

SAVE THE CHILDREN ROMANIA

CHILD ABUSE AND ADULT JUSTICE

NATIONAL REPORT

2001

Project financially supported by UE through Daphne Project

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I. INTRODUCTION

In June 2000, Save the Children Sweden developed a project objective was to effect an European study regarding sexual abused children and the law in ten European countries (Denmark, Finland, Germany, Greece, Island, Italy, Norway, Spain, Sweden and Romania). The main purpose of the study was to evaluate the manner in which the Penal law and especially the proceedings are dealing with the under age victim of a sexual abuse.

They have identified, in all judicial systems regardless the cultural differences and the diversity in organization, significant gaps in preventing the abuser to re offend and protecting the victim. A debate concerning the weak points in proceedings and the need for training in the area of sexual abused children has taken place.

In the same time, they have identified examples of creative and efficient practice that can be transferred to all the countries involved in the project.

Save the Children Romania, following the same procedure as the other studies and with the same structure, has made the national report from Romania: proceedings and values, difficulties and recommendation.

The conclusion of the report was that adults develop proceedings... for adults.

We must see the fight against breaking the law as a problem that concerns all the governmental structures, the entire society.

In Romania, the fundamental law is Constitution. It provides principles with general value, such as:

1. Equality in rights for all citizens: *The citizens of Romania are equal in the face of the law and public authorities, with no privileges and non-discrimination (art.16). No one is above the law.*
2. Free access to justice (*Every person can address to justice to defend their rights, freedom and legit interests. No law can forbid this-art.21*).
3. The supremacy of the law.

Judges are the ones that ensure the enforcement of the law as a fundament of the democracy.

The state protects youth and especially minors. The Constitution forbids any activities that might harm their health or jeopardize their life or development.

The Penal law provides the penalties for various offences and the penal proceedings establish the limits in which the authorities can act. The mission of the organs of judicial inquiry, prosecutor or judge is to investigate the case and punish the offender. Each institution has very precise roles. In order to reach the most appropriate solution for the case, the prosecutor supervises the activity of the police and the judge supervises the prosecutor. Even the judge decision can be annulled

There is a principle that guides the activity of the institutions mentioned above, the active involvement in the process of finding the truth. Therefore, the organ of judicial inquiry has the obligation to gather all the necessary evidence in order to find the truth and elucidate the case. Gathering evidence is not a measure of protection for the victim so that the offender could be sentenced with a harsher penalty. This process is meant to apply the presumption of innocence by gathering evidence both in favor and against the offender.

The active part of the judge consists in exercising specific attributions with the same objective, finding the truth and achieving the educational goal of the trial. The judge can only come to a conclusion based on the

evidence already gathered by the police. That is because the law stipulates that gathering evidence must be accomplished in the criminal investigation stage.

The judge decision refers to the offence and the offender pointed in the charge and only when the trial extends to other offences or offenders (in specific circumstances); the judge decision will refer to those.

The prosecutor has the obligation to participate to the court proceedings at the first instance, in cases he forwarded the file to the instance, in cases that the law provides a penalty within two years or more, in cases that one of the offenders is in prison or under age. In court proceedings regarding other offences, the prosecutor participates only if he considers necessary. The prosecutor has the obligation to participate in all the other instances.

There are two aspects of the minority considered by the penal law, such as:

- The minor as author of the offence. In this case, the penal law provides an age limit when the minor can be prosecuted and the measures that can apply such as administrative or educational measure, or a penalty.
- The minor as co-author of the offence. The adult offender is sentenced harsher if he commits the offence with a minor, another measure that is meant to protect minors.
- The minor as a victim of the offence. The special section of the Penal Code includes offences in which the fact that the victim is under age aggravates the penalty that applies: rape, sexual perversion meanwhile sexual intercourse with a minor, sexual corruption are the very essence of the offence. The prosecutor investigates all the offences with under age victims.

Also, the penal proceedings provide, in a distinct chapter, a special proceeding regarding the obligation to effectuate a social investigation in cases with offenders under age. The law does not provide a special procedure for cases in which the minors are victims and not offenders.

II. GENERAL PRINCIPLES

1. The principle of legality of the penal process

This principle represents a form of the supremacy of the law principle, with general value, stated in article 5 in Constitution, where it says that *to respect the Constitution, its supremacy and the laws is an obligation*. The principle of legality is stated in article 2 in the Penal Proceedings Code, where it says that *the penal proceedings take place both in criminal investigations stage and in the court proceedings stage, as the law provides*.

In fact, this principle guides the entire organization of the activities that take place during the penal proceedings, regulated by the Law 92/1992.

Thus:

- Art.3: *Judges are independent and they only obey to the law.*
- Art.4 align. 1: *No one is above the law.*
- Art.9 *The judge sentences only in the name of the law.*

To ensure the legality of the penal process, we have a very complex system of guarantees and a large number of measures that apply to the persons who break the law during the penal proceedings take place.

2. The principle of officially

This principle is stated in art.2 in the Penal Proceedings Code, where it shows that the necessary acts for the penal proceedings to carry on are accomplished ex-officio, except the situation when the law provides different. The principle of officially or obligatorily is based on the obligation for the judicial organs to act every time an offence has been committed and/or there is a petition.

The principle of officiality represents a guarantee for the protection of the people against offences regarding the patrimony or the person. Thus, even if a person does not have means to sue, the judicial organs have the obligation to investigate the offence. The exceptions to this principle are stipulated and they refer to those offences for which the investigation starts when there is a petition.

3. The principle of finding the truth

The truth is considered to be found only when there is sufficient evidence to prove it. More, the activities within the penal proceedings must ensure, according to art.3 in the Penal Proceedings Code, finding the truth regarding the circumstances of the offence and the offender. Within the penal proceedings, finding the truth refers only to the circumstances that can be proved. The active role of the organs of judicial inquiry and the court, stated in art.4 in Penal Proceedings Code, represents the guarantee of their participation in the process of finding the truth.

4. The principle of the innocence presumption

This principle is stated in Constitution (*the person is considered innocent until the sentence is final*) and in art.66 in Penal Proceedings Code, according to which *the offender does not have the obligation to prove his innocence*. When there is evidence that incriminates him, the offender has the right to prove their inconsistency. The presumption of innocence intends to guarantee the protection of the persons during the penal proceedings against arbitrary in establishing the responsibility in committing the offence. The presumption of innocence assumes that no person can be prosecuted and convicted in the absence of evidence. The principle also corroborates with the right to defend and other rights that the law guarantee for the offender.

5. The principle of the active role of the judicial organs

The legislator stipulated the active role as a main rule in the judicial organs activity of finding the truth. Thus, according to art.4 in Penal Proceedings Code, the organs of judicial inquiry and the court have the obligation to elucidate the case in all its aspects.

6. The principle that guarantees individual freedom and personal security

The right to freedom is stated in Constitution where it says that searching, retaining or arresting a person are allowed only in situations and following the procedure that the law provides, *the retaining cannot last more than 24 hours, a person cannot be arrested in the absence of a warrant from the prosecutor or the judge and cannot last more than 30 days, the person arrested can complain to the judge who has the obligation to decide and motivate his decision*.

The right to freedom is stipulated also in art.5 in the Penal Proceedings Code together with an obligation for the state to cover the prejudice caused to the person deprived of her right to freedom without legal ground.

7. The principle that guarantees the right to dignity

This principle demands that the persons called to account, even when he or she is guilty of committing serious offences, to be treated humane. To ensure the enforcement of this principle, the legislator regulated torture as a distinct offence, consisting in pain or strong suffering, physical or psychological, in order to obtain information or confessions, or to punish or intimidate someone for something that he\she has done. The principle corroborates with the right to physical and psychological integrity.

8. The principle that guarantees the right to defend

Constitution, Law 92\2000 and The Penal Proceedings Code provide the right to defend. The art. 6 stipulates that judicial organs have the following obligations:

- to guarantee the persons involved in the penal proceedings the fully exercise of their rights as the law provides and to administrate the necessary evidence for the defense:
- to inform the offender about the offence for which he\she is brought to trial, incadrare juridic and to ensure the opportunity of preparing to defend:
- To inform the offender, even before he makes his first statement, about the possibility to get assistance from a lawyer. If he does not have a designated lawyer and he is in one of the situations that require the presence of a lawyer, the judicial organ has the obligation to designate one ex-officio.

The principle of non-discrimination in the face of the law and judicial organs

Constitution provides equality for all citizens regardless race, nationality, ethnic origin, language, sex, opinion, political opinions, religion, wealth or social background, and art.6 in Constitution provides that no one is above the law and that all citizens are equal in the face of the law and authorities, without any privileges or discriminations. That principle assumes that the same institutions carry out the criminal investigations and reinforce the sentences for all citizens.

9. The principle of non-intermediation

This principle refers to the obligation for the judge to investigate directly all elements which help solving the case. Both organs of judicial inquiry and courts must decide based on primary evidence. According to art. 63 align 2 in Penal Proceedings Code, evidence have no priory value. Organs of judicial inquiry and the court evaluate evidence according to their conviction and conscience, after examining all the evidence administrated.

10. The principle according to which the language used during penal proceedings must be Romanian

This principle is stipulated in Constitution and in the Penal Proceedings Code, in art.7 align1. They allow using native language during penal proceedings, trough an interpreter.

11. The principle of promptness

Judicial organs have the obligation to proceed without any delay to solving the case, observing the rights of the persons involved in the penal proceedings and the rules that the law provides.

III. THE RESEARCH

The Romanian Criminal Code does not regulate, nor define the notion of "sexual abuse", but the third chapter, entitled "Offenses regarding the sexual life" contains stipulations connected to the sexual liberty, which means that one person - regardless her/his gender - can make a decision about her/his own sexual life, without being afraid that someone else could offend him/her. The law ensures a person with his own sexual liberty, but in the same time requires that this liberty should not be excessively exercised. Therefore, there are considered offenses, being socially harmful, not only those acts that infringe the sexual liberty, but also those of exercising this liberty beyond certain limits, like:

- **Rape** - sexual intercourse of any kind with a person of the same or different gender, by forcing her/him or taking advantage of her/his impossibility of self-defense. If the victim is an underage person, who has not reached the age of 15, the punishment is much severer , this situation being an aggravating circumstance;
- **Sexual intercourse with a minor** - sexual intercourse of any kind with a person of the same or different gender who has not reached the age of 15. This deed is considered an offense too if the

victim is of age between 15 - 18 , and if the offender is a tutor, a supervisor, a guardian, doctor, teacher or instructor, exercising his/her position.

- **Seduction** - the deed of a person who, by marriage promises convince an underage, feminine person to have a sexual intercourse with him.
- **Sexual perversion** - the deed of sexual perversion committed in public or provoking a public scandal. There is an aggravating circumstance committing sexual perversions with a person who has not reached the age of 15 or when the person is between 15-18 years of age and the offender is a tutor, a supervisor, a guardian, doctor, teacher or instructor, exercising his/her position.
- **Sexual corruption** - those obscene deeds committed upon a minor or in his/her presence, or alluring a person to commit such sexual acts with a minor, regardless his/her gender. The deed is severer if committed within a family.
- **Incest** - sexual intercourse among ascendants and descendants or among brothers and sisters;

A relevant law regarding the sexual abuse against children is the article 306 of Penal Code - "hurt treatments applied to minors". This article stipulate that: "putting in dangerous situations, using any kind of treatments, which affect the physical, intellectual or moral development of a minor, by the parents or any other person whose the minor was entrusted to be grown up and educate, is punished with detention from 2 up to 12 years". This article is relevant especially in connection with the type of abuse, which cannot be proved by material or physical trace.

This research intends to answer two questions: firstly, which is the legal framework constituted by the present legislative Romanian system that deals with and works out the situations involving minors; secondly, how the results of the experts' practice (psychologists, social workers, medical experts, policemen, public prosecutors, judges) reflect in the way of regulating the situation of a child confronted with the law.

Of course, should be emphasize just from the beginning that this investigation Does not intend to have a global approach of the phenomena of sexual abuse against the child, but it refers at two important aspects: medical examination and victim's hearing. These two aspects are considerate essential in prevention of victims' relapse and in treatment of the abused minor. The two aspects are tightly bounded one with the other and, in a certain way, interconnected. It is inconceivable a legal framework that would offer modern solutions but ignore the results of specialized researches.

This study is based on interviews and filling of questionnaires by 82 persons in Bucharest and in other 8 cities in the country, persons who are professionals in the field of social assistance (15), psychologists (18), lawyers (12) , police officers (12), public prosecutors (12) and judges (12). It was also organized an interview with a mother of an abused child and a focus group with a policeman, a prosecutor and two psychologists involved in a sexual abuse cause against a child.

III. 1 INVESTIGATIONS

According to Romanian law, this stage of the criminal proceedings refers to police investigations and public prosecutors' actions. These authorities can be informed either through a complaint made by the injured person or ex officio, when they receive by any way, information connected to committing an offence.

The first step in starting the investigations is the victim's statement.

When the victim is a minor, the statement is being given in the presence of the legal official (parent, tutor, curator, social assistant - when the victim is an institutionalized child). When the offence is committed by the members of the family themselves, the interests of the legal representatives being opposed to those of the victim, the Tutorial Authority will appoint a curator who will represent the child's interests in the Court.

In this stage of the proceedings, the child's statement is taken once, only exceptionally, in order to clarify some inadvertencies that may occur later, the victim could be interrogated twice.

The law makes no special provision for such a case.

The questionnaires filled by police officers point out that the child is encouraged to speak freely, to describe the events, and whether is possible, to write them down, too. Short and simple questions are asked, and no answers are suggested. Later, the police officer asks questions regarding those aspects that may prove the offending character of the act committed upon the child. The police officers also mentioned in the questionnaires that they dealt with cases of sexual abuses committed upon children of a minimal age of 6.

The difficulties connected with taking the victim's statement regard more aspects:

- Firstly, the police representatives do not have a special training in working with children - who are either the victims or the offenders. In this way, there were attempts - generally, at a local level (Iasi County) - to train the police officers in the field of the psychology of child's development and the psychology of the sexual abused child. Unfortunately, the results weren't able to solve the problem, because of the small number of the trained police officers included in such programs and because of the short period of training.
- Cases involving minors are distributed, generally, to certain police officers from each police station, but the number of them is insufficient, taking into consideration that they don't deal only with such cases, but also with thefts, robberies, domestic violence etc. Thus, the great volume of work, the pressure of the short time when they are asked to resolve the cases, may lessen the quality of the investigations, mostly in the cases of sexual abuse, where the collecting of the proofs it's difficult by its nature.
- Thirdly, it is necessary that the psychological assessment of the victim constitute a compulsory proof in the offences of sexual abuse committed upon the child.

The requirement of a psychological evaluation and assistance of the victim, by a psychologist, is an option of the investigator, and it's not compulsory. The law makes not provision that among the proofs, a psychological survey on the victim must also be present. Therefore, the opinion of a professional could be demanded, and his statement can be considered either a witness statement or a report on the victim from a psychological point of view, being in this case extra-judiciary evidence. The filled questionnaires also showed that a reduced number of police officers demanded the presence of a psychologist when the victims were investigated. It is also noticed that in the Romanian faculties of psychology and social assistance there are no courses specialized on sexual abuse, because there are no teachers having such training. Thus, the present generations of professionals "suffer" from a lack in their specialization, the only informed are those who benefited from a training developed abroad, with different professionals.

- Fourthly, the room where the victim is interrogated often leaves much to be desired because of the improper space. Thus, in the absence of a room specially devised for the victims' interrogations, the child is usually interrogated in the police officer's study. In such a room there could be more writing desks, each of them occupied by a police mate, which makes the place improper for discussions and statements of a sexual abused child. Of course, there is the possibility that the others should be asked to leave the room, but this certainly is not a definitive solution.

The duration of this phase is difficult to estimate. The law does not impose any time limit, although the principles of justice require the celerity of the process. There are no statistics in this regard, but it is generally acknowledged that investigations of such cases are difficult and take time.

It should be noticed that the law makes no special provision regarding the protection of the children with special needs.

The public prosecutor exercises the supervision of the law observance in the process of prosecution, he makes sure that any offence is discovered and any offender brought in court.

In his activity of supervision, he takes the necessary measures or orders the organs of judicial inquiry to take such measures.

The public prosecutor can assist the carrying out of any judicial inquiry or he can make them himself. He can ask for checking any file from the organ of judicial inquiry, which is obliged to send it, with all the documents, materials and data (concerning the act which is to be judged) included.

When the evidence is sufficient, the file is presented by the police to the public prosecutor, with a recommendation of starting the prosecution. After having examined the evidence, he calls the suspect for interrogation. He may take another statement of the victim, if he considers it necessary in order to clarify certain aspects - there are no legal provisions limiting this thing.

The public prosecutors who were interviewed said that only in extreme cases they asked more than once for the victims' statements, when this thing was necessary. In this phase too it is required the assistance of the underage victim by a legal representative.

Regarding the victim's assistance by a lawyer, the law does not impose the organ of judicial inquiry to assign an ex-officio defendant of the child. The victim can be assisted or represented by a lawyer only if he/she decided so.

The law imposes the presence of the lawyer only if the minor is the sexual aggressor, when the public prosecutor must assign one ex-officio. The underage victim may get one ex-officio only in the court proceedings phase, if the judge considers it absolutely necessary and if the victim can not defend herself/himself.

However, the most of the public prosecutors who were interviewed declared that they called ex-officio a lawyer for sexual abused children.

In this phase too, communication with the victim has often been underlined as a major problem, the public prosecutors claiming the necessity of the psychologist or other person trained in working with sexual abused children, to be present.

Within at the most 15 days since the receiving of the file from the police, the public prosecutor must start checking the work of prosecution and pronounce his opinion on this.

If the public prosecutor establishes that the legal procedures which guarantee the find out of the truth have been respected, that the prosecution is complete, and the required and legally administrated evidence exist, he starts elaborating the charge, which constitutes the act of informing the instance.

III. 2 THE MEDICO-LEGAL EXAMINATION

After the victim's statement has been taken, or, in some cases, before this - in order to preserve the evidence - in the cases of sexual abuse the victim is medico-legally examined.

The majority of those who where interviewed, regardless their profession, declared that the most useful evidence, with a generally recognized value, is the victim's medico-legal examination.

In most of the cases, as soon as the police officer who investigates the case, is informed about the abuse, he takes the minor (who is the victim), to a laboratory of legal medicine, being well-known the importance of the time in these circumstances. There are situations when the parents themselves take the child to be examined and only after, if the abused is confirmed, they inform the police. The Forensic Medicine Laboratories requests an amount of many those who requests the expertise (police,

family's victim, prosecutor's office). This fee is established in Bucharest at around 7 USD, what for Romania means a prohibitive tax (in Romania an average wage is 100 USD).

The forensic expert gives a medico-legal certificate that attests the existence of victim's lesions and, depending on these, the possibility that the person in case could have been the victim of a sexual abuse. The forensic expert could also provide a medico-legal report, having the same purpose. These constitute evidence that has a decisive value in the cases of sexual abuse, both during the prosecution and in the court too.

III. 3 COURT PROCEEDINGS

Within 24 hours since the receiving or - according to the case - the confirming of the Public prosecutor's charge, he forwards the file to the instance.

The criminal causes regarding minors are judged by judges specifically appointed by the president of the instance.

The law does not make special provision on the criteria of selecting the judges who judge files involving minors, the choice being up to the president of the instance.

During the court proceedings, the evidence administrated during the prosecution is administrated again, and, if necessary, new evidence is administrated.

Thus, it takes place the hearing of the victim. If the victim is a minor, the hearing will take place in the presence of the legal representative. When the case involves an abuse committed within the family, the victim must be assisted by a representative of the Tutelary Authority, or this organ must appoint a curator or a tutor in order to represent the minor's interests.

In all the cases when minors are involved, the instance must summon the Tutelary Authority, organ in charge with protecting the child's interests.

In this phase, the law makes no provision for the obligation of appointing ex-officio a lawyer to defend the victim, even if he/she is a minor, the choice being up to the judge.

In court, at the hearing of the victim, it is not absolutely necessary that the underage victim should be placed in the position of re-telling in detail the statement given during the prosecution. Usually, she/he is asked whether she/he maintains her/his complaint against the offender and, if the judge considers that further explanations are necessary, after having examined the evidence of the prosecution, he may ask more questions regarding the offender and the offence committed.

The Romanian legislation lays an important role on the victim during the criminal proceedings, she/he being an active part during the trial, and she/he is called to assist all the time during it.

The judge is obliged to explain the victim that she/he has the possibility of constituting a civil party. This means that the victim can ask that the offender to be obliged to pay her/him civil damages (expenses made by hospitalization, medical treatment) and also moral damages - for the psychological sufferings produced by the offender's action.

Although there are no special audience chambers, where the hearing of the underage victim could take place, the laws mentions that, even if the session is with public, the presence of minors under the age of 16 is forbidden.

When such minors are parties of the trial, they are called inside only when their hearing is made, being asked to leave after this.

In the same time, the law stipulates that, if a public session could harm the state interests or the morality, the dignity or the intimate life of a person, the instance, at the request of the public prosecutor's, or of the parties or ex-officio, may state secret session for all the court proceedings or only for a part of it. As long as the session is secret, only the parties, their representatives and the other persons called in trial for the interest of the cause are admitted in the chamber.

Almost all the interviewed judges declared having taken the abused child's statement in secret sessions.

For example, at the law court from Iasi there was created a special chamber for sessions, equipped with audio-video devices, where there are judged the cases involving minors, even if these are victims or offenders.

The causes are judged by two judges who took part in seminars that included topics like the psychology of child development, interview techniques with the sexual abused child, seminars organized by the initiators of the Instance for Minors Iasi project.

Concerning the evidence administered in the instance, after the victim is being heard, the offender, the witnesses that were proposed by the representative of the Prosecutor's Office (persons that have also been heard during the prosecution) and the witnesses proposed by the victim and the offender are also heard.

Usually, if during the prosecution the victim was medico-legally examined, this evidence is not repeated in the instance.

There is the possibility that that the medico-legal certificate which confirmed the lesions suffered by the victim, or the medico-legal expertise, should be contested in the court by the offender or even by the victim. If the reasons of the contestation are real and pertinent, the judge may dispose the effectuation of another medico-legal expertise, based on the medical documentation, the observation files from the hospitals where the victim was hospitalized, and even based on the re-examination of the victim.

These situations determine the delay of the court proceedings, though they are necessary sometimes for the finding out of the truth.

In the majority of the cases involving sexual abuse on children, the aggressors are arrested, the arrestment lasting as long as the court proceedings last, and the punishment, when such offences are proved, is imprisonment. The judge usually decides the punishment to be completed in prison.

IV. RECOMMENDATIONS

A. General recommendation

1. False perceptions on abused children

The most frequent false perception is that the victim of the abuse is lying. Unfortunately, people also believe that most children are lying and they shouldn't be trusted. For this reason, the members of the family, the doctors and all the others don't react immediately when they hear the children's stories. It is well known that most children don't understand what happened to them, so their stories are quit naive. It is necessary that all experts that work with children should have a special training on identification methods, recognizing the signs of the abuse and techniques of communication with abused children. This is how teachers, doctors, social workers and others would be able to identify more easily the abuse cases and ask the authorities to investigate them.

The policemen, prosecutors and judges designated to investigate or prosecute minors' cases should also have a special training, so they would understand the child psychology and, particularly, the abused child psychology. The child should be trusted and all the signs of abuse carefully investigated.

Another cause of this false believes is the fact that a lot of the children's or mother's complaints were withdrawn, so many people think that these statements aren't true. Still, it is well to be known that in many cases the victims choose not to make an official complaint because of the pressures made by the aggressor or because their financial or social situation. This is why we consider that the investigations should continue, but in another direction: therapy in order to achieve the psychological recovery of the assumed sexually abused children. These methods are meant to offer a chance to the child and his family to observe, if not legally at least from a psycho-therapeutically point of view, the evolution of the abuse's repercussions in order to obliterate or diminish them.

2. Designating the personnel who deal with cases involving minor children

This stipulation is recognized in principle, but, from our observations, the personnel (policemen, prosecutors, judges) are designated by rotation in these cases. This procedure doesn't allow the personnel to get a real specialization in this field. Also, there is a general attitude that working with a children is sometimes a penalty or something that it has to be done. There are no special courts for minors specialized in this problem. Also, the existence of special stipulations in the deontological codes of the professionals working with children would be quit useful. Another important issue is the harmonization of these deontological codes in order to facilitate the communication between specialists.

3. Personnel training

The existence of a well-established body of experts working in minors' cases makes impossible their specialization in fields like:

1. child psychology
2. victim psychology
3. abuser psychology
4. memory processes
5. interviewing the victim
6. legislation
7. multidisciplinary teams
8. prevention networks
9. criminological techniques

In some people's opinion, a lot of policemen, prosecutors and judges treat the children as adults. This approach is not suitable not only because they are dealing with a child but also because they are dealing with a victim of a traumatic experience. These shocking events enhance the stress of the child as well the memory processes. As far as we know, there are no researches in judicial psychology that focus on minors and sexually abused children. This lack of interest is a measure of the importance that is given to these aspects during the trial.

4. The lack of a good practice guide in the field of sexually abused children

This guide should contain answers to simple questions, such as: "what should I do if ..." or "to whom should I report what I know?" etc. This guide should be addressed to all specialists that work with children in order to became able to identify in time the signs of abuse, to report it to the authorities in charge and act according to their professional competencies. The main principles could be as following:

B. Administrative recommendation

- 1. The rooms used for hearing the victims and for the identification of the sex offender have to be arranged in such a way as to ensure a secure environment and to guarantee that the principle of confidentiality is being respected.**

As it was shown in the previous chapter, these interviews are taken in the common offices, where are sometimes other 4 or 4 colleagues of the person that carry out the investigation. Those persons are investigating other cases with other actors. This environment is not favorable at all for open and relaxant discussions on such a sensitive issue as the sexual abuse is.

Those offices should at least be separated by fowls walls, if the specials spaces for the investigation of cases involving children are not available.

- 2. Equipping the investigation and trial areas with false mirrors, video camera and close circuit television.**

These devices diminish the child exposure to the public and especially to the sex offender. It is easily to understand the reaction of a 10 years old child that meet the abuser look. Through the close circuit television and the false mirrors, the child cannot be seen by the witnesses, judges and the opposite side, and this one cannot see them at his turn.

Some of the psychological effects of such a situation are:

- The intimidation of the victims;
- The inhibition of the victim in correctly relating the traumatizing events related to the abuse, which may affect the penal process;
- The mental revival of the traumatizing events;
- The transformation of the post-traumatic stress from psychological field in corporal symptoms.
- To deepen the guilt fillings to the offender.

- 3. The celerity of the penal trials involving minor children should be the most important performance indicator.**

In this manner it can be avoided the situation when, although the abuse was reported to the proper bodies, a final court decision was decided after 1 or 2 years. Hearing a sexually abused child after such a long time can become irrelevant, the child forgetting the details needed by the court. In the same time, the repeatedly hearings of the sexually abused child can diminish the therapeutically efforts that seek to resolve the psychological problem, “forgotten” the traumatic event by the child.

- 4. The entire tax for the legal-medicine laboratories and the Forensic Institute should be paid from the public budget**

In this way, the access to justice can be made easier for the ones that cannot afford such expenses. Sometimes the taxes for the expertise, which represent the fifth from the average income, represent the first real obstacle in starting a penal process for proving the guilt of the sex offender. Starting with the principle of social solidarity on which the legislation regarding the social protection of the families in need are based, is necessary to conceive a system of not charging taxes by the forensic laboratories. Which is really matter is to respect the best interest of the child and this field, to protect by the penal law. The justice act must be accorded to all the persons despite their age or social statute.

C. Legislation recommendation

1. Tune the legislation towards a protective system for children

The place for children in the justice system is first of all a reflection of the way the system treats the victim. The way the Romanian judicial system treats the victim indicate that victim is more then anything else a source of information. The aim of the system is not to rehabilitate the victim but to get information form him/her. Therefore there is a great need to imagine a system to protect and include the victim in the penal trial. There are also specific situations where special protection is needed like in witness protection scenarios. There are not dispositions in the current penal procedure for when the children is victim. Children are at the special level of their psycho-social development and they have specific needs. This should be acknowledged in the court.

The Prosecution Office should issue methodological norms for the procedure with minors as exceptions from the adult one. Therefore cases with minors should be heard and processed in special rooms or other rooms with close system of TV. Magistrates should not wear their uniform and to explain the procedure to children are other measures needed.

2. Establishing Youth Courts

Following the previous recommendation this recommendation calls for an accurate implementation of the current Criminal procedure. This is the only way we can make sure that children rights are really protected and the staff involved is trained and protected.

These courts should judge cases of abused children but also children offenders.

3. Extend the evidence system

As showed above the most important prove is the medico-legal certificate. This is for cases of physical contact. But what happens in cases without vaginal or anal contact? And in oral sex? A Spanish research showed that 137 cases of abuse only 16 presented physical evidence. On the other hand physical evidence vanishes after 3 months.

This kind of sexual abuse could be proved only after deep psychological evaluation. Currently the Romanian Criminal Procedure Code does not admit the psychological certificate as evidence with legal power. The psychologist opinion is not one issued by an expert. Article no. 117 from the same code should oblige the court to ask for an expertise in sexually abuse.

Another way of dealing with this is setting up a system of validation for child testimony when this is the only proves.

4. Establish centers/services for evaluation and treatment of children sexually abused.

One of the most important problems of the children involved in child abuse is the lack of specialized centers for evaluation and rehabilitation of victims.

Therefore there is a great need to establish such centers in the community with multi-agency and multi-discipline (doctors, pediatricians, psychologists, lawyers and so on) input. These professionals could be approved as official experts in cases like this.

It is also worth mentioning that the Romanian system is more concerned with identifying the offender and not by the victim's situation. The victim is involved in the trail only for proving the guilt of the offender. Unfortunately the need for therapy is not important for the court. The procedure should also stipulate that

there is a possibility for the victim to take some counseling and eventually interim reports should be asked by the court.

5. Prevention of sexually abuse

To prevent the recidivism of the abuser and the intergeneration transmission of the abusive behavior there is a great need for including the offender in special programs during the imprisonment and afterwards.

6. To restrain the number of child statements

To hear the sexually abused children only once it is necessary to include the prosecutor from the complain moment. Once informed the prosecutor could supervise the investigation and authorize the video recording procedure. Once it is authorize by a magistrate the tape can be used in the court. Therefore once again the evidence system should be developed in order to include psychological certificate and video tapes as proves.

7. To appoint ex officio a defendant for the child victim of sexually abuse.

The legislation stipulates the ex officio lawyer for the offender but says nothing regarding the child victim. Although the prosecutor is the representative of the state interest the children rights would be best protected by a lawyer. If the family could not pay a defendant the court should appoint a lawyer ex officio.