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The Swedish “Special Representatives for Children” and Their Role in Barnahus

Maria Forsman

Introduction

It goes without saying that children who are victims of parental violence and abuse are in a highly vulnerable position. This is also true in the legal sense, as the alleged perpetrator(s) normally represent(s) the child in legal matters. In such cases, the child’s rights must be independently safeguarded. This chapter offers a legal analysis of the roles of the “special representative for children”, the child’s lawyer in child abuse criminal justice cases. It will focus on the context of Swedish Barnahus.

In Sweden, a special representative can be appointed to safeguard the child’s rights during a criminal investigation and subsequent trial (Act on Special Representatives for Children, Section 3). The legal

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prerequisites for this are that a crime against a child is suspected which may carry a prison sentence, and the child's custodian is the suspect, or that a custodian may, on the basis of his or her relationship to the suspect, not protect the rights of the child (Act, Section 1). The purpose of this act, which entered into force in 2000, was twofold: to strengthen the rights of the child when victim of parental abuse *and* to improve the ability to investigate and prosecute such crimes (prop. 1998/1999:133).

The special representative for a child acts in the midst of a complex legal landscape with diverse legal responses regarding child abuse. In addition to constituting criminal offences and thus resulting in a criminal investigation and process, child abuse can also, at the same time, be the subject of a child welfare investigation with the primary aim of resolving the situation or ultimately, if needed and requirements are met, removing the child from his or her home environment under the Care of Young Persons (Special Provisions) Act. Essentially, in Sweden as in many other countries, child abuse is dealt with either as a social problem or as a crime, and sometimes both.

The legal landscape of child abuse interventions also encompasses the fact that it is increasingly common in these cases for the police and prosecutors and the social services—together with other involved professionals such as medical practitioners and (child and adult) psychiatrists—cooperate under the same roof, in Barnahus. When the Act on Special Representatives for Children was introduced, the Barnahus concept was in its infancy. The main interest of this act was, and still is, to facilitate the criminal justice process. The child-centred, inter-agency collaboration we know today was partly un(fo)reseen.

In this chapter, I will scrutinise the act and its underlying values, focusing on the special representative's role(s) in the Barnahus context, from the point of view of the child's pathway through Barnahus and in relation to the agencies involved. The activities undertaken in Barnahus are sometimes, for illustration purposes, depicted as being divided into four rooms, each meeting a different need of the child (see the introductory chapter of this volume). In addition to focusing on the criminal justice room, this chapter will also consider child representation issues in the other rooms, in order to include the full Barnahus view of the

topics of children’s legal standing and representation. A legal analysis will be conducted, based on the legal sources which include the preparatory works of the Act (prop. 1998/1999:133) in particular¹, as well as the Code of Professional Conduct of the Swedish Bar Association (SBA) and disciplinary decisions from SBA’s disciplinary committee.

Other sources, such as guidelines and evaluations of Barnahus, will also be used to shed light on the topics analysed. Follow-up studies of the Act have shown that the ability to investigate parental crimes against children has increased (RFR2:2005/2006); appointing a special representative is regarded as the strongest factor in facilitating a child abuse case to proceed in the criminal justice process (Swedish Prosecution Authority 2010). In relation to Barnahus, evaluations indicate that the role(s) of the special representative has become more prominent (Swedish National Police Board 2009) and that representatives are assigned more often where Barnahus collaborations exist than when they do not (Kaldal et al. 2010). Of particular interest is also that several questions and critiques regarding the special representatives and their roles have been raised in an evaluation (Landberg and Svedin 2013). This suggests the need for a closer look at this professional.

An overarching point of departure is that the special representative, in their capacity of being an independent legal representative for the child, forms an integral part of society’s response to child abuse. In essence, no other single professional can have as full a picture of the child’s views and circumstances as the one assigned to defend the child’s rights and best interests. With this in mind, and building on the experiences of Swedish Barnahus, the goal is to identify and discuss challenges and possibilities of this piece of the child protection puzzle.

The Core Legal Issues

In this section, I will briefly outline topics I find integral to the understanding of the child lawyer’s role(s) in Barnahus. These are the children’s rights, family law and practical legal contexts of the issues studied. In exploring the role(s) of the special representatives, the

relationship between the lawyer and the child client is also a core question, which will be highlighted.

The Child Victim's Rights

The special representative is, essentially, a means to realise the child victim's rights in the criminal justice process. This is critical, considering the difficulty, commonly recognised in research, of ensuring that rhetorics about rights translate into enforceable rights. This is evident with regard to children's rights (e.g. Smith 2013) as well as victim's rights (e.g. Groenhuisen 2014). In the light of the strong link between rights-based issues of access to justice, the right to voice an opinion and, in practice, proper legal counselling, the right to an independent legal representative (in the child's own name) can be regarded as a relatively substantial right (see, for example, Council of Europe 2010). As such, the child's independent legal representation is also strictly linked to two fundamental principles of the UN Convention on the Rights of the Child (CRC), namely the child's best interest and the child's right to participation (art. 3 and 12).

It should, however, be noted that the setting in which the special representative works is the criminal justice process, and so the rights at hand are closely connected to those of an aggrieved party (*målsägande*). Procedurally, the rights of an aggrieved party include the right to information throughout the process, the right to assist the prosecutor's indictment and thus gain an independent right to appeal as well as the choice of individual actions or appeal to a superior prosecutor if the prosecutor decides not to prosecute (Träskman 2011). The aggrieved party's rights are, as indicated in victimological research, not very prominent in the criminal justice process (e.g. Burman 2011).

In relation to the target group for Barnahus, as defined in the joint guidelines for collaboration and criteria for Barnahus by the Swedish National Police Board (Swedish National Police Board 2009), the connection to legal standing as an aggrieved party *inter alia* means that children who have witnessed parental violence are excluded from independent representation unless they are (also) supposedly direct victims of a crime which may carry a prison sentence.

Independent Legal Representation

Children have limited legal capacity and are subject to their custodian(s) right and duty to decide in matters concerning the child, with account taken of the child's views and wishes according to the child's age and development (Parental Code, Chapter 6 Sections 2, 11 and 13). The need for an independent legal representative for the child in the criminal justice process stems from the fact that the alleged perpetrator(s) is the same person(s), or in a close relationship with the person, who legally represents the child. The child's statement is often crucial to a criminal investigation, and so the parental legal authority can constitute an acute obstacle to the investigation and consequently to the child's access to justice.

This legal problem can be solved in different ways. In the Nordic context, Iceland has a regulation that enables the independent legal representation of the child when they are at risk (and not as a priority to safeguard the child's right to participate and be heard in criminal proceedings), and in Norway and Finland, a legal representative can be appointed based on an assessment of whether the parent in question will safeguard the best interests of the child during the criminal investigation and whether there is a conflict of interest between the child's involvement in criminal proceedings and the interest of the parent (Kaldal 2015).

In Sweden, there are various solutions depending on the legal process at hand. In a child welfare investigation, the child welfare agency is given the power to decide whether and how the child is being interviewed, as well as whether the child should undergo a medical examination when the Care of Young Persons Act is applicable (Section 32, and Social Services Act Chapter 11 Section 10 para. 3). An independent legal representative for the child is not relevant until the child protection process reaches compulsory measures and court procedures (SOSFS 1997:15). This is a profound difference from the situation in the criminal justice investigation, where the decision-making power regarding investigative measures has, through the Act on Special Representatives for Children, been placed with an independent legal representative from the start of the investigation.

The independence of the child's legal representative is essential and built into the function and role of a lawyer as one fundamental principle in the Guiding Principles for Good Advocate Conduct. It should, however, be pointed out that the child is not always granted an *independent* representative. If the child has two custodians, who are not married or cohabitating, and one of them is not suspected of a crime against the child, or believed to have difficulties safeguarding the child's rights, then that custodian may be appointed by the court to represent the child (Act, Section 2). This exception is based on the principle that a custodian should not be excluded from the power of decision-making over a child to a greater extent than necessary (prop. 1998/1999:133). The regulation has one further exception, in cases where children are considered to have reached such an age that they can defend their own rights (Act Section 1 para 2; prop 1998/1999:133). Children who represent themselves, or are represented by one of their custodians, will not necessarily lack a legal counsel; however, they may be appointed an aggrieved party counsel² to ensure their procedural rights (i.e. to bring an action for damages) in the process. For this counsel, there is no regulation regarding particular suitability for representing children.

As the parental legal authority is restrained by the assignment of a special representative, the question at hand in the analysis of this chapter is mainly about the balance of power between the individual (child), the lawyer and the agencies (state power).

...in the Barnahus Context

It is crucial to the underpinnings of the analysis that there may also exist different, sometimes conflicting, interests between agencies involved in Barnahus. Research has shown that the collaboration implies a tension between a criminal law-oriented logic and a treatment-oriented welfare logic (Johansson 2012). In relation to the often-held aim of cooperation in Barnahus to "put the child in focus" (e.g. Thornblad 2006), such cooperation may also entail discord between the operational perspectives of the agencies involved on the one hand and the "child focus"

on the other hand (Forsman 2013). The joint guidelines for Barnahus highlight that the collaboration should be characterised by a child perspective, *not* an operational perspective, and that the overall aim is for the child to be safe and supported from a holistic perspective (Swedish National Police Board 2009).

In this connection, it should be noted that, as regards the aims and functions of the investigations that are carried out in Barnahus (i.e. a criminal justice investigation and a social welfare investigation), the child victim is not essentially the main focus. Both investigations include the parents (custodians) as crucial participants, as they are, in relation to the processes, *key to change* in the home situation (e.g. by becoming motivated to work with their (in)abilities to fulfil the child's needs) and, also, *key information sources* regarding the crime(s) under investigation [the possibility that the suspect actually admits, acknowledges certain circumstances or at least provides new or more accurate leads in the investigation is believed to be underestimated (Diesen 2005; Swedish Prosecution Authority 2016)]. The implications of this overall focus of the investigations are thus that the child-centred elements, which are carried out in Barnahus, must not be separated but anchored in the investigation(s) as a whole, based on each involved authority's function, regulation and their independence in the exercise of authority (Swedish Instrument of Government, Chapter 12 Section 2). In relation to the special representative, however, the relevant investigative measures are Barnahus based, as the representation is centred solely on the child.

The Child as a Client

The Council of Europe Guidelines on child-friendly justice emphasises the importance of clarifying the exact role(s) of independent representatives for children. In the assignment studied, this legal professional functions, in general terms, both as an aggrieved party counsel and as a guardian ad litem (ställföreträdare³) for the child. As regards the former function, the special representative is to look after the child's interests as an injured party in the case, for example, in filing claims

for damages and providing legal assistance and support throughout the process. In their function as a guardian, the special representative holds the decision-making power as to whether and how the child is to be interviewed, medically examined and so on, thus ensuring that all investigative measures are in the best interests of the child (prop. 1998/1999:133).

With their dual roles, and in view of the fact that the alleged perpetrator in the criminal justice process is the client's custodian, the special representative has to deal with a very sensitive situation that can often involve complex conflicts of interest and ethical concerns. Considering this, the act stipulates that only "an advocate, a legal associate at an advocate firm, or other" may be assigned to that role, who, on the basis of their knowledge and experience and personal skills, is particularly well suited for the assignment (the act, Section 5). The eligible group is not formally limited to lawyers, but considered a result of the experience needed in the field of criminal investigations and trials.

The duality of roles relates to what research has recognised as the "child lawyering dilemma" (e.g. Ventrell and Duquette 2005). Should the lawyer for the child (mainly) be guided by the child's expressed wishes or by the lawyer's determination of what is in the best interests of the child?

In Swedish Bar Association's memorandum on the lawyer's assignments for weak or vulnerable clients (SBA 2016), it is emphasised that the child's instructions should not always be followed: the special representative shall promote the child's best interests, and although this will include clarifying and paying regard to the child's own views, the lawyer shall *decide what is in the best interests of the child* following a comprehensive review. This may be related to, and partly inferred from, the lawyer's duty of loyalty, to act in an upright and honourable way, in the client's best interests, which may not always mean complying with the client's wishes but giving the client the advice and assistance that objectively will best benefit the client's cause. More specifically, the Swedish Bar Association emphasises, however, that in the case of a special representative having a different opinion than the child in matters relating to the criminal investigation or the trial, the lawyer should assert the idea that they believe is in the best interests of the child (SBA 2016).

Whereas the mainstream view in research and child law policies would be that lawyers representing children should put forward the opinion of the child and provide the child with all necessary information and explanations concerning the possible consequences of the child's views and opinions (e.g. Council of Europe 2010), the Swedish view seems particularly inclined to best interests representation. This model of lawyering in relation to children has inter alia been contested from the viewpoint that the lawyer may, subconsciously, insert their own views of what is best for children into the representation of an individual child. In the light of this, the international (American) discussion is heavily geared towards urging lawyers to get to know the child client as well as possible through frequent contact with the child (e.g. the Fordham Recommendations 1996). The *importance of discerning and presenting the child's voice* is also stressed, whilst viewing the child in multiple dimensions, such as developmental stages, language, culture, gender, class and disability (the UNLV Recommendations 2006). In the preparatory works of the Swedish Act, it is accordingly indicated that close contact with the child is fundamental in assessing the child's best interests, as is *valuing* the child's own opinions (prop. 1998/1999:133).

The role(s) of the special representative will now be further scrutinised in the Barnahus setting.

Role(s) in the Criminal Investigation Room

Initial Coordination Meeting: Assignment

One of the first steps in the Barnahus collaboration is the coordination meeting. During this, it is decided, in the light of investigative measures needed, whether a special representative for the child should be appointed (Kaldal et al. 2010).

The special representative is assigned to the child by the district court upon application of the prosecutor. If it appears necessary in order to safeguard the child's rights, for example, to enable an interview with the child without their custodian(s) impinging the investigation (prop. 1998/1999:133), the district court can appoint an interim special

representative without the custodian(s) knowledge (Act Section 6). The timeframe for action in these cases is short, as the custodian(s) should be informed as soon as possible without it being detrimental to the investigation (Act, Section 7). This duty of information is normally conducted as soon as an interview or medical examination of the child has been undertaken, but no later than the fourth working day after the interim order (prop. 1998/1999:133, Ordinance on Special Representatives for Children, Section 2a). This urgency can mean that the interview with the child has already been scheduled when the prosecutor submits a request for a special representative to the court, and that the representative is appointed on the same day. The time available for the lawyer to get to know the child before the interview is thus limited.

A question worth considering in relation to the initial coordination meeting is the implications of the special representative not attending. The presence of the person who is assigned to safeguard the child's rights could be vital with regard to the child's best interests and to this person's ability to convey the child's views on the matters at hand. Such procedures would, however, need the criminal justice investigation to have a head start, so that it is established, before the coordination meeting, that the child will be interviewed in a criminal investigation and thus be in need of a special representative. Hence, this strict connection to the criminal justice process may be a significant element in how the legal representation of the child's rights might in the future be reinforced in and through Barnahus, which I will return to in the discussion.

Bringing the Child to Barnahus

In order to undertake initial investigative measures, such as an interview with the child, without the custodian's knowledge, bringing the child to Barnahus must normally be done in connection with the child spending time in kindergarten, school or the like (prop. 1998/1999:133). The special representative decides on the conditions surrounding the visit to Barnahus.

Given that the interests of the child are paramount, the child may be accompanied by a person who is known and safe for the child.

The special representative therefore needs to find out who is best suited to accompany the child (Swedish Prosecution Authority 2016). Although it is within the special representative's role to decide on different arrangements as regards the transportation of the child, on a case-to-case basis, the lawyers are never obliged to collect the child themselves (SBA 2016). It may not always be appropriate for the special representative to transport the child, *inter alia* by using public transport, for reasons of confidentiality (see, for example, the Journal of the SBA, no 3 2015, where this is discussed).

It is, however, of importance in this connection that the special representative has the opportunity to familiarise themselves with the child in question. As mentioned, the lawyer should decide what is in the best interests of the child following a comprehensive review. This may be a problematic element in the early, time-limited, stage of the process. It was also shown in a recent evaluation that other professionals involved in Barnahus reportedly sometimes felt that the special representatives were passive and seemed unaccustomed to talking to or associating with children. On occasions, the special representative neither greeted or talked to the child (Landberg and Svedin 2013) which of course is inconsistent with the lawyering roles and ethics as well as the demands regarding particular suitability.

Cooperation with Other Professionals

From the appointment and throughout the process, the special representative shall, within their independent role, consult and cooperate with professionals in kindergartens and schools, and other persons who may be close to the child. The same applies in relation to representatives of the child welfare services and the police. The preparatory works particularly emphasise that the representative's cooperation with child welfare services may mean that a child does not need to undergo more medical examinations and interviews than necessary (prop. 1998/1999:133). There were thus seeds of thought in the drafting of the Act as regards child-centred coordination measures, which are now exercised in Barnahus.

The Child Investigative Interview

A key undertaking in the criminal justice investigation and the Barnahus operations is the police interview of the child. Because multiple professionals collaborate, a time needs to be set when all (other) actors can join in, such as the prosecutor and the child welfare agency, the suspect's defence lawyer, as well as paediatricians and child psychiatry professionals who may be given the opportunity to follow the interview from an adjoining room (Swedish National Police Board 2009).

In connection with the investigative child interview, it is first worth stressing that the criminal justice authorities do not have any right to interview the child unless the child's custodians—or in their place, the special representative—consent. According to the preparatory works, it is generally in the child's interest that suspicions are investigated, but a special representative should not consent to an investigative measure if the child may be harmed, for example, due to strong fear. The special representative should thoroughly consider the child's views and wishes (prop. 1998/1999:133).

Secondly, *how* the interview is conducted is essential for the child, due to both legal rights and other interests. Earlier studies, and also more recent evaluations, have shown that police investigations of child abuse suffer from many systematic weaknesses, for example, that the child interviews are often substandard (Diesen and Diesen 2009) and the establishment of Barnahus operations has not eliminated these deficiencies (Kaldal et al. 2010). One key task for the special representative is to ensure that the interview meets high standards and is conducted in a child-friendly manner. One such example is to make sure that the interview is held by a person who is specifically competent for the task. If the child's testimony is of particular import to the investigation and it is warranted in view of the age and maturity of the child and the nature of the crime, someone with specific knowledge in child or interview psychology should assist with the interviewing of the child (Ordinance on Preliminary Investigations, Sections 18–19). Ensuring the quality of the interview is one way in which the special representative can safeguard the child's rights in relation to the investigative authority. The special representative has the opportunity and obligation to intervene

and stop the interview if it is not in the best interests of the child, and this has also been done in Barnahus, although only in exceptional cases, according to an evaluation (Landberg and Svedin 2013).

Since it is common practice for interviews with younger children to be video recorded, and for these recordings to be later shown in court, it is essential that the interview meets high standards. Additional questions cannot be asked during the trial, so the quality of this investigative measure can be a determining factor in the child’s safety and redress as a victim of crime.

Thirdly, it is within the special representative’s role to give the child proper and age-adequate information and to support the child (prop. 1998/1999:133). The adversarial system entails that the suspect has the right to be told what he or she is accused of, in order to prepare his or her defence, and also that the child has the right to information about (the seriousness of) the situation. Balancing the child’s right to information, whilst ensuring that the child is not frightened so that it becomes difficult for the child to talk in the light of the possible consequences, has been called a fundamental ethical dilemma (Edvardsen and Mevik 2014) and a “child-right” dilemma (Chap. 10 in this volume). If they are particularly suitable, the child lawyers—experienced and well trained in professional ethics and good advocate conduct—should be well placed to deal with this quandary, although difficult.

After the interview, it needs to be considered that the child might have to return home to one or both parents, even though they are suspects of crime. In relation to this delicate situation, the special representative thus needs to make sure that the agencies involved are coordinated in ensuring that the child is safe and properly informed.

Medical Examination of the Child

According to the joint guidelines for Barnahus, relevant medical expertise in paediatrics, gynaecology, child and adolescent psychiatry and forensics should be available under the same roof (Swedish National Police Board 2009). The role of the special representative in this part of the criminal investigation is, in place of the custodian(s), to consent or

not consent to a forensic medical examination of the child. A medical examination constitutes a forced physical violation, from which everyone is safeguarded in the constitution (the Instrument of Government, Chapter 2 Section 6), and since there is a lack of a provision allowing an involuntary medical examination of a crime victim, the child, or the special representative in place of the child's guardian(s), needs to consent to this investigative measure.

In the preparatory works of the Act on special representatives, it is pointed out that the child's own opinion regarding the examination should be considered in case the child has reached such an age and maturity that her or his own will should be respected. There should be no question of forcing a child to undergo a medical examination even if the special representative would have consented to it (prop. 1998/1999:133 p. 44). As with interviews, it is indicated that an important task for the special representative is to be a support to the child and to ensure the creation of an atmosphere in the performance of the medical examination that minimises discomfort for the child. It is also noted that if a child feels very strong fear and discomfort before a medical examination, the special representative should decide to not consent (prop. 1998/1999:133).

A decision of the SBA's disciplinary committee (from 2008⁴) regarding a lawyer who had been appointed as special representative for a child is also of importance in this connection. The lawyer was given a disciplinary reminder after having consented to a forensic medical examination which showed that the crime of female genital mutilation had not been committed. Given that the child was subject to a gynaecological examination without the company of a support person, and experienced it as very unpleasant and intrusive, the disciplinary committee found that the lawyer had breached their duties as a lawyer, in not having, with due care, examined the need for the investigative measure nor taken any concrete measure to minimise discomfort for the child.

This disciplinary decision has been discussed in the Journal of the SBA (no 4, 2010) as the preliminary work offers unclear and somewhat inconsistent guidance. In the preparatory works, it is stated that it is not within the roles of the special representative to "make own assessments

about the state of the evidence or other questions concerning the investigation” (prop. 1998/1999:133). Moreover, it is clarified that the representative cannot refuse to give consent because they have a different opinion on the position of the evidence of the case. The representative should carry out the assignment in close contact with the criminal justice agencies (prop. 1998/1999:133).

The Swedish Bar Association states in its memorandum on this topic that the special representative is obliged to carefully examine the need for a medical examination in each case and, in this regard, “assess the conditions for obtaining a specific result of the examination on the basis of the known circumstances of the individual case. If there are insufficient indications that the child has been subjected to a certain act, the child maybe should not be subjected to a medical examination” (SBA 2016).

This lawyering practice, going further than was envisaged in the preparatory works, defines the more independent role of the child’s representative. There is an evident dilemma, however: acting (strictly) in accordance with the guidance of the preparatory works may collide with fundamental principles of lawyering. The advantage in relation to the child’s rights may be a stronger legal position, but it also highlights the importance of the special representative obtaining a thorough knowledge of, and from, the child.

Role(s) in Relation to the Other “Rooms” in Barnahus

Child Protection

Since the special representative’s assignment is limited to the criminal justice process, the lawyer cannot represent the child in child welfare matters, and insights into that investigation are thus limited. The representative has, however, the right to obtain information about the child and the child’s situation, which may otherwise be confidential under the provisions on secrecy, if the information is needed in order to monitor and safeguard the child’s interests in the criminal justice process. According to the main rule, secrecy is not applicable in relation to the

individual themselves (the Public Access to Information and Secrecy Act Chapter 12 Section 1). In their capacity as special representative for the child, the lawyer exercises the child's powers as regards the right to receive and dispose of confidential information about the child to the extent that the information is necessary for the assignment. This right is reduced, however, in relation to the child's age and development, as with maturity the child's consent is needed in order to obtain such information. The social welfare agency may also find that information regarding the custodian(s) is protected by rules on secrecy and thus limits the special representative's insight. This was clarified in the preparatory works of the act (prop. 1998/1999:133).

The special representatives may thus be able to keep themselves somewhat informed of the child welfare investigation, but are legally speaking powerless to act on behalf of the child should the child's rights be violated.

The Child's Medical and Psychological Needs

In the remaining two rooms of Barnahus, it is the custodian(s) who hold the power of decision over matters concerning the child. In these rooms, which inter alia may involve crisis support, as well as having the needs for further support and treatment assessed (Swedish National Police Board 2009), the child lacks independent legal representation. The special representative's assignment includes paying attention to the child's needs for care and treatment, and conveying knowledge in those respects to the child welfare agency (prop. 1998/1999:133), but giving consent (or not) to medical or psychological measures is not included in the special representative's assignment (which is restricted to the criminal investigation and subsequent trial, Act, Section 3).

In the medical room, in addition to or resulting from a medical examination, there may be other medical needs detected that may warrant treatment. It is, however, at the custodian's discretion, considering the child's views and wishes according to age and maturity, to decide on such measures and thus govern the child's right to medical care.

Given that the custodians (joint) decision-making power could preclude a child from obtaining access to necessary psychological care and

treatment, in particular in cases of suspected child abuse, the child welfare agencies have, however, (since 2012) been afforded the legal ability to execute an intervention measure with the consent of one custodian alone, if this is deemed necessary in view of the best interests of the child, as provided under the Parental Code (Chapter 6 Section 13a). This may, *inter alia*, apply to psychiatric or psychological assessment or treatment. The provision is intended to meet the child’s right to support and care, and to counteract irrelevant considerations such as when a custodian’s resistance to the measure is based on a fear that the suspicion might be strengthened because of what emerges when the child receives help to process their experiences (prop. 2011/2012:53).

The basis for application of the provision is that one custodian “takes sides” for the child and his or her needs, and a decision on a measure is required for the child’s best interests. Against the background of the individual’s right to protection against interference in their private and family life, the requirements for a decision of this kind must reasonably be set high and in each case considered proportionate to the intervention in the opposing interest (i.e. the rights of the custodian). Not least, there must be information to support the intrusion, which is why the provision can rarely be applied immediately. In these rooms, the child’s ability to exercise his or her rights is weak.

Discussion

The issues dealt with in this chapter concern both principles and practicalities. From a children’s rights perspective, it is crucial that the agencies involved prioritise a child focus *within* their operational perspectives; however, it is also important that the child is granted effective means to defend their rights when the agencies fail to do so. One reason to emphasise the potential benefits of independent legal representation of the child is that in the Nordic welfare states, there is often considerable (over)confidence that the agencies will, at all times, safeguard the child’s rights and operate on the basis of the child’s best interests.

In practice, the child victim’s position is strengthened through the special representative since this professional has the potential to

represent the voice of the child, facilitate the child's right to participation and ensure a child-friendly process. The representative has also some decision-making powers (e.g. to decide on the conditions surrounding an interview) and can, as an independent lawyer, act as a counterweight to the investigative interests of the criminal justice authorities if the child's rights and interests so require.

In determining the role(s) of the special representative, it is, in conclusion, important to consider and clarify (at least) the following two aspects:

- (i) To what extent the child can instruct the lawyer. The regulation is somewhat ambivalent regarding the child's voice. The preparatory works mainly connect the role of the special representative with that of a custodian, that they shall take into account the child's views and wishes according to the child's age and development (Parental Code Chapter 6 Section 11). The motivation of the Act was thus to curtail parental legal authority over the child, rather than starting from the child's rights and interests. The Swedish Bar Association is correspondingly inclined to favour best interests representation, which makes it uncertain whether the child will be able to make use of their lawyer in practice.
- (ii) The lawyer's discretion to act when the child has more and other interests than those assigned. This chapter has shown the child's right to independent representation is not adapted to the practical handling of child abuse cases nor to the child's legal needs. Quite the contrary, the legal representation of the child is connected to their legal standing in a (single) process, in this case as the aggrieved party in a criminal justice case. In the handling of these cases, the child is essentially a crucial source of evidence. The special representative makes the evidence available to the investigation, if it is in, and in a way that is in, the best interests of the child. The child has no independent legal representation in the other (medical and psychological health) measures in Barnahus, or representation only at a late stage in the process (in a child welfare investigation). The child might not benefit from having four different legal representatives

(one in each room), but certainly from one, specialised in child abuse and children’s rights, with the power to act on the child’s behalf. If and when Barnahus operations are more thoroughly established in Sweden, the overall regulation of when and how the child is granted independent legal representation would benefit from the same holistic and coherent approach that underpins Barnahus operations as such.

Concluding Remarks

From a child(’s) perspective, as far as it is possible to adopt such a perspective without asking the children themselves, as in Chap. 3 in this volume, it may be hard to grasp and understand what, if any, is the role of a lawyer (see, e.g. Buss 1996, “You’re My What?”). The importance of the regulation allowing the lawyer time to build trust with the child client can thus not be overstated. Should the role be compared to that of a custodian (as is done), then age-adequate pedagogical approaches are paramount. In essence, when combining a “child focus” with a rights-based perspective, lawyering based on a thorough knowledge of the client in his or her context appears crucial to secure the child’s future position as an independent rights holder.

Notes

1. Preparatory works are documents that precede a legal amendment. In Sweden, these documents are an important tool in interpreting legislation, i.e. in guiding those who implement the law. *Prop.* (proposition) is a government proposal.
2. An aggrieved party counsel, *målsägandebiträde*, is assigned to the crime victim in certain cases, usually cases of sexual offences, assaults, unlawful deprivation of liberty, robbery or other similar offences. The counsel is assigned to protect the interests of the victim in the process, e.g. in bringing action for damages if the prosecutor does not. See the Act (1988:609) on aggrieved party counsel.

3. The Swedish concept *ställföreträdare* roughly corresponds to the term “guardian ad litem” (or simply “guardian”). It is a person who acts on behalf of, i.e. who legally represents, a party to a case who themselves does not exercise control over the matter at hand, or is personally incompetent to enter into the legal relationship in question (Swedish Code of Judicial Procedure (1942:740) Chapter 11 Section 1).
4. For full text decisions from the disciplinary committee, see SBA’s website [www.advokatsamfundet.se].

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