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# **IMPROVING LEGAL PROTECTION MECHANISMS TO ENSURE THE RIGHTS OF TRAFFICKED PERSONS, PARTICULARLY THOSE OF CHILDREN**

## **Current Practices Analysis**

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## Introduction

This research was carried out by the specialists of La Strada International Center from the grant awarded by USAID as part of the Rule of Law Institutional Strengthening Program implemented by Checchi and Company Consulting, Inc.

The purpose of the research was to identify good practices of working with child victims during a trial and to identify system shortcomings causing violations of the child victims'/witnesses' rights. To achieve this purpose, the authors studied criminal cases of child trafficking. For a better comparative analysis of the observance of child victims' rights during trials, the authors also analyzed criminal cases of sexual crimes against children.

As a result of the analysis of the work practices in criminal cases of child trafficking, the authors developed recommendations to improve the practices of working with child victims/witnesses in courts and during criminal investigation.

The research is structured in two chapters. Chapter One describes the notion of trafficking in children as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Then, goes a description of international and European tools for protecting victims of trafficking in persons. From the mentioned international documents, the authors quoted several victim's rights and described them in separate sections that underpinned the research methodology. Chapter One also describes the psychological aspects of bearing testimony with implications for interviewing juveniles in courts in cases of sexual abuse/exploitation.

Chapter Two describes the research methodology and qualitative-quantitative results of the criminal cases analysis. For better understanding, the findings are presented in graphs. Where necessary, the authors used the psychologist's arguments in terms of the impact of the trial on the accuracy of the victims' testimony and on the child victim's/witness's well-being.

Thus, this document shows the importance of observing the child's right to be protected against retraumatization from repeated hearing, and of minimizing the number of hearings to mitigate the retraumatization and to ensure the accuracy of testimony.

Working with victims of trafficking in children is a difficult assignment. Traumatized children seldom speak about the abuses they experienced; they are scared, distrustful, and uncommunicative. Given this fact, persons who interview children should know the psychological factors that contribute to obtaining full and objective testimony.

Generalizing the aforementioned, we can say that treating victims with respect to their rights, legitimate interests, and specific needs can help them find justice and, ultimately, can contribute to prosecuting perpetrators. Victims who are treated with consideration are more cooperative with criminal prosecution authorities and, thus, serve as valuable witnesses. In the end of the paper, the authors presented a set of recommendations to improve the legal protection mechanisms ensuring the observance of the rights of trafficked persons, particularly children.

The findings presented in this research paper can serve to formulate recommendations for judges, prosecutors, and police.

The research results and recommendations were presented and discussed during two trainings dedicated to special interviewing techniques used to investigate cases of child abuse/exploitation. The expert from the Supreme Court of Justice Ghenadie Nicolaev, together with all 45 judges and prosecutors who participated in those trainings confirmed the usefulness of the findings and recommendations. Moreover, these findings and recommendations are consistent with the latest amendments to Article 110.<sup>1</sup>

## **I.1. Judicial Practice on Trafficking in Children and Sexual Crimes**

Trafficking in children is a severe violation of the victims' integrity, which justifies special attention police and judicial entities should pay to such victims. An important and decisive element in detecting, inquiring and investigating traffickers is the victims' willingness to cooperate with the investigation. This willingness depends very much on the general treatment of victims by police and judicial entities, on the protection of their right to safety and privacy, on their access to information and assistance. The experience of La Strada International Center shows that victims treated properly are more cooperative and, thus, are more valuable witnesses.

The quality of the treatment offered to victims is also important to obtain a wider public support for the criminal justice. Equal attention should be paid both to the general interest for establishing the truth and to maintaining a balance between protecting the victim's interests and protecting the defendant's interests, in accordance with Article 6 of the European Convention on Human Rights.

Observing the rights of trafficked victims also benefits criminal proceedings. According to a research by Anti-Slavery International, law enforcement authorities have had the greatest success in getting traffickers sentenced when they took into consideration the rights of trafficked persons.<sup>1</sup> Such cases were solved successfully due to mixed teams of prosecutors, attorneys, and service providers who showed interest in the needs and rights of the trafficked persons involved in the trial.

Taking into account the norms of international treaties on approaching child victims—particularly the victims of trafficking or sexual abuse—, criminal procedure norms, and the explanations offered to courts through the decision of November 22, 2004, of the Plenum of the Supreme Court of Justice on applying the legislation in cases of trafficking in humans, including children, presumably, there should not be problems in the judicial practice in terms of observing the child victims' procedural rights and the principle of the best interest of the child. However, in some cases the judicial practice proves to be different.

### **1.1.2. General Norms on Trafficking in Children**

Trafficking in children is a flagrant breach of the victims' fundamental rights. This crime is considered not only a violation of human rights but also breach of dignity and integrity of a human being.

In its definition of trafficking in persons, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime<sup>2</sup> includes the forms that characterize this crime, the description of trafficked persons and traffickers, the pursued purpose and interest, the underlying causes, social implications, and the specificity of the violated social values and rights.

According to Article 206 of the Criminal Code, the notion of trafficking in children refers to:

- recruiting
- transporting
- transferring
- sheltering or receiving a child
- offering or accepting payments or benefits to obtain the approval of the person controlling the child for the purpose of:

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<sup>1</sup> PEARSON, E. Human Traffic, Human Rights: Redefining Victim Protection. Anti-Slavery International, London. 2003.

<sup>2</sup> United Nations Convention: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Palermo, November 15, 2000.

- a) sexual, commercial, and non-commercial exploitation through the involvement in prostitution or pornographic industry
- b) exploitation through labor or forced services
- c) exploitation through slavery or slavery-like conditions, including in cases of illegal adoption
- d) use in armed conflicts
- e) use in criminal activity
- f) taking organs or tissues for transplants
- g) abandoning the child abroad

## **I.1.2. International and European Instruments for Protecting Victims' Rights**

### **I.1.2.1. United Nations' Protocol on Trafficking in Persons**

The United Nations' Protocol on Trafficking in Persons (the Protocol) is the first international tool that addresses all aspects of trafficking and contains the legal definition of trafficking, unanimously acknowledged at the international level. It contains provisions on charging for trafficking in persons, protecting victims, and taking preventive and cooperation measures.

**Victim protection.** In terms of helping and protecting trafficking victims, the Protocol provides, in Articles 6, 7, and 8, for the main protection and assistance measures for trafficked persons:

- Information and counseling, particularly on the rights granted by the law, including the information on legal and administrative formalities and understanding of the victim's viewpoint to adjust the representation of the victim's interests in the court
- Psychological care
- Physical protection, observance of the victim's privacy and identity
- Available remedies for the supported damage

### **I.1.2.2. Recommendations of the United Nations on Human Rights and Trafficking in Persons**

The importance of offering assistance and protection is reflected in the recommendations of the United Nations on human rights and trafficking in persons. These recommendations are:

- Taking protection measures for trafficking victims during the inquiry and criminal proceedings. The protection programs developed for that may include access to an independent lawyer, and ensuring the victims' anonymity during criminal proceedings.
- Encouraging law enforcement authorities to partner with non-government entities to offer trafficked persons the support and protection they need.

### **I.1.2.3. Council of Europe Convention on Action against Trafficking in Human Beings**

The convention explicitly identifies trafficking as a violation of human rights. It provides for minimal norms for protecting the rights of trafficked persons (including a 30-day reflection period) and for the prevention of, and charging for, trafficking in persons. The Convention of the Council of Europe explicitly requires signatories:

- To make sure that persons who are reasonably deemed to be the victims of trafficking should receive assistance and protection.
- To offer assistance and protection to all persons in respect of whom there are reasons to believe that they have been trafficked; to inform them about their rights, including the right to compensation of damage.

All these forms of assistance, however, should not be conditioned by the willingness of the person to appear before court to testify against traffickers. For human considerations, there is usually a resistance to reducing human beings to the role of mere instruments at the discretion of law enforcement authorities.

According to international legislation on human rights, the right to protection and restoration of rights of the trafficked victims, as persons whose human rights have been violated, is a right in itself that should not be conditioned by the availability or capacity of the trafficked person to cooperate during criminal investigation or to bear testimony.

#### **I.1.2.4. Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001)**

The fundamental rights of victims are presented in the Council Framework Decision on the Standing of Victims in Criminal Proceedings. The framework decision, which is mandatory for member states, lists several rights, including the right to be treated with dignity, the right to offer and to receive information, the right to understand and to be understood, and the right to be protected during various procedural phases.

#### **I.1.3. Fundamental Rights Derived from the International Regulatory Framework and National Law**

Both the Criminal Procedure Code and international acts contain provisions on victims' rights during criminal procedure. The following is a brief presentation of the fundamental rights derived from the international regulatory framework and the legal basis for each right in the national legislation.

##### **I.1.3.1. Right to Intimacy**

Because traffickers intimidate them, the victims often hesitate to address law enforcement authorities for help or refuse to cooperate. However, there is also another factor: fear that their community will learn about the situation they experienced, especially in cases of children trafficked for sexual exploitation. Once becoming public, the situation may result in the stigmatization and rejection by the community, which hinders the victim's rehabilitation and social reintegration. Protecting the victim's right to private life is an important measure that should be taken throughout the legal proceedings. This right is stipulated by the Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001).

“Article 8.2 – Right to protection

“To that end, and without prejudice to paragraph 4, each Member State shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position.”

Council of Europe Convention on Action against Trafficking in Human Beings (2005).

“Article 11 – Protection of private life

“1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

“2. Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

“3. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.”

Article 18 (2)<sup>1</sup> of the Criminal Procedure Code contains the provision about declaring a secret hearing in cases involving juvenile victims or witnesses.

Article 21 of Law No. 241 on the Prevention and Combat of Human Trafficking stipulates that the private life and identity of the trafficking victim shall be protected. Recording, storing, and using personal data of victims of trafficking shall be performed only during criminal proceedings to administer justice and to protect victims in compliance with special confidentiality rules.

According to Decision No. 37 of the Plenum of the Supreme Court of Justice, court sittings for examination of criminal cases of trafficking in persons and children shall be secret to protect victims' lives.

So law enforcement authorities and entities that work with victims, including judicial entities, shall take into account minimal rules to ensure the observance of victim's right to privacy and private life.

### **I.1.3.2. Child Victims' Right to Protection against Retraumatization**

Article 6 of the ECHR requires keeping a balance between the defendant's and the victim's rights. That, however, does not mean that the victim's rights are always be subordinated to the defendant's rights. The Council Framework Decision underlines the need to make all efforts to protect victims' dignity. This implies using case investigation and examination methods that minimize trauma and the breach of the victims' dignity. When law enforcement authorities and judges examine cases of trafficking in children, they should remember that a child who tells his/her experience lives that experience again. In this context, the EU Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001) stipulates the following:

“Article 2 – Respect and recognition

“1. Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognize the rights and legitimate interests of victims with particular reference to criminal proceedings.

“2. Each member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.”

The national legislation has no provisions on determining cases or circumstance that cause retraumatization to child victims. Only Article 109 (3) of the Criminal Procedure Code mentions that if it is desired to reduce the retraumatization of witnesses, they can be interviewed by the investigating judge, thus ensuring the parties with the possibility and the right to participate in this procedural action. The minutes of such interviews may be read out during the court sitting (Article 381 of the Criminal Procedure Code). Thus, a way was found to reduce the number of interviews with victims and witnesses.

On October 27, 2012, the Criminal Procedure Code was amended to provide for a special norm referring to interviews in special conditions for child victims and witnesses younger than 14. The children interviewed in accordance with Article 110<sup>1</sup> are also allowed to refuse to appear before court.

### **I.1.3.3. Right to Information**

The procedural transparency and honesty of information are of vital importance. Victims should receive complete, correct, concrete and clear information allowing them to take informed decisions from the very first contact with the police or judicial authorities. If victims get correct information from the very beginning, law enforcement authorities or other official representatives will be able to establish good cooperation relations with them. Information should be offered both verbally and in writing. It is not sufficient just to offer victims a prospectus describing their rights; a competent person should explain the victims their rights and to make sure that they understand the practical meaning of that information. Judges too are responsible for informing victims about procedures they will have to participate in. Correct information ensures victims' willingness to cooperate and, as a result, the possibility to punish traffickers or individuals guilty of the crime. Victims should know various stages of the proceedings, the victims'

role and status, especially their rights and obligations, during criminal proceedings, and the type and level of protection they can benefit of, the right to be compensated and to be kept up to date with the progress of the criminal proceedings.

### **Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001)**

“Article 4.1. Right to receive information

“1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests. Such information shall be at least as follows:

“(a) the type of services or organisations to which they can turn for support;

“(b) the type of support which they can obtain;

“(c) where and how they can report an offence;

“(d) procedures following such a report and their role in connection with such procedures;

“(e) how and what conditions they can obtain protection;

“(f) to what extent and on what terms they have access to: (i) legal advice or (ii) legal aid or (iii) any other sort of advice;

“(g) requirements for them to be entitled to compensation.”

Article 26 letter (d) of Law No. 241 establishes that one of the principles of combating human trafficking is informing child victims/witnesses about their situation and rights, and about protection and assistance measures.

According to Article 60 (1) point 8) of the Criminal Procedure Code, the injured party has the right to participate in the court sitting, including during the examination of case materials. The injured party's right to attend the case hearing is perceived as the party's obligation to attend all court sittings.

#### **I.1.3.4. Right to assistance**

As mentioned previously, if victims receive appropriate assistance, law enforcement authorities will have more chances to succeed.

Council of Europe Convention on Action against Trafficking in Human Beings, (2005)

“Article 12. Assistance to victims

“1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

“a. standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;

“b. access to emergency medical treatment;

“c. translation and interpretation services, when appropriate;

“d. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;

“e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;

“f. access to education for children.

“2. Each Party shall take due account of the victim's safety and protection needs.

“3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.

“4. Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.

“5. Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.

“6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

“7. For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.”

Article 29 of Law No. 241/2005 lists in detail the types of assistance the government offers to the victims of trafficking in persons. The law stipulates that the state must offer the necessary protection to victims from the moment of their identification until their complete rehabilitation. It is supposed that the assistance includes the victim’s right to legal and psychological assistance during criminal proceedings.

#### **Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001)**

“Article 6. Specific assistance to the victim

“Each Member State shall ensure that victims have access to advice as referred to in Article 4 (1) (f) (iii), provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid as referred to in Article 4 (1) (f) (ii), when it is possible for them to have the status of parties to criminal proceedings.”

#### **Council of Europe Convention on Action against Trafficking in Human Beings (2005)**

“Article 15. Compensation and legal redress

“1. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.

“2. Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.”

Most victims have no legal knowledge nor experience of participating in legal proceedings. Access to legal representation is a key factor for the capacity to exercise one’s rights. There are not many victims who can hire a lawyer and the law does not contain clear provisions regarding the appointment of an attorney ex officio for this category of beneficiaries. As a result, the child victim’s interests are impaired because he/she has to appear before court, assisted only by one of his/her parents or, in some cases, by a representative of the Directorate for the Protection of Child’s Rights, whereas the defendant is assisted by a lawyer or, in some cases by two lawyers.

#### **I.1.3.5. Right to compensation**

The right to compensation is an important element of the access to justice for victims. Generally speaking, child victims of trafficking suffer severe material damage (expenses for healthcare, counselling and therapy, which in case of children are long-term and costly) and moral and emotional damage (sufferance, psychological and moral trauma, loss of self-esteem, physical pain and sufferance, distorted perception of a sound relationship, etc.). An important component of the right to compensation is also the

right to counseling services. To claim their rights, victims must know them and how to defend them, which is, obviously, accomplished through their legal representatives.

On the whole, the examination of charges against traffickers require the active participation of victims in legal proceedings, including bearing testimony on damages. This can be traumatizing. Therefore, legal counselling and representation are an essential condition to enable victims to obtain compensation.

Moldova does not have a fund for compensating victims of trafficking or other sexual crimes. The only way to obtain compensation is filing a lawsuit against the offender. However, though de jure this form of compensation is acknowledged, very few victims request compensation. The main disincentive for victims to participate in legal proceedings and to obtain compensation is the requirement of physical presence in court and bearing verbal testimony, with all risks and sufferance this implies. Improving the access of victims of trafficking in persons to compensation is the obligation of all involved parties: police, prosecutors, judges, and NGOs.

#### **Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001)**

“Article 9. Right to compensation in the course of criminal proceedings

“1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

“2. Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.

“3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.”

#### **Council of Europe Convention on Action against Trafficking in Human Beings (2005)**

“Article 10. Compensation and legal redress

“3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

“4. Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.”

#### **I.1.4.6. Right to Witness Protection**

Many victims justifiably fear revenge from traffickers, offenders. This situation is compounded when the victim and the perpetrators are in a close relationship, such as when both come from the same environment or family. That is why in all cases, maximum attention should be paid to the safety of victims and their families or friends.

#### **Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001)**

“Article 8. Right to protection

“4. Each Member State shall ensure that, where there is a need to protect victims—particularly those most vulnerable—from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles.”

#### **Council of Europe Convention on Action against Trafficking in Human Beings (2005):**

“Article 28. Protection of victims, witnesses and collaborators with the judicial authorities

“1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:

“a. Victims;

“b. As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;

“c. Witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;

“d. When necessary, members of the family of persons referred to in subparagraphs a and c.

“2. Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.

“3. A child victim shall be afforded special protection measures taking into account the best interests of the child.

“4. Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.”

Article 11 of Law No. 241/2005 stipulates that the Ministry of Home Affairs must offer victims of human trafficking physical protection during criminal proceedings.

Article 215 of the Criminal Procedure Code establishes the way of applying victim and witness protection measures for the duration of criminal proceedings.

## **I.2. Witnesses' Memory**

The concept of memory refers to the process of coding, keeping, and updating information accumulated previously in the form of images, words, sentences, ideas, emotional states, movements. Human memory is a way of reflecting the past. In psychological terms, giving testimony is a the process of updating events kept in the witness's memory. Each stage of forming and updating memories (coding, keeping, and updating) involves several factors changing the accuracy of the testimony. In what follows, we will present factors that affect the accuracy of testimony at various stages of the memory process.

### **I.2.1. Coding Information**

Coding events in the memory mostly depends on the knowledge and previous experience of the subject (Cordon, 2002; Ornstein, Shapiro, Clubb, Follmer, & Baker-ward, 1997b). Previous knowledge and experience contribute to a detailed, elaborate, and sustainable nature of memories about a given event (Schneider & Bjorklund, 1992).

Even if they do not have the necessary knowledge, child victims and witnesses of sexual abuse or exploitation can perceive abuse. The difference is that they may interpret it in a wrong way. Thus, whether an event is coded as traumatizing or "normal" depends on the level of knowledge and experience gained. It is worth mentioning that remembering episodes from past depends to a great extent on the way the information was interpreted at the moment of coding.

### **I.2.2. Keeping Information in the Long Memory**

Traumatizing experiences, especially if they are repeated and very intense, can cause irreversible changes in the cerebral system affecting both the memory and the stress reaction in some individuals. Studies (Sapolsky, 1996) show that the stress hormones cortisone and adrenaline, that mobilize the brain in stress situations, may cause lesions in the long run at the level of hippocampus, affecting the information stored in the memory. In the context of bearing testimony, this implies that the episode that should be remembered may be incomplete due to the stress that affected the process of storing the information in the memory. The information about central elements of the event is usually stored intact and the peripheral elements are more obliterated. Thus, the details of the testimony can be altered depending on the way the hearing is conducted. These facts have important consequences on the court processes. It is in the interest of justice to ensure friendly conditions for interviewing victims, thus eliminating the stress that affects the victim's ability to recall the abuse.

Additionally, in psychology there is also the notion of retroactive interference, which is used to explain how the currently received information influences memories. Thus, the more explanations specialists will give to the victim/witness about the experienced events, the more important will be the changes in the information kept in the memory. Since court proceedings can last for several years, the child victim or witness may have to re-tell traumatizing events to various specialists and hear various explanations and encouragement from them, which makes him/her reinterpret those events and, consequently, alters the accuracy of the testimony.

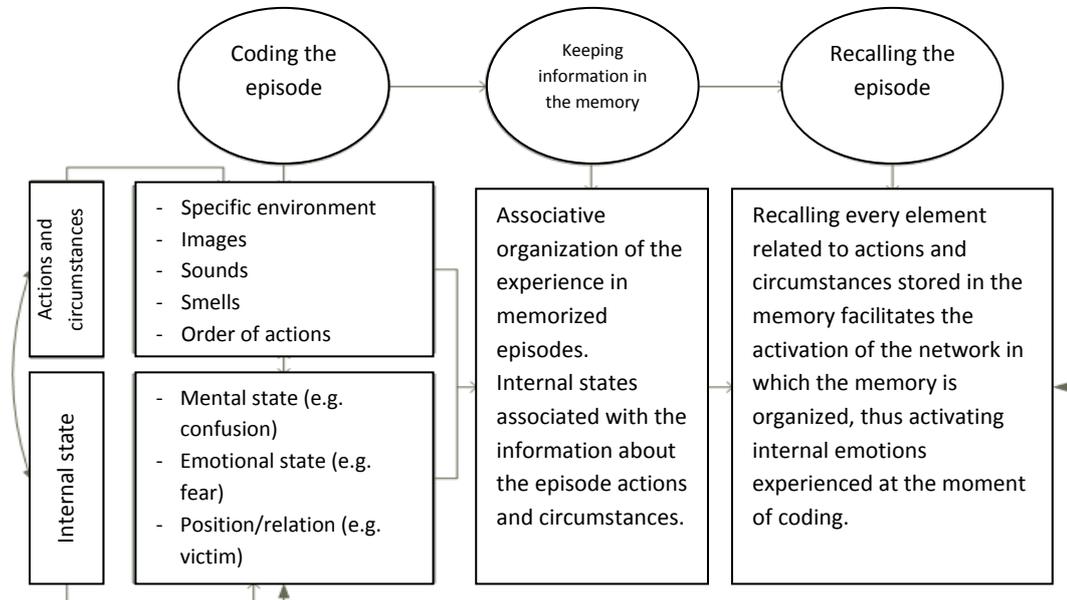
In addition, since memory stores both the event and the emotional reaction to it, recalling such memory induces neurophysiological state that accompanied the traumatizing event. This process is known in the specialized jargon as retraumatization. Retraumatization means repeated experience by the victim/witness of the emotions and states associated with the traumatizing event.

#### **I.2.2.1. Retraumatization**

The concept of retraumatization refers to the process of recalling the stressing event in the victim's mind and re-activating the specific emotions related to the trauma. This concept is used in two cases: (1) when the present events trigger traumatizing memories and (2) when the person is highly vulnerable to abusive

circumstances because he/she already has such a scenario in the memory. The second case is called revictimization and it happens because the persons has internalized the role of victim.

To illustrate the retraumatization, Graph 1 represents the processes of memorizing, keeping, and recalling information (the process of bearing testimony is, in fact, the recalling of previously memorized information).



Graph 1. Coding mechanisms (memorizing) and recalling mechanisms

In 1973, Tulving & Tomson described the principle of contextual similarity, which explains how the similarity between the circumstances at the moment of recalling and those existing at the time of coding stimulate the recalling of the event. Thus, if a victim/witness testifies in the presence of the abuser, the victim will remember not only the events but also emotional states specific to the role of victim. In other words, hearing the victim in the presence of the abuser triggers, during the recollection, the emotional state that existed at the time of victimization itself.

In conclusion, repeatedly hearing child victims/witnesses of sexual abuse causes retraumatization, on the one hand, and alters memories due to retroactive interference, on the other hand.

### 1.2.3. Recollecting

Errors during the stage of recollecting information are mostly related to the number of hearings (Loftus & Palmer, 1974) and the way in which questions for victims are formulated during hearings (Loftus & Zanni, 1975).

According to Loftus (1979), Zaragoza & McCloskey (1983), the information included in suggestive questions interferes with the original memories, thus precluding remembering the original event. These findings are also supported by previous studies by Bartlett (1932), according to which, recollecting means reconstructing the episode using the available information in accordance with the principle “what would have been true.” In light of this, the new information compatible with the experienced events may influence the recollection creating false memories. Kassin, Ellsworth & Smith (1989) demonstrate that 27% of the testimony made by victims is influenced by the wording of questions.

Another factor that can influence the accuracy of recollection is the confirmation bias. This happens when the episode that must be remembered is influenced by the interviewer’s expectations. When victims/witnesses are children, due to their desire to be approved by adults, they may confirm suggestive questions if they think that is what adults expect from them.

Given the aforementioned, the accuracy of the victims' testimony greatly depends on the quality of the interview. And if every interview alters the memories of the events by re-writing them, every time the subject has to bear testimony he/she will do it in light of what he/she remembered at the previous hearing.

To avoid interference with testimony, Fisher et co. (1987) recommends that interviewers should: (1) ask open questions, free of suggestions, and allowing independent report of the events; (2) ban distracting factors; (3) keep up with the rhythm of recollecting (avoid rush); (4) make pauses between questions and answers to them; (5) use the words understood by witnesses; (6) try to reduce the witnesses' anxiety; and (7) avoid personal comments and judgmental attitudes.

After analyzing the research on the witnesses' memory, we can make the following conclusions on the topic of this study:

1. It is important to make distinction between facts and their interpretation during interviews with witnesses. In case of children involved in sexual exploitation/abuse, the interpretation of facts is often a reflection of the adults' opinions rather than the child's personal findings because juveniles have no sufficient knowledge nor experience to make independent informed judgments.
2. Since the trauma-related stress can affect the victim's capacity to recollect information, it is recommended:
  - a) To create conditions inspiring trust and security.
  - b) To avoid the victim's confrontations with the abuser.
3. Since peripheral information on the traumatizing episodes is not stable in the memory and multiple interviews and suggestive questions can alter the recollection of the episode and, consequently, the accuracy of the testimony, it is recommended:
  - a) To minimize the number of interviews with child victims of sexual abuse/exploitation to reduce the chances of retraumatization and ensure the accuracy of testimony.
  - b) To ask open questions and to avoid suggestive questions during interviews.
  - c) To interview the child before psychological rehabilitation.
4. Keeping a neutral, open attitude throughout the interview, and asking questions allowing free recounting of the traumatizing event will diminish the influence of the confirmation bias and will increase the accuracy of the testimony of the child victim/witness of the sexual abuse/exploitation.

## II. Research Methodology

### II.1. Research Purpose and Tasks

The purpose of this research is to identify good practices and shortcomings in the court examination of criminal cases of trafficking, sexual exploitation, and sexual abuse of children.

The results of this research will be disseminated to involve citizens in developing measures to protect and promote the rights of vulnerable victims and witnesses of trafficking in persons and sexual exploitation/abuse, particularly of children.

To achieve this purpose, the authors established the following tasks:

- Qualitative and quantitative analysis of at least 20 criminal cases on trafficking in children or similar cases.
- Development of a report on good practices and shortcomings in court examination of cases of trafficking in children.

### II.2. Research Method

The purpose of the qualitative analysis of cases was to assess the compliance with the international treaties on the protection of children's rights during trials of child trafficking, sexual exploitation, and abuse.

The most important international treaties ratified by the Republic of Moldova are: Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

This research uses certain rights of child victims of trafficking or sexual exploitation/abuse, provided for in international documents, as qualitative case analysis criteria. These rights include:

- **Right to privacy**, ensured by (1) the inadmission of the disclosure of the victim's personal data, and (2) the examination of cases in closed sessions.
- **Right to protection against retraumatization** as a result of his/her participation in criminal proceedings. This right is ensured by the availability of child-friendly conditions for bearing testimony. By friendly conditions, we mean: (1) the absence of the abuser in the room with the victim, (2) bearing testimony in the presence of a (educational) psychologist, (3) minimum hearing sessions with the child.
- **Right to assistance**, ensured by (1) offering a qualified attorney to represent the child, and (2) offering a psychologist to assist the child during proceedings.
- **Right to information**, ensured by law enforcement authorities' offering the child the information about his/her rights as a victim in a form that is easy to understand by the child.
- **Right to compensation.**
- **Right to witness protection**, ensured when the prosecutor requests and the judge issues a decision on applying protection measures.

### II.3. Procedure

The authors sent Moldovan Supreme Court of Justice a few letters of request asking access to 20 cases on charges under Article 206 of the Criminal Code (child trafficking) for the purpose of this research. An additional request was addressed to Chief Justice to delegate an expert judge to supervise the research and analysis of the approved cases.

The request specified that cases should refer to the past three years. The reason for this is that most important changes in the Criminal Procedure Code were operated after 2009. The study should also reflect the current system trends.

As a result, the Court offered access to 15 criminal cases examined under Article 206 of the Criminal Code. To increase the representativity of the research, the authors also requested access to cases on charges under Article 171 (3), rape, and Article 172 (3), violent actions of sexual nature, of the Criminal Code. The authors requested access to them because they are similar in terms of the procedures used in case of child victims of trafficking. As a result, the researcher Natalia Bayram received access to 11 cases on charges under Article 171 (3) and Article 172 (3) of the Criminal Code.

The cases were analyzed in the premises of the SCJ under the supervision of the expert Ghenadie Nicolaev appointed by Chief Justice at the request of La Strada International Center.

#### **II.4. Limitations**

The SCJ forwarded the request of La Strada to Chisinau courts, which responded that they had no cases on trafficking in children. However, after a routine search in the database of sentences of the SCJ, it was found that some of those courts actually had issued judgments in cases of trafficking in children. As a result, the SCJ sent personalized letters to each of those courts with the request to present the cases on charges of Article 206 of the Criminal Code, with the name of the convict and the number of the case.

Because of the initial refuse of the courts to present cases on charges under Article 206, the research was delayed by approximately one month.

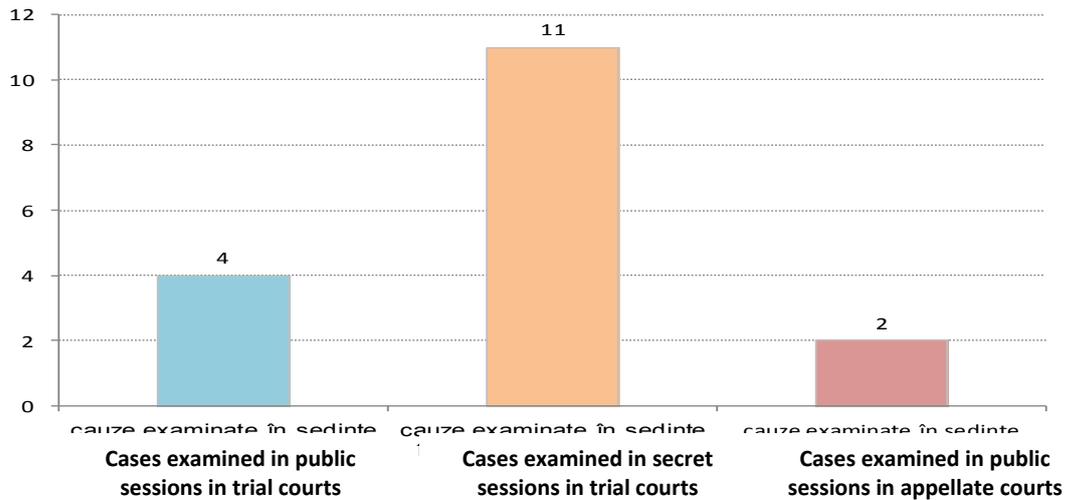
## Results and Discussions

The researchers examined 15 criminal cases on charges under Article 206 of the Criminal Code, trafficking in children, and 11 cases on charges under Article 171 (3) of the Criminal Code. The analysis was carried out in accordance with the developed methodology.

After analyzing criminal cases on trafficking in children and sexual crimes, the researchers found that trial courts and appellate courts had committed several judicial errors that are presented in the following sections.

### *Right to privacy*

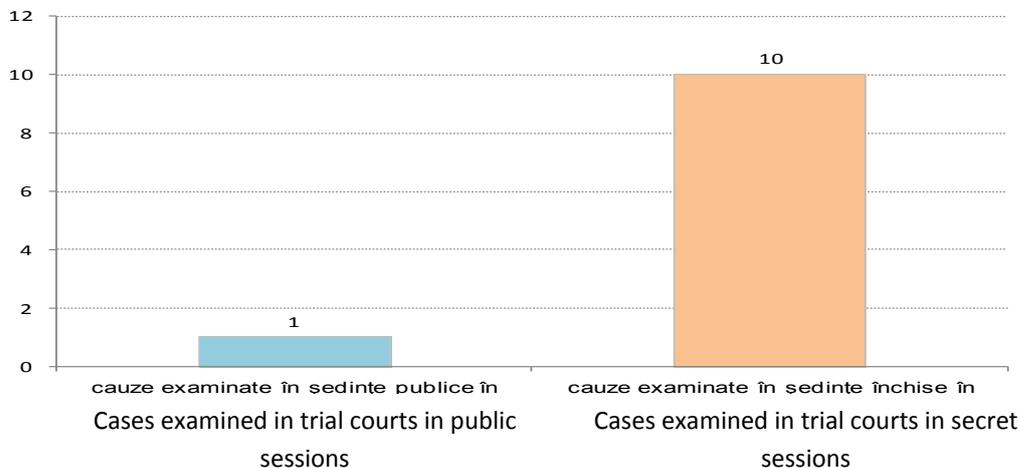
In terms of **the publicity of court sittings**, 11 cases on trafficking in children were tried in secret sessions, 4 in public sessions and 2 are currently examined under appeal in public sessions (Graph 1).



**Graph 1.** Number of cases on trafficking in children examined in secret sessions in comparison with those examined in public sessions. In total there are 15 cases on trafficking in children.

Given the small number of cases examined, the fact that 4 of 15 cases on trafficking in children were examined in public sessions raises concern. The situation is even more “confusing” with the 2 cases examined publicly in appellate court because, in the overcrowded courtrooms of appellate courts, the victim’s personal data cannot be kept confidential and becomes public.

Of the 11 criminal cases on rape and violent actions of sexual nature, 1 case was tried in public sessions (Graph 2).



**Graph 2.** Number of cases on rape and violent actions of sexual nature examined in secret sessions in comparison with those examined in public sessions. In total there are 11 cases.

The comparative analysis of cases on trafficking in children and those on sexual crimes shows that, in the latter type of cases, judges perceive the need to observe the confidentiality of the juvenile victim's data better. This can be explained by the general perception that sexual crimes are more severe than trafficking in children, even though all cases of trafficking in children have the component of sexual exploitation.

Another reason why judges observe the rights of victims of sexual crimes more strictly is the children's age. Victims of sexual crimes are usually younger than victims of trafficking in children. This explains why judges are more considerate with child victims of sexual crimes. On the other hand, cases of trafficking in children often involve psychological manipulation that creates the impression that trafficked children did not put up resistance and participated in sexual activities with consent. In such cases, it is believed that the child bears the same responsibility as an adult. Consequently, such cases are treated the same way as the cases with adults.

Law enforcement authorities and courts should not publish the trafficked persons' names and the addresses or other data that can be used to identify them and, thus, to compromise their safety or right to private life. An example would be the practice of publishing court decisions on court Web sites. It is good that court decisions are published and become publicly accessible because this ensures the transparency in courts' work. However, in cases of trafficking in persons, names and other information identifying victims should be erased from published decisions because otherwise victims risk to be threatened by traffickers' relatives and unidentified members of the criminal network.<sup>3</sup>

In this context, it is worth mentioning that the public examination of cases on trafficking in children with the component of sexual exploitation can establish the perception of the child as a victim, thus increasing the risk that the community will exert pressure on him/her to get involved in sexual activities at the local level.

On the other hand, hearing cases in which a trafficked and sexually exploited child has to overcome the psychological barrier and to speak publicly (the more participants in the hearing, the stronger the effect) psychologically forces the child, who tries to maintain a positive self-perception, to justify the experienced events. Consequently, these justifications can form a set of beliefs that may determine the victim to involve other people in exploiting activities and make him/her an abuser too.

In conclusion, both in case of trafficking in children and in case of sexual crimes, judges must observe the victims' right to privacy and private life; and part of that is examining such cases in a secret session.

### ***Right to protection against retraumatization***

Child victims/witnesses involved in criminal cases on trafficking in children and sexual crimes are interviewed 3 or 4 times. Repeated interviews are the main cause of the retraumatization of child victims/witnesses of sexual crimes in the court system.

During court proceedings, child victims of **trafficking in children** can be subjected to interviews 2 or 3 times in trial courts and 1 time in appellate courts.

Only in 3 cases victims were interviewed by an investigating judge in accordance with Article 109, 110 of the Criminal Procedure Code. In all other cases, nobody proposed that interviews be held in special conditions to protect the private life and to avoid the influence on establishing the truth.

In one criminal case, after the investigating judge interviewed a victim in compliance with Articles 109 (3) and 110 of the Criminal Procedure Code, the trial court upheld the defence attorney's motion to interview the victim repeatedly without a motivation. Neither this decision nor the attorney's motion

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<sup>3</sup> A decision containing the victim's full name, birth year, including the telephone number he/she used can be found here <http://www.csj.md/admin/public/uploads/Dosarul%20nr.%201%20ra%20607%2012%20Popovici%20N.%20Article%20220,%20206%20CP.doc.pdf>

presented the reasons for the additional interview and questions for the child. The only mentioned motivation was the defendant’s right to defence.

In other criminal case, after the investigating judge interviewed the victim once, the trial court ordered another interview of the injured party at the request of the defense. In total, the court interviewed the injured party 4 times because every time the defendant raised additional questions.

Even though in 4 criminal cases, the injured parties were interviewed only once, they had to attend all hearings during the court proceedings, including those in which the court interviewed the defendant. Thus, every time injured parties were confronted with the defendant.

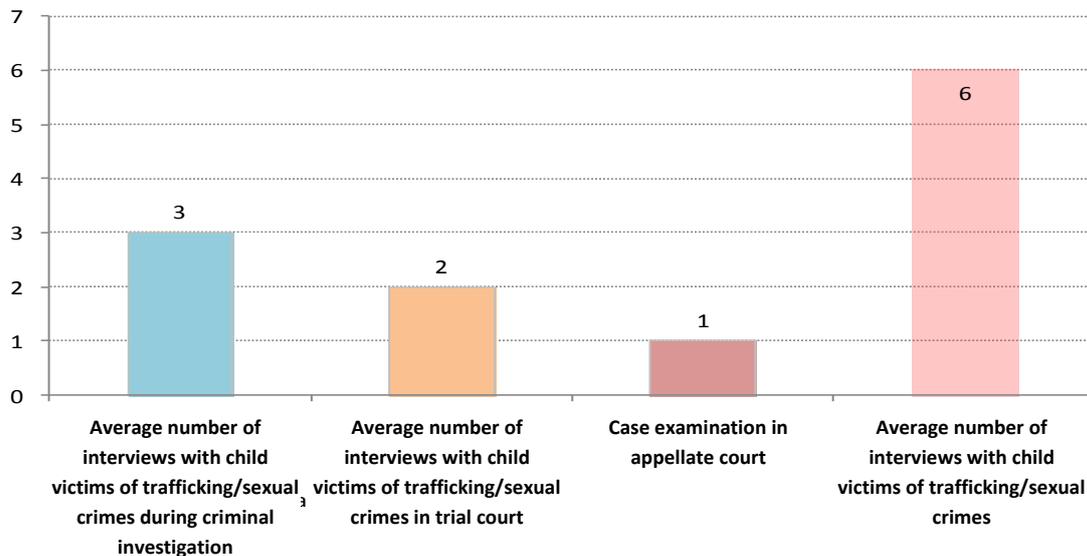
The average number of interviews with a child victim of **sexual crimes** during the case examination is 1 or 2 in trial court and 1 in appellate court.

In 11 criminal cases examined on charges of sexual crime, interviews with victims/witnesses were not held in special conditions to avoid retraumatization through a repeated court hearing.

In conclusion, law enforcement authorities, particularly prosecutors, do not apply the provisions of Article 109 (3) and Article 110, thus contributing to retraumatization of victims/witnesses.

Moreover, in contravention of legal requirements, judges admit repeated hearings of victims, instead of reading the minutes of interviews. Graph 3 shows the average number of interviews with child victims/witnesses of sexual crimes or trafficking.

We think that the amendments to the Criminal Procedure Code on court interviews in special conditions for child victims/witnesses during criminal proceedings are welcome, will exclude the need to bring the child into the court, and will eliminate retraumatization through participation in the trial.



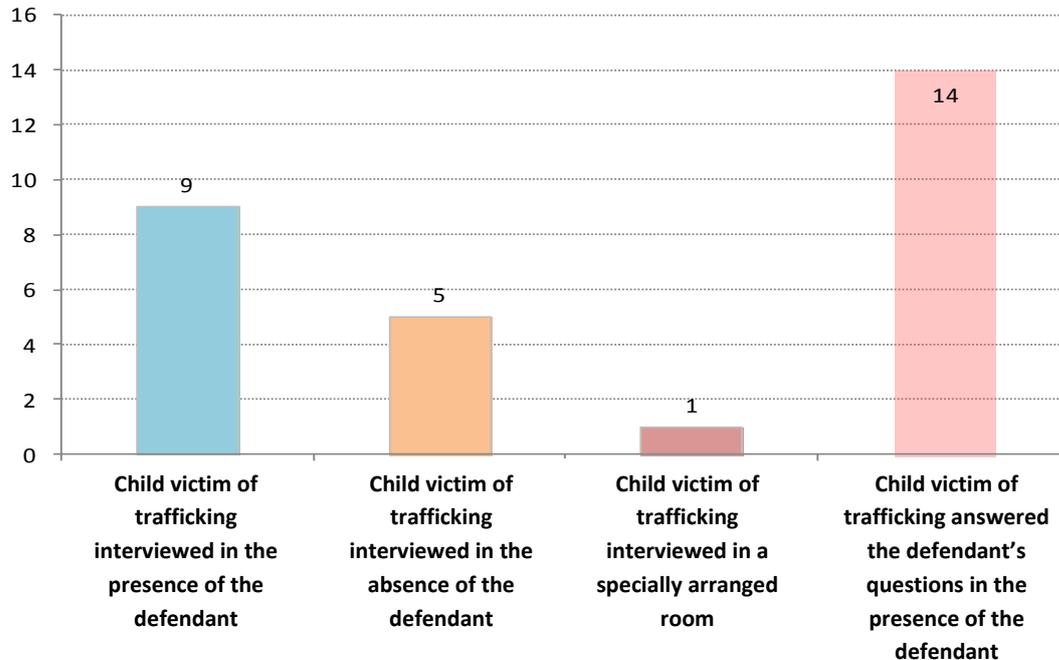
**Graph 3.** Average number of interviews with child victims/witnesses of sexual crimes/trafficking during criminal investigation, in trial courts, and in appellate courts.

Article 109 (3) of the Criminal Procedure Code stipulates that to reduce the retraumatization of a witness, the prosecutor can request that the interview be taken by an investigating judge. Article 10 (6) of the Criminal Procedure Code stipulates that if a victim or witness is juvenile, the court shall observe his/her rights and interests at any stage of criminal proceedings.

We analyzed criminal cases in terms of the number of hearings juvenile victims were subjected to during court proceedings to establish whether law enforcement authorities complied with provisions of Article 109 (3) and international documents Moldova is a party to.

**Hearing the injured party in the presence of the defendant during examination of cases of trafficking in children.** In 9 cases subjected to analysis, the juvenile injured party was interviewed in the presence of the defendants. In 4 of these cases, defendants were at large in the period of court proceeding and none of the victims benefited of protection measures. In 5 criminal cases, injured parties were interviewed in the absence of the defendant. However, in all these cases, victims answered the defendants' questions in the presence of defendants.

Only in 1 criminal case, injured parties were interviewed in a specially arranged room for hearing child victims. Graph 4 shows the data on the conditions for interviews with child victims of trafficking.



**Graph 4.** Number of cases of the child victims of trafficking interviewed in the presence and in the absence of defendant, in a specially arranged room and the number of cases in which children answered the defendant's questions in the presence of defendants. The total number of cases included in the analysis: 15.

However, the criminal procedure law contains neither clear provisions about retraumatization, nor a proper definition of it, nor the examples of situations leading to retraumatization so that judges do not clearly understand this notion and, consequently, uphold motions on repeated hearing of child victims.

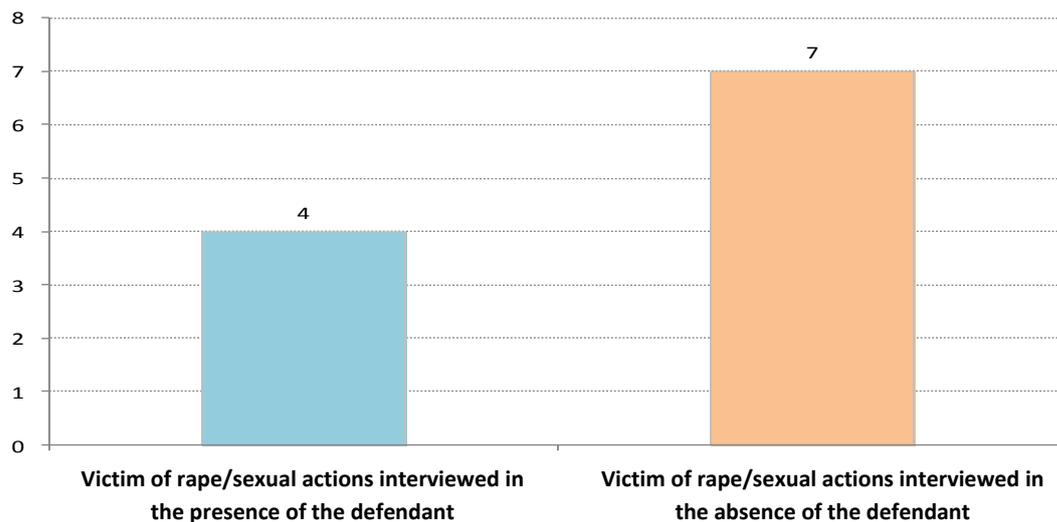
It is necessary to introduce the notion of retraumatization in the criminal procedure law and to describe concrete situations in which it might happen.

According to specialist's definitions, the retraumatization is "the process of the victim's recalling the traumatizing topic, which triggers the specific emotions of trauma."

Retraumatization happens when (1) the victim has to tell on multiple occasions about the abusive events, feeling the emotions specific to the abuse and/or (2) the abuser stays in the same room with the victim and can intimidate him/her through glances. These conditions can trigger traumatic memories that strengthen the child's role of victim. In both cases the child perceives that his/her physical or psychological safety is in danger.

In light of the knowledge about the effects of repeated interviews on the accuracy of testimony and the meaning of retraumatization for the supreme interest of the child, it makes sense to question the usefulness (added value) of the juveniles' presence during the whole period of court proceedings and of hearing them repeatedly at the request of the defence.

**In 4 criminal cases on rape and sexual actions**, child victims were interviewed in the presence of defendants. In one of these criminal cases, examined under appeal for the charges under Article 172 (3) of the Criminal Code, the child victim that had to tell about the sexual abuse was only 4 years old. In all that time, the defendant was in the same courtroom with the victim. In 7 criminal cases children were interviewed in the absence of defendants. In 2 of those criminal cases, the interview in the absence of the defendant was requested by the victim's attorney. In 5 of those cases the court ordered to put the defendant out of the courtroom at the prosecutor's request. Graph 5 shows the number of the interviews with child victims of sexual crimes in the presence of defendants and the number of hearings in the absence of defendants.



**Graph 5.** Number of cases of rape/sexual actions in which victims were interviewed in the presence, and in the absence of the defendant. The total number of cases covered by the analysis: 11.

Again, there is a differentiated approach to victims of trafficking in children and victims of rape and sexual actions. Thus, 60% of child victims of trafficking are interviewed in the presence of defendants and only 37% of child victims of sexual actions are confronted with abuser. The ratio is reverse in case of observing children's right to protection against retraumatization: 63% of victims of sexual actions benefited of this right and only 33% of victims of trafficking in children did so.

In this context, it is worth noting that just the abuser's presence is enough to trigger traumatizing emotions in child victims of sexual abuse/exploitation. The more traumatizing the circumstances of the abuse, the more intense the child's emotions during the confrontation with the abuser and the more difficult it will be for him/her to remember the abuse details.

### ***Right to information***

In 6 criminal cases on **trafficking in children**, the court did not explain the injured party his/her right to request that the case be examined in his/her absence and with his/her legal representative and prosecutor as representatives of his interests and rights.

In one of those cases, the court rejected the injured party's request submitted through his/her legal representative to allow his/him to be absent from court hearings. As a result, the juvenile injured party had to appear before court and other case parties during the entire trial period, which may take up to 3 years.

In most cases, the reason for a long trial period was the failure of the juvenile injured party to appear at the court hearing. In 2 criminal cases, the court held hearing of witnesses in the absence of the injured party, even though the injured party and his/her legal representative had not requested that the court hearing be held in his/her absence.

In 9 criminal cases, the court explained the injured parties their right to participate in court hearings and to request the case examination in their absence. In all these cases the victims used this right.

In 7 **criminal cases on sexual abuse**, the victim had to appear and to attend all hearings, including the interviews with the defendant during which the victim was in the same room, which allowed direct visual contact between the victim and the abuser. The age of the victims in criminal cases on rape and violent actions with sexual nature in the analyzed sample was between 6 and 14 years. Victims of school age had to miss school to attend all court hearings, even when sittings were postponed because of the parties' absence.

In conclusion, judges should have a more active role in informing victims and legal representatives about their procedural rights. As for the victim's right to attend court hearings, judges should know that this is a procedural right, not an obligation. Forcing the victim to attend all court sessions, the judge indirectly contributes to intensifying the victim's trauma and delaying the victim's rehabilitation.

Just a repeated stay of the victim of a sexual crime in the same room with the abuser exposes the child to the risk of taking on the victim role once more. The duration of 2-3 years of case examination maintains both the victim role and traumatizing memories, which are harmful for the developing personality of the child. In the long run, the child could become desensitized, in other words to stop feeling emotions of trauma, **but this would happen at the cost of the normalization of the victim role.**

#### ***Right to assistance***

In terms of the assistance provided by a psychologist/educational psychologist, legal representative, trusted person, and a lawyer during legal proceedings, in 9 cases of **trafficking in children**, the victims had a psychologist, a legal representative, and a lawyer throughout the trial. In one case, the psychologist was present only at the court session at which the juvenile victim was interviewed, while in other sessions, even when the victim was present and had to answer additional questions of the trial participants, the psychologist was absent. In 4 criminal cases, the victim was neither assisted by a psychologist, nor benefited of the qualified legal assistance of a lawyer. In one criminal case, due to the fact that at the time of the trial the victim came of age, the court did not call a psychologist to assist him/her. In one of the 4 criminal cases in which the court interviewed the child in the absence of the psychologist, he/she changed his testimony during the court hearing.

The figures regarding the participation of children in court hearings presented in this chapter refer to repeated interviews and serve as an indicator of the observance of the child's supreme interest by the judicial system. They also reveal the need for a clear description of the psychologist's duties. In defining the psychologist's role, it should be taken into account that observing the provisions of Article 110<sup>1</sup> will eliminate the need to repeatedly involve a psychologist and, thus, the judicial system will save on human resource.

In cases of **sexual abuse** of juveniles, a psychologist or an educational psychologist was present in all the 11 cases not only at the interviews with the child but also at all other sessions of legal proceedings. In 1 criminal case, both the aggressor, who was a juvenile too, and the child victim benefited of the services of the same psychologist.

In most cases, both on trafficking in children and on sexual crimes, the psychologist present at the court hearings has a passive role: he does not participate by rewording questions, nor objects to the questions of the defense. Thus, in one case on trafficking in children in which a 17-year-old victim was involved in prostitution, the court asked the victim: "Why did you accept prostitution?" At that obviously accusing question, the psychologist neither objected nor requested that the question be reworded so as not to sound accusing in the address of the victim.

#### ***Right to compensation***

On the whole, courts apply the material law and classify the actions of the defendants charged with **trafficking in children** correctly. Sentences are also issued due to the observance of the juvenile victims' procedural rights and the correct approach to them.

In 2 criminal cases of trafficking in children court issued acquittal sentences. The reason was that injured parties changed their testimony. The injured parties did so for several reasons: (a) multiple/repeated interviews; (b) interviews in the presence of defendants; (c) interviews of injured parties without a psychologist or a trusted person who would assist him/her during trial.

In 6 criminal cases in which injured parties had attorneys and civil claims were advanced, the court issued convicting sentences by which it partially upheld civil claims. In 9 criminal cases, neither injured parties advanced civil claims through their legal representatives nor prosecutors did so on behalf of the juvenile injured party.

In none of the analyzed cases on traffickign in children, the court explained the injured party and his/her representative the right to file a civil action and to claim compensation for moral and material damage.

In 10 criminal cases of **sexual crime**, the court issued convicting sentences on the basis of the articles for which defendants were charged and only in one criminal case the trial court sentenced the defendant on the basis of Article 172 (3) of the Criminal Code and the appellate court requalified defendant's actions on the basis of Article 175 of the Criminal Code and sentenced him to 3 years in prison with suspension.

In 10 criminal cases, neither legal representatives nor prosecutors filed a civil action. In one of them, the court asked the injured party whether he/she had moral claims to the defendant. In other cases the court did not explain the child his/her right to be compensated.

In one criminal case, the injured party filed a civil action but the court refused to solve it.

#### ***Right to witness protection***

In just 1 criminal case on **trafficking in children**, the court ordered the prosecutor to apply protection measures for the injured party. In 5 criminal cases, defendants were tried at large despite objective grounds to believe that they endangered the victims' lives. In 3 of those 5 cases, children changed their testimony and as a result the court acquitted defendants in 2 of those cases. Thus, because of the failure to ensure the victims' physical and psychological integrity, traffickers escaped criminal liability.

In none of the criminal cases on **sexual crimes**, court took measures to protect victims, even if in 1 case the agressor was the victim's step father at large. In 2 criminal cases, victims changed their testimony. In 1 case, defendants were achitted due to changed testimony. Thus, breaching the victim's fundamental right entails severe consequences. In this case it was the perpetrators impunity.

That is why it is important that before, during, and after the end of criminal proceedings, court take all necessary and possible measures to protect the victim against intimidation, threat of retaliation, and retaliation from perpetrator(s). If necessary, the same protection should be offered to the victim's family and friends.

#### ***Forced participation of the victim in court sessions***

In 4 criminal cases on **trafficking in children**, court obliged the injured party to attend trial session. In 2 cases it happened at the trial stage, and in 2 other cases during the examination under appeal. This happened despite the procedural right of child victims of trafficking to refuse to appear before court.

In cases of **sexual abuse**, court did not oblige victims to attend court sessions.

## Conclusions

The observance of the child victims'/witnesses' rights during case trials is incomplete and the national legislation on such rights has gaps.

Although, currently, the national legislation, particularly Law No. 241/2005<sup>4</sup>, contains ample provisions on victims' rights, issues persist, including such as: (1) the lack of an ex officio lawyer and psychologist; (2) victims' distrust in criminal justice; (3) the widely accepted idea that it is the child who is responsible for getting involved in trafficking (especially in case of 16- or 17-year-olds involved in prostitution); (4) the need for a better case management and a better communication between all stakeholders, for more respect and understanding between law enforcement and judicial authorities; (5) the lack of appropriate equipment for interviewing children in friendly conditions; (6) the need to interrogate victims repeatedly; (7) long criminal proceedings and the need to ensure that all cases of trafficking in children are examined in closed sessions.

Judges trying criminal cases of trafficking in children and sexual crimes must be instructed to examine such cases in closed sessions. Professionals working with such cases and, as a result, knowing victim's personal data, must know their obligation to keep the confidentiality of information on the victims' private life.

Judges should also take into account that child victims suffered much and criminal proceedings subject them to retraumatization. Judges should be instructed on special techniques of interviewing child victims/witnesses to avoid repeated hearings, confrontations with abusers in courtrooms, and damaging children's dignity by accusatory wording of questions. Child victims who agreed to cooperate with law enforcement authorities and thus to contribute to combating criminality, must believe in the efficiency of the judicial system. This can be achieved by administering justice in child friendly and supporting conditions and not in conditions that aggravate their trauma.

Judges, prosecutors, and police can play an important role for victims. Their support encourages victims, which results in a better prosecution of offenders. An informed victim whose all rights are ensured will be more cooperative and will trust justice and the trust in justice is a determining factor for a rule-of-law state.

We think that it is impossible to ensure children's right to compensation without ensuring the right to free legal aid through a qualified attorney. Thus, it is necessary to instruct lawyers to provide assistance to child victims of trafficking. Another issue is the lack of a government compensation fund for victims, *i.e.* sums allocated from the State Budget for compensating victims.

The victim/witness protection system should be revized. According to the practice of working with these cases, it is difficult to apply protection measures due to strict requirements, such as the proof of an imminent and real danger for the victim, the requirements that cannot be met because in case of child victims of such crimes, the danger lies in intimidating and threatening the child, not in applying physical force. Because of that, in such cases, it is impossible to request protection measures. However, judges and prosecutors must be instructed to hear victims in special conditions that exclude the possibility of defendant's meeting the victim so as to exclude the intimidation of the child. The victim interviewed in special conditions must not appear before the court to make testimony repeatedly.

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<sup>4</sup> Law on the Prevention and Combat of Human Trafficking: No. 241 of October 20, 2005. In: Official Gazette of the Republic of Moldova No. 164-167.

Therefore, the criminal procedure legislation must be changed to establish the rights and duties of a psychologist assisting a child during hearings. The psychologist should play an active role in the proceedings and not be just an observer at hearings of child victims/witnesses. In addition, the law must provide for the situations that retraumatize child victims.

## Recommendations

To ensure the observance of international commitments on child victims' rights, the authors formulated the following conclusions and proposals:

1) Criminal cases on trafficking in children should be tried by a specialized judicial panel for juveniles and family. Any activity regulated by norms on human rights should be subordinated to the supreme interest of the child and family.

2) In trials of such criminal cases, the prosecutor and attorney should be appointed from among qualified individuals with a seniority of over 5 years. The examination should be carried out on the basis of the adversarial principle. These persons, who represent the accusation and the defence, must exert their duties in a competent and honest manner and must play an active role in solving the case to establish the truth and to comply with legal requirements.

3) In trials of such criminal cases, the victim must necessarily receive state guaranteed legal aid to be really able to exert his/her rights during criminal proceedings and to efficiently support his/her civil claims in respect to the defendant.

4) In trials of such criminal cases, it is necessary to have more interviews with persons who are not directly interested in solving the case, namely experts, psychologists, social reintegration counselors, etc. to determine the psychological impact of the crime for the victim.

It is also necessary to take into account that it is characteristic for juvenile victims to be susceptible and emotional, which makes them feel embarrassed in courtroom environment. As a result, the presence of the aforementioned specialists, particularly, trusted persons, gives them the feeling of safety and makes them feel at ease, thus facilitating cooperation and communication with judicial authorities. Psychological support for victim is particularly important because he/she knows useful information necessary to establish the actual situation and to identify trafficking networks.

5) In trials of such criminal cases, court sessions should be secret. This derogation from the principle of publicity is justified by the fact that in case of such crimes publicity may damage the interests, spirits or private life of the victim by disclosing aspects for which the legislature offers the victim the right to decide on making them public.

Thus, when the victim gives evidence regarding an embarrassing or traumatizing experience, such as rape, sexual abuse, and sexual exploitation, the public should be excluded from court sessions. Despite the defendant's right to defence, the questions that do not refer to the elements of crime, and are obviously aimed at insulting and humiliating the victim are not admitted.

In addition, court should take into account that in public sessions, victims have particularly strong emotional states triggered by the presence of other persons in the courtroom, which may impact the fidelity of their testimony.

6) In trials of such criminal cases, it is necessary to establish specific procedural rules for interviewing witnesses and victims of trafficking in children, aimed at protecting their privacy and identity by observing the confidentiality throughout criminal proceedings, to allow them make objective testimony.

7) In trials of such criminal cases, it is mandatory to examine the question of applying protection measures. The court must establish whether there are sufficient grounds to believe that the injured party, victim, witness or other trial participants and their family members or close relatives may be or are threatened with death, violence, deterioration or destruction of goods or with other illegal acts. If such grounds are found, the court is obliged to take measures provided for in the law to protect the life, health, honor, dignity and goods of these individuals and to identify the culprits and to hold them liable.

8) It is necessary to adopt measures to encourage and support the victim to denounce the acts he/she was subjected to and to participate as victims/witnesses. It is necessary to act in such a way as to make the criminal justice system react by applying an “equitable treatment” to victims.

9) It is necessary to change the criminal procedure legislation in order to establish the rights and obligations of the psychologist who assists the child during interviews.