Children’s Recantation in Court Cases on Child Abuse: Raising Institutional Awareness to Avoid Revictimization

Introduction

Over 20 years after the adoption of the Convention on the Rights of the Child (CRC), which provided a new paradigm for the protection, promotion and exercise of children’s rights, any action that results in the verification of abuse against a person in this age group should be analyzed, questioned and changed, whether it was caused by a person, an organization or a public institution.

This article will focus on the concept of recantation among children who are victims of abuse, considering that this behavior was to be expected given the massive impact of this kind of situation. States have a duty to adapt institutional and/or administrative proceedings so that access to justice is available for all. For this purpose it is necessary to know the laws, rules and statutes, but it is also essential to understand children, who are the beneficiaries of the comprehensive protection policy.

By recantation we mean the behavior of children and adolescents who after having reported any form of abuse or mistreatment later change their account when providing formal testimony. This may happen in different institutional settings. In this article we will focus on the judiciary and its proceedings, with the aim of making suggestions for an improved access to justice.

This sudden change in a child’s statement, known as recantation, should encourage awareness-raising among the actors involved (judges, guardians, lawyers, specialists, family) to enable them to understand, support and protect the victims during their process toward emotional stability.

If judges are unaware of the complexities of children, in cases of disputes between adults/aggressors and children/victims it is more likely that they will decide without considering the child’s best interests because behaviors that should be interpreted differently will be given the same weight.

This topic, which falls within institutional violence and is one of the cases of State violence, entails the paradox of being included in the policies and/or institutions designed to protect children from abuse. Furthermore, it reveals the difficulty of
dealing with actions that produce revictimization\(^1\) and in many cases are naturalized and justified on the basis of the protection of rights. These actions are often based on established institutional mechanisms or procedures which tend to hide their abusive effects while infringing fundamental rights and hindering access to justice.

**Definition of Institutional Violence**

Following the international agreements\(^2\), we understand violence as any action that inflicts harm on others. Although the concept of violence is easily associated with physical aggression, in fact it is broader: when we speak of violence we mean physical, psychological, symbolic and economic violence.

We will use the concept of institution, particularly public institution, in its most common and socially accepted meaning, as the union of the structure and the conceptual basis\(^3\) of organizations in charge of applying a state’s public policies.

When we speak of institutional violence we refer to harmful actions inflicted by institutions on their users, often in an involuntary manner and which is therefore even more difficult to change. Among these actions not directly intended to harm are all the ones carried out by naturalization of forms of intervention, and also the ones deriving from ignorance of the new human rights paradigm that should guide the practices and culture of these institutions after adoption of the CRC.

This means that when any agency has to deal with cases of child abuse, ignorance of basic expected effects such as the victim’s recantation, at the family, community or

\(^{1}\) Please see, especially, the Institutional Technical Guidelines No. 1, IIN – OAS, February 2008: “Revictimization of Children and Adolescents in jurisdictional and administrative procedures in the event of sexual abuse”.


\(^{2}\) Specific articles of the CRC are mentioned below. According to the WHO definition, quoted by the PAHO, violence is: “The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation”.

\(^{3}\) Some authors understand the concept of organization as the buildings and administrative structure which are the basis of an enterprise, and institution as the abstract concept that injects meaning and content to the organization (e.g.: organization: “the Judiciary” or “the Courts” and institution: “Justice”).
judicial level, becomes an overwhelming process of revictimization that makes it difficult for the victim to exercise fundamental rights and achieve recognition of the harm sustained. When planning any future approach and treatment of the harm suffered by a child, it is essential to keep this last element in mind. Ignoring the expected effects on a suffering child is even worse than the original abuse, because in many cases it hardens an attitude of denial or dissociation with the event and obstructs any therapeutic approach.

International framework: the CRC

In the light of the comprehensive protection of rights paradigm included in the CRC, we will study the basic principles of judicial action in cases of child abuse.

The CRC contains a number of articles that embody cross-cutting principles of the whole convention and which should shake the foundations of public institutions such as they existed formerly. The most noteworthy of those articles and principles are: recognizing the child as a subject of rights; non-discrimination (art. 2); the consideration of the child’s best interests in all actions and decisions concerning children (art. 3); the right to life and development (art. 6); the right to be heard and to respect for their views (art. 12).

These articles are in fact principles because they are general and fundamental statements that do not need to be proved as they are universally accepted. All the agents (both human and physical) participating in judicial proceedings should incorporate these principles, which means not only knowing them but appropriating them as their own in an intellectual and emotional manner.

The following are the articles of the CRC⁴ that need to be appropriated.

Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

⁴ Underlining added by author.
Article 12, which states:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Article 39, which reads as follows:

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

This brief series of CRC articles shows that the States, their public policies, institutions and procedures are obliged to ensure the protection of children's rights and the main standards of the comprehensive protection system for children. All practices should be aligned with “the best interests of the child” and relations between adults and children should respect the law, particularly children’s right to express their views. The States' duty to adapt institutional and/or administrative proceedings in order to achieve these aims is mentioned several times. For this purpose it is necessary to know the laws, rules and statutes, but it is also essential to understand children, who are the beneficiaries of the comprehensive protection policy.

Recantation

When a child suffers some sort of abuse, it is to be expected that he or she will exhibit different changes in behavior. According to the type of harm suffered, these changes in behavior will become (specific or non-specific) symptomatic indicators of that damage.

Statistics indicate that most cases of abuse occur within the family setting (adults whom the children know or with whom they have an emotional bond) so the victim’s
possibilities of expressing suffering are hampered and other agents or protective environments (other significant adults, family members, neighbors, friends and, especially, educational environments) become particularly relevant for inviting, hearing and interpreting those changes.

Depending on the degree of protection the child receives from the environment, one of the behavior changes that can be expected is recantation.

A simplified definition of recantation is that it is a sudden change of the account provided by a child after reporting a situation of abuse, in whatever form is appropriate to the child’s stage of development (words, games, drawings, etc.).

These cases of mistreatment that affect a child's emotional bonds create complex feelings and distort the victim’s response. The child or adolescent victim very often has ambivalent feelings (love/hate) towards the aggressor. Such ambivalence paralyzes both disclosing the situation and asking for help, and often leads the child to halt the process for obtaining protection and punishment of the offender due to a distressing confusion: “my aggressor is the person who loves me”. This explains why these situations are perpetuated and these children tend to isolate themselves: they believe that “telling” is betraying the underlying bond of affection.

Isolation also shelters the situation of abuse from others; it keeps the action on a private rather than a public level. For this reason, children’s and adolescents’ participation in education or recreational group activities helps to protect them and strengthens their ability to question socially unacceptable behaviors. When children step outside the abusive relationship and meet with others they are enabled to express a request for help or an account of their suffering, to share situations which they cannot understand or the symptoms of their distress.

Regardless of their age of the details of each case, children who have suffered mistreatment, whether for a short or a long time, and who manage to express their suffering as a clear account or as a symptom, may later need to recant their statements (as a form of emotional defense).
In psychodynamic terms, recantation would be the best defense against the anguish and anxiety generated\(^5\). Recantation can be considered the expected emergence\(^6\) of a child who receives from the “protective adult environment” a response that once again infringes his or her rights. In other words, if after the first account, which is doubtlessly the one that should ALWAYS be considered the most valid, a child perceives disbelief, mistrust, a shattering of the family environment, a weakening of economic support or other responses that imply doubting his account or forgetting their suffering, the child will have to bear the enormous and revictimizing burden of guilt: all these effects seem to be the consequence of telling. Faced with the emotions at stake there are several possible reactions according to the victim’s personal history, family history, previous bonds and age. These reactions may be more or less voluntary but entail a similar degree of suffering.

At the more unconscious level, recantation is a denial\(^7\) of what happened or a disassociation\(^8\): both are ways of seeking a reorganization of personality, with varying degrees of acceptance and awareness. At the more conscious level, recantation will be accompanied by large amounts of guilt and/or fear of reprisals; this makes therapeutic intervention easier but the child will need understanding as well as actual and permanent protection in order to consider a different option.

This is why most therapeutic interventions with children who are victims of abuse begin by creating a space for listening to the child, for providing feedback to remove the feeling of guilt and redirect responsibility towards the offender. This in itself reduces the energy needed to control what the victim may or may not say, it calms the child and quickly confers the therapeutic space a position of importance, trust and protection.

\(^5\) Anguish as a result of disturbances to the internal structure. Anxiety as an effect of the elements of the external situation.

\(^6\) Emergence as a result of the interaction of different elements. This refers to Edgar Morin’s complexity paradigm.

\(^7\) Denial as an unconscious defence mechanism, which we would briefly define as an attempt to place in front of the original event a fictional explanation with similar weight to it, so as to cover up what happened and thus recover stability.

\(^8\) Disassociation as an unconscious mechanism which retains an event that occurred but mollifies it by disconnecting the emotions related to it, or by isolating it from the rest of the psyche as a way of protecting the ego.
This first moment is not enough to ensure a healthy therapeutic process if the victim is not provided reliable, actual and continued protection. A permanent link with an adult is needed but this is precisely what counseling and social services are often unable to provide and, in emotional terms, much less so a court proceeding.

**Effects and Emotions of Judicial Proceedings**

The abused child’s arrival at the judicial system can never be easy. In the best scenario, the victim will be accompanied by a protecting adult, family member or social worker who will facilitate an understanding of the imposing dynamics of the judicial institution according to each child’s symbolic and communicative level. The child will have suffered a situation in which personal rights have been infringed, and to enter a courthouse to express their version of the truth is at best a traumatic and difficult to understand experience. In the absence of support and follow-up by an adult, it is almost impossible for a child to understand that what takes place in the courtroom may result in a form of protection from future aggressions.

No matter how forceful the text of a judicial decision may be, if it comes from an unknown person, is pronounced in a building more suited to adults than to children, if there is insufficient supervision and monitoring of the enforcement or, even worse, if a notoriously abusive situation concludes with a warning or reprimand to adults and a return to the setting of coexistence which facilitated the abuse, the court order will have failed to provide adequate protection.

Another element that fosters retraction is that it is very difficult for judicial institutions to recognize children as beneficiaries of public protection in a manner that expresses affection. This would require adapting buildings to the needs of children, establishing sustainable bonds that facilitate speaking and telling, not only for the purpose of evaluation but also as an expression of affection and trust in the other person: such a relationship, however brief, would restore the child’s image of an adult world that ensures protection.

However, it is highly unlikely that the judicial system will be able to approach the large number of cases involving violation of children’s rights with that kind of commitment,

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9 In this respect please see the research on protective practices for taking testimony from child and adolescent victims of sexual abuse. “Depoimento sem medo”, Childhood Brasil (Instituto WCF-Brasil); 2009.
recognition and displays of affection. An intermediate option to alleviate the situation would be getting to know the children and adolescents better, in an effort to understanding their basic needs in these complex situations.

In other words, like any other public institution involved in the paradigm of the comprehensive protection of rights, the judicial system needs to reexamine its procedures in the light of the best interests of the child.

**Final Summary**

Some essential measures that should be adopted are: understanding the child, listening and believing what they say, validating their drawings, gestures, symptoms and/or silences as evidence in the context of a process of diagnosis, adapting settings and expressions to their stage of development, being aware of the complex nature of the problem and its possible effects (including recantation), awarding the child’s first account increased value as EVIDENCE and accepting it as the basis for the first protective actions, reflecting on institutional practices to reduce revictimizing actions that only serve to obstruct children’s access to justice and eradicating the belief that the main objective of a judicial proceeding is the conviction of the offender instead of focusing on the comprehensive protection of the victim.

As in the case of other public services, the task of synchronizing the recognition of children as subjects of rights requires ongoing reflection and adaptations. The quest for truth and the establishment of solid evidence on which to base a decision must be placed in perspective without losing thoroughness. The basic concept of progressive autonomy as part of a child's normal development must be understood and adopted, and this will eliminate the fear of accepting that drawings or games may be the most appropriate forms of expression for some age groups, or that silence should not always be interpreted as a denial or a refusal to speak, and even that recantation may be the only possible form of self-protection in face of the pressure imposed by certain circumstances.

Recognizing the rights of children also means recognizing their dynamics, their resources and forms of expression. In order to really include them, judicial systems

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10 Ibid. 1
must adapt their procedures, in terms of understanding and of emotions, to the progressive development of these beneficiaries.

In order to honor the comprehensive protection of rights paradigm the process of reorganizing and adapting the institutions of each State to include children should provide a space for their views and sensitivity.