more reserved and recorded interviews are seen as carefully legislated exceptions to hearing the victim in court (Finnish Ministry of Justice, 2020, pp. 61–63).

A desk research approach was chosen instead of an empirical approach because there are recent interview studies available in both Finland (Lilja & Hiilloskivi, 2022) and Sweden (University of Linköping, 2019). The source material of this research consists of European, Finnish, and Swedish legislation and, when necessary, preparatory material and guidance issued by government authorities. Furthermore, academic research (especially the extensive Barnahus anthology in English: Johansson et al., 2017a) and Barnahus evaluations are utilized to describe how the Swedish and Finnish procedures work in practice.

### 3. Results

#### 3.1. European law

##### 3.1.1. European Union

The European Union (EU) is a unique regional organization that enhances economic cooperation and harmonizes legislation in its member states. The EU has 27 member states in total including both Finland and Sweden (European Union Website, 2022). The EU harmonizes criminal law and criminal procedure of the member states mostly by using directives. EU directives set out goals that the member states have to fulfill but the means to achieve these goals are left to the member states' discretion.

The Barnahus model has wide support in EU law. There are provisions for using recorded hearings as evidence in the 2012 Victim Directive<sup>3</sup> (Article

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3 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

24) and the 2011 Child Sexual Abuse and Exploitation Directive<sup>4</sup> (Article 20). In short, EU legislation requires that it is possible to use recorded interviews of under-18-year-old child victims as evidence in all member states. The scope of the Child Sexual Abuse and Exploitation Directive is limited to sexual crime, but according to the Victim Directive, the child may be heard conclusively in the pre-trial investigation of other crimes as well. It is further elaborated in the Victim Directive that the procedural rules for the recorded interviews and their use shall be determined by national law.

The Victim Directive (Articles 23 and 24) and the Child Sexual Abuse and Exploitation Directive (Article 20) also include other victim protection measures that the child victims may benefit from that both Finland and Sweden have implemented. These measures include securing a representative and/or an own lawyer for the child if there is a conflict of interest with the child's guardians. During criminal investigations, the interviews should be carried out on premises designed or adapted for that purpose by trained professionals and all interviews should be conducted by the same persons. In cases of sexual violence and violence in close relationships, the interviews should be carried out by a person of the same sex as the victim if the victim so wishes (for example by having a female interviewer for a girl victim). The interviews should take place without unjustified delay and the number of interviews should be as limited as possible.

The Victim Directive also includes protective measures for the trial phase. If the child would for some reason testify in court visual contact between the victim and defendant should be avoided (for example by setting a screen to block visual contact). The victim could also be heard without being physically present in the courtroom by using communication technology and/or the case could be tried without the public. All unnecessary questioning concerning the victim's private life should be avoided in criminal proceedings.

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4 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

### 3.1.2. Council of Europe and the European Court of Human Rights

The Council of Europe (COE) is a European organization that promotes human rights and has 46 member states including Finland and Sweden. Most of the Council of Europe member states are also EU member states. However, the Council of Europe has more member states in Eastern Europe and also Iceland and Norway are member states (Council of Europe Website, 2022).

The Barnahus model has strong support in the 2007 Lanzarote Convention<sup>5</sup>. All member states of the Council of Europe have ratified the Lanzarote Convention which requires the contracting states to ensure that it is possible to use recorded interviews of child victims as evidence (Article 35).

The European Convention of Human Rights<sup>6</sup> is the most important human rights instrument in Europe. Both Finland and Sweden have ratified the Convention which is a prerequisite for joining the Council of Europe. The Convention is interpreted by the European Court of Human Rights (ECHR) in Strasbourg, France. Individuals may take cases to the ECHR after they have exhausted national appeal mechanisms. The ECHR does not change the judgment of the national court, but the ECHR evaluates if there has been a breach of human rights. Therefore, the jurisprudence of the ECHR greatly shapes the interpretation of the law in the contracting states. Article 6 of the Convention establishes the right to a fair trial.

According to the case law of the ECHR, recorded interviews do not prejudice the right to a fair trial provided that the suspect is reserved a chance to present questions to the victim in the pre-trial investigation (Fredman et al., 2020, pp. 455–459; Johansson et al., 2017b, p. 11 and cited literature; Kaldal, 2020, p. 4). In the landmark case of *S.N. v. Sweden* (July 2<sup>nd</sup>, 2002), the applicant S.N. filed an application to the ECHR to contest the Swedish practice of using recorded interviews as evidence. S.N. was suspected and later found guilty of sexual abuse of a 10-year-old child, whose interview was recorded in the pre-trial investigation by the police. During the pre-trial

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5 The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse 25.10.2007 (CETS No. 201).

6 The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms 4.11.1950 (CETS No. 005).



investigation, S.N.'s lawyer did not participate in the interview in real-time, but the lawyer was allowed to ask questions to the child by presenting the questions to the interviewer before the interview. S.N.'s lawyer was satisfied that the questions were answered when listening to the recording afterward (para 12). In his application to the ECHR, S.N. argued that he had not been able to exercise his right to cross-examination because there was no direct contact between his lawyer and the child victim. He further argued that the Swedish system where the police present the defense's questions to the child was unreasonable and it hampered the possibility of critically questioning the child (para 39–42).

The ECHR found that the recorded interview was indeed decisive evidence in adjudicating the case (para 46). The court argued that the defendant has to be given “an adequate and proper opportunity to challenge and question a witness” at the time when the statements are made or in a later phase of the procedure. However, the court stated that the defendant does not have “an unlimited right to secure the appearance of witnesses in court” (para 44). The court accepted the use of victim protection measures as long as they can be reconciled with “an adequate and effective exercise of the rights of the defense” (para 47). The ECHR ruled that the Swedish procedure was not in violation of the right to a fair trial (para 54). Therefore, in the European legal regime, it is possible to secure the right to cross-examination without direct contact between the defendant or the defendant's lawyer and the child victim.

### **3.2. Finland**

#### **3.2.1. Legislation on using recorded interviews as evidence**

In Finland, the pre-trial investigation is regulated by the Criminal Investigation Act (esitutkintalaki 805/2011, ETL). The court proceedings are regulated in the Code of Judicial Procedure (oikeudenkäymiskaari 4/1734, OK) and the more specific Criminal Procedure Act (laki oikeudenkäynnistä rikosasioissa 689/1997, ROL). The provisions on using evidence are found in Chapter 17 of the Code of Judicial Procedure and they apply to both criminal and civil cases.

The police are in charge of the pre-trial investigation in most cases (ETL 2:1–2). The prosecutor decides to prosecute or waive prosecution based on written material delivered by the police (ROL 1:6–8). There are also provisions for cooperation between the police and the prosecutor (ETL 5:1–3). The prosecutor must be informed of crimes involving the sexual abuse of children. The prosecutor may also order the police to conduct a pre-trial investigation or gather more evidence on a specific issue.

In Finland, the main rule is to receive all evidence orally during the trial (OK 17:24). However, it is possible to use recorded interviews of victims as evidence in the trial phase if the conditions of the Code of Judicial Procedure (OK 17:24) and the Criminal Investigation Act (ETL 9:4) are met. It is of paramount importance that the suspect is given a chance to present questions to the victim during the pre-trial investigation. In addition to legislation, there is Police Guidance (2019) on the treatment of children in pre-trial investigations and the recent Police Handbook (2022) on child investigations which contain more specific instructions.

According to Finnish law, recorded interviews are permissible in all crimes for child victims (and witnesses) who are under 15 years old. The Criminal Investigation Act requires that the interview is filmed if hearing the person in a trial would probably cause him or her harm due to the person's young age (ETL 9:4.1). Therefore, recorded interviews must be used as evidence when the case involves young children. In practice, recordings are routinely used for children under 15 years of age.

The use of recorded interviews is more restricted for child victims between 15 and 17 years. Recorded interviews are permissible as evidence in most sexual crimes such as rape and sexual abuse that are invasive in nature.<sup>7</sup> The only other requirement is that the 15 to 17-year-old child victim does not

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7 At the time of writing, the list of sexual crimes does not include sexual harassment, pandering, enticing a child for sexual purposes or crimes concerning the dissemination of sexual material depicting a child. However, recorded interviews may be used as evidence in these situations if the child between 15 and 17 years has specific protection needs. The Finnish parliament has enacted legislation that extends the permissibility of recorded interviews by default to victims of human trafficking or pandering and minors who are offered compensation for a sexual deed in March 2023 (Finnish Government Bill, 2022, pp. 135–136). The new legislation enters into force October 1<sup>st</sup> 2023.

want to testify in court but the child may testify if he or she wants to. The recorded interviews are also permissible in other crimes than sexual exploitation if the child victim between 15 and 17 years has specific protection needs (for example victims of hate crime or violence in close relationships). When evaluating the victim's specific protection needs the personal situation of the victim and the quality of the crime shall be taken into consideration (Finnish Government Bill, 2014, p. 84).

In Finland, the use of recorded interviews is not strictly restricted to children. Also, adult victims may benefit from recorded interviews in most sexual crimes if testifying in court would harm their health or would cause other significant harm. Therefore, not wanting to testify in court is not enough for adult victims.

### 3.2.2. Organization of Barnahus activities

In Finland, no law extensively regulates Barnahus activities. However, in 2008 the Act on Organizing the Investigation of Sexual and Assault Offences against Children (*laki lapseen kohdistuneen seksuaali- ja pahoinpitelyrikoksen selvittämisen järjestämisestä 1009/2008*) was enacted. According to the Organization Act, university hospitals are tasked with organizing interviews and examinations of child victims of sexual and physical abuse. There are five Child Forensic Psychology Units in university hospitals (sometimes referred to as Barnahus units) in Helsinki, Turku, Tampere, Oulu, and Kuopio. The units are responsible for providing services in their respective districts which cover the whole country. The Barnahus activities are coordinated by the Finnish Institute for Health and Welfare.

In Finland, the name Barnahus (or Barnahus project) has been used more since 2019 to describe the cooperation between authorities. Nonetheless, there were similar practices in place already in 2014 such as the interdisciplinary LASTA screening model. The LASTA screening model has been developed to facilitate the transfer of information between Finnish police, prosecution, child protection, and healthcare authorities which is crucial for investigating the crime. There is a standardized template for gathering information such as medical history and possible child protection measures. The information is

gathered from different systems manually by a LASTA coordinator who may, for example, be a trained social worker. LASTA screening is followed by a meeting between relevant authorities where the child's situation is discussed and the authorities decide together which actions to take. The LASTA screening may be initiated, for example, by child protection services if they are concerned about the child's welfare. There are regional differences in the procedures (Johansson et al., 2017a, pp. 363–364; Lilja & Hiilloskivi, 2022, pp. 16–23; Police Handbook, 2022, pp. 27–34).

There is some recent research on the Finnish variation of the Barnahus model available in English. Julia Korkman, Tom Pakkanen, and Taina Laajasalo (Korkman et al., 2017) have explained the forensic interview procedure in detail in the Barnahus book. More recently, an analysis of legal psychological research and authorities' training needs was released (Mäenpää et al., 2022). Inka Lilja and Miina Hiilloskivi (2022, pp. 4–6) have recently studied Finnish procedural legislation on child abuse in line with the Barnahus model by analyzing the relevant legislation and conducting interviews with 23 professionals. According to Lilja and Hiilloskivi (2022, pp. 11–32), the legislation on authorities' right to information should be made clearer. They argue that enacting a specific Barnahus law could be a possible way to improve the system (Lilja & Hiilloskivi, 2022, pp. 48–55).

### 3.2.3. Barnahus target group

In Finland, the Barnahus target group is small because in practice only young child victims of sexual or physical abuse are referred to Barnahus units. Lilja and Hiilloskivi (2022, pp. 10–11) point out that there is no legal obligation for the police to refer the case to Barnahus units. They further observe that according to the Organization Act, all children under 16 years (and even children aged 16–18 for a specific reason) could be referred to the Barnahus units.

According to the study by Lilja and Hiilloskivi (2022, pp. 34–39; see also Police Handbook, 2022, p. 78), the police usually request that the Barnahus units conduct the interview only for children under 7 years old or children with developmental disabilities due to a lack of resources. In practice, children

from 7–17 years are usually interviewed at the police station by police officers trained in child forensic interviews. According to Lilja and Hiilloskivi (2022, pp. 38, 45–46), it is problematic that not every child is referred to the Barnahus units, because Barnahus units provide better access to therapy services. Most importantly the quality of evidence tends to be better if forensic psychologists from Barnahus units are involved in the interview.

#### 3.2.4. Representation of the child victim

Children are not legally competent to represent themselves in the criminal procedure due to their young age and therefore the legal guardian has to take care of the child's interests. Yet, the guardians of the child victim may not always be suited to act in the best interest of the child in the criminal procedure. For example, this can be the case if one of the victim's parents is the suspect.

In certain cases, the police officer in charge of the investigation has an obligation to apply for a legal guardian for the criminal procedure to ensure that the interests of the child are taken seriously. The legal guardian is usually a social worker. The guardian is wholly in charge of representing a child under 15 years old, but children over 15 years have shared competence with the guardian. The child may be appointed a personal legal aid counsel. (Police Guidance, 2019, pp. 19–21; Police Handbook, 2022, pp. 39–47) Legal aid for a victim of sexual exploitation is free of charge regardless of income (ROL 2:1a). The child's legal aid counsel and the child's legal guardian (or appointed guardian in case of conflicting interests) have the right to be present during the interview of the child (ETL 7:12 and 7:14).

The cooperation between the legal guardian and the legal aid counsel is referred to as the tandem model. Lilja and Hiilloskivi (2022, pp. 8–10) point out that the guardian supervises the best interests of the child, and the legal aid counsel is responsible for representing the child in the criminal procedure. The legal aid counsel ensures that all relevant evidence is gathered and makes claims for damages. According to Lilja and Hiilloskivi, both the legal guardian and the legal aid counsel should be appointed as early as possible, and the police are responsible for ensuring that they have been applied for (see also Police Guidance, 2019, pp. 19–21; Police Handbook, 2022, p. 41).

### 3.2.5. Interview and cross-examination

There is some regulation concerning the process of conducting the interviews in the Criminal Investigation Act (ETL 9:4). Before starting the interview, the child must be informed that the interview is being recorded. The police may decide that the interview is conducted by another person than the police (Barnahus expert who is usually a forensic psychologist) under the supervision of the police. The child's developmental stage must be taken into consideration when deciding the methods and circumstances of the interview and the number of participants.

In Finnish Barnahus units, experts in forensic psychology conduct the interviews of young children because they are the most challenging. The Barnahus experts may also support police officers in police-conducted interviews by working together as a pair, reviewing the interview plans, or giving feedback. (Police Handbook, 2022, pp. 90–91) Lilja and Hiilloskivi (2022, pp. 40–41) highlight the importance of the police officer's participation in the planning of the interview if it is conducted by a Barnahus expert. The process of recording interviews is essentially the same even though the interview would be conducted by a Barnahus expert or by a specialized police officer. The police remain in charge of the investigation. The legal guardian or possible court-appointed guardian is responsible for taking the child to the interview. In some cases, it is also possible to take the child to the interview without the parents knowing about it. Only the interviewer and the child are physically in the same room and the other participants follow the interview from a separate room by using a video connection (Police Handbook, 2022, pp. 74–84).

The place of the interview is not strictly regulated, but it has to be suitable for interviewing children and there has to be adequate video-recording equipment (Police Guidance, 2019, p. 30). According to the study by Lilja and Hiilloskivi (2022, pp. 38, 45–46), some Barnahus units prefer to interview the child in their child-friendly premises and some units prefer to travel to the child victim and conduct the interview, for example, in a local police station. Lilja and Hiilloskivi point out that even though some police stations have premises designed for interviewing children, not every police station is suited for children.

Before the actual interview, a practice interview is conducted to get the

child to relax and gain experience in communicating in a way that the real interview requires. The child may be asked to tell about some mundane event, for example, a day at school (Police Handbook, 2022, p. 75). The NICHD protocol is used as the basis of the interview (for more on the protocol see Baugerud & Sinkerud Johnson, 2017). The semi-structured protocol is based on empirical research. It is used by both police officers and Barnahus experts and it is individually modified for each case (Police Handbook, 2022, p. 79). According to Korkman et al. (2017, p. 146), the hypothesis testing approach is a unique trait of the Finnish Barnahus model. Korkman et al. explain that in the hypothesis testing approach, different hypotheses are carefully formulated before the interview, and then it is tested which hypothesis gains support in the interview. The hypotheses can, for example, be the following: A) the child was sexually abused by a parent, B) the other parent has repeatedly instructed the child to lie about sexual abuse due to a custody dispute and C) the child has been misunderstood or the child has not understood the sexual nature of the words he or she has used.

The prerequisite for using recorded interviews as evidence is that the suspect is given a chance to ask questions from the victim (OK 17:24). The suspect's right to cross-examination is further stipulated in the Criminal Investigation Act (ETL 9:4). According to the Police Handbook (2022, p. 87), the suspect should be provided with a lawyer to properly comprehend the meaning of cross-examination and counter possible claims for infringements of the suspect's procedural rights. Also, the prosecutor must be reserved a chance to participate in the interview and ask questions (ETL 9:4.3).

The interview is usually conducted in two parts. First, the victim is asked to tell about the situation in his or her own words. Then, in the second part of the interview, all parties are allowed to ask questions of the victim. (Fredman et al., 2020, p. 455; Korkman et al., 2017, pp. 149–150) Usually, the suspect is not personally present in the adjacent room, but the suspect's lawyer is in charge of securing the right to cross-examination. The defense is usually not allowed to follow the first interview in real-time but instead the defense is allowed to get acquainted with the recording and transcription of the first interview. The suspect has to be reserved a chance to ask relevant questions

to the victim, but the suspect does not have to exercise this right. The suspect's lawyer often presents the questions on behalf of the suspect and the questions should be prepared preferably in written form. The defense does not have the right to ask irrelevant or harmful questions. This is supervised by the police who routinely decide that the defense's questions are presented to the victim by the interviewer. The interviewer may formulate the questions in another way that is more suitable for children of that age. Therefore, the suspect's right to ask questions may be secured without direct contact between the victim and the suspect (Police Guidance, 2019, pp. 33–35; Police Handbook, 2022, pp. 84–89).

There are two major reasons why the defense's questions are asked by the interviewer. Firstly, direct contact with the possible offender should be avoided because it could be traumatizing for the child. Forming a good connection between the interviewer and the child is crucial to getting the child to speak. It is easier for the interviewer to ask the questions because they already have a deeper connection. Secondly, interviewing children requires special expertise because children are especially vulnerable to leading questions. If the defense's question is not leading, irrelevant, or harmful it can be conveyed as such to the child. The interviewer does not change the essential content of the defense's question but makes it more understandable to the child or formulates the question in a less-leading form. Open questions such as "What happened?" are preferred. This directly affects the quality of the child's interview. It is possible to ask further questions if the suspect's lawyer is following the interview in real-time. However, in practice, the suspect's lawyer does not always follow the second interview in real time but instead approves the cross-examination by watching the recording afterward.

According to Korkman et al. (2017, p. 151), the interview of a child victim is often evaluated by a Barnahus expert who gives a statement in which the credibility of the abuse hypothesis is weighed against other hypotheses at the request of the police, prosecution or the court. Korkman et al. explain that these statements are used in court proceedings as evidence, but they are not binding on the court.

In addition to the interview, a medical examination is usually conducted



to gather evidence of physical or mental signs of crime. The medical examination is conducted in university hospitals. For victims of sexual exploitation over 16 years the examination is conducted in SERI support centers where they also receive support services (Police Guidance, 2019, pp. 33–35; Police Handbook, 2022, pp. 84–89).

### 3.2.6. Trial phase

Child victims of exploitation or abuse are not present during the trial. A 15 to 17-year-old victim may participate in the trial if the victim so wishes. In these cases, the child may be heard as a witness and the recorded interview is not used as primary evidence. The prosecutor, defendant, and the defendant's lawyer are present in the trial and the child's legal aid counsel participates if the child has compensation claims. The case is heard without the public if it involves sexual violence towards children (15 § laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa 370/2007). The video of the child's interview is played in the courtroom and the parties are allowed to comment on the evidence. Experts that have participated in the interview of the child may be heard in court. The defendant and possible witnesses are heard in the trial. The procedure is the same in appellate courts if they arrange a hearing (Fredman et al., 2020, pp. 452–459).

According to legal psychological research, recorded hearings are reliable evidence because they are taken up shortly after the alleged crime. The recordings should be made as soon as possible after the alleged crime because memories fade rather quickly, and the risk of false memories increases when time passes. (Väisänen & Korkman, 2014, pp. 729–732 and referred literature). However, from a strictly legal perspective, it may be harder for the prosecutor to win a sexual crime case if the victim does not testify in court. This is because new issues may be raised in the trial phase and the procedural safeguards are in favor of the defendant. This problem is articulated in the recent Finnish Government Bill (2022, p. 135) on changing the Act on Criminal Investigations. For example, the prosecutor might need to ask new questions from the victim to undermine the defendant's arguments, but this is not possible because the interview was recorded. Therefore, the

victim does not always know what refusing to testify in court may mean in practice.

The problem is more relevant for adult victims of sexual crime. The presence of young children would not make it easier to secure a conviction because they would not be able to answer the prosecutor's questions properly in a court setting. Consequently, this highlights the need to conduct the recorded interview properly and the prosecutor's active participation in the pre-trial investigation.

### 3.3. Sweden

#### 3.3.1. Legislation on using recorded interviews as evidence

In Sweden, the most important procedural piece of legislation is the Code of Judicial Procedure (*Rättegångsbalk* 1942:740, RB). There are provisions on pre-trial investigations in Chapter 23 of the Code of Judicial Procedure and the Statute on Pre-trial Investigation (*Förundersökningskungörelse* 1947:948, FuK).

The main rule is to receive all evidence in the trial (RB 35:8). Since January 2022 it has been possible to even use recorded interviews of adults as evidence in criminal cases provided that it is deemed appropriate by the court (RB 35:15). There is no specific legislation on recorded interviews of child victims. Nevertheless, the practice is deeply embedded in Swedish legal culture. Susanna Johansson et al. (2017b, pp. 11–12) point out that the Swedish supreme court ruled already in 1963 that audio recordings of child victims could be used as evidence. Therefore, the Swedish legal system is very open to using recorded interviews as evidence provided that the suspect's right to cross-examination is secured.

In Sweden, the prosecutor leads the pre-trial investigation when the victim is under 18 years of age (Prosecutor's Handbook, 2019, pp. 14–15). According to the Prosecutor's Handbook (2019, pp. 24–25), the interviews of children under 15 years old shall be recorded in the pre-trial investigation and this recording shall be used as evidence in the trial. The Handbook also states

that there is no legal obstacle that prevents using recorded interviews of children aged 15–17 years as evidence. The use of recorded interviews is not limited to sexual exploitation or abuse, but it is permitted in all crimes as long as it is deemed appropriate.

### 3.3.2. Organization of Barnahus activities

In 2006, the Swedish Ministry of Justice started a pilot with six Barnahus Units. Currently, there are over 30 Barnahus units in total. Barnahus activities are not legislated but they are based on established cooperation practices. Therefore, it is not mandatory to refer cases to Barnahus units. (Johansson et al., 2017a, pp. 356–358) However, in 2009 the National Police Board, together with the National Prosecution Authority, the National Board of Forensic Medicine, and the National Board of Health and Welfare, issued national guidelines for Barnahus cooperation (National Police Board, 2009). Furthermore, the National Prosecutor Authority has issued a Prosecutor's Handbook (2019) for crimes against children.

In Sweden, the Barnahus activities are decentralized and therefore, the local authorities are supposed to make a specific contract on Barnahus cooperation (National Police Board, 2009, pp. 10–12). The Barnahus units are mostly funded by the municipalities. NGOs, such as Save the Children, play an important role in coordinating Barnahus activities on a national level. (Johansson et al., 2017b, p. 15) However, there is much variation in local practices, and not every municipality is connected to a Barnahus unit, especially in Northern Sweden (Kaldal, 2020, p. 9; University of Linköping, 2019, pp. 25–26 and map on p. 13). In municipalities that are not connected to a Barnahus unit, the cooperation between the prosecutor, police, social services, and health care shall be organized in another way (Prosecutor's Handbook, 2019, p. 9).

The main role of the Barnahus is to coordinate the parallel criminal and social welfare investigations (Johansson et al., 2017b, p. 20; National Police Board, 2009, p. 8). According to the guidance issued by the National Police Board (2009, pp. 8, 10–11), the authorities should arrange a coordination meeting with the police, prosecutors, social workers, and medical professionals when

the authorities receive information about possible child abuse. The coordination meeting is called by the Barnahus Coordinator, who works in the local Barnahus unit.

In Sweden, there is much research and many evaluations of Barnahus activities. The University of Linköping (2019, pp. 11–14) conducted an evaluation of Swedish Barnahus units in 2018–2019 with an extensive literature review of previous evaluations conducted in 2006–2007, 2010, and 2013 by different Swedish universities. According to the 2018–2019 evaluation, the overall quality of Barnahus units was good, but there is still room for improvement. Some of the identified development needs were providing the children better access to healthcare services in Barnahus units and connecting every municipality to a Barnahus unit. According to the evaluation, there is a need for Barnahus legislation on a national level that would make the Barnahus activities mandatory. There is a need for clearer legislation on authorities' right to information because the current restrictions hamper the exchange of information. (University of Linköping, 2019, pp. 57–62) There is also research available in English about the Swedish Barnahus model in the Barnahus book (Johansson et al., 2017a).

### 3.3.3. Barnahus target group

In Sweden, the Barnahus target group is wide. According to the Barnahus Guidelines (National Police Board, 2009, pp. 9–10), it consists of children under 18 years old who are suspected to be victims of sexual exploitation, violence, crimes against freedom (such as human trafficking), female genital mutilation and even witnesses of violence in close relationships. However, Anna Kaldal (2020, p. 12) points out that in practice the target group varies greatly between local Barnahus units. According to the evaluation by the University of Linköping (2019, p. 58), children between 15–18 do not always get access to Barnahus units.

### 3.3.4. Representation of the child victim

Representation of the child is described in the Prosecutor's Handbook (2019, pp. 17–22). The child is primarily represented by the child's guardians.

In these cases, the child has a right to legal aid counsel. However, if one of the child victim's parents is the suspect the child may be appointed a special representative who acts simultaneously as the legal counsel and the guardian of the child in the criminal procedure. The representatives are regulated in the Act on Special Representatives for Children (lag om särskild företrädare för barn, 1999:997). In practice, the special representatives are lawyers with experience in child cases. The prosecutor applies for a special representative from the district court if it is deemed necessary. It is possible to appoint a special representative without hearing the parents (In English see Forsman, 2017, pp. 231–236).

### 3.3.5. Interview and cross-examination

There are provisions for interviewing children in the Statute on Pre-trial Investigation. The interview shall be conducted in such a manner that it does not cause harm to the child and the number of interviews should be kept to a minimum (FuK 17 §). The interviews of children shall be conducted by trained professionals (FuK 18 §) who are police officers. An expert in child or witness psychology shall assist in the interview or give an opinion of the child's interview if the child's age and developmental stage or the nature of the crime so require (FuK 19 §).

The interviews of children are conducted in Barnahus units. The child's guardian shall take the child to the Barnahus unit for a forensic interview. If a special representative is appointed he or she is responsible for taking the child to the interview. In Sweden, the authorities may take the child to the Barnahus unit without the parents knowing about it. For example, the child is taken from school or kindergarten to a Barnahus unit by the special representative. The child should also be accompanied by a person the child knows, such as the child's teacher, kindergarten worker, or social worker (In English see Forsman, 2017, pp. 236–237; and in Swedish Prosecutor's Handbook, 2019, p. 20).

The interviews of children are usually conducted by specifically trained police officers (Lind Haldorsson, 2017, pp. 16–17; Mycklebust, 2017, p. 109). The interviewer is the only person directly in contact with the child while other participants follow the interview from another room through a video connection.

The aim is to ensure the quality of the child's testimony by creating trust and preventing suggestive interview techniques. The NICHD protocol and a practice interview are also used in Sweden (Prosecutor's Handbook, 2019, pp. 8–10). In Sweden, psychologists do not conduct interviews, but their expertise may be used in the process. A psychologist may also give an opinion on the child's interview for court proceedings (FuK 19 §). According to the Barnahus evaluation by the University of Linköping (2019, pp. 45–47), it is problematic that psychologists do not attend the interview regularly. Their role is more consultative instead.

The prosecutor is in charge of the investigation, but the prosecutor is not in direct contact with the child. The prosecutor follows the interview from an adjacent room and has the power to decide who is present in the interview through the video connection. The child's guardian or special representative shall also be present (National Police Board, 2009, pp. 8, 11; Prosecutor's Handbook, 2019, pp. 24–25). In Sweden, the child's interview in the pre-trial phase does not only focus on the criminal investigation, but instead it is a joint interview with the social welfare investigation. The idea is to avoid the child telling the same things twice. Therefore, a representative of social services should be present to facilitate the parallel investigations (Prosecutor's Handbook, 2019, p. 26). According to the evaluation by the University of Linköping (2019, pp. 45–46), the cooperation between criminal justice professionals and social services works well in practice. However, according to Johansson (2017, p. 268), the social welfare investigation is in practice subordinate to the criminal investigation due to the underlying criminal law-oriented logic.

In Sweden, the right to cross-examination is ensured without direct contact between the child and the suspect or the suspect's lawyer. According to the Prosecutor's Handbook (2019, pp. 42–44), the suspect's right to cross-examination is ensured by giving the suspect an opportunity to ask questions from the victim. It is important that the suspect is provided with a defense lawyer. The Handbook states that the suspect or the defense lawyer is never allowed to ask questions directly from the victim, but they are presented through the interviewer instead. It is further explained that the interview is conducted in two parts and in the second interview the suspect's defense

lawyer is allowed to follow the child's interview from another room through a video connection and ask questions. The defense is allowed to see the recording of the previous interview and the questions should be given to the lead investigator in advance. According to the Handbook, the exercise of the right to cross-examination shall be carefully documented in a written memorandum. During the interview, the prosecutor and the special representative (or the child's legal aid counsel) are also allowed to ask questions from the victim through the interviewer (National Police Board, 2009, pp. 8, 11; Prosecutor's Handbook, 2019, pp. 24–25).

In addition to the interview a forensic medical examination is conducted when necessary, preferably in the Barnahus facilities (National Police Board, 2009, pp. 11–12, 14; Prosecutor's Handbook, 2019, pp. 27–29). In practice, every Swedish Barnahus unit is not able to provide medical examination services and then the examination is conducted in a local hospital (Kaldal, 2020, p. 13; University of Linköping, 2019, pp. 49–50).

### 3.3.6. Trial phase

If a child's interview has been recorded in the pre-trial investigation the court may decide that the recording is played in court (RB 35:14). In this case the child is not present in court.

However, according to the Prosecutor's Handbook (2019, pp. 24–27, 37), hearing older children in court can increase the quality of evidence. Therefore, the prosecutor shall consider if it would be possible to hear the child in court. The prosecutor shall discuss this with the child's guardians or special representative. The Code of Judicial Procedure stipulates that the court shall consider if a person under 15 years of age may be heard as a witness (RB 36:4). The Prosecutor's Handbook states that this is analogically applied to child victims as well. Therefore, the prosecutor may appoint the child to testify, but the court decides if it is appropriate to hear the child in court.

It must be noted that the Prosecutor's Child Handbook was given before the 2022 law reform, according to which recorded interviews may be used as evidence in criminal cases provided that it is deemed appropriate by the court

(RB 35:15). The recorded interview can be used as separate evidence even though the person would be heard in court. The interview is played and the parties may ask questions from the victim (The procedure is described in detail in Swedish on the National Prosecution Authority Website, 2022). The victim protection measures stipulated in the Victim Directive, such as hearing the case without the public, allowing the victim to testify through a video connection, or setting a screen to block visual contact between the victim and the defendant, are also available in Sweden.

#### **4. Discussion and Conclusions**

The Barnahus model is widely accepted in Europe, and it has strong support in European law. European law imposes obligations on states to ensure the permissibility of recorded interviews of child victims as evidence in the trial phase. According to the European Court of Human Rights, the defendant's right to a fair trial is not prejudiced if the suspect is given the opportunity to ask questions from the victim in the pre-trial investigation. The conditions and details of the procedure are regulated by national legislation.

The core function of the Barnahus model is very similar in Finland and Sweden. In both countries under 18-year-old victims of sexual exploitation and abuse may be conclusively heard in the pre-trial investigation in most cases. The suspect's right to cross-examination is ensured in the pre-trial phase by providing the suspect with the possibility to ask questions from the victim through the interviewer. Therefore, there is no direct contact between the victim and the offender at any phase of the criminal procedure because the child does not testify in court.

There are also differences in the Finnish and Swedish Barnahus variations. The first difference is the legislative approach toward using recorded interviews as evidence. In Finland, the use of recorded interviews is a clearly legislated exception to the general rule of receiving all evidence orally in the trial phase. In Sweden, the approach is more flexible and based on case-by-case discretion because recorded interviews are permissible if the



court deems it appropriate. However, in both countries, the general rule of an immediate trial where all parties are simultaneously present is starting to crumble (Hiilloskivi & Lilja, 2022).

The second difference is the representation of a child victim if the child's guardian is not suited to represent the child in the criminal procedure. A unique trait of the Swedish model is that the child may be represented by a special representative who is both the guardian and the legal aid counsel. In Finland, the guardian and the legal aid counsel are two separate people with separate duties.

The third difference is the organization of Barnahus activities. Johansson et al. (2017b, p. 22) point out that in Finland the Barnahus activities are closely tied to the healthcare system because they are arranged by university hospitals (Child Forensic Psychology Units). In Finland, forensic psychologists are tasked with conducting interviews with young children at the request of the criminal justice authorities. According to Korkman et al (2017, p. 159), harnessing forensic psychological expertise in conducting interviews and using the hypothesis testing approach is perceived as the major strength of the Finnish model. However, in practice, the Barnahus target group is narrow because only the interviews of under-7-year-old child victims of sexual or physical abuse are conducted in Barnahus units. The interviews of older children are conducted at police stations by specifically trained police officers.

In Sweden, the Barnahus activities are more decentralized and based on local contracts between police, prosecutor, social services, and healthcare. The key task of the Swedish Barnahus units is coordinating the criminal investigation and the social welfare investigation. The interviews are conducted in Barnahus units by specifically trained police officers. In Sweden, the Barnahus target group is considerably wider than in Finland because it covers children under 18 years old and more crime types, such as human trafficking (National Police Board, 2009, pp. 9–10). However, in practice, there is much variation between different Barnahus units, and children 15–18 years old do not always get access to Barnahus (University of Linköping, 2019, p. 58). In conclusion, the Finnish Barnahus activities are closely tied to Child Forensic Psychology Units while the Swedish Barnahus units focus on coordinating parallel

criminal and social welfare investigations.

Johansson et al. (2017b, pp. 1–4) state that the development of the Barnahus model is closely tied to the context of the Nordic welfare state. According to the researchers, comparative knowledge about Nordic Barnahus variations is also valuable in implementing a child-friendly approach to criminal procedures outside Nordic countries. Even though the legal status of using recorded interviews is clear in Nordic countries, it is not certain that the suspect's or the child victim's rights are always adequately respected in practice. The proper implementation of the Barnahus model while respecting the rights of the defendant requires consistent efforts and the work is not yet done in either Finland or Sweden. Nevertheless, I argue that the Barnahus model guides the development in the right direction. As Bragi Guðbrandsson states (in the foreword of Lind Haldorsson, 2017, pp. 5–6): “the Barnahus is never a fixed model but rather an evolving practice, ready to adapt to the complex needs of children who are victims or witnesses of violence.” Therefore, I invite Korean scholars and criminal justice professionals to discuss if the Barnahus model or a similar practice could be applied to South Korea and what form could the multidisciplinary cooperation take.

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