

Children victims within criminal procedures

~ Research results ~

Proiect derulat de:



Research Methodology

- ✓ Analysis of the legal framework and its correlation with the European legislation,
- ✓ Analysis of court decisions regarding victims of child trafficking, issued in the period 2018-2020-200 cases,
- ✓ Qualitative research- 47 interviews with representatives of police offices, prosecutors, judges, lawyers, representatives of National Agency against Human Trafficking, Child Protection Regional Directorates, NGOs.

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RIGHT TO INFORMATION

- Information is given in a formal way and not adapted to the child as there are no methods to evaluate the child's understanding of the received information
- Information is given before the hearing - more of a check-off procedure;
- There were situations when the child received the information sheet and read it, without being explained its content and importance;
- The minutes of judicial bodies are the evidence that the minor has received the information established by law and become part of the criminal file;
- There is no sufficient preparation of the victim prior to the hearing, which would allow the child to be effectively informed about his rights, the hearing and further criminal proceedings;
- The information is usually given orally as the child does not receive written information material regarding his rights or the next criminal procedures updated to his understating level.

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RIGHT TO BE HEARD – Law

Romanian Criminal Procedural Code –optional nature of the provisions

Art 111 (6) In the case of injured persons for whom the existence of specific protection needs has been established under the law, the judicial body **might order** one or more of the following measures, when it is possible and when it assesses that there is no harm to the good proceedings or the rights and interests of the parties

- a) hearing them in premises designed or adapted for this purpose;
- b) hearing them through or in the presence of a psychologist or other specialist in victim counselling;
- c) their hearing, as well as their eventual re-hearing, is carried out by the same person, if this is possible and if the judicial body considers that this does not affect the smooth running of the process or the rights and interests of the parties.

In practice the rule becomes exception and the exception the rule

Art 111(8) If the injured person is a minor, the recording of his hearing by technical audio or audio-video means is mandatory in all cases. **When the registration is not possible, this is recorded in the statement of the injured person, with the concrete indication of the reason why the registration was not possible.**

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RIGHT TO BE HEARD- CHILD HEARING

- **Duration:** between 1 hour and 10 hours, varies depending on the procedural phase, the age of the victim, the complexity of the case, the reluctance of the victim to communicate and the expertise of those who listen in communication with minor victims, the location and the way in which comfort, protection and safety are ensured the victim.
- **Location:** mostly in police or prosecutors' offices or courtroom. Exceptions: Hearing rooms adapted to the needs of children (AUDIS Cluj Napoca, Bucharest and Dolj).
- **Participants:** standard: 6 people at the criminal investigation level and a maximum of 7 people at the trial stage. The application of art 111 paragraph (6) is limited in cases with female victims because they are very few women police officers and prosecutors.

Hearing methods:

- There is no uniformly applied hearing procedure adapted to the needs of children.
- There is no pre-hearing psychological evaluation to establish the degree of understanding of the child and the establishment of the intervention plan within the judicial proceedings
- **50% of the interviewees stated that the CHILD hearing is not audio-video recorded**

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"if he had an action to catch the criminals and the victim was together with criminals

Iceland 
Liechtenstein **Active**
Norway **citizens fund**

The moment of the first hearing: Rule: as close as possible to the moment of identification

"if he (the policemen) had a mission to catch the criminals and the victim was together with criminals, yes, she is heard on the same day, most of the time. It also happens, for example, to refuse to talk and we take her to a shelter and give her time to think, and over a few days, the procedure is resumed in order to be able to take a statement from her"

Rehearing: the practice of rehearing at all procedural phases (minimum 4 rehearsings).

At the level of criminal prosecution, the victims may be interviewed at least 2 times, depending on the experience of those who are interviewing, the complexity of the case and the situation of the case examiner.

At the court level, the victims are more often re-audited at the first instance.

- None of the interviewed judges used the audio-video recording of the victim's testimony, which had to be carried out by the criminal investigation bodies, because all the criminal files included only the written statement of the minor victims.
- in most cases, at the trial stage, the hearing of the child victim takes place in the presence of the defendant and his/her lawyer

The importance of the hearing: without the victim's statement, there is no case!

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LEGAL AID- Legislation

Criminal Procedure Code: The legislator's omission of correlation of the provisions of art. 93 paragraph (4) Criminal Procedure Code with article 281 paragraph (1) letter (f) **which provides absolute nullity for the violation of the provisions on mandatory legal assistance only for the suspect or defendant but not for the injured person who is missing from the list of main proceedings**

Decision 180 of 2016 UNRB regarding the approval of the Regulation – Framework for the organization, operation and attributions of the legal assistance services of the bar associations (Art 36 Emergency Ordinance no. 51/2008 regarding public judicial assistance in civil matters)

Art 60 (2) The lawyer who provided extrajudicial assistance becomes incompatible with providing judicial assistance for the same case.

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LEGAL AID- In practice

- 90% of interviewees: most victims benefit the services of the ex officio lawyers at the criminal prosecution and at the court level, the chosen lawyers are mainly involved in the cases where the victim benefits from the support of non-governmental organizations that offer free legal advice or assistance to victims.
- **Lack of continuity of lawyers appointed ex officio in the criminal process** - 100% of those interviewed stated that the ex officio lawyer who participates in the course of the criminal investigation does not continue his mandate in the court proceedings
- **The low quality of legal aid services provided by most lawyers in office**
 - ✓ The lack of specialized expertise of ex officio lawyers regarding human trafficking but also on how to interact with children victims;
 - ✓ High volume of work
 - ✓ The lack of interest of ex-officio lawyers to get involved due to the complexity of cases of child trafficking but also due to the delays regarding the payment of their fees;

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PROTECTION MEASURES- Law

Romanian Criminal Procedural Code –optional nature of the provisions

Art 352- Publicity of the court session

Paragraph (3) If the trial in open session could harm some state interests, morals, dignity or private life of a person, the interests of minors or justice, the court, at the request of the prosecutor, the parties or ex officio, **may** declare a non-public session for the whole course or for a certain part of the trial of the case.

The lack of regulation regarding the release or escape of the perpetrator of the crime

Article 113-Protection of the injured person and the civil party

Paragraph (1) When the conditions provided by the law regarding the status of a threatened or vulnerable witness or for the protection of private life or dignity are met, the criminal prosecution body may order the protection measures provided for in art. against the injured person or against the civil party . 124-130, which apply accordingly

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PROTECTION MEASURES

Publicity of the court session

Rule: non-public for victims of child trafficking and pornography.

Exception: if the defendant or defendants from the same case are prosecuted for several crimes, and for one offence the rule of public session is applicable, then the entire case is judged according to the rule of publicizing the court session, even if has child victim.

For children victims of other sexual crimes- the holding of the non-public court session is a measure left to the discretion of the court, the non-public session was ordered only for the moment of the hearing of the minor and court procedure involves oral debates in the presence of an unlimited number of people which may produce additional traumas to the child victim, but also to the child witness

The length of criminal proceedings of cases involving child victim is not reasonable- THB court cases was 689 days and in 2019, 585 days (2018)

Confidentiality of victims' data: The provision of temporary accommodation in the placement centers managed by the DGASPCs is not safe because they are not facilitated according to the victims' safety and protection standards.

There were several case brought in the attention that children were exposed to the Interaction with the offender outside the courtroom

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THE RIGHT TO COMPENSATION

- No child victim of human trafficking received compensation;
- The long procedure from identifying the victim to compensation: the victim can receive compensation after the final decision, but only for the crime committed on the territory of Romania;
- There is no procedure for the compensation of moral damages;
- Reduced offer of training for magistrates in the field of victim compensation.

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ROMA CHILDREN

- No official data on Roma victims in general
- Very few researches of human trafficking in Roma communities: ERRC 2011- 50%,
- International and European Bodies concerned about the high number of Roma children as victims of human trafficking (US State Reports, GRETA, OSCE, EC)
- CADO research- number of Roma victims of child trafficking varies from 20%-80% in 10 counties out of 42 counties.
- No Roma interpreters on the emergency contact list of the law enforcements
- There were no cases recorded that Roma interpreters were used during the hearings of Roma children at retrial or trial level
- In 2006 was translated in Romanes the information pamphlet for children
- No Roma ONG was informed about cases with Roma children as victims of trafficking

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Recommendations- Law

Amendment of the Criminal Procedure Code:

- **Amendment of art 93** according to which legal assistance is mandatory when the injured person or the civil party is a person lacking legal capacity or with limited legal capacity or when the injured person or the civil party **is the victim of one of the crimes provided for in art. 197, 199, 209 -216, 2161, art. 218-223 of the Criminal Code.**
- **Amendment of art 111 para. (6) by introducing the obligation of the judicial bodies to order one or more of the protection measures** for the victims and not when it is possible and when it appreciates. Also, **the introduction of the hearing of minor victims of sexual crimes by videoconference or other technical means of communication at the place where they benefit from the protection measure of temporary accommodation.**
- **Amendment of art 111 para. (7)** by extending the application of the provision of hearing and re-hearing by a person of the same sex as the injured person and victims of crimes regarding family violence (art. 199), ill treatment of minors (197), harassment (208) and sexual harassment (223).

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- **Amendment of art 111 para. (8) by introducing the obligation of audio video recording without the existence of exceptions**, because the current provision establishes that "When the recording is not possible, this is recorded in the statement of the injured person, with the concrete indication of the reason why the recording was not possible" becomes rule. According to the CADO 2022 report and the Judicial Inspection of 2021, the criminal investigation bodies, as a rule, did not record the audio-video testimony of the minor victims, citing the lack of means of recording, which led to repeated hearings by the police and the prosecutor. Thus, the original purpose of the provision cannot be achieved if the provided exception leads to the impossibility of applying the legal rule, the protection of minor victims being undermined by the provision itself.
- **Amending art 113** by expanding the protection measures for victims, **including in the case of the release or escape of the perpetrator of the crime.**
- **Amendment of art. 281 para. (1) lit. f) by introducing the victim among the participants who need legal assistance** and whose absence attracts the sanction of absolute nullity. This amendment will resolve the legislative contradiction, because according to art. 33 CPC, both the suspect and the injured person are the main procedural subjects, and it is necessary to establish a balance in terms of assistance by the lawyer.

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- **Amendment of art 352** regarding publicity of the court session, namely, ex officio or at the express request of the injured person or the prosecutor, the court session is declared non-public for its entire course if the injured person is a minor and is a victim of crimes regarding sexual life.
- **The introduction to art. 509 a paragraphs (6-7)** establishing a new protection measure for minor victims under the age of 16 of sexual crimes, namely, the judge can order the removal from the session of the minor but also of the parents, or the guardian, curator or of the person in whose care or supervision the minor is temporarily when evidence is administered that may have a negative influence on the minor. The introduction of paragraph (8) by which the court hears the injured person only in thoroughly justified cases.

Amendment of the Regulation - Framework for the organization, operation and attributions of the legal assistance services of the bar associations to ensure the continuity of the ex officio legal assistance offered at the level of criminal investigation and at the trial stage, especially for victims of sexual crimes,

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Recommendations for improving the practice

- Mandatory psychological evaluation of the victim prior legal proceedings to determine the level of emotional and psychological trauma, the degree of understanding, the degree of discernment of the child,
- Adjustment of information methods to the age, the degree of understanding of the children, the level of emotional, psychological and physical trauma,
- Elaboration of informative materials on the rights of the victim in a friendly format and updated to the level of understanding of children,
- Development of ongoing training programs for police officers, magistrates and lawyers to strengthen their knowledge of human trafficking legislation, hearing of the minor, compensation, etc., to develop an approach based on the best interests of the child.
- The creation of a Register not only with ex officio lawyers of the bar associations but also of the NGOs that offer free legal assistance and to increase the collaboration with the NGOs that provide free legal assistance;
- Specialization of lawyers through permanent training programs in the field of human trafficking and communication with minor victims developed by local bar associations;

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- Improving the information provided by the authorities to victims regarding criminal proceedings, legal assistance, both orally and in written material;
- Increasing fees for ex officio lawyers and reducing the bureaucracy to provide the payments on time;
- Establishing procedures for collaboration between victims' case managers and lawyers, enabling them to provide victims with regular updates on the progress of the process;
- Establishment of hearing rooms adapted to children with increased safety, protection and comfort standards;
- Using only audio-video/audio recording means for interviewing victims of sex crimes to reduce re-victimization and ensure hard-to-contest evidence;
- Carrying out the hearing of minors with temporary accommodation (protection measure) by video conference;
- Carrying out the hearing only by the psychologist in the presence of his defender;
- Ensuring the trial of minor traffic cases/sexual offenses with child victim with speed in the emergency procedure;

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- Drafting a guide for the hearing of minors applied at the level of all prosecutor's offices and courts based on good practice models already piloted;
- Training of representatives of police bodies, criminal prosecution and judges, as well as social experts and psychologists in the management of cases with minors as victims of sexual crimes through training programs and exchanges of experience,
- Ensuring access to assistance and protection for children, regardless of whether or not they have agreed to participate in the proceedings. For those who agreed to cooperate, the competent authorities should ensure that the special protection measures provided for by law are fully used, in order to ensure victims with maximum protection;
- Re-establishing of the victim's route in the court premises to avoid the meeting with the defendant and the organization of separate waiting areas for victims of sexual crimes;
- Improving the system of state shelters for victims of trafficking, where they can be sheltered for a certain period of time and benefit from assistance and protection;
- Improving the existing witness protection program and ensuring effective access to protection for witnesses or victims;
- NGOs as official partners in the witness protection program and the formalization of collaboration through protocols;
- Compensation of victims of human trafficking in advance and recovery of the amount from the defendants; Providing compensation for moral damages as well.

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