Child abuse is a complex problem. It happens in many different ways (it comprises not only physical and sexual abuse, but also emotional or psychological abuse and neglect), has multiple causes and is difficult to combat. Next to the direct harm that is inflicted on the child, it also can have long term (physical, psychological and psychiatric) effects, often leading to future child abuse. Early action is of utmost importance and often health professionals are the first to be confronted with a suspicion (or indeed clear warning signs) of child abuse.

In the European Court of Human Rights’ judgment *Juppala v. Finland* a doctor was consulted by the grandmother of her daughter’s three year-old son. She had noticed a bruise on the boy’s back and informed the doctor of her concern that the injury might have been caused by his father. Consequently, the doctor alerted the child welfare authorities. Almost a year later, charges were brought, not against the doctor, as you might expect, but against the grandmother, for defamation of her son-in-law. At first these charges were rejected by the district court, but the court of appeal overturned that decision and convicted the woman of defamation. Before the European Court she complained of the violation of her freedom of expression, and rightly so, according to the Strasbourg judges: “The possibility to voice a suspicion of child abuse, formed in good faith, in the context of an appropriate reporting procedure should be available to any individual without the potential ‘chilling effect’ of a criminal conviction or an obligation to pay compensation for harm suffered or costs incurred.”

For me, as a health lawyer, it is rather astonishing that a lay person can be convicted of defamation by informing, in good faith, a doctor of a suspicion of child abuse. In my view such a step should be applauded as long as the allegation is not completely groundless. Subsequently, it is up to the doctor to decide whether the indications for child abuse are serious enough to alert the child protection services. In my opinion, professional responsibility requires the doctor to be granted certain discretion in assessing whether the interests of the child outweigh his confidentiality obligation and a notification is justified. This corresponds more to a legal right to notify the authorities, than to a legal duty to do so. In many countries...
such a right has been acknowledged by law, either written or unwritten (conflict of interests). If necessary, the doctor should be called to account in court for his decision to notify the authorities or not. In other countries (such as Finland), if the doctor (and other health care employees) learned about a child in apparent need of child welfare measures, they are under a duty to notify the social welfare board, with a rather low threshold for making such a notification. Thus the scope for professional decision-making is rather narrow. As a consequence, individuals may be deterred from informing the doctor and seeking his advice. It is interesting to note that in the case cited the grandmother had objected to a report being made to the child welfare authorities, but apparently the doctor had denied her request.

More often the European Court of Human Rights has been called upon to decide in matters of child abuse. The Court keeps in mind that to a certain degree the medical authorities should be left discretion in deciding on the proper course of action. For instance, in *R.K. and A.K. v. The United Kingdom* the doctors concluded that the injury of a three-month old baby, a fractured femur, had not been accidental. The authorities were informed and an interim care order was issued. After a second injury the baby was diagnosed with brittle bone disease, a very rare condition and difficult to identify in small infants. The Court ruled that the medical (and social) authorities cannot be held liable every time genuine and reasonably-held concerns about the safety of children are proved, retrospectively, to have been misguided. “There is a delicate and difficult line to tread between taking action too soon and not taking it soon enough. The duty to the child in making these decisions should not be clouded by a risk to exposure to claims by a distressed parent if the suspicion of abuse proves unfounded.”

However, as soon as there are indications that the initial assessment might be incorrect, immediate action is needed. Furthermore, due account and procedural protection should be given to the interests of the parents (or other caretakers) without affecting the prime interests of the child. In *Venema v. the Netherlands*, where the mother of a small baby was mistakenly suspected of suffering from the Munchausen’s syndrome by proxy, the Court stressed that the doctors involved should have made arrangements to discuss their concerns with the parents and should have given them an opportunity to dispel those concerns.

Recently, the Court seems to have adopted a rather new approach. In *D. and others v. the United Kingdom* a mother was suspected of fabricating her son’s illness. Social services were contacted without her knowledge. Later on the child was placed on the at risk register. Finally it turned out that the mother was suspected mistakenly. Before the Court she argued that the placement of the boy on the at risk register was a first step towards formal care proceedings potentially

---

2) ECHR 30 September 2008, 38000(1)/05, *EJHL* 2009, no. 1, p. 89 (ECHR 2009/1).
3) ECHR 17 December 2002, 35731/97.