The study „ Ensuring the rights of the victims of sexual crimes. Analysis of the judicial practice in the Republic of Moldova." was conducted by the International Center for Protection and Promotion of Women's Rights „La Strada", within the project „Ensuring access of sexual assault victims to adequate legal and social protection", with the financial support of the US Embassy in Chisinau.

The results of the study, the interpretation of facts, the conclusions and the recommendations included in this publication represent the opinion of the research team and do not necessarily reflect the views of the US Embassy in Chisinau.

Editor: International Center for Protection and Promotion of Women's Rights „La Strada"

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Expression of gratitude

The current Study was developed following the goal to identify the level of protection of the sexual crimes victims' rights and the attitude of law enforcement bodies towards these victims.

For the development of this Study and the publication of the final result, we express our highest consideration to the ***Superior Council of Magistracy***, that reacted promptly to our request and facilitated our access to the courts of law, for analyzing the criminal files related to sexual crimes.

We express our gratitude to the ***Superior Court of Justice*** which showed its openness to collaborate in order to develop a complex study resulting from the existent judicial practice.

Also, we want to express our gratitude to the C***ourts from Botanica, Buiucani, Centru, Ciocana, Rascani districts of Chisinau Municipality, as well as to the Courts from Balti, Cahul, Cantemir, Calarasi, Causeni, Criuleni, Falesti, Hancesti, Orhei, Sangerei, Soroca, Ungheni*** for their perceptiveness, support and provision of necessary conditions for data and facts collection relevant to the study.

Development of this study was made possible due to the support provided by the above-mentioned institutions.

Introduction

Along with the right to life, physical integrity and health, another fundamental human right is the right to freedom. As long as the person is free, he/she can fully enjoy all the other inherent rights.

By the right to freedom we understand the right to put in practice all the legitimate and rational skills, attributions, interests and wishes of a person, the only limitation being the law, or the norm that imposes due respect to the same right of his/her peers.

The right to freedom which is granted to every person, has several aspects: the right to physical freedom (freedom of movement), the right to moral freedom (mental freedom), the right to inviolability of correspondence, to the freedom of speech, to the freedom of thought, the right to the freedom of opinions and religious beliefs etc.

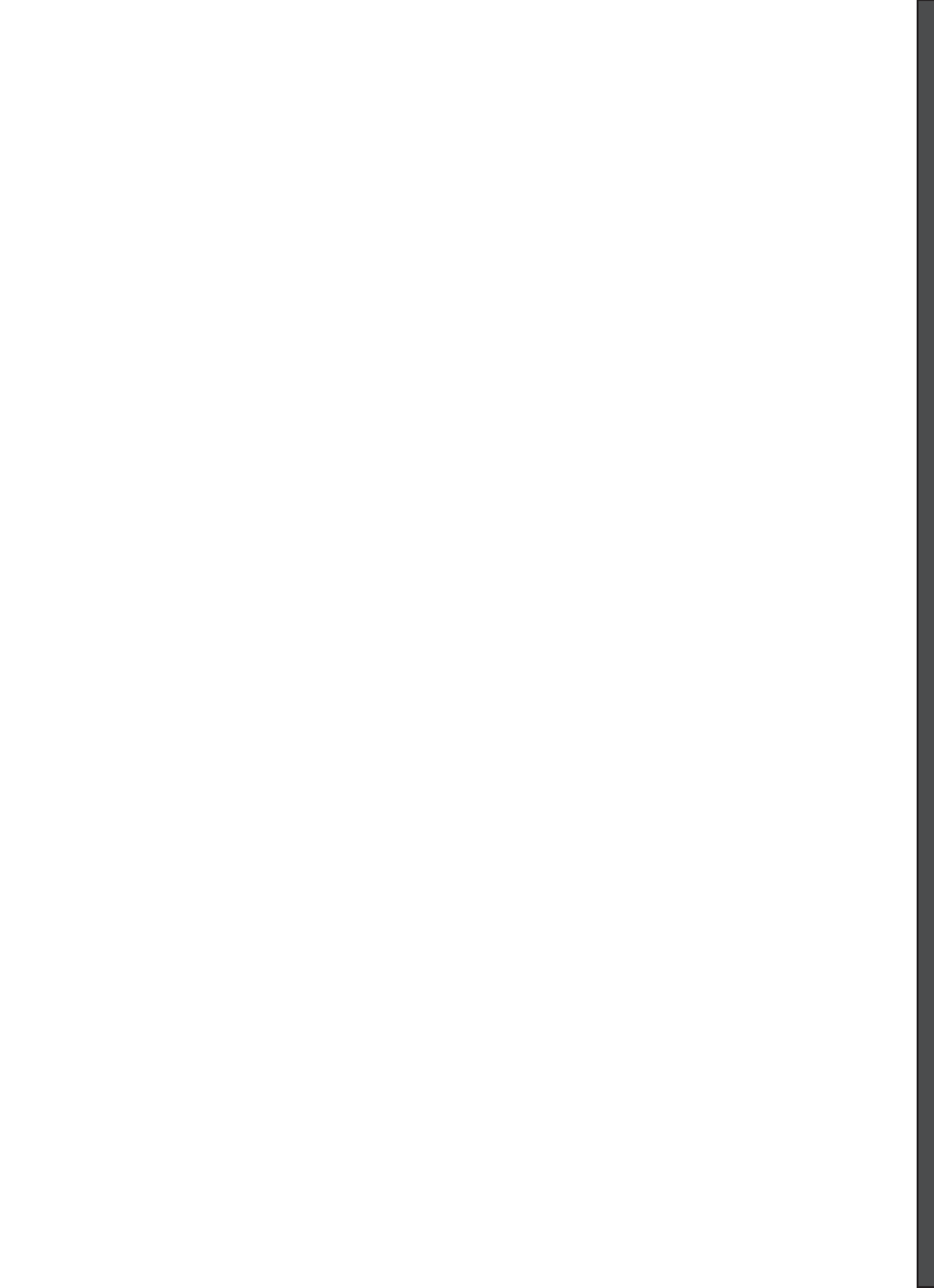
Besides the aspects mentioned above, the individual freedom also includes sexual freedom, as to say, the possibility of a person, irrespective of sex, to take decisions regarding his/her sexual life, without being afraid that something bad could happen to him/her. The sexual life and integrity of women is part of the rights and interests of a person and represents an important aspect in the development, progress and welfare of a society. For this particular reason the state must adopt an efficient policy in the area of preventing and combating sexual crimes, and rehabilitation of women, in case they were victims of actions that threatened their life and sexual integrity. The state policy in this area should be put in practice through the legal measures adopted and through the level of ensuring the effective implementation of such. By granting and respecting the rights of the victims of sexual crimes, they can claim the values that were affected and consequently they can be efficiently reintegrated in the society.

The Study ***„Ensuring the rights of the victims of sexual crimes. Analysis of the judicial practice in the Republic of Moldova."*** was developed in order to assess the level of protection of rights of the victims of sexual crimes and the attitude of law enforcement bodies towards them.

By this study, we intended to reflect and generalize the aspects of judicial practice related to sexual crimes, as well as identify the deficiencies in the management and instrumentation of this category of crimes. Particularly, special attention was paid to the respect of the reasonable term for the examination of these criminal cases, the involvement of the victim in the investigation process, the probation aspect and the decisions issued by the court.

We hope that this Study will serve as reference for the legislator in the process of amendment of the legal framework, in order to guarantee and ensure the highest level of respect for the rights of the victims of sexual crimes.

Also, we are convinced that this Study will serve as a guide for the law enforcement bodies that are in charge for the protection of rights and interests of victims of sexual crimes, and the findings and recommendations proposed will be taken into consideration in order to improve the practice in this area.



1 Research methodology

1. Research methodology

1.1. Research goal and objectives

The Study „ Ensuring the rights of the victims of sexual crimes. Analysis of the judicial practice in the Republic of Moldova." aimed at examining not only the material legal framework which incriminates sexual crimes, but also the procedural legal framework, which guarantees the victim's rights during the entire instrumentation process of this category of crimes. Thus, the goal of the study was to identify the level of respect of the rights of victims of crimes related to sexual life within the criminal cases, starting with the moment when the criminal investigation body is informed, until the issue of the final decision by the court. Through this specific study the authors' goal was to make an objective and correct evaluation of the situation, based on the criminal cases examined by the law enforcement bodies, and develop suggestions and recommendations in the area, for ensuring a higher level of protection of the victims of sexual crimes and eliminating practices and actions that violate their rights or threaten their dignity and honor.

Specifically, the study focused on the following objectives:

- identify violations of rights of the victims of sexual crimes by offence prevention bodies, criminal investigation bodies, prosecutors and courts of law;
- establish the way victims of sexual crimes are treated by the law enforcement bodies;
- analyze the attitude of the law enforcement bodies towards victims of sexual crimes;
- define the way of evidence collection, subject to evidence and respect of examination timeframe of cases;
- determine the way of performing an interrogation and asking questions;
- identify the means for rehabilitation of victims of sexual crimes;
- provide recommendations for improving the way the rights of the victims of sexual crimes are respected and the way they are treated.

In addition, it should be mentioned that the focus of this study was also determined by the constant number of crimes related to sexual life, which prove the fail to fulfill the scope of punishment, included in the Criminal Code, particularly prevention of commitment of other crimes. To demonstrate the high rate of these cases, the table below reflects the data from the National Bureau of Statistics.

2011	2012	2013	2014	2015
462 criminal cases	618 criminal cases	608 criminal cases	648 criminal cases	639 criminal cases

1.2. Research method

To develop the current study 240 criminal cases were collected from the Chisinau Municipality Courts (Botanica, Buiucani, Centru, Ciocana, Rascani,) and the courts from Balti, Cahul, Cantemir, Calarasi, Causeni, Criuleni, Falesti, Hancesti, Sangerei, Soroca, Orhei, Ungheni. The files referred to sexual crimes investigated during the years 2011-2016.

The number of cases examined per municipalities and districts

Court	Cases
Botanica Court, Chisinau Municipality	12 criminal cases
Buiucani Court, Chisinau Municipality	14 criminal cases
Centru Court, Chisinau Municipality	16 criminal cases
Ciocana Court, Chisinau Municipality	13 criminal cases
Rascani Court, Chisinau Municipality	16 criminal cases
Balti Municipality Court	15 criminal cases
Cahul District Court	12 criminal cases
Cantemir District Court	24 criminal cases
Calarasi District Court	11 criminal cases
Causeni District Court	12 criminal cases
Criuleni District Court	19 criminal cases
Falesti District Court	9 criminal cases
Hancesti District Court	12 criminal cases
Orhei District Court	15 criminal cases
Sângerei District Court	10 criminal cases
Soroca District Court	17 criminal cases
Ungheni District Court	13 criminal cases

The criminal cases analyzed referred to the following categories of crimes related to sexual life included in the Criminal Code: ***rape*** (art. 171); ***violent actions of sexual nature*** (art. 172); ***sexual harassment*** (art. 173); ***sexual intercourse with a person aged under 16*** (art. 174); ***perverted actions*** (art. 175). The victims of the cases analyzed are minors aged between 14 -16 and women starting with the age of 18. The table below indicates the number of criminal cases per article/crime.

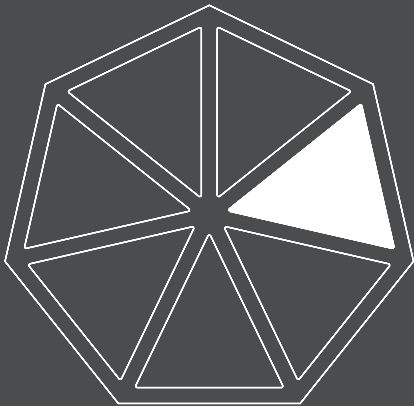
art. 171	*art. 172*	*art. 173*	*art. 174*	*art. 175*
130 criminal cases	46 criminal cases	6 criminal cases	48 criminal cases	10 criminal cases

It should be mentioned that we collected and analyzed only the criminal files in which a final and irrevocable decision was taken, omitting the cases that were terminated at the stage of criminal investigation. Every criminal file was analyzed separately in order to research and identify the violations of rights of the victims of sexual crimes and accomplish the goals set.

The limits of the research

Initially, one of the research objectives was also collecting the criminal cases related to sexual crimes that were terminated at the phase of criminal investigation. Unfortunately, the General Prosecutor's office refused to provide access to these criminal files, invoking the secret of the criminal investigation and protection of personal data. Also, the criminal files related to article 175^{1} of the Criminal Code of the Republic of Moldova ***(Grooming a child for sexual purposes)*** have not been examined, due to the complexity of this crime and to the fact that this is a relatively recent article, and there are very few such files. In addition, in our opinion, the sexual crimes against children refer to the topic of another specific research.

Crimes related to sexual life – national legal framework



2

2. Crimes related to sexual life – national legal framework

2.1. Material aspect

Following the adoption of the Declaration of Independency in 1991, the Republic of Moldova undertook a number of important actions for the recognition of human rights and enhancing the state's obligations related to the respect of human rights. The fundamental rights and freedoms of the person, as well as their limits and restrictions were reflected in the Constitution of the Republic of Moldova, adopted on July 29, 1994. Thus, the articles 24 and 28 of the Constitution of the Republic of Moldova stipulate that the state guarantees each person the right to life and physical and mental integrity. The state respects and protects private, family and intimate life. The intimate component of the private life, guaranteed by the Supreme Law, aims at protecting the person's identity, his/her intimate life, personal relations, including sexual freedom.

These constitutional guarantees, including the provision of sexual freedom of the person, as well as incrimination and sanctioning of actions that threaten this freedom, have been developed through a legal framework inferior to the Supreme Law. At the same time, protection of sexual freedom, combating the phenomenon of sexual abuse, as well as protection of the victims of this scourge, was a priority defined by both European international documents, as well as universal ones. Thus, the new Convention of the Council of Europe on preventing and combating violence against women and domestic violence is the most comprehensive treaty that refers to this serious violation of human rights. The Convention calls for zero tolerance towards this form of violence and makes an important step forward to make Europe and beyond it a safer space. According to the Convention, the parties engage to incriminate and sanction any form of domestic violence (physical, sexual, mental or economic), to proceed with investigating sexual violence, including rape, sexual harassment, forced marriage, female genital mutilation, abortion and forced sterilization. The Republic of Moldova signed the above mentioned Convention on December 15, 2016.[1]

According to p. 7 of the Rome Statute of the International Criminal Court, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of a comparable gravity is qualified as crime against humanity. Provisions in this area can also be found in the following:

- The Convention for the Protection of Human Rights and Fundamental Freedoms (STE No. 5, 1950) and its Additional Protocols;
- The European Social Charter (STE No. 35, 1961, revised in 1996, STE No. 163);
- Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005);
- The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007);
- The International Covenant on Civil and Political Rights (1966);
- The International Covenant on Economic, Social and Cultural Rights (1966);
- The United Nations Convention on the Elimination of All Forms of Discrimina-

[1] The Decree of the President of the Republic of Moldova 2511-VII of 15.12.2016 for approving the signing of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Official Monitor of the Republic of Moldova, no. 459-471, art. 935 of 23.12.2006).

tion against Women ("CEDAW", 1979) and its Optional Protocol (1999);

- The United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000);
- The United Nations on the Rights of Persons with Disabilities (2006); The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) and Additional Protocols I and II (1977).

In the same context, we should also mention the following Recommendations of the Committee of Ministers to Member States of the Council of Europe:

Recommendation Rec(2002)5 on the protection of women against violence;

Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms;

Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building;

as well as other relevant recommendations. A point of reference of the guarantees is also the General Recommendation No. 19 of the CEDAW Commission on violence against women.

We cannot exclude from the chessboard of guarantees the arguments provided by the European Court Law, which establishes important standards in the area of violence against women, a law that is subject to constant update.

Following the guarantees defined on the international level, the Republic of Moldova incriminated more punishable criminal acts by adopting the Criminal Code in 2003. Thus, a distinct chapter was introduced – chapter IV, called ***„Crimes related to sexual life"***, which includes the following crimes: ***rape*** (art. 171), ***violent actions of sexual nature*** (art. 172), ***sexual harassment*** (art. 173), ***sexual intercourse with a person aged under 16*** (art. 174), ***perverted actions*** (art. 175), ***grooming a child for sexual purposes*** (art. 175[1]).

The basic concepts stipulated in the national legislation have their roots in the international documents that aim at unifying this protection and raising it to the highest standards related to human rights. All these prejudicial acts, committed intentionally, threaten and damage – mainly or exclusively – the social relations related to the sexual life of a person, and the generic legal subject of the crimes from the above mentioned group refers to social relations referring to the sexual life of the person.

Art. 171 CC of RM	Rape, i.e. sexual intercourse committed by the physical or mental coercion of the person, or by taking advantage of the victim's incapacity to defend himself/herself or to express his/her will.
Art. 172 CC of RM	Homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself or to express his/her will.
Art. 173 CC of RM	Sexual harassment, i.e. physical, verbal or nonverbal behavior of sexual nature, that infringes the person's dignity or creates an unpleasant, hostile, degrading, humiliating and insulting atmosphere, with the aim to coerce a person to sexual intercourse or other not desired actions of sexual nature, accomplished by threat, constraint, blackmail.
Art. 174 CC of RM	Sexual intercourse other than rape, as well as any other acts of vaginal, anal or oral penetration committed with a person certainly known to be under the age of 16.
Art. 175 CC of RM	Undertaking perverted actions against a person certainly known to be under the age of 16, consisting of intimate exhibition, indecent touches, obscene or cynic discussions with the victim related to sexual relations, coercion of victim to participate or assist to pornographic shows, providing the victim with pornographic materials, as well as other actions of sexual character.

1) Rape

Rape is incriminated by one typical version and 2 aggravating.

The special legal subject of the rape often has a complex character, consisting of: 1) main legal object – social relations that refer to sexual inviolability and sexual freedom of a person; 2) secondary legal object – social relations related to psychological freedom, corporal integrity, health and the life of a person. In the case of actions mentioned in the let. b), par. (2) and let. b), par. (3), art. 171 of the Criminal Code of the Republic of Moldova, the main legal object consists of social relations that refers to sexual inviolability of minors.

The material subject refers to the person's body. The subject of an offence can be an individual, who reached the age of 14 by the moment the crime was committed.

The victim of a rape crime can be any person, irrespective of age, sex, social status, wealth, social affiliation etc. Generally, for qualifying a rape crime, the victim's characteristics are not important. Nevertheless, there are cases when the victim's characteristics represent an aggravating circumstance. Thus, an aggravating circumstance may be the ***age of the victim***. In case if she is not an adult, the crime will be comprised in the art. 171, let. b), par. (2) or, in some cases, art. 172, let. b), par. (2) of the Criminal Code. If the rape crime or the violent actions of sexual nature were committed towards a person aged under 14, the offence will be treated following the provisions of art. 171, let. b), par. (3), or, in some cases, art. 172, let. b), par. (3) of the Criminal Code. The rape committed against a pregnant woman, against a family member or the rape of the person who was in custody of, under protection of, for education or treatment purposes with the aggressor are also qualified as aggravating circumstances of the rape and of violent actions of sexual nature (art. 171, par. (2), let. b2) of the Criminal Code).

The objective side of the crime consists of 2 actions: the main action – ***sexual intercourse***, and an adjacent action: a) ***physical constraint***; b) ***mental constraint***; c) ***taking advantage of the impossibility of the victim to defend herself or express her will***.

According to the explanatory decision of the Supreme Court of Justice no. 17 of November 7, 2005, sexual intercourse is a normal sexual act (in the physiologic aspect) between people of different sex. Physical coercion (hitting the victim, immobilization of arms and of the whole body, tying etc.) represents the use of physical power against a person in order to defeat her physical resistance and make the sexual intercourse possible. The victim's resistance is not an essential condition and is important only as an expression of absolute refusal to engage in a sexual relation. Mental coercion refers to threatening a person with a serious danger for her or another person, in order to make her feel the fear that the danger can be avoided only by obeying the threat.

In the context of the same crimes, the impossibility to express one's will refers to a psycho-physiological state that deprives the victim of the ability to understand what is happening to her or to express her will (in the case of a young age, of oligophrenia, of other pathological states of psychical nature, of hypnotic or lethargic sleep, of a faint, of a coma, of clinical death, alcohol consumption etc.). When the offender takes advantage of the victim's impossibility to defend herself or express her will, it means that the offender understood the difficult situation of the victim and used this occasion to have a sexual intercourse with her.

It should be mentioned that in case of participation for qualifying the crime of rape it is not required for a person to commit both the main and the adjacent action, but only a part of the objective side.

The subjective side of the crime included in the art. 171 of the Criminal Code refers, first of all, to direct guilt in terms of intention. As aggravating elements of the crime of rape, besides the ones mentioned above, art. 171 of the Criminal Code provides for the rape in the following conditions:

- committed against a family member;
- committed knowingly against a pregnant woman;
- committed by two or more persons;
- followed by intentional contamination with a venereal disease;
- committed with particular cruelty, as well as for sadistic motives;
- committed against a person certainly known to be aged below 14;
- committed against a person who was in care of, under protection of the offender or was placed with the offender for education or medical treatment purposes;
- followed by intentional contamination with AIDS;
- which caused severe damage of corporal integrity or health by imprudence;
- which caused the victim's death by imprudence.

[2] S. Brînză, V. Stati, Vl. Grosu, X. Ulianovschi, I. Țurcan. Drept penal, partea specială. Editura Cartier, Chișinău, 2005, pag. 179.

2) Violent actions of sexual nature

The main characteristic of the crime provided by art. 172 of the Criminal Code of the Republic of Moldova is that instead of sexual intercourse, which is considered a normal manifestation of sexuality, the sexual instinct is intended to be satisfied by acts that are opposing its typical nature[2].

The special legal object of the crime provided by art. 172 of the Criminal Code, similar to the case of rape, in the majority of cases has a complex nature, because it includes: 1) social relations referring to sexual inviolability and sexual freedom of a person (main legal object); 2) social relations referring to mental freedom, corporal integrity, health and life of a person (secondary legal object). In the case of ways provided by let. b) par. (2) and let. a) par. (3) of art. 172 of the Criminal Code, the main legal object of the analyzed crime is made of social relations related to sexual inviolability of minors.

The material object of the violent crimes of sexual nature is the person's body.

The victim in the case of the analyzed crime, adopts a particular position, depending on the nature of the main action within the objective side: a person of masculine gender (in the case of homosexuality); a person of feminine gender (in the case of lesbianism); a person of either masculine or feminine gender (when sexual appetite is satisfied through perverted actions). In the case of the first two situations, the victim has the same gender as the offender (or co-offender that commits the sexual intercourse).

The subject can be any person, who reached the age of 14 at the moment of crime commission.

The objective side of the crime provided by art. 172 of the Criminal Code, is expressed by the prejudicial deed, including two types of actions: 1) ***the main action;*** a) homosexuality; b) lesbianism; c) satisfaction of sexual appetite in perverted forms; 2) ***the adjacent action:*** a) physical constraint; b) mental constraint; c) taking advantage of the victim's impossibility to defend herself or express her will.

According to the explanatory decision of the Plenum of the Superior Court of Justice, homosexuality is a sexual intercourse between two persons of masculine gender, lesbianism is a sexual intercourse between persons of feminine gender, satisfaction of sexual appetite through perverted actions is the practice of unnatural sexual intercourse, aiming at satisfying sexual instinct through various methods (anal-genital, oral-genital, oral anal), except homosexuality and lesbianism.

In case of physical and psychological constraint and taking advantage of the impossibility of the victim to defend herself or express her will, this results in similar interpretation as in the case of rape. The aggravating circumstances are also similar to those submitted to forensic examination of rape.

3) Sexual harassment

The innovation of the Criminal Code of the Republic of Moldova of 2002 referred to the inclusion of crimes related to perverted actions. The article 175 provides that perverted actions committed against a person certainly known to be under the age of 16, consisting of exhibition, indecent touches, discussions of an obscene or cynical nature about sexual relations with the victim, coercion of the victim to participate in or assist to pornographic shows, providing the victim with materials of pornographic nature, as well as other actions of sexual nature, are punished with imprisonment from 3 to 7 years. Also, art. 175[1] incriminates the invitation, including by means of information and communication technology, of a minor to a date with the goal of committing any sexual crime against him/her, if

[2] S. Brînză, V. Stati, Vl. Grosu, X. Ulianovschi, I. Ţurcan. Drept penal, partea specială. Editura Cartier, Chişinău, 2005, pag. 179.

the invitation was followed by certain actions that lead to such a meeting, it is punished with imprisonment from 1 to 5 years.

The national legislation in the area of crimes related to sexual life also includes other regulations, in addition to those provided by the Criminal Code. For preventing sexual harassment, the following regulations are valid:

– The Labor Code of the Republic of Moldova obliges the employer to take action for preventing sexual harassment at the work place, as well as action for preventing persecution for filing complaints on discrimination to the competent bodies[3]; to introduce in the internal regulations of the entity provisions that would forbid any kind of discrimination and sexual harassment[4]. Also, the internal regulations of the entity must include provisions on observance of non-discrimination principle and exclusion of sexual harassment and of any form of infringement of dignity in work[5]. Art. 1 of the Labor Code of the Republic of Moldova defines sexual harassment as any form of physical, verbal or nonverbal behavior of sexual nature, that infringes the person's dignity or creates an unpleasant, hostile, degrading, humiliating and insulting atmosphere.

– The Law no. 121 of 25.05.2012 on ensuring equality forbids any distinction, exclusion, restriction or preference based on the criteria provided by this law, which have the effect of limiting or undermining equality of chances or treatment in employment or dismissal, direct work and professional training. The harassment actions of the employer are also considered to be discriminatory[6].

– According to the Law no. 45 of 01.03.2007 on preventing and combating domestic violence, the victim of domestic violence has the right to assistance for physical, psychological and social recovery, through special medical, psychological, legal and social actions. It should be mentioned that the marital rape is a form of domestic violence and is punished in accordance with the law.

– The Law no. 5 of 09.02.2006 on ensuring equal opportunities between women and men, by art. 2, defines sexual harassment as any form of physical, verbal or nonverbal behavior of sexual nature, that infringes the person's dignity or creates an unpleasant, hostile, degrading, humiliating and insulting atmosphere, and by art. 10, par. (3), let. d) the same law compels the employer to take action for preventing sexual harassment of women and men at the work place, as well as for preventing persecution for filing complaints on discrimination to the competent bodies.

4) Sexual intercourse with a person aged under 16

The sexual intercourse with a person aged under 16, and particularly acts of homosexuality or lesbianism undertaken against such a person, can cause serious repercussions not only of physical, but also of psychological nature.

The special legal object of the crime provided by art. 174 of the Criminal Code consists of social relations related to sexual inviolability of persons aged under 16.

The material object of the analyzed crime is the person's body. Victim of such crime can be only a person of feminine or masculine gender, who was aged under 16 at the moment of the commission of crime. For qualifying the crime, the degree of victim's sexual maturity is not important.

The objective side of the crime included in art. 174 of the Criminal Code is expressed by the prejudicial deed turned into action. This action can take any of the following forms: 1) sexual intercourse; 2) homosexuality; 3) lesbianism.

The subjective side – direct intention.

[3] Labor Code, art. 10, let. f3), par. (1).

[4] Labor Code, art. 10, let. f5), par. (1).

[5] Labor Code, art. 199., let. b), par. (1).

[6] Law no. 121 of 25.05.2012 on ensuring equality, art. 7, let. f), par. (1). Law no. 121 of 25.05.2012 on ensuring equality, art. 7, let. f), par. (1).

5) Perverted actions

The term ***perverted actions*** defines actions condemned by society, that represent deviations from norms of instincts, human behavior, ideas and judgement. Pervert actions (immorality, lechery) have a specific sexual nature targeted towards satisfaction of sexual needs of the offender or arousal of the sexual instinct of the victim. These actions can bare a physical or intellectual nature. The category of perverted actions of physical nature includes: indecent touches, caressing or exhibiting one's own sexual organs or the sexual organs of a minor, indecent photographs, body nakedness, committing sexual intercourse or homosexual intercourse in the presence of a minor victim etc. The acts of lechery of intellectual nature can refer to: cynical discussions with the victim about sexual relations; demonstration of pornographic images; demonstration of pornographic materials to the victim, recordings with such content etc. (see p. 21 of the Decision of the Plenum of the Superior Court of Justice no. 7 of 29.08.1994, with the modifications of the Decision of the Plenum of the Superior Court of Justice no. 38 of 20.12.1999 and no. 25 of 29.10.2001). Victims of perverted actions can be persons of both genders, aged under 16.

The subjective side of the crime is accomplished by direct intention. The motive of the offender is his need to satisfy his sexual appetite in a perverted form. The subject of this crime can be any person irrespective of gender, aged under 14.

2.2. Procedural aspect

In order to respect its obligations according to international standards, the Republic of Moldova created a mechanism, a procedure and appointed criminal prosecution bodies to examine cases of undermining the sexual life of a person and prosecute the guilty individuals, so that the rights of the victim are recovered after the incrimination of criminal deeds.

Article 276 of the Criminal Procedure Code does not provide for the rape[7] as one of the crimes that require a complaint from the victim. But it includes a number of other crimes, that can imply sexual violence. For example, article 276 of the Criminal Procedure Code, requires a complaint from the victim before initiating criminal prosecution for less severe body injuries[8], threat with death or severe body injuries[9] and sexual harassment[10]. In addition, article 276 of the Criminal Procedure Code provides that even if the victim files a complaint and a criminal cause is initiated, criminal prosecution can be terminated if the victim and the suspect reconcile[11].

A similar situation is observed with reference to the isolation of the aggressor from the victim. In the cases when there is a subordination relationship between the subject and the victim, the fact that the subject of the crime keeps his job and the victim depends on his decisions, makes the process of effective satisfaction of the victim more difficult. Thus, the previously mentioned about the constitutional principle – free access to justice – this principle is violated due to the lack of legal possibilities to ensure the access to justice of the injured party. An effective satisfaction of the injured party interests cannot be accomplished, if: 1) the denouncement of the crime and of the offender depends only on the victim; 2) the victim is dependent on the subject of crime. Both cases refer exclusively to factors that do not relate with the victim's power of decision. In the first case, the victim's power of decision can be influenced by her mercy and compassion towards the suspect, accused or culprit. The psychological freedom, part of the legal object of the crimes provided by Chapter IV, Special Part, CC, is strongly affected as a result of the sexual violence to which the victim

[7] Criminal Code of the Republic of Moldova, article 171.

[8] Criminal Code, art. 152.

[9] Criminal Code, art. 155.

[10] Criminal Code, art. 173.

[11] Criminal Procedure Code, art. 276 (5).

was submitted. This fact essentially influences the further decisions taken by the injured party. In the second case, as mentioned before, the lack of norms that would isolate the subject of the crime from the victim, or at least efficient protection of the victim in relation with the subject's power of decision is a decisive factor in the process of the so-called reconciliation between the injured party and the suspect, accused or culprit.

The legislation of the Republic of Moldova should clearly stipulate that for prosecution of cases of sexual violence, there is no need for a complaint from the victim. The law should not allow termination of prosecution if the victim and the suspect reconcile. Such aspects of the law are inconsistent with the requirements of the Council of Europe Convention on preventing and combating violence against women and domestic violence of 11.05.2011 (Istanbul Convention) and the recommendations of the CEDAW Committee. The Istanbul Convention explicitly forbids the Member-States to perform investigation or prosecution of sexual violence, among other crimes, as „wholly dependent" upon a report or complaint filed by the victim. Additionally, The Istanbul Convention provides that „the proceedings may continue even if the victim withdraws her/his statement or complaint[12]."

The General Recommendation No. 19 (24) (b) of CEDAW Committee on violence against women provides that „States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women..." The requirement of availability of the victim's complaint for prosecution does not fit into the adequate protection argument. Additionally, the General Recommendation No. 19 provides for „all legal and other measures that are necessary to provide effective protection of women against any kind of violence, including, inter alia domestic violence and abuse, sexual assault and sexual harassment in the work place[13]." Lastly, the final observations of the periodic analysis of the CEDAW Committee for the Republic of Moldova in 2013 conclude that the victim's complaint should not be necessary for the investigation of crimes that include sexual assault. The Committee advised the Republic of Moldova on the following:

- enhancing the application of the Criminal Code, the Law No. 45-XVI on preventing and combating domestic violence, as well as other relevant national legal acts should ensure that all women and girls, including particularly elderly women, Romani women and girls and girls with disabilities are protected from violence and have access to immediate recovery measures;

- Initiate the ***ex-officio investigation*** of all these crimes and ensure that the offenders are prosecuted and punished in accordance with the gravity of the crime.

The explicit use by CEDAW Committee of the term ***ex-officio investigation*** indicates that the government should make use of its inherent empowerment and not require victim's complaint for the initiation of criminal legal procedures.

Another international document that should be mentioned is the Council of Europe Convention on preventing and combating violence against women and domestic violence of 11.05.2011 (Istanbul Convention), that has not been yet ratified by the Republic of Moldova. After assessing the compliance of the provisions of the Istanbul Convention and of the national legislation in the area, it should be mentioned that with the Law no. 196 of July 28, 2016 the national legislation in this area was updated with important provisions and therefore adapted to the international requirements. Still, the national legislation lacks the provisions of Chapter VII on refugees.

[12] Convenția de la Istanbul, art. 55.

[13] Recomandarea Generală Nr. 19(24)(t) a Comitetului CEDAW privind violența împotriva femeilor.

In this regard, The Criminal Procedure Code defines that ***a victim is any individual or legal entity to whom moral, physical or financial damages were caused as a result of a crime.*** The victim has an interest in the criminal trial and is interested in the results. After filing of complaint, the victim is qualified as injured party, a status that allows her to participate in the criminal trial. Also, the Criminal Procedure Code provides the victim with the right to refuse being qualified as injured party, a right that is used by victims by filing a request in this regard.

Participation of the victim in the examination of the criminal case results from her procedural rights granted by the Criminal Procedure Code. Thus, the victim of sexual crimes is entitled to the following rights:

- her complaint should be registered immediately and accordingly, to be forwarded for execution to the criminal investigation body and the victim should be informed about the results of that execution;
- receive from the criminal investigation body a confirmation paper, stating that she filed a complaint, or a copy of the protocol if the complaint was submitted in the narrative form;
- submit documents, objects or any other evidence to confirm her request;
- file additional requests;
- request to be informed by the criminal investigation authority, prosecutor or, if necessary by the court about the course of her request, about all the decisions issued that refer to her rights and interests;
- receive free of charge, upon request, copies of those documents, as well as of the decision to interrupt or terminate the criminal case on her cause, the copy of the sentence or any other final decision of the court;
- to request from the criminal prosecution authority to be approved as injured party in a criminal case;
- file a request for being approved as an injured party in a criminal trial;
- withdraw her request as per the provisions of law;
- receive a confirmation of the registration of her complaint and the initiation of the criminal investigation or a copy of the order to initiate the criminal investigation;

- appeal the order of non-initiation of criminal investigation during 10 days from the moment she receives the copy of that order and analyze the files based on which the order was issued;
- be assisted by a chosen attorney during all the procedural actions with her participation.

The victim of a serious crime or extremely serious crime, irrespective of whether she was or not approved as an injured party or civil party, also has the following rights:

- to be consulted by an attorney during the entire criminal trial, just like the other parties to the trial;
- to be assisted, in accordance with the law, by an attorney who provides free state legal assistance, if the victim has no financial means to pay an attorney;
- to be escorted by a trustworthy person, besides the attorney, to all proceedings, including closed hearings;
- to receive a court decision on financial compensation for the prejudice caused by the crime.

In accordance with the law, once the victim was identified, she can express her right to protection and compensation, as well as the right to file a request for the application of protection measures.

The victim can express her rights and obligations personally or, if the law provides so, through legal representatives. If the victim is a minor or an irresponsible person, her rights are defended by legal representatives in accordance with the provisions of the Criminal Code. The rights of the deceased victim are passed to his/her successors.

The victim is interrogated in the conditions provided for the interrogation of witnesses. The minor victim aged under 14 is interrogated in criminal cases related to sexual crimes, child trafficking or domestic violence, as well as other cases required in the interests of justice or in the interest of the minor, in accordance with art. 110[1] of the Criminal Procedure Code of the Republic of Moldova.

An injured party is considered to be an individual or a legal entity submitted to moral, physical or financial damage by means of crime, recognized as such in accordance with the law and with the consent of the victim. The minor submitted to crime prejudice will be considered as injured party without his/her consent.

In accordance with the Criminal Procedure Code of the Republic of Moldova, the injured party has the following rights:

- know the content of the prosecution;
- make statements and give explanations;
- submit documents and other evidence to be attached to the criminal file and examined in court;
- challenge the person who leads the criminal investigation, the judge, the prosecutor, the expert, the interpreter, the translator, the court secretary;
- make objections against the actions of the criminal investigation authority or the court and ask for her objections to be included in the protocol of the action;
- examine all the protocols of the procedural actions in which she participated, and ask for their completion or inclusion of her objections in the protocol;
- stay informed about the criminal case files from the moment of initiation of the criminal investigation and make notes of all information from the file;
- participate in the court hearings, including the examination of the case evidence;
- ask for prejudice remuneration during judicial hearings;
- be informed by the criminal investigation officer, or by the prosecutor about all the decisions issued that refer to her rights and interests, receive free of charge, upon her request, copies of those decisions, as well as decisions of interruption or termination of the trial, of non-initiation of the criminal investigation, the copy of the decision, or other definite court sentence;
- file complaints against the actions and decisions of the criminal investigation body as well as appeal the court decision on the caused prejudice;
- withdraw the requests submitted by her or her legal representative, including complaints against actions forbidden by law committed against her;
- get a mediator if the law provides so;
- reconcile with the suspect, accused or culprit in cases when the law provides so;

- make objections related to the complaints submitted by other participants to the trial, that were brought to her knowledge by the criminal investigation body or in other circumstances;
- participate to the appeal trial of the case;
- express appeal actions against court decisions;
- get compensation of the expenses made during the criminal trial, and compensation of the prejudice cause by the illegal actions of the criminal investigation body;
- get back the goods confiscated by the criminal investigation body as evidence or submitted by herself, as well as the goods that belong to her and were confiscated from the person who committed the action forbidden by the criminal law, receive originals of the documents that belong to her;
- to be represented by an appointed attorney, and if she cannot afford one, to be assisted, in accordance with the law, by an attorney who provides free state legal aid;
- to inform the hierarchically superior prosecutor or, if necessary, the court about the violation of the due terms.

Corporal examination, as well as collection of samples of body discharge or other biological samples from the injured party without her approval can be conducted only with the authorization of the investigating judge. These actions cannot be performed in places or under circumstances that could cause the risk of traumatizing the injured party or the risk of violation of human rights.

The injured party is interrogated in the conditions provided by the mentioned Code for the interrogation of witnesses. *The minor injured party aged under 14 is interrogated in criminal cases related to sexual crimes, child trafficking and domestic violence, as well as other cases required in the interests of justice or of the minor, in accordance with art. 110[1] of the Criminal Procedure Code of the Republic of Moldova.*

Additionally, it should be mentioned that the Criminal Procedure Code sets up imperative norms which should be respected by the criminal investigation authority, prosecutor or court, and failure to respect these norms results in violation of the victim's rights to a fair trial.

2.3. Rehabilitation aspect

Before the adoption of the Law or. 137 of July 29, 2016 on rehabilitation of victims of crimes, the legislation of the Republic of Moldova did not provide any rehabilitation solution to the victim. The adoption of this law allows for victims of several types of crime, including victims of sexual crimes to get rehabilitation.

First of all, we should point out that the subjects of the Law on rehabilitation of victims are ***victims of crimes***. In accordance with the Criminal Code of the Republic of Moldova, the term victim of crime refers to „individuals, mentally or physically injured, who suffered from an emotional or financial loss, caused by a crime". In addition, when we refer to financial compensation from the state of the prejudice caused by crime, the term ***victim of crime*** also includes „husband, children and people who were in care of the deceased".

Article 2 of the mentioned law defines the support services for the victims of crimes and provides the following „support services are public or private services ***provided to victims of abuse, physical, psychical or sexual violence***". This provision mentions several forms of domestic violence, i.e. physical, psychological and sexual violence.

The mentioned law expressly provides for the following public support services for victims:

- informational counselling of victims regarding the rights and benefits they are granted;
- psychological counselling;
- free state legal aid;
- financial compensation by the state of the prejudice caused by the crime.

In art. 2, par. (5) of the law, it is mentioned that the provisions of the Law no. 45-XVI of March 1, 2007 on preventing and combating domestic violence have a complementary nature. Thus, the victims of domestic violence are entitled to assistance services in accordance with the Law no. 45-XVI of 01.03.2007. In particular, in accordance with art. 11, par (21): ***„The victim has the right to assistance for physical, psychological and social recovery by means of special medical, psychological, legal and social actions. Provision of protection and assistance services is not conditioned by the victim's will to make statements or participate in the criminal prosecution of the aggressor"***. The same article, in par. (5) provides for the right of the victim to free primary and qualified legal assistance in accordance with the legislation referring to the free state legal aid, and in par. (6) specifies the obligation of medico-sanitary institutions to provide medical assistance in accordance with the Law on obligatory provision of medical care. Consequently, the Law on rehabilitation of victims of crimes and the Law no. 45-XVI generally define the rights to assistance which are granted to victims, and also refer to the obligation in providing medical care by the medical-sanitary institutions. The free state legal aid services are doubled.

Informational counselling as a public support service to victims of sexual crimes is nothing else but a general obligation of the employee of the crime identification body, criminal investigation officer, prosecutor, court and other subjects with attributions in the area of rehabilitation of victims of crimes to provide the victim with complete and concrete information as per art. 6, par. (1), let. a) – e) of the law. Specifically, in the case of sexual crimes, victims will be provided with informational support related to: assistance services to victims, the availability of a criminal prosecution body where she could file a complaint about the crime committed against her, the processual rights she is entitled to, the available protection measures, as well as other information required by the victim.

As for the ***free state legal aid***, it is provided by the Law no. 198 of July 26, 2007 on free state legal aid. According to art. 19, par. (1) of this law *„Qualified legal aid is granted to persons indicated in art. 6 who: a) need legal assistance on criminal cases and the interests of justice require so, but do not have sufficient means to pay this service"*. Thus, the existence of a general regulation on free state legal aid to victims of sexual crimes is observed.

As for the other two public support services, the Law no. 137 of 29.07.2016 on rehabilitation of victims of crimes (date of entering into force is 09.03.217) expressly mentions in art. 9, par. (1) and art. 12, par. (2) the following:

- ***psychological counselling*** is granted by the state upon request to the victims of sexual crimes;
- the victims of sexual crimes have the right to ***financial compensation***.

Free psychological counseling consists of a minim number of counseling hours which the state provides to the victims of crimes. Unlike the previous service of informational counseling which is granted to the victims of all categories of crimes, the provision of psychological counselling has specific limitations.

Compensation by the state of the prejudice caused by the criminal deed is expressly assigned to victims of crimes related to sexual life. Therefore, the victims of sexual crimes could request financial compensations from the state only for the following:

a) expenses for hospitalization, treatment or other medical expenses of the victim;

b) damage of glasses, contact lenses, dental prosthesis and other objects that contribute to the proper function of specific parts of the human body;

c) prejudice caused by destruction or dam age of the victim's goods, or by depriva tion of her goods due to crime, as provid ed by art. 12, par, (2) of the Law no. 137 of 29.07.2016;

d) damage resulted in the loss of working ability, in case it was directly caused by the criminal actions;

e) victim's burial expenses, in case of his/her death.

The right of the victim to an adequate compensation from the state is also provided in several international documents, specifically in art. 30 of the Istanbul Convention, in the Directive 2004/80/CE of the European Council of April 29, 2004 relating to compensation to crime victims, in the European Convention on compensation to victims of violent crimes, as well as other international documents.

One of the ways to let the victim express her right to a fair trial is to create an efficient system for investigation of criminal cases.

Conclusions

The analysis of the material legislation that regulates sexual crimes shows that the demarcation line between the sexual freedom and crimes that threaten sexual life is ***the consent of the adult person***, when the person is an adult with full legal capacity. In the case of rape crimes and violent actions of sexual nature the Criminal Code of the Republic of Moldova restricts the victim's consent through use of physical or mental coercion of the person or taking advantage of the impossibility of the victim to defend herself or express her will.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul and not yet ratified by the Republic of Moldova, states that ***the consent must be voluntary, resulting from the freewill of the person, evaluated in the context of surrounding circumstances***. Still, the legislation of the Republic of Moldova treats the victim's consent in another way, although the provisions of the Istanbul Convention in this sense refer specifically to the victim's rights and ensure her the possibility to be protected also in case when the physical and mental constraint was not applied, but due to specific circumstances her consent was viciated. Thus, currently, in accordance with the legislation of the Republic of Moldova the feeling of guilt, sexual habit or other circumstances will be qualified by the law enforcement bodies as commission of sexual intercourse with the consent of the victim. In this regard, it should be mentioned that, in accordance with the legislation of the Republic of Moldova, the demarcation line between *rape* and *having a sexual intercourse with a person under the age of 16* is also the consent. Or, based on the criminal cases analyzed, in different situations, the criminal investigation body was qualifying the deed as sexual intercourse with a person under the age of 16 even in cases when the victim was morally and financially depending on the offender and was afraid of him, which, obviously, cannot be interpreted as voluntary consent. Thus, in case the legislation in this area is modified, the sexual integrity of the women will be fully protected.

As for the procedural law, it should be mentioned that although the legislator amended the legislation to increase the level of protection of victims, still, based on the specifics of the sexual crimes, the victims of these crimes should be granted additional rights, including the right to intimacy and the right to psychological and medical care during the criminal investigation. At the same time, a though the legislation of the Republic of Moldova provides some guarantees for respect of the rights and freedoms of the victims of sexual crimes, still, specific modifications are required to raise the level of protection of the victims' rights and provision of more guarantees related to her protection and rehabilitation.

Recommendations

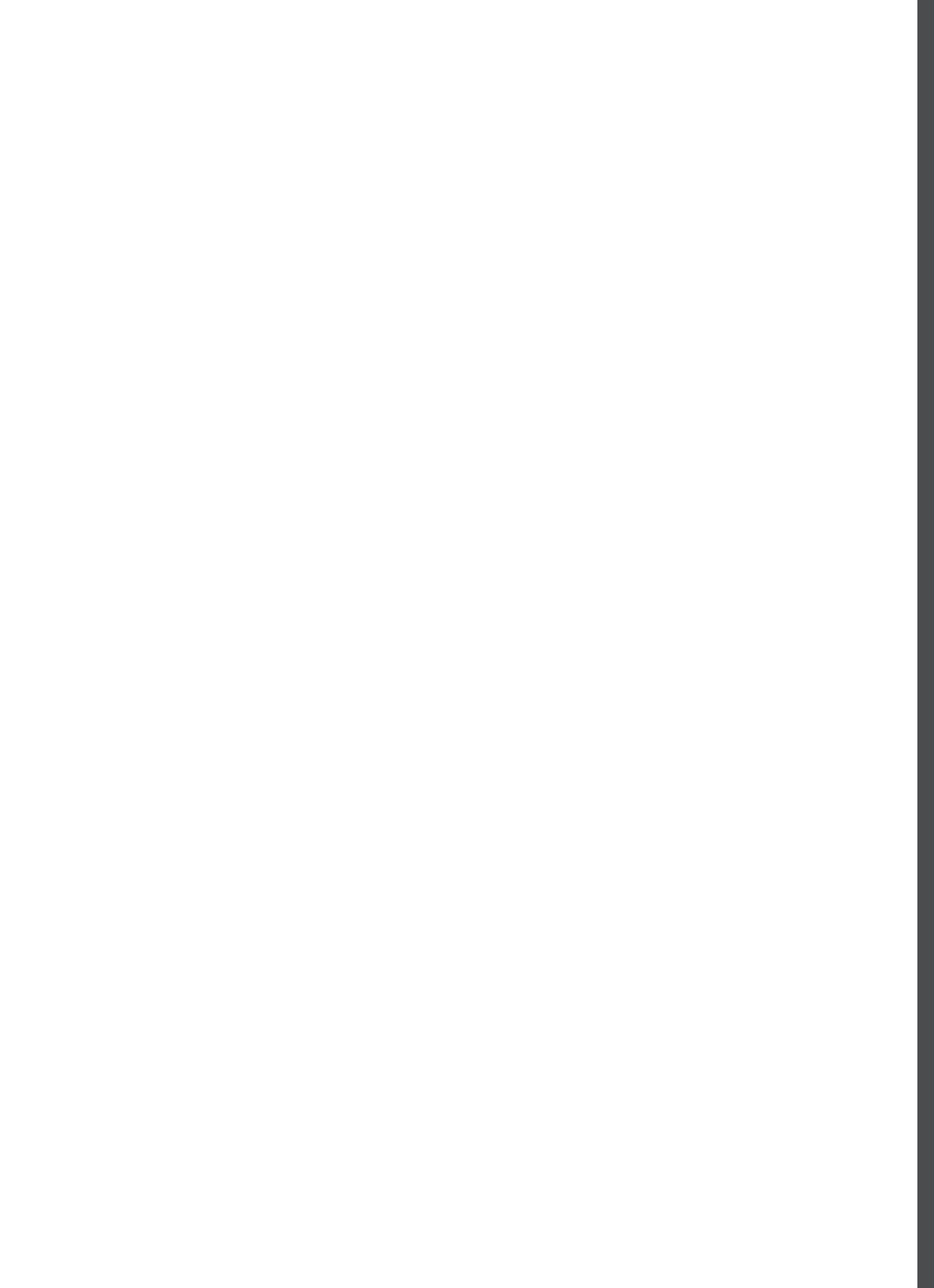
The analysis of the material legislation that regulates crimes related to sexual life suggests the following recommendations:

- operate modifications to the Criminal Code of the Republic of Moldova in order to revise the term ***consent*** in the case of crimes related to the sexual life, in accordance with the provisions of the Istanbul Convention;

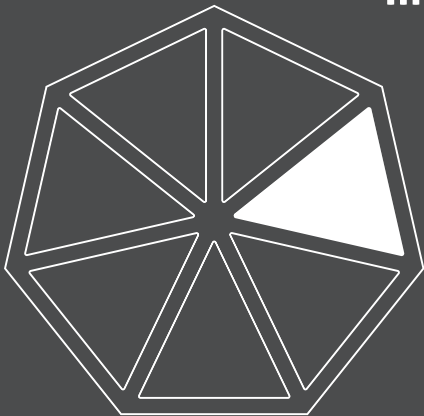
- establish additional guarantees for the victims of crimes related to sexual life, among which the right to intimacy, the right to psychological and medical assistance during the criminal investigation process;

- amend the Criminal Code and the Criminal Procedure Code in order to exclude evasion from criminal punishment as a result of reconciliation of the victim with the offender. Usually, the offender, if released from custody, easily influences the victim and convinces her to accept reconciliation;

- modification of the national regulatory framework referring to crimes related to sexual life, according to the provisions of the Istanbul Convention.



Initiation and accomplishment of the criminal investigation in case of crimes related to sexual life



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3. Initiation and accomplishment of the criminal investigation in case of crimes related to sexual life

3.1. Promptness of initiation and accomplishment of the criminal investigation

According to the modifications to the Criminal Procedure Code operated through the Law no. 66 of April 22, 2011, initiation of criminal prosecution can be divided in 2 phases: ***the criminal case***, which starts from the moment of registering a complaint as per art. 262-265 of the Criminal Procedure Code, and ***the criminal investigation***.

In view of the nature of sexual crimes and the specifics of evidence collection, the promptness in initiating criminal investigation and accomplishment of the urgent action of evidence collection guarantees an effective investigation and expression of the victim's rights. The general analysis of the criminal files did not identify procedural violations related to the promptness of initiating criminal investigation, taking into consideration the period between informing the criminal investigation authority and actual initiation of the criminal investigation. Though, in practice, in several cases analyzed it was established that before informing the criminal investigation body, the notification request goes through one more procedure, due to the organization of the police activity. This procedure is against the principle of promptness in undertaking urgent actions of criminal investigation.

In urban areas, the victims of sexual crimes address the Police Inspectorate. They have operative groups that include a representative of the criminal investigation body who performs criminal investigation actions that cannot be postponed, such as registering the complaint, crime scene investigation, interrogation of victim, or issuing a referral to the victim for the forensic examination. In the rural areas, the victims of sexual crimes or their legal representatives inform the police officer, the mayor, the social worker or the family doctor, who do not have the competence to perform urgent criminal investigation actions. In most cases, they do not inform the criminal investigation body, but accept the victim's complaint. Then they follow the procedure of registering the complaint and transmitting it to the criminal investigation authority for examination according to its competence.

During one of the hearings the victim stated that she addressed „the family doctor about the rape, and he told me to go to the mayor, without making any medical check-up"[14]. In this particular case, following his professional competence, the family doctor, was supposed to contact the criminal investigation body and to give the victim a referral for a gynecological test.

After having seen the family doctor she went to the mayor, who advised the victim to talk to the police officer. After 2 days, the victim finally found the police officer who accepted the complaint and registered it in the Register R2, which includes requests that do not represent a notification on the commitment of a crime.

After being registered, the complaint is forwarded to the criminal investigation body, which will further on undertake necessary actions, taking into consideration the new provisions of the Criminal Procedure Code.

[14] Here and hereafter, the quotes from the cases analyzed, the protocols and other official documents of the criminal investigation bodies, courts etc., are reproduced in original, as written by the authors.

Consequently, although it was only about 2-3 days, when it comes to sexual crimes this is a very long term for the management of the biologic evidence, and there is a risk of losing them. Also, after having studied the cases, several situations were identified when the date of filing the complaint did not correspond with the date of notification registration, the term for the registration of the notification being delayed by 24 hours, as provided in the order of the Ministry of Internal Affairs no. 121/254/286-0/95 of July 18, 2008 on unique evidence of crimes, criminal cases and persons who committed crimes. In the majority of cases, the period from filing a notification – registration of the notification – to the initiation of the criminal investigation is of 1 – 2 days, which corresponds to the standards related to the accomplishment of the criminal investigation actions with diligence and in due time. But there are situations when in the criminal cases, after filing the complaint, the police officers submit reports to the Chiefs of the Police Inspectorates in which they indicate: „By this report, I inform you that as a result of the prevention actions undertaken, it was identified that the minor XX has sexual relations with YX. Following the mentioned above, I request your permission to register this information in REI IP X, in order to be solved in accordance with the legislation in force."

In such situations, the police authorities created a procedure that is not provided by the Criminal Procedure Law and that challenges the obligation of the criminal investigation bodies to react promptly and with maximum diligence, as well as violates the right of the victim to have her case examined in the shortest time. Contrary to the acting legislation and the modifications to the Criminal Procedure Code, after the filing of a complaint, the police officer asks the victim of a sexual crime to provide explanations or statements, in which the victim narrates in detail the circumstances of the cause, which represents an interrogation without guaranteeing procedural rights expressly stipulated in the Criminal Procedure Code. Such a procedure was practiced by the police until 2011. This was due to a legal gap, i.e. the Criminal Procedure Code did not provide for the possibility to undertake processual actions before the initiation of the criminal investigation. Later the art. 279, par. (1) of the Criminal Procedure Code was modified, which allowed the criminal investigation authority to undertake processual actions, and the term of criminal trial was created. Although the law was modified, the procedure of requesting explanations or statements from the victim of a sexual crime continued in 30% of the cases analyzed. In such situations, the procedure of requesting explanations and statements is actually an intimidation of the victim, since the explanations must be requested from the persons who are in conflict with the law, and not from the persons who are victims of crimes.

At the same time, the request for explanations is preceded by an interrogation of the victim in accordance with the procedure provided by the Criminal Procedure Code, which means that the victim has to narrate again the circumstances of the case and to be revictimized by the psychological and emotional shock caused as a result of the crime committed against her. Moreover, in 65 of 240 criminal cases analyzed the victim gives explanations on the sexual crime committed, and the next day she is interrogated as injured party.

example 1

Criminal case, initiated on the fact of committing the crimes provided by article 172, paragraph (2), letter b2), Criminal Code, marital relationship.

Content of the complaint. „I request the police authorities to take action against my concubine XX, who has been practicing perverted relations with me against my will for a long period of time, forcing me to oral sexual intercourse, threatening me with physical punishment."

According to the case files, the criminal act was committed on July 21, 2014, and the police was informed about it on the phone. The complaint on committing the crime was filed on July 22, 2014 and registered in the Register R-II. Also on July 22, 2014 the victim was requested to give explanations.

On August 04, 2014, the notification on the commission of the crime was registered. On September 03, 2014, criminal investigation was initiated on the fact of committing the crime provided by art. 172, par. (2), let. b2) of the Criminal Code.

example 2

Criminal case initiated on the fact of committing the crime provided by the article art. 27, and art. 171, paragraph (1), Criminal Code (attempt of rape).

Content of the complaint. „I request the police bodies to take action towards XX who entered my house the night of 18.07.2011, at 01:00AM and tried to have a sexual intercourse with me, I showed resistance and he didn't manage to do it" (the style of the complaint indicates the fact that it was written from the words of the police officer).

Nevertheless, it results from the files that on 19.07.2011 the victim, being an elderly person, went to the family doctor. While being heard as a witness, the family doctor stated that: „The citizen XX addressed to the doctor claiming that she was beaten and raped, but since she had no visible signs of physical injury, she was not advised to make a medical examination, but to address the mayor".

On 19.07.2011 the victim went to the police, filing a complaint in this regard. Also on 19.07.2011 the victim was asked to give explanations. The notification was registered in R2, with the status of case file.

On 23.07.2011 a report was written and submitted to the Chief of the Police Inspectorate, in which the extension of the period for files exami-

nation was requested in order to take explanations from the presumed suspect.

On 04.08.2011 a repeated report was written, in which the extension of the period for files examination was requested till 10.08.2011, in order to interrogate additional witnesses.

On 10.10.2011 the criminal investigation body proposed not to initiate the criminal investigation, based on the fact that the deed does not reflect the elements of a crime: „There was no sexual intercourse, but the victim was asked whether she wanted or not to have a sexual intercourse".

The victim was not requested to make a forensic examination on the day she filed the complaint. Only on 24.08.2011 the criminal investigation body issued her a referral to a specialist for collecting biologic samples.

Further on, the criminal case was terminated for the reason of reconciliation of parties.

Although the Criminal Procedure Code of the Republic of Moldova does not provide for the possibility to extend the criminal trial in the cases of crimes related to sexual life, the analysis of cases revealed that the criminal investigation officer, against the legal provisions, solicited the Chief of the Police Inspectorate to prolong the criminal trial until the initiation of the criminal investigation.

example 3

The complaint was filed on February 14, 2014 with the following content: „I ask the criminal investigation body to take action about the fact that on February 02, 2013, at 23:00 I was raped by XX". The victim informed the police on the phone about the crime on February 11, 2014.

On 28.02.2014 the criminal investigation officer wrote a report to the Chief of the Police Inspectorate, in which he indicated: „I inform you that in my management I have the file registered in R-1, stating that on 02.02.2014 XX had a sexual intercourse with XZ against her will. Taking into account that a decision must be issued on this matter in accordance with art. 274 of the Criminal Procedure Code, it is necessary to interrogate several witnesses who know about the circumstances of the case, but due to the fact that the examination period expires on 28.02.2014, I ask for your permission to extend it till 07.03.2014".

The criminal investigation was finally initiated on 16.02.2014.

In the case of example 3 it was detected that the criminal investigation body was informed on the phone about the rape committed on 11.02.2014, which was proved by the phone notice, included in the case evidence. Still, the notice is considered to be filed on 14.02.2014, at the moment of filing the complaint.

In 82 criminal cases analyzed, contrary to the specifics of sexual crimes, within 2-3 days after receiving a phone notice, the criminal investigation body prepares crime establishment acts, and then solicits a standard complaint from the victim. Although, immediately after the notice, the victim was supposed to be examined for identification of samples of sperm, blood, traces on the clothes of the victim and of the offender.

example 4

As per the materials of the criminal case, a report was registered on 20.09.2012, according to which, on 18.09.2012 a phone call was made on the number 903, informing that XK was found intoxicated with alcohol on the edge of a ravine. On 19.09.2012 explanatory statements were taken from the victim, and she claimed she was coerced by 3 persons to go to an abandoned house, forced to drink wine, undressed and raped, and after that dragged through the nettle.

The matter was registered in the Register R1 on 01.10.2012, and on 15.10.2012 criminal investigation was initiated only on the commitment of the crime provided by art. 171, par. (1), let. b) of the Criminal Code – rape committed knowingly against a child, without mentioning the fact that the crime was committed by 2 or more persons.

A less serious violation of the provisions of the Criminal Procedure Code is that in 12 criminal cases analyzed the criminal investigation body exceeded the term of 30 days, provided by the art. 274, par. (1) of the Criminal Procedure Code, to initiate the investigation, an infringement that resulted in violation of rights of the victims of sexual crimes.

example 5

On 11.05.2015 the victim filed a complaint addressing the criminal prosecution body, in which she indicated: „I ask you to take action against XX, who had a sexual intercourse with me against my will, at my domicile, on 08.05.2012".

Although the complaint was registered in R1 on May 11, 2015, the criminal prosecution on committing the crime provided by art. 171, par. (1) of the Criminal Code (rape) was initiated only on June 27, 2012.

Also, the crimes that threaten sexual life, specifically the crimes of rape or violent actions of sexual nature, can be committed concomitantly. Thus, although victims mention in their complaints all the actions that took place, the criminal investigation body initiates criminal investigation mostly on the crime of rape, without including the art. 172 (violent actions of sexual nature) of the Criminal Code or other crimes.

example 6

The protocol on committing or preparing to commit a crime includes a complaint from a minor victim: „I ask you to take action against XX, who forced me to get into his car, and took me approximately 500 meters away from the village on 27.10.2012, around 21:00. He stopped next to a forest, where, threatening me with death, he coerced me to have sexual intercourse with him against my will, at the same time hitting different parts of my body".

The protocol was written on 29.10.2012. On the same date the minor was interrogated as a victim and during the hearing, besides the facts indicated in the complaint she stated: „...He forced his penis into my vagina. After 5-7 minutes, he told me he could not ejaculate and he hit me and threatened me, asking to have oral sex and spit the sperm out. I was afraid he would beat me, so I did what he told me, and he ejaculated in my mouth".

Although the victim was interrogated, on 01.11.2012 the criminal investigation body initiated the criminal investigation on the fact of committing the crime provided by art. 171, par. (2), let. b) of the Criminal Code – rape committed against a child.

Conclusion. Although it is clear from the victim's complaint and the protocol of the victim's interrogation that 3 crimes were committed, namely rape, kidnaping of a person and violent actions of sexual nature against a minor, the criminal investigation authority initiated the criminal investigation only on the crime of rape.

In addition to the mentioned above, ***many crimes of rape are committed by breaking into the victim's domicile***. Although this circumstance is not a sign leading to the crime of rape and is not an aggravating circumstance, it is a component separate from the crime, provided by art. 179 of the Criminal Code – trespassing. In very few criminal cases the criminal investigation is initiated on the fact of committing the crime provided by 179 of the Criminal Code, ***this being a flagrant violation of the victim's access to justice***.

Consequently, if we make a delimitation between the promptness of the initiation of a criminal investigation on committing the crimes provided by art. 171 – 175 of the Criminal Code, it should be mentioned that in all the criminal cases that refer to rape crimes and perverted actions of sexual nature, with a few exceptions, the criminal investigation body reacts much faster than on the fact of committing the crime of sexual harassment or sexual intercourse with a person aged under 16, the difference being from 10 to 30 days. Regarding the actions of the crim-

inal investigation officer after the initiation of the criminal investigation, we specify that usually, the criminal investigation on the fact of committing sexual crimes lasts for a very short period of time, with a term of 1 to 6 months. In average, the criminal investigation is finalized in 2-3 months and sent to the court, which represents examination of the case in due time.

3.2. Implication of the victim in the examination of the criminal investigation

As a rule, the victim is the one that shows up in a criminal investigation at the initial phase, from the moment when she notifies the criminal investigation authority about the commission of the crime. Still, there are cases when the criminal investigation authority is informed by other people. More often it happens in the cases of minors, when the criminal investigation officer is informed mostly by the legal representative of the victim: a teacher („during a routine test in school, the victim wrote that her stepfather, the partner of her mother, abuses her sexually...", the teacher spoke with the victim, and later informed the police), a social worker, a police officer (as a result of some crime prevention actions), a family doctor.

The files analyzed reflect a passive attitude of the society towards the victims of crimes related to sexual intercourse with a person aged under 14. Thus, if the victim lives in concubinage with the offender for a long period of time and does not go to school, all the people around her, including her parents, know about it, but take no action in this regard. This is a dangerous phenomenon, since the prevention factors – social worker, school, police officer, including parents – adopt a passive behavior and make no effort to explain the victim and the offender the consequences of this relationship. Moreover, in one of the cases analyzed, ***the victim, aged 15, lived in concubinage with the offender for 8 months and did not attend school, and neither her parents nor the teachers took any action in this regard, which actually means that they did not properly honor their work duties and parent obligations***.

But in most cases, the victims of crimes themselves inform the criminal investigation authority about the cases of crimes related to rape and violent actions of sexual nature. As for the criminal deeds indicated in the notification document, the victim does not reveal them all, mostly referring only to the deed of rape, without mentioning that an anal or oral sexual intercourse also took place. In most situations, the reason for non-disclosing all the criminal deeds in the notification is shame.

In one of the analyzed cases the victim of a rape was interrogated for 2 additional times, and only during the third interrogation she stated that a sexual intercourse of perverted nature took place, particularly oral intercourse. When asked by the criminal investigation officer why she was hiding this information, she answered that she was about to get married and was afraid that her fiancée would have broken up with her.

The Criminal Procedure Code grants a range of rights to the victims of sexual crimes, related to their implication in the development of the criminal investigation, but not all of them are respected. In this regard, it should be mentioned that of all the files studied, not even one victim of sexual crimes was given a paper to confirm that she filed a complaint, although according to the legislation this is a right of the victim and an obligation of the police.

Article 274, par. (1) of the Criminal Procedure Code provides that the criminal investigation authority or the prosecutor informed as per art. 262 and art. 273 issued an order for the initiation of the criminal investigation in a 30-days term. In case when the summary of the notification or acknowledgement document reveals a reasonable suspicion that a crime was committed and there is no circumstance that would exclude criminal investigation, the criminal investigation body or the prosecutor bring this information to the knowledge of the person who filed the complaint or the appropriate authority. ***None of the victims was informed about the order for initiation of criminal investigation.*** Contrary to the legal provisions, the victims are informed about the initiation of the criminal investigation only after being interrogated as victims or injured parties, and the order for initiation of the criminal investigation is issued to them only upon request.

Thus, it was identified that at the stage of initiation of the criminal investigation the victim is not involved in the criminal case, except at the moment of filing the complaint on the fact of the crime commission.

As for the complaints filed, from the cases analyzed it results that both in urban area and in rural area, the complaints have the same content, as follows: ***„I request the criminal investigation body to take action against XX, taking into account that on XXXX, at XXX, he had a sexual intercourse with me against my will"***. Or: ***„I ask the police to call to account XX, who during the period XXXX had sexual relations with my daughter aged 15"***.

As for the connection between the complaint filed and the initiation of the criminal investigation, the analysis of files shows that the criminal investigation officer not always takes into consideration the statements of the victim in her complaint, explanation or protocol of interrogation. In 76 criminal cases examined, the criminal investigation officer initiated the criminal investigation on another deed, which is less serious than the one specified in the notification document. In this regard, 2 tendencies of the criminal investigation body's activity were defined:

1) In 23 criminal cases analyzed, a minor victim aged between 14 - 16 years old filed a complaint about a rape, but had no visible signs of corporal injuries. The criminal investigation body initiated criminal investigation based on art. 174 and not based on art. 171, par. (2) of the Criminal Code.

2) In 6 criminal cases analyzed, although the victim filed a complaint about a tentative of rape, the criminal investigation body initiated the criminal investigation on the crime of committing perverted actions.

example 1

In the report written by the criminal investigation body on 23.06.2010 it is indicated that „I have the information registered on 15.06.2010, according to which the minor XXXXX addressed to the family doctor claiming a tentative of rape".

On 28.06.2010 a criminal case was initiated on the fact of committing the crime of perverted actions provided by art. 175 of the Criminal Code, that stipulates a punishment from 3 to 7 years.

In the interrogation protocol of 06.07.2010 the minor victim, who was 10 years old at the moment of interrogation, stated the following: *„When XX asked me about the scratch on my arm, I said that my brother beat me. He said ok, and took my hands, put them one on another, and with a hand he closed my mouth and pushed me down on the grass, holding my mouth so that I could not scream, and his body was over mine to stop me from moving my hands, and with another hand he was taking my panties off and touching my genital organs, and at that moment I was struggling with all my strength to escape from XX. All this lasted for 2 minutes, then several people approached, we heard some voices and XX told me to run behind the bushes and be quiet, and there I put my panties back on"*.

Although the actions presented above imply a tentative of rape against a minor person aged under 14, crime that is included in art. 171, par. (3), let. b) of the Criminal Code, which provides a punishment from 10 to 20 years, the actions of the offender were qualified based on art. 175 of the Criminal Code. The offender was convicted to 2 years of imprisonment with suspension of the punishment execution, for a probation period of one year. Moreover, initially, the criminal investigation officer submitted a report by which he refused to initiate the criminal investigation, stating that the offender did not commit any illegal action. The evidence that he used for the report were the statements of the offender, the explanations of the minor victim and the forensic examination report, which indicated that the hymen of the victim was not damaged.

Conclusion. From the very beginning, the criminal investigation officer took into consideration the version of the offender and not of the minor victim. Later, he qualified the fact to a norm that stipulates a much softer criminal punishment, with the possibility to apply several procedures in favor of the offender.

From the cases analyzed an erroneous interpretation of the rape victim's consent was identified, especially when the victim is under the age of 16. This resulted in re-qualification of crimes from rape, provided by art. 171 of the Criminal Code to sexual inter-

course with a person aged under 16, provided by art. 174 of the Criminal Code. While examining these cases, the criminal investigation officer does not take into consideration the statements exposed in the complaints, explanations, interrogations, where the victim expressly states that she was raped or did not give her consent for having a sexual intercourse. Nevertheless, the criminal investigation officer follows the findings of the forensic examination report, which does not indicate corporal injuries, and initiates the criminal investigation of the fact of committing the crime provided by art. 174 of the Criminal Code. Such a wrong requalification was identified in 15 cases analyzed.

example 2

The legal representative of the victim filed a complaint: „I request the criminal investigation body to call to account XX, who had a coerced sexual intercourse with my daughter at his domicile".

During the interrogation, the minor victim stated that: „I asked him to leave me alone, but he told me he would beat me with the belt. When he tried to undress me I opposed him, but he shouted at me to stop crying. XX took off my trousers and my panties, then he got undressed himself and got on top of me and had a sexual intercourse with me. During the sexual intercourse, I was opposing, but he used his physical strength and raped me. After XX, XY had a coerced sexual intercourse with me. The intercourse took place shortly after the first sexual intercourse, as I didn't even manage to get dressed".

Nevertheless, after the interrogation of the injured party, the criminal investigation authority initiated a criminal case on the commitment of crime provided by art. 174, par. (1) of the Criminal Code (perverted actions).

At the initial stage of the criminal investigation, the criminal investigation officer shows lack of trust mostly in victims who were drunk at the moment the rape was committed, or were in the house of the offender. The same lack of trust is noticed in cases of marital rape. This attitude actually causes a feeling of culpability to the victim, and forces her to take responsibility for the deed, although it is obvious that, a priori, the victim cannot have any guilt.

The attitude described below of the criminal investigation officer towards the statements of the victim is conditioned by the fact that there is a long period of time between the filing of the complaint and initiation of the criminal investigation, interrogation of witnesses (who in most cases are friends with the offender), request for psychological evaluation etc.

the protocols of interrogation of the victim or the injured party also serve as evidence that reflect the position of the injured party and the versions stated by her. Although the Criminal Procedure Code provides the possibility of hearing the victims in special conditions, these provisions are not applied to victims of sexual crimes. The interrogation of victims, and minor / adult injured parties is made in general conditions, with no use of special interrogation mechanisms, provided by the criminal procedural law.

example 3

In a case initiated on the fact of committing the crime provided by art. 174 of the Criminal Code, the prosecutor solicited the interrogation of the minor injured party in the conditions stipulated in art. 110[1] of the Criminal Procedure Code. Still, the investigating judge rejected the solicitation motivating that the Criminal Procedure Code provides for the interrogation of sexual crime victims up to 14 years old.

Also, in the majority of cases, the injured parties go through additional interrogation for 2-3 times, when there is no need for such additional interrogations. In a criminal case, the victim of perverted actions was additionally interrogated for the third time, just to be asked whether she swallowed the sperm or spitted it. The victim stated that she swallowed it, as the offender forced her, in order to leave no evidence. Although this fact has no relevance to the requalification of the crime, the criminal investigation body, without motivating the need for an additional interrogation, proceeded with interrogating the victim again. Moreover, if the analysis of the crime scene was properly done, there would be no need for additional interrogation.

Another important aspect of the judicial practice related to sexual crimes is that after filing the complaint, the victim is issued a referral for making the forensic examination. With this referral, the victim is obliged to find by herself, with no assistance, the medical institution where she could make the forensic examination, the forensic doctor on duty etc. Of the total of criminal cases analyzed, in none of the cases the criminal investigation officer asked for an ambulance for the transportation of the victim to make the forensic examination, except the cases when the victim requested the emergency services by herself. Also, no case was identified in which the victim would be transported by the police officer to the hospital or to make the forensic examination. We can conclude that, from the moment when she files the complaint about the crime that was committed against her sexual life and integrity, the victim tries to prove to everybody around that the crime actually took place.

Also, during the entire period of criminal investigation, the right of the victim to be informed about the decisions of the criminal investigation body on her case is not respected.

The analysis of the criminal cases also identified that although the complaint is filed against several persons, the criminal investigation body does not inform the victim about exclusion of some suspects or accused from criminal investigation. She finds out about this at the termination of the criminal investigation, along with the issue of the indictment or already in court. The victim is neither informed about the requalification of the criminal deed. During the analysis, we identified cases, in which the injured party filed a complaint about a rape /violent actions of sexual nature, the criminal investigation was initiated on these crimes, but later they were requalified by the prosecutor in perverted actions or sexual intercourse with a person aged under 16, and the victim was not informed about the requalification.

A right expressly granted by the Criminal Procedure Code is informing the victim about the case files at the termination of the criminal investigation, along with the issue of the indictment. Only in 50% of all the criminal cases analyzed this provision was respected. Thus, from the mentioned above, we can conclude that after the initiation of the criminal investigation and the interrogation of the victim, in most cases her partici-

pation was attested only at the termination of the criminal investigation or after being summoned to court.

3.3. Causes of refusal to initiate criminal investigation, exclusion from criminal investigation, interruption or termination of the criminal investigation

The information comprised in this subchapter results exclusively from the criminal cases that were provided by the courts and analyzed. Or, as previously mentioned, the General Prosecutor's Office refused to give access to the criminal files related to sexual crimes interrupted at the criminal investigation stage.

Thus, in all the cases analyzed, the initiation of the criminal investigation was never refused for the crimes related to rape, violent actions of sexual nature or sexual intercourse with a person aged under 16. But in cases of crimes related to tentative rape, perverted actions and sexual harassment the criminal investigation body submitted reports to the prosecutor soliciting the refusal of the initiation of the criminal investigation. The explanation for non-initiation of the criminal investigation was the following: „The actions of XX cannot be qualified as a tentative rape, since there was no sexual intercourse between XX and XY, but the victim was only asked whether she wanted to have a sexual intercourse. Moreover, although there was nobody to prevent XX from having a sexual intercourse, he stopped his actions when the victim showed her disagreement". Still, the prosecutor rejected the report for non-initiation of the criminal investigation, and requested to initiate criminal investigation on the fact of committing the crime provided by art. 27, art. 171, par. (1) of the Criminal Code.

In another criminal case, which included a tentative of rape, and the prosecutor qualified the deed as committing perverted actions, the criminal investigation officer suggested non-initiation of the criminal investigation, providing the following justification: *„The reason why the minor is making these statements is not clear, but probably she is afraid of her mother, who beats her for misbehavior. The mother is under observation of a psychiatrist. At the same time, the A. family is in hostile relationship with V. In addition, as per the conclusions of the forensic examination report, no corporal injuries were found on the minor's body, although, according to the minor's statements they should be on her neck and arm. The hymen is not damaged"*. The criminal investigation officer's report was also not accepted in this case, and criminal investigation was initiated of the fact of committing perverted actions.

These reports that suggest non-initiation of the criminal investigation do not represent a violation of the law or of the victim's rights if the prosecutor finally orders the initiation if the criminal investigation. Still, they demonstrate that for the initiation of the criminal investigation the criminal investigation authority is already supposed to have evidence of the person's guilt, as provided by the procedural law, and not just a reasonable suspicion. These reports also show the lack of trust from the criminal investigation bodies in the victims' statements.

It should be mentioned that, although in the second example the criminal investigation officer was aware that the minor victim is afraid of her mother who beats her and is under observation of a psychiatrist, he did not undertake any action in this regard. This fact was also neglected by the prosecutor and the judge who examined the case without taking into account these circumstances, which shows a passive attitude of the state authorities towards the family situation and psychological state of the victim.

A serious problem identified in ***89 criminal cases analyzed***, is related to exclusion from criminal investigation of one of the suspects/accused, although several people participated in committing the crime. Thus, if 2 or more people were involved in com-

mitting the crime, one of them is interrogated as a witness and another is excluded from criminal investigation (the most frequent reason is that the facts do not relate to the elements of the incriminated deeds), and only in very rare cases, 2 or more persons are held accountable.

example 1

The victim is a 15-year-old Romani from a socially vulnerable family.

The deed. Two brothers, in the middle of the day, with 10 witnesses around, forced the victim to go to their house, dragging her on the ground in front of everybody. In her statements, the victim said that while they were dragging her, their friends were walking after them and laughing. After being dragged into the house, she was forced to drink beer, in which they put some pills. Then one brother was holding her and the other was raping her. She was opposing, but suddenly she fell asleep.

When she woke up, she was lying naked on their bed, feeling pain in her entire body and also having excoriations. She ran out of the house naked and got to the road. Although she felt dizzy and sick, she walked through the neighborhood, and a woman gave her some clothes to get dressed, as she was afraid to go home like that. At home, she told her parents and then to the police about the deed.

In fact, the girl's nightmare did not end at that point. She gave explanations about how she was raped and dragged through the village, and then she made statements. After making the statements, she was sent to make a forensic test. After the forensic examination, she was interrogated again. Also, her blood sample was collected for examination. Then she went through 10 confrontations, of which 2 with the suspects and 8 with the eyewitnesses, who were friends with the offenders and who let her being dragged to the house of the offenders. Obviously, the results of the examinations were not registered, although the examinations took place 4 times. After the additional statements of the suspect, the victim was interrogated again. Also, a psychological examination was performed, to identify whether the minor has an appropriate understanding of the situation and does not have a rich imagination. This examination was ordered after identifying that the victim has injuries in her anus and vagina, as well as ecchymosis and excoriations. During the hearings, the victim stated that she was submitted to coerced sexual intercourse and violent actions of sexual nature with both brothers.

Later, the prosecutor issued an order to: EXCLUDE XC, ONE OF THE BRO-

THERS, FROM THE CRIMINAL PROSECUTION WITH REFERENCE TO THE INCRIMINATION OF CRIMES PROVIDED BY art. 171, par. (2), let. C), and art. 172, par. (2), let. C) of the Criminal Code, DUE TO UNSUITABILITY OF DEEDS WITH THE SIGNS OF INCRIMINATED CRIMES.

In the motivation of his order, the prosecutor indicated that: „After the analysis of the criminal investigation files submitted, the criminal investigation authority concluded that the accused XC had a normal and perverted sexual intercourse, and the injured party, since the recognition of the accused is doubted by the victim in correlation with the participation to violent actions of sexual nature committed through coercion in the described circumstances, and his participation being directly denied by the accused, since there is no other evidence that would confirm the presence of the biological traes of the culprit at the crime scene".

Thus, it was established that the prosecutor's order was not well motivated, to avoid confusions related to his decision. Therefore, the orders to terminate the criminal prosecution and release the person from criminal investigation should be motivated by administrative evidence, but not evasive phrases that come in contradiction with the case files. In addition, the actions of the criminal investigation body were also discriminating. Considering that the victim was a Romani, from a socially vulnerable family, she had to face procedural actions that clearly showed a lack of trust in the victim's statements: several confrontations, psychiatric examinations etc. Moreover, in the end, the criminal investigation of the second brother was also terminated, due to reconciliation of parties.

Another practice of the criminal investigation body is to make one of the suspects a witness, who comes to testify in favor of the offenders.

example 2

The victim working as a waitress was going home from work. On her way, she was stopped by 3 persons who beat her, dragged her in a yard and raped her. From the victim's statements: „XX was holding my hand while the other two were undressing me. I was raped by one of them, and then by another person, while the third one was holding my hands and covering my mouth ..."

Nevertheless, criminal investigation was terminated for one person, due to reconciliation of parties, and the other person, who held the victim's arms but didn't have a sexual intercourse with her was heard as a witness. Thus, only one person was submitted to criminal prosecution.

In some cases, the suspects are exempted from criminal prosecution due to the fact that the victim does not remember exactly the actions that took place and has no claims towards the accused. Although this is not a reason for excluding a person from criminal prosecution.

Contrary to the above, it should be mentioned that of 89 criminal cases in 48 cases of exclusion of the person from criminal investigation due to lack of crime elements in the deeds of the offenders, the orders for exclusion from criminal investigation were rejected by hierarchically superior prosecutors. This proves one more time that they were not justified enough, in order to avoid doubts about the correctness of the motive.

The most frequent reason of the termination of criminal cases is reconciliation of parties. In 99% of the analyzed criminal cases the victims submitted termination requests due to reconciliation of parties. At the same time, it is a good sign that 50% of these requests were not accepted by the prosecutor, and the cases were sent to court. But this cannot be an indicator, since the criminal cases terminated at the stage of criminal prosecution had not been analyzed, therefore, there is no information on how many of them were terminated due to reconciliation.

In this case, the law does not forbid the reconciliation of parties, and, as a matter of fact, it is not a violation of the legislation. Still, the prosecutor, as an accusation authority and representative of the state, will accept the reconciliation request, which implies identification of motives that led to reconciliation – whether the victim was influenced or not by the culprit or his relatives – but also what will be the repercussion of the reconciliation on the victim, and the trust of the population in the act of justice. Although it is appropriate and necessary to analyze these motives, the prosecutor does not deal with them and does not motivate the termination, but only referring to the requests filed and the provisions of the legislation.

When the victims are minors, the reconciliation process takes place between the legal representative and the offender. The victim does not participate in this reconciliation, which is a violation of the victim to a fair trial. When accepting reconciliation, the prosecutor does not take into consideration the relationship between the victim and her legal representative and the attitude of the victim towards the decision of her legal representative, eliminating the victim from the reconciliation process. For example, in a case the victim had a hostile relationship with her single father and ran away from home. On the way, she was forced to get in a car with 4 boys and was taken to the house of one of them. There they had sexual intercourses with her. The victim was 15 years old. When asked if she gave her consent to the sexual intercourse, she said yes, because she was afraid to be abused. At the same time, she stated that her father treated her brutally and often beat her, that's why she had to run away from home. The criminal investigation body did not act ex-officio on the fact of domestic violence, and did not take any action to involve the social worker, for monitoring the relations in that family. But it accepted as legal representative the father of the victim, who filed the request for termination due to reconciliation of parties. In this case the father of the victim was not supposed to be appointed as the legal representative of the victim, but should have been interrogated in regard with the statements of the injured party.

3.4. Ensuring the rights of victims of sexual crimes

As mentioned before, the rights of victims are provided by art. 78 of the Criminal Procedure Code. Still, we believe that in the case of victims of sexual crimes, along with the general norms, they should be provided with special rights, in order to get access to a fair trial and a more efficient social reintegration. The Criminal Procedure Code grants to the injured party the right to an attorney, and in case he/she has no financial means – the

right to be assisted by an attorney who provides free state legal aid. As for the granted right to legal assistance, it should be mentioned that although during the interrogation of the injured party a protocol is made to communicate her about her rights and obligations, in all the files analyzed no victim required an attorney that would provide free state legal aid. This makes us believe that the victims do not want to be represented by an attorney. Or, the communication of their rights and obligations is not efficient and the victim simply doesn't know that she has this rights. At the same time, from all the files analyzed, only in 5 cases the victim was represented by an attorney with whom she signed an agreement for provision of free state legal aid.

The lack of legal assistance to victims during a criminal case has several negative effects for the process of respecting their human rights and liberties, turning them into a procedural mean of the criminal trial and not active participants, whose rights have been seriously damaged. This happens due to totally passive behavior of victims during the criminal cases examination, as they participate in the criminal investigation only when the cases require their obligatory presence and without making objections or suggestions as the law provides them. Moreover, the victims never file requests related to accomplishment of criminal investigation actions, complaints regarding the actions of the criminal investigation body or prosecutor, and do not solicit the completion of the criminal investigation after its termination.

The procedural documents filed by the victims within the criminal cases are the complaints, requests to be approved as injured party, requests of refusal to be approved as injured party, requests to be approved as a civil party, and request for termination of the criminal investigation due to reconciliation of parties.

It was established that, contrary to the legal provisions, during the criminal cases victims write some kind of receipt with the following content: „I state in the presence of witnesses that I have no claims towards one of the accused for the moral damages caused by him, and I engage to confirm this also in court. My decision is based on my free will, I confirm that I received a reward of 7.000 lei that I asked, and I engage to confirm this in front of the judge". Obviously, this receipt is abusive and is made due to the lack of qualified legal assistance.

The lack of the legal aid for victims also influences the quality of the request for being approved as civil party, of the petition forms within a criminal file, as well as the requirements included in the petition forms related to compensation of the moral prejudice caused by the crime. From the criminal cases examined the victims did not appeal against any order of termination of the criminal investigation or exclusion of a person from criminal investigation. This situation is due to 2 reasons that lead to violation of victims' rights, specifically: not informing the victim about exclusion of a suspect/accused from the criminal case or about the termination of the criminal case, and lack of an attorney who would ensure the respect of the victim's rights. Thus, it was established that even though the law expressly provides for the right to qualified legal assistance, in practice this right is not respected, which inevitably leads to the violation of the victim's rights.

As previously mentioned, the procedural law does not grant the victim with the right to medical care, although, according to the specifics of the crimes, medical assistance is inevitable. It is impossible to establish exactly whether the victims from the criminal cases analyzed were provided with necessary free medical care, but this can be deducted from the civil actions initiated, which request the compensation of the financial prejudice and compensation of expenses for treatment, indicating the amount of the financial damage.

In all the criminal cases, except the ones

mentioned above, the victims were given referrals to see the forensic doctor and make the forensic evaluation report. Though, the forensic examination does not imply providing necessary medical care to the victim, but only identification of injuries. In this regard, it should be mentioned that the victim is provided with medical care only in case she asks for the ambulance, or needs emergency assistance due to her health condition, as well as when the victim solicits the medical care and pays the treatment by herself, and later requests compensation of financial prejudice in court. From 240 criminal cases analyzed, in one case it was identified that the victim passed away, and in other 10 cases the victims were urgently hospitalized with corporal injuries. In the rest of the cases the victims went by themselves to the family doctor for examination and prescription of a treatment that they paid by themselves. Moreover, in a criminal case, the victim, along with the expenses for the medical care and treatment, also requested in the civil case the compensation of the expenses for the forensic examination.

Obviously, this fact is not a rule, but the availability of a single case is already a serious violation of the victim's rights, since the examination of crimes is made on the expense of the state, without financial contribution of the victim to the collection of evidence. In this regard, it should be mentioned that, in accordance with the Government Decision no. 1387 of December 10, 2007 on the approval of the Unique Program on mandatory health insurance, the mandatory medical assistance provided to victims of crimes includes the following:

- general blood test;
- urine test;
- urogenital smear;
- bacteriologic investigations;
- virus investigations;
- complex echography examination (abdominal cavity organs + urogenital system organs);
- radiologic investigation.

Medical assistance is mostly solicited for treatment of corporal injuries. No case of treatment of sexually transmissible diseases or abortion as a result of rape was detected. Moreover, in accordance with the Government Decision and the annexes mentioned above, abortion is not included in the list of medical assistance services/intervention that would be covered by the mandatory insurance policy.

In case of crimes related to sexual intercourse with a person aged under 16, medical assistance is provided only if the victim is pregnant and addresses her family doctor with regard to her pregnancy. It is alarming that in the cases of rape, sexual actions of perverted nature or sexual intercourse with a person aged under 16, the victim is not requested to make a test, in order to identify whether she got infected with a sexually transmitted disease and needs a treatment in this regard. This was not requested in any of the cases analyzed. Moreover, in none of the cases the victim required compensation of the financial prejudice, resulting from treatment of a sexually transmitted disease.

As for psychologic counselling of victims, it should be mentioned that also in this case the state does not grant this service, and it is usually paid by the victim. Thus, in all the criminal cases in which a psychologic-psychiatric examination was requested, the victim was recommended to attend counselling sessions with the psychologist, but from the files analyzed it cannot be concluded whether these sessions took place or whether the victim was provided with any kind of treatment in this regard. From all the files analyzed, in 23 cases psychiatric evaluation

was requested, in 9 causes the victims went through psychologic evaluation, and in all cases the victims were recommended to attend 10 sessions with the psychiatrist and/or 10 sessions with the psychologist, and follow a treatment. At the same time, it should be mentioned that the need for psychiatric sessions was not justified in any way, taking into account that none of the victims suffered from a psychiatric disease.

From all these cases, only one victim filed the request of a civil action for compensation of financial prejudice in amount of 2000 lei, payment for 10 sessions at the psychologist. The other victims asked for the compensation of the moral prejudice. We believe that this is due to the fact that they signed a contract of legal aid with an attorney who assisted the victim during the case examination. In 2 cases the victims were provided social assistance by psychologists from the civil society organizations, specifically the International Center for Women Rights Protection and Promotion "La Strada" and the Center for assistance and protection of victims and potential victims of human trafficking. Still, this does not exclude the fact that the victims also address various rehabilitation centers to seek psychologic counselling. Unfortunately, it should be mentioned that the state does not provide any kind of psychologic assistance to victims, limiting its involvement to the diagnosis phase.

3.5. Protection of personal data

Protection of personal data is granted by art. 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (also known under the name of European Convention on Human Rights) and by the Law no. 133 of July 8, 2011 on personal data protection. According to art. 3 of the Law no. 133, personal data is any information relating to an identified or identifiable individual (personal data subject). ***Processing of personal data*** implies any operation or set of operations which is performed upon personal data, by automatic and non-automatic means, such as collection, registration, organization, storage, maintenance, restoring, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Within the Study we wanted to analyze whether the criminal investigation body made illegal use of the personal data of the victims. Also, we aimed at analyzing the protection of personal data in corroboration with the secrecy of the criminal investigation, these two principles complementing each other and excluding each other at the same time.

In the criminal cases analyzed, no systemic violation of data related to sexual life of the victim was identified. Still, in some cases, the police, by the nature of their actions, work with the personal data of the victims. At the same time, it should be mentioned that any non-authorized communication of data related to the sexual life of the victim is a violation of personal data protection.

The most violations of personal data protection take place while interrogating witnesses. During such an interrogation, a witnesss answered to the question of the criminal investigation officer stating the following: „***...I found out that XX was raped from the police...***" or „***I do not know whether she had friendly relations with the person who raped her or not ...***".

This is not only a violation of the personal data protection, but also of the procedure of witnesses' interrogation, since they must provide an objective statement about what they actually know. But from the answers given it can be concluded that the criminal investigation officer informs the witness from the very beginning about the deed that took place, this way violating the principle of personal data protection.

Other violations of this principle happen from the moment of committing the crime. Police officers are in charge for these violations, since they come to the crime scene and interrogate the neighbors, in order to identify witnesses. Thus, by interrogating the neighbors, all the locality finds out from the police officers about the sexual crime and its victim, which obviously is a violation of the principle of personal data protection.

We believe that the protection of personal data is violated also in the situation when the offender is wanted, and the orientation made in this regard contains the following information: ***„Is wanted as on XXXX, XZ raped XC, therefore being a suspect/accused of committing the crime provided by art. 171 par. (1) of the Criminal Code..."*** Such orientations are distributed to all police stations, which must take action for searching the culprit. What is the logical reason, for which those orientations indicate personal data of the victim, if the offender is going to be held liable for the crime committed, no matter who the victim is?

In the rest of the criminal cases analyzed no violations of personal data were identified, the criminal investigation body, the prosecutor, and the courts ensured a minimum level of protection of these data.

3.6. Probation means

Cumulation of evidence within a criminal case is the exclusive duty of the criminal investigation bodies, which have the obligation to analyze from all aspects, completely and objectively the circumstances of the case, in order to call to account the person responsible for committing the crime. Thus, the criminal investigation body will gather the following evidence: statements of the suspect, culprit, injured party, civil party, civil responsible party, witness; forensic examination report; corpora delicti; protocols reflecting the criminal investigation and judicial examination actions; documents (including official); audio and video recordings, photographs; technical-scientific and forensic findings; procedural documents reflecting the result of the special investigation measures and annexes, including transcripts, photographs, recordings etc.

The most frequent evidence cumulated while conducting criminal cases investigating the crimes related to sexual life are: ***statements of the injured party; statements of the legal representative of the injured party; statements of the suspect, accused, culprit; forensic examination reports; crime scene investigation protocols; confrontation protocols; crime scene reconstruction protocols; statements of witnesses; documents (social evaluations, characteristics)***.

Although the probation process is common for all the criminal cases, the way to collect evidence in the case of sexual crimes is very specific. Therefore, as mentioned above, in the majority of cases the criminal case starts on the basis of the complaint filed by the victim or her legal representative. In the cases of minors, the complaint is filed by their legal representatives, same as if the victim is 16 years old. After filing the complaint, the victim will be interrogated as victim/injured party.

Nevertheless, as mentioned earlier, before being interrogated as victim/injured party, the victim also gives some explanations or specifications that refer to the crime committed. Although this action has no procedural status, it forces the victim to revictimization, since she has to narrate twice that day about what happened to her, and go through the same psychological stress again.

As a rule, the interrogation of the victim is the first procedural action from the beginning of the criminal case or the criminal investigation. Still, from some files we concluded that the victim was interrogated long after the initiation of the criminal investigation, specifically, after the statements from witnesses and the suspect were taken the turn of the victim came. In a case, the victim

was interrogated after 2 years from the initiation of the criminal investigation. From the case files, it is not clear what was the reason of the late interrogation, since the victim did not leave the territory of the Republic of Moldova and had no sickness. Moreover, the interrogation of the victim took place after the interrogation of witnesses, the accused etc.

Late interrogation of the victim is a serious violation of her rights, especially when she is the source of information who can provide indications to the criminal investigation body about the offender, the place of crime, the way the crime was committed, the time of the crime and other circumstances for the qualification of the criminal deed. This inevitably results in superficial examination of the criminal case, without a full and correct elucidation of the events and leads to the violation of the victims' rights to a fair trial. Moreover, late interrogation of the victim also affects the quality of the interrogation. Since time passes, some circumstances may be forgotten, and in case of those crimes, they are important for the objective examination under all aspects of the case.

The interrogation of the victim/injured party is performed by the criminal investigation officer, who asks the victim to state everything she knows about the crime committed. ***In this regard, it should be mentioned that in all the files analyzed, no difference was detected between the interrogation of minor victims and adult victims, except for the presence of the legal representative and psychologist. As for the nature, conditions of interrogation and the formulated questions the criminal investigation body did not make any difference.***

While analyzing the way the victim is interrogated, it was identified that various procedures and specific language is used that infringes the dignity of the victim. The criminal investigation officer does not appoint the interrogation of the victim on a separate day from the interrogation of the offender, and does not take any action to make sure the victim does not meet the culprit.

In 56 criminal cases analyzed the victims were interrogated on the same day as the offenders, and looking at the time of these hearings indicated in the protocols, one can think that while the victim is interrogated, the offender is waiting at the door to be interrogated immediately after her. This fact not only intimidates the victim, but also exposes her to psychical suffering and stronger emotional stress, which affects the quality of interrogations, and due to shame or fear the victim may hide specific circumstances that are important for the criminal investigation. Or, if all the initial circumstances in which the criminal deed was committed are not revealed, later, the criminal investigation officer can have doubts about the victim's statements, in case she later mentions additional facts.

The interrogation of the victim starts with a detailed narration of the events that took place, then the criminal investigation officer asks questions to specify and collect some additional information which he considers necessary. In this regard, the biggest problem is the language used by the criminal investigation officer and the questions addressed, which mostly intimidate the victim and have no relevance for the qualification of the deed. The most frequent questions addressed by the criminal investigation officer to the victims of sexual crimes are included in the table below.

„Did you previously have sexual relations?" Question that is immediately followed by another one of the same nature: „If yes, with whom?"

Or: „Before the rape have you ever had sexual relations?"; „Did you previously have sexual intercourses? If yes, how many times and when was the last time you had one?"; „How often or how seldom did you have sexual relations?"; „Did the sexual intercourse happen with your consent or not?"; „While the accused was raping you, did you show physical resistance or did you shout for help?"; „Who took your clothes off?"; „How old were you when you started your sexual life?"; „Are you upset with the offender for what he did to you?" etc.

All these questions are not related to the circumstances of the case and have no importance for the qualification of the deed, but refer to the personal life of the victim. At the same time, we believe that these questions only show the lack of trust of the criminal investigation officers in the victims' statements, which discourages the victim from the very beginning, and she perceives it as blaming, biased attitude and violation of impartiality.

Also in this context, the criminal investigation officer asks one more question that has no relevance to the sexual crime committed: ***„Have you previously had sexual relations with the offender?"***

These questions only intimidate the victim and make it difficult for her to answer. Moreover, the victim makes statements under criminal liability, being forced to provide details of her personal life.

In a case when the victim knew the offender before and the crime was committed after a party, the criminal investigation officer also asked inappropriate questions: ***„Did you consume alcohol? If yes, in which quantities? Were you drunk at the moment of rape?"***

The availability of alcohol in blood can be proved by collecting some biological samples of blood for a blood test, which doesn't happen during the criminal cases, although this is objective evidence. And asking such a question can show the negative attitude of the criminal investigation officer towards the victim's statements, which intimidates the victim and proves his lack of trust in her statements.

Another question that shows the distrust of the criminal investigation officer towards the victim's statements and obviously challenges her psycho-emotional state is the following: ***„Do you think you are guilty for what happened?"***

It is hard to understand the need for such a question, when the interrogated person is the victim and not the offender. Certainly, we don't see the use of this question, and it is obvious that it is not clearing out any circumstance within the criminal investigation, it is not relevant in the context in which the victim states that she was submitted to a coerced sexual intercourse, and does not influence the qualification of the deed. This question is nothing but a way to psychologically intimidate the victim.

It should be mentioned that the questions that are asked to confirm the lack of trust of the criminal investigation officer towards the statements of the victim, and are not related to the de circumstances of the case are also addressed to the offender.

„Was the victim virgin when you had the sexual intercourse with her?"

Also, the criminal investigation body addresses denigrating and irrelevant for the criminal cause questions to the persons with mental retardation. Thus, in one of the criminal cases where the victim was a person with severe mental retardation, the criminal investigation officer asked her during the interrogation: ***„What X did to you was wrong? Did you like what X did to you?"***

These questions are probably addressed also because the criminal investigation officers are not trained in the field and do not know how to behave with a person with severe mental retardation. Still, if the statement of the victim with mental retardation is not important for the qualification of the deed, as she is not responsible for and is not aware of the actions that take place, we believe that such questions should be avoided in order to respect the dignity of the person.

At the same time, it should be mentioned that, considering the specifics of the cases analyzed, some clarification questions intimidate the victim, but they are necessary for the qualification of the deed and for the collection of evidence. For this reason, the criminal investigation officer should explain to the victim why he is asking a specific question and how important it is that she gives a correct and honest answer, that the goal of the question is collection of evidence.

„Did the culprit ejaculate?"; „Where did the culprit ejaculate?"; „Where did he introduce his penis?" etc.

Additionally, it should be pointed out that in case of the crimes related to sexual intercourse with a person aged under 16, the only question is whether the sexual intercourse was consented. For the rest, the criminal investigation officer has no questions, even though initially the victim claimed that she was raped, and afterwards stated that the sexual intercourse happened with her consent.

A very common practice (in 50% of the cases analyzed) is the additional interrogation of the victim by the criminal investigation officer. In 20% of these cases, the victims were additionally interrogated for 2-3 times. Although the Criminal Procedure Code does not forbid additional interrogation in situations when the criminal investigation officer needs to confirm specific circumstances, still, within the sexual crimes field additional interrogations provoke the revictimization of victims, when they are forced to go through the details of crimes again. Moreover, the criminal investigation officer does not give any plausible explanation to motivate the need of additional interrogation and the premises that led to it.

From the files analyzed it results that usually the additional hearings are requested when the local community is against the victim and shows lack of trust in her statements.

example 1

The offender is a priest and the victim is a minor (15 years old) and sings in the choir of the church..

The victim stated that after the church services the priest was inviting her to his house to have sexual intercourses with him. This situation lasted for half a year.

After the complaint was filed, the witnesses, the villagers claimed that this was not true, that the victim invented all that due to a conflict between her and another singer in the choir. The victim's aunt also stated that it was not true, but just some inventions of the victim.

According to the forensic evaluation, the hymen of the victim was damaged. A classmate of the victim stated that the priest gave the victim a phone and was calling her during the classes.

The victim was submitted to a social evaluation, to a psychological evaluation by the community psychologist, to a psychiatric examination and was interrogated as victim. Also, the victim was additionally interrogated for 4 times on this case and the hearings were held after the interrogation of the offender.

During the interrogations, the victim was repeatedly asked if she is sure that the sexual intercourse took place? Who wrote the complaint? Whether she signed it or not? Whether she was influenced by someone to file the complaint? „Did you make your statements today by yourself or someone influenced you?"

During an investigation procedure, the victim said that the offender was psychologically pressing her to withdraw her complaint, threatening her that if she doesn't change her statements, she will be hospitalized in a psychiatric clinic. The reaction of the criminal investigation authority was unique: *they made the offender to sign a receipt in which he commits not to make any physical or psychological pressure on the victim.*

Such situations discourage the victim and she avoids addressing the criminal investigation authorities, as from the very beginning nobody trusts her statements. Taking into account their attitude and that the victim is forced to prove she is telling the truth, she feels inferior in the relationship with the criminal investigation body. Moreover, this proves that both the local community and the criminal investigation body do not understand the social threat of the deed, qualifying the victim's consent as normal, although the victim is minor.

Also, it was identified that the additional hearings are not effective, since in the majority of cases the victim stated that the sexual intercourse was coerced, and the offender claims that the sexual intercourse happened with the victim's consent. The victim should only confirm or infirm the statements of the offender, which proves once

again that the criminal investigation officer has doubts about the victim's testimony, and insists to confirm one more time the veridical aspect of her statements.

Another procedural action practiced by the criminal investigation officers while instrumenting the sexual crimes is the confrontation between the victim/injured party and the offender/witness, performed in cases when the statement of the offender/witness is different from the victim's. In 144 all the criminal files analyzed, the procedural action of confrontation was identified, although it is not a recommended procedure in cases of sexual crimes. Such confrontation implies that the victim and the offender meet face to face to confirm or infirm their previous statements. Moreover, depending on how many offenders are recognized as suspects/accused in a criminal case, the confrontation is requested between the victim and each of the offenders. The number of confrontations in a criminal case also depends on the number of witnesses. Only in one criminal case, the victim was submitted to 12 confrontations, two with the suspects, and 10 with witnesses, who actually were friends with the suspects.

It should be mentioned that the confrontation is actually requested in all the criminal cases when the parties make contradictory statements, without taking into consideration the fact that the victim is a child, the way the crime was committed, its gravity and other circumstances. Although the Criminal Procedure Code provides that the criminal investigation body should ask clarification questions related to contradictory statements, de facto, during the confrontation, the victim is asked to tell what happened to her. The victim, in the presence of the offender, repeatedly narrates about the circumstances of the case, the same way she stated during the interrogation. After her testimony, the criminal investigation officer asks the accused if he agrees with the victim's statements. If he disagrees, he is asked to say what are the things he disagrees with. Thus, the victim is forced to retell the circumstances of the case, and the offender may only accept or reject her statements. In such situation, the principle of equality is violated. It should not be allowed that the victim makes statements on the circumstances of the case in front of the aggressor, which directly threatens her psycho-emotional condition.

The criminal investigation officer does not take into consideration the feeling of fear of the victim towards the aggressor, even when she expressly states that she is afraid of him. There are situations when the interrogation of the victim, the interrogation of the offender and the confrontation between them is performed in one day, being consecutive only in terms of time. It should be mentioned that only in two of the criminal cases analyzed the criminal investigation officer and the prosecutor refused to conduct the procedural action of confrontation. Their decision was based on the fact that this procedure will put the victim in a bad psychological situation and is a violation of the victim's rights. We believe that it is necessary to apply this practice in all the cases related to sexual crimes.

In some cases analyzed, the victims filed complaints about the fact that the offenders are or were threatening them with physical assault, if they don't withdraw their complaints. From the files analyzed the criminal investigation body / prosecutor was not informed about those complaints, not under the aspect of initiating a criminal case on the fact of threat, nor under the aspect of undertaking measures for the protection of victims.

example 2

An adult victim was raped and submitted to violent actions of sexual nature.

„The victim, coming from a socially vulnerable family, called the offender with a swear word („sag") in the presence of a witness. The offender felt humiliated and decided to punish the victim, raping her in public, in the presence of a witness. After he raped her, he took a champagne bottle cork out of his pocket and introduced it into her vagina. After all his actions, he asked her if she still believes that he is a „sag"".

The victim informed the criminal investigation authority about the deed. After being interrogated, she filed a complaint in which she mentioned that „The offender's wife is a criminal investigation officer and forces the victim to withdraw her complaint".

Nevertheless, the criminal investigation body, without taking any action, went directly to the confrontation of parties, since the offender was claiming that the sexual intercourse was consented. Moreover, the criminal case was terminated during the trial, due to reconciliation of parties.

Other evidence collected by the criminal investigation authorities when instrumenting the sexual crimes are the crime scene investigation protocols.

The analysis of the criminal cases shows that the crime scene investigation is performed by the criminal investigation authority on the day the complaint was filed only if the victim called the operative police forces. In the other of situations, the analysis of the crime scene can be made even several days after the crime was committed. Only in 20% of the criminal cases analyzed, crime scene investigation was undertaken when the victim filed a complaint or informed the criminal investigation body, but didn't show signs of violence. In all the other cases, in the same circumstances, the crime scene investigation did not take place.

The document which should reflect in detail the place of the crime and the way the crime was committed is the crime scene investigation protocol. From the cases analyzed it results that writing criminal investigation protocols is formal, with no detailed description of findings.

example 3

Although the criminal investigation was initiated on January 26, 2011 on the fact of committing a crime of rape – art. 171, par. (1) of the Criminal Code, the crime scene investigation took place on January 28, 2011.

In this case, the victim was a person with blindness since childhood, who was raped by the kindergarten security guard, in a building annexed to the kindergarten. Nevertheless, in the protocol of the crime scene investigation instead of the building where the rape took place, the building of the kindergarten was indicated, with specifications about the number of rooms, bedrooms and play rooms, the gym, the kitchen, the laundry room, the office of the principle and the place of the kindergarten in the village, while the annexed building, where the rape took place, was not even mentioned in the protocol.

In 90% of the files analyzed the protocols from the crime scene investigation were followed by annexes with a photograph, indicating the crime scene, and nothing more. Or, it should be specified that, the Criminal Procedure Code provides that during the crime scene investigation the criminal investigation body is supposed to collect evidence, objects, that would be recognized as corpora delicti. Still, this provision is not respected by the criminal investigation authorities.

The judicial practice provides that if the criminal investigation officer decides to collect objects, these generally are the victim's clothes and bedsheets. If the victim was hit with a blunt object, that object will be collected. Nevertheless, while conducting the study, we did not identify any criminal case in which biologic or material evidence would be collected. Or, if a detailed examination of the crime scene was made, with a proper collection of biologic evidence, the questions like „Where did the offender ejaculate? Did you swallow the sperm or not?" would disappear.

Another procedural action performed by the criminal investigation authority is verification of the victim's statements at the crime scene, which goal is not clear since it implies that the victim must go to the crime scene with the criminal investigation officer and make statements, indicating concrete places and actions that happened that day/night. In such situation, the victim is still influenced by the psychological and physical trauma resulted from the crime committed against her, and she has to narrate the facts repeatedly, indicating the place and the way the crime was committed, which means she has to go through the same circumstances again, aggravating her already existing trauma.

In two of the criminal cases analyzed, this procedural action was performed in the presence of the offender, with no clear reason why his presence was needed during that procedure and what was his status. It is also not clear who informed the offender about the date and time of performing that procedure. Thus, there are several questions with no answers, but which bring up doubts about the credibility of that particular action and its goal.

In some regions, the criminal investigation body records this procedure in video/audio format, i.e. records in video/audio format the statements of the victim referred to the circumstances of the cause, indicating concrete places where and in which way the crime took place. If the action is not registered in video/audio format, a photographic chart is made, with the pictures of the victim at the crime scene indicating the positions and ways in which the crime was committed. In the case of a crime of coerced oral sexual in-

tercourse between mother and son, the victim, being the mother of the offender, was photographed in the position she had at the moment of crime commission, which is obviously a serious intimidation and revictimization of the victim. In another case, the victim was photographed on the back seat of the car, showing the way she was raped, posing with her legs up. In the third case, verification of statements at the crime scene was made for a victim aged 83 and bedridden, who was also photographed on her bed in the position she was raped.

Such actions are performed also in cases when the victim is a minor. Thus, in a criminal case referred to perverted actions, the victim aged 8, in presence of her mother, was showing the criminal investigation officer how the perverted actions took place. In order to reconstruct the deed, the victim was lifted on an iron barrel, to demonstrate which were the actions of her step father in the moment of crime.

It is a good sign that not in all regions the criminal investigation body performs this action, but its practice even in 2-3 regions already implies a vicious habit, which repeatedly places the victim in a vulnerable situation towards the crime committed and humiliates her status of a woman.

Important evidence in the identification of a sexual intercourse or perverted actions of sexual nature are the forensic, biological and chemical evaluations. Of all 240 criminal cases analyzed, the examinations were mandatory required in the cases of rape and violent actions of sexual nature. In the cases of perverted actions, the expertise was required only if the victim was a minor aged under 14.

As for the crimes related to sexual intercourse with a person aged under 14, the criminal investigation body requested the forensic expertise report only when the victim filed the complaint about rape. If the forensic report does not indicate corporal injuries, the criminal investigation body orders the initiation of criminal investigation on the fact of committing the crime of a sexual intercourse with a person aged under 16. Thus, in 35 criminal cases analyzed it was identified that the victim filed the complaint on the fact of rape, but after the analysis of the forensic reports' findings, the criminal investigation was initiated on the fact of sexual intercourse with a person aged under 16.

It should be mentioned that the forensic expertise is preceded by a forensic report, prepared after the first examination of the victim. After the development of the forensic report, if it identifies the availability of corporal injuries, the criminal investigation body requests the examination. Taking into account that the period for criminal investigation on such cases is short, the period given for tests is also short. Thus, the evaluation is requested within maximum 2 weeks from the moment when the forensic report is received. And the forensic report is developed in a period of 7 - 10 days.

After analyzing the results of forensic evaluation, it was established that, although the way the crime was committed, the circumstances and the victims' injuries are all different, still, the way the examination is made and the research methods are identical. In this regard, it should be mentioned that the forensic expertise's results are not individualized considering the specifics of each criminal case, but have practically the same content, except for the conclusions, which are different.

In this regard, art. 145, par. (1) of the Criminal Procedure Code provides that if the evaluation is requested, the criminal investigation body or the court should summon the parties and the expert assigned with the forensic examination to inform them about the object of the evaluation, and the questions which the expert must answer, in order to explain them the right to make comments on these questions and ask for their modification or completion. At the same time, the parties are explained about the right to ask the appointment of an expert recommended by each

party, who would participate in the evaluation. A protocol is also made in this regard.

Although the law expressly provides these moments, only in 1% of the criminal cases analyzed the victim was informed about the request for the forensic evaluation, and in none of the cases victims asked questions to the experts, which actually makes us conclude that the information of the injured party about her rights and obligations is formal, only to attach the protocol to the case files.

As the content of the criminal cases analyzed shows, in such criminal files forensic evaluation is requested to identify corporal injuries and the condition of the hymen, and the biological examination – to identify the blood type and whether there were traces of narcotic substance or other chemical elements in the blood etc. It should be mentioned that during some criminal cases 5-6 forensic reports were developed and none of the results was communicated to the victim. She found out about these reports only when the criminal investigation was terminated and when she was informed about the case files or in court. Or, the Criminal Procedure Code provides that both the request for forensic evaluation and its results should be communicated to the victims of crimes. The criminal investigation authority does not fulfill this obligation. In 90% of the cases analyzed the criminal investigation body did not inform the victims about the request and the results of the forensic, biological and chemical examinations.

Forensic evaluations are all made following the same model and structure, but the language used sometimes differs, being intimidating for the victim. Here is an example: „Her hymen is ripped long time ago". In most of the cases the forensic doctor confirms that the hymen is damaged, and indicates the approximate period of time from the damage. Thus, it would be appropriate if the forensic doctors, when writing conclusions, avoided specific expressions that might intimidate the victim and make her feel a psychological discomfort.

In order to perform the examination, the criminal investigation body should collect the biological evidence in the shortest time, to avoid the loss of relevant information. Thus, in a criminal case the victim stated that she was forced to consume some alcoholic drinks, mixed with a chemical substance that made her sleep, so she was not aware of what was happening. But when she woke up in the morning, she felt general corporal pain. In this case a biological expertize was requested, to answer the following question: „Are there any sleeping drugs in the injured party's blood?" The conclusions of the biological test report indicated the following: „The analysis of the blood sample, collected from XX, to identify the availability of the sleeping drugs cannot be performed, due to the following: a) the blood sample was collected from the injured party after 48 hours from the crime commission; b) according to the identification protocol, the liquid blood was partially lost during inaccurate transportation and the quantity left was used for the biological analysis". From this statement, it can be concluded that the criminal investigation body, as well as the forensic doctors should collect the samples or ensure their collection in the shortest time possible, otherwise the biological traces are lost.

A separate place in those files has the request for psychological-psychiatric evaluation. Within the analysis of the criminal files we concluded that although the psychological-psychiatric evaluations are requested to certify the psychological condition of the victims of sexual crimes, still, the questions to the evaluation committee, consisting of psychiatrists, do not have the goal to identify the psychological condition of the victim, but to exclude her guiltiness, confirm that she does not have any psychiatric disease and to see whether she is not lying. By requesting such a procedure, the vulnerable position of victims of sexual crimes and the attitude of the criminal investigation body towards them is confirmed. Moreover, the criminal investigation authority does not explain in any way the need to request the psychiatric-psychological evaluation.

From the criminal files analyzed it was concluded that the psychiatric examination is requested when the criminal investigation officer has doubts about the statements of the victim, specifically when the victim is a minor, there are no signs of violence, as well as in case of crimes that refer to sexual harassment, perverted actions and marital rapes. It was also established that contrary to the provisions of the Criminal Procedure Code the victim is not informed about the request for examination and the questions prepared. She is only informed about the request for the psychological-psychiatric examination. These examinations are usually requested in out-patient or stationary conditions. From the files analyzed, it can be concluded that all the psychiatric-psychological examinations were made in out-patient conditions, which means that the victim was not hospitalized, but was going to the commission to be evaluated.

Among the questions addressed to experts during the psychiatric-psychologic expertise we can mention the following: „Does the victim suffer from a psychical disease? If yes, what is the diagnosis? Does the victim show deviations from the normal psychic condition for that age? Does the victim show signs of mental retardation? If yes, which are these? Does the victim have the capacity to perceive the things around? Is the minor victim capable to make statements?"

But here is a conclusive example of a rape crime. The victim was invited by her colleague to his room in the students' dorm, to tell her the schedule of their classes. After being forcedly held in his room for several hours, and coerced to several sexual intercourses, the victim jumped over the window from the 4th floor, in order to escape from the rapist. The criminal investigation officer requested the accomplishment of the ambulatory psychiatric examination, for which he proposed the following questions:

1. What is the psychical condition of the victim after the events that took place?

2. Taking into consideration the psychologic-psychiatric condition of the injured party at the moment, is it possible to define the psychologic-psychiatric dysfunctions and their relation to the rape?

3. Identify the specific features of the type and gravity of particular non-pathologic behaviors of perturbational nature, and their importance in the structure of the victim's behavior after the rape.

4. Assess the capacity of the victim to adequate self-defense, by showing physical and psychical resistance in case of rape, establishing the character and the significance of the rapist's actions.

5. Establish the type and the peculiarities of the affective and volitional reactions during the event that is important for the judicial qualification of the deed, of the anomalies aspect and of the nature of features of the injured party.

6. Define the capacity to adequately understand the situation and her own actions, in the objective circumstances of the rape, voluntary management of actions and awareness of the consequences of own behavior in case if the injured party would have been psychically constrained.
7. Attest whether the injured party had the psychiatric-psychological capacity to adequately perceive the actions that took place in relation with the rape, specifically the events before, during and after the rape.
8. Was the injured party to understand the content of her statements during the interrogations?
9. Identify whether at the moment of rape, the injured party was psychically influenced.
10. Taking into consideration the level of sincerity of the injured party, can her statements during the interrogation within the criminal investigation be considered veridic?

From the list of these questions it is not clear what did the criminal investigation officer want to identify with this psychiatric expertise, since the questions are difficult and have no sense. Moreover, some questions are addressed in order to confirm the statements of the injured party, as for example: ***„Identify whether at the moment of rape the injured party was psychically influenced; Taking into consideration the level of sincerity of the injured party, can we consider veridical her statements made during the interrogation within the criminal investigation?"***. In some cases, along with the mentioned questions, the criminal investigation officer addressed additional questions to find out whether the victim fantasizes or has inspiration abilities.

The lack of trust of the criminal investigation authorities in the victims' statements was also identifies in cases of elderly victims, who were also submitted to psychiatric-psychological examination. In 27 cases analyzed with elderly victims the psychiatric-psychological evaluation was requested, and the following questions were asked to the experts: ***„Taking into account individual and age peculiarities, as well as the specific conditions of the crime, was the injured party able to perceive correctly the important circumstances of the case? Taking into account the individual psychological peculiarities of the injured party and the age, could she show resistance? Is the injured party likely to exaggerate, distort the facts or fantasize the reality?"***

From all the criminal cases analyzed none was identified in which the criminal investigation officer asked questions about the psychological-psychiatric condition of the victim after the crime and whether she must be hospitalized or needs a treatment. The questions asked are more targeted to exclude the victim's guilt that she filed a complaint and made statements on the crime, which is an obvious clack of trust of the criminal investigation officer in the victim's statements. ***In 13 of all the criminal cases analyzed*** related to the marital rape, it was identified that

the criminal investigation officer requested the psychiatric-psychological examination only for concluding that the victim is not lying, asking the experts the following question: „Is the victim predisposed to exaggerate the facts or maybe she was influenced by someone, due to her depression and fear of her concubine?" Usually, the psychiatric-psychological evaluations are performed in approximately one week after the request and none of these evaluations identified that the victim could lie while making statements or that she wasn't a victim of sexual crimes.

It should be mentioned that, the state covers the expenses for the psychiatric examinations from the budget of the prosecution and the police inspectorate, the payments being made in the account of the psychiatric institution. Still, during the analysis, we identified cases when the victim had to pay by herself for the psychiatric-psychological evaluation. Thus, in some civil actions initiated, compensations of expenses for the psychiatric-psychological evaluation is requested in amount of 1.187 lei, which is an obvious violation of the victim's right to a fair trial.

Along with the mentioned examinations, in some files we identified that the DNA test was also requested. The victim was a blind person, with mental retardation, who was raped, got pregnant and gave birth to a child. The victim and her mother requested the DNA test in order to prove that the person indicated by them was the rapist. The criminal prosecution authority gave them the following answer: „Also, the General Police Inspectorate informs you that it does not have the possibility to pay the amount of 9.600 lei for the DNA test in private institutions". Indeed, these expenses can be transferred to the criminal investigation authority, in case they don't have a definite budget already. Still, the state authorities in charge should anticipate such situations and plan the budget accordingly, in order to avoid such financial problems and ensure the victim's right to a fair trial.

3. 7. Specifics of criminal investigation in the cases of victims of sexual crimes aged between 14-18

Crimes, the victims of which are usually persons aged between 14 - 18 years old:

- rape committed knowingly against a minor (art. 171, par. (2), let. b), CC);
- violent actions of sexual nature against a minor (art. 172, par. (2), let. b), CC);
- sexual harassment (art. 173, CC);
- sexual intercourse with a person aged under 16 (art. 174, CC);
- perverted actions (art. 175, CC).

48 cases of all the files analyzed were initiated following the elements of the crime provided by art. 174 of the Criminal Code (sexual intercourse with a person aged under 16), this being the most common component of crimes involving minors. Then follow the crimes of rape against a minor, violent actions of sexual nature, perverted actions and sexual harassment (only one criminal case).

It should be mentioned that the number of sexual crimes in which the victims are minors is critically high in the Republic of Moldova, ***representing 60% (122 files) of all the cases analyzed***. For this reason, we decided to analyze separately the crimes committed against this category of victims. At the same time, in 90% of the files analyzed, the minors ended up to be victims of sexual crimes due to inactivity of the prevention factors: family, school, social workers. Moreover, in the majority of cases they come from socially vulnerable families, in which parents do not take care of children but set up other priorities (mostly alcohol), from families with only one parent or families in which parents work

abroad. Nevertheless, we are fully convinced that if the prevention factors got more involved into the life of minors, these crimes wouldn't have happened and the minors would have been more informed, more careful, with another attitude towards the things around them.

Unfortunately, it was identified that the crimes related to perverted actions, sexual harassment of minors, rape and violent actions of sexual nature exist even in families. It usually happens between daughters and stepfathers or even biological fathers, although not that often. The saddest thing is that in many cases mothers were aware of the sexual abuse committed by their husbands, but they preferred not to inform the criminal investigation authorities and took no action in this regard. Being asked by the criminal investigation officer why they didn't call the police, they answered that they were scared, didn't want the community to find out, and gave other reasons that are irrelevant, but demonstrate the vulnerable environment in which the minor lives, and the reasons why she became a victim.

example 1

Relationship: daughter (16 years old) – mother – stepfather.

When the minor reached the age of puberty, her stepfather started to compliment her physical aspect. One day, when her mother was not home, her stepfather started to touch her genital organs, kiss her and had a sexual intercourse with her. Afterwards, the sexual relations continued when the victim's mother was absent from home.

One day, at her return, the victim's mother found both of them in bed and she understood what was happening. After that incident, the mother explained to the victim that the offender was the only one who financially supported the family and both of them should do everything to make him feel good, convincing the victim to accept sexual relations in 3.

This situation lasted for 2 years, until the victim became an adult, and from what she stated, she didn't want to tolerate that situation anymore. But she didn't know how to stop that „relationship in 3", since she was living with her mother and her stepfather, and had no other place to go. Thus, she decided to seek help from her biological father, went to visit him and told him about the entire situation.

The criminal investigation authority was informed. The complaint was filed by the wife of the victim's biological father. After filing the complaint, the victim continued living with her mother and her stepfather.

The criminal investigation was initiated against the stepfather, on the bases of art. 174, par. (1) of the Criminal Code – sexual intercourse with a person aged under 16. The mother was interrogated as witness and denied all the statements. Immediately after the offender was declared a suspect, the victim was sent away from home and went to live with her grandmother.

Later, the victim changed her statements and withdrew her complaint.

The conclusion is obvious: the entire file does not reflect any respect for the victim's rights, but the social environment, the reason she became a victim and the lack of action from her mother and the law enforcement institutions.

Also, during the investigation of the sexual intercourses between the minor-stepfather or minor-biologic father, when qualifying the deed, the fact that the victim is afraid of her biologic or stepfather and that her consent is viciated and not given by her good will is not taken into consideration. Still, it should be mentioned that in such cases good practices also exist, when the criminal investigation authority, despite the circumstances, does not change the qualification of the deeds.

In another case, the mother stated that she knew that her minor daughter lives in concubinage with a person, but she has three children and she has no time to deal with the girl's education.

The analysis of the files related to the crimes provided by art. 174 of the Criminal Code, shows that in most cases parents are aware of the sexual life of their children, but they take no action in this regard, and the law enforcement institutions are informed only when the victim goes to see the family doctor with pregnancy. Usually, the minor victims involved in sexual relationships give up school, do not attend classes during a long period of time, and the teachers do not take any action, although they are aware of the reasons.

When the parents are abroad for work and minors live by themselves, the social workers get involved only if they are requested by the criminal investigation authority for assessing the living conditions of these children and their social portrait.

One of the biggest problems in cases when the victim of sexual crime is a minor, is the qualification of the deed as sexual intercourse with a person aged under 16 instead of rape. Nevertheless, there are districts, where we could not find any case of a crime related to sexual intercourse with a person aged under 16. We believe that the wrong qualification of the deed is a systemic problem, in which the fear of potential physical violence coerces the person to have a sexual intercourse, and the law enforcement authorities perceive this as a voluntary consent, making it a qualification element.

example 2

The minor victim informed the criminal investigation body that she was coerced by 4 persons to have sexual intercourses with each of them. The victim also stated that the rape took place in a house, at the domicile of one of the offenders.

During the interrogation, the criminal investigation officer asked her why didn't she try to escape or show resistance. The victim answered that they were 4 people and she was afraid they might have abused her. Nevertheless, the criminal investigation was initiated on the fact of committing the crime of sexual intercourse with a persona aged under 16. The outrageous thing is that only one of the offenders was hold accountable, 2 of the offenders got the status of witnesses, and one was excluded from the criminal investigation.

example 3

The victim was urgently transported to the hospital, with acute pain in her stomach. She stated that she was raped by 2 people in a dormitory. The forensic analysis report indicated bruises on her heck and breast. Nevertheless, the criminal investigation was initiated based on art. 174, par. (1) of the Criminal Code.

It should be mentioned that there is also good practice in this sense, when the criminal investigation body does not requalify the deeds despite the circumstances.

example 4

A minor victim, filed a complaint to the criminal investigation authority stating that she was raped and submitted to violent actions of sexual nature by 2 persons, which resulted in corporal injuries. In the forensic examination report, the forensic pathologist indicated that corporal injuries were found on the victim's body, but they were not caused in the circumstances and in the conditions indicated by the victim in her complaint, and they are not specific to rape.

Nevertheless, criminal investigation was initiated base on art. 171, par. (2), let. b, c), and art. 172, par. (2), let. b and c) of the Criminal Code, and a new forensic examination was requested.

In the end, the offenders were convicted to 8 and 9 years of imprisonment.

Another problem in qualifying the crimes refers to the consent of the victim that was highly-inebriated. Often, the criminal investigation is initiated on the fact of committing the crime of a sexual intercourse with a person aged under 16, without checking the level of alcohol in the victim's blood. In this context, it should be mentioned that, in general, the problem of the crime qualification refers to the competence of the criminal investigation authority, which later is verified by the prosecutor and then by the court. Still, if the victim states that ***„they took advantage of my highly-inebriated situation and raped me"***, this is a circumstance that needs to be proved by the criminal investigation officer with evidence, otherwise there is an impression that the situation was not examined from all its aspects.

The cases analyzed under the aspect of violations of the minor victims' rights are generally similar to the cases of adult victims. At the same time, taking into account that the victim is a minor and the Criminal Procedure Code provides for additional protection levels of their rights, the analysis of such criminal cases revealed specific violations. Thus, if the victim is a minor, specific mandatory requirements are established for her interrogation. She must be interrogated in the presence of her legal representative and a psychologist/pedagogue. Nevertheless, the police first solicits explanations from the minor victim in the absence of the legal representative, which means she makes statements with violation of the procedural law, without her rights to be granted. Also, it was identified that in some cases the pedagogue or the psychologist was not present at the interrogation, which is an obligatory requirement defined by the criminal investigation authority. This is again a serious violation of the procedural rights. Although this violation is not frequent, the existence of 4-5 cases should already catch our attention and be removed.

In the cases of minor victims, the criminal investigation officers also make additional interrogations of victims, if it is necessary for the criminal case, without taking into consideration that the additional interrogation causes a strong psycho-emotional stress to the victim. In these cases, the confrontation is also requested, although it is not recommended. The confrontation is requested even in criminal cases when the offender is the biologic father or mother's concubine, even if the victim initially stated that she is afraid of them. Thus, in such cases, the criminal investigation officer forces the victim to make statements during the confrontation, pressured by the presence of the offender, without considering having a definite approval of the victim and the conditions in which this approval was given.

It should be mentioned that from all the cases analyzed, only in one the minor victim was interrogated in special conditions, the rest of the victims were interrogated in general conditions.

Another problem identified in the criminal cases related to sexual crimes against minors is the permission for the legal representative to participate in the criminal trial, and appointment of a person as legal representative. The participation of the legal representative of the minor in the criminal trial is clearly provided by law and does not refer to the consent of the minor in appointing a legal representative or in filing a request in this regard. Nevertheless, in most of the cases the legal representatives of minors are their mothers and fathers, and the criminal investigation authority does not take into consideration the relationships between mother-daughter, father-daughter. Only in one case, the criminal investigation officer did not approve as legal representatives the minor's parents, stating that it was not in the best interest of the child, as they have hostile relationships. The social worker was appointed as legal representative, which is actually a good practice and a proof that the criminal investigation officer examined in details all the circumstances of the case, including from the perspective of the best interest of the child.

But other cases were also identified, when the criminal investigation officer accepted as legal representative the father or the mother of the victim, although the victim stated that they have a hostile relationship. Moreover, they were submitting her to physical violence.

In the case of a minor who ran away from home being afraid of her father (***„I ran away from home, because my father is constantly scolding me and beating me"***), the criminal investigation officer accepted as legal representative the father of the victim, without taking into consideration the high interest of the minor. Moreover, he did not take any action to identify domestic violence in this family. In another case, as legal representative was accepted the mother of the minor, who knew about the sexual abuse of her concubine against the minor, but did not inform the criminal investigation authority. Therefore, how can a mother represent the procedural rights of the minor victim, if she could not protect the child's interest before the criminal investigation authority got involved.

Another problem in criminal files that include minors is the termination of criminal cases due to reconciliation of parties, especially if the reconciliation is made between the offender and the legal representative of the minor injured party, and the latter does not participate in the reconciliation process. It should be mentioned, that in 99% of the files analyzed that refer to sexual crimes, the reconciliation of parties took place, the majority of cases being terminated in court. As for the reconciliation of parties at the criminal investigation stage, the prosecutors mostly reject the requests for termination due to reconciliation of parties.

Conclusions

To resume the information presented in this chapter, we can conclude that during the investigation of criminal cases that refer to sexual crimes the victim is not treated with fairness, being subjected to discrimination in relation to their granted rights. Moreover, the criminal investigation body does not sufficiently ensure the victims' rights, and often violates their rights granted by law.

Thus, it was established that the victims of sexual crimes are not involved in the investigation of cases, which actually transforms them into passive participants, whose rights and interests are neglected. They are not informed about the initiation of the criminal investigation and are not issued any confirmation paper about the acceptance of their complaint. Also, contrary to the legal provisions, the victims are not informed about the questions that are suggested for the evaluation, and neither about the evaluation report. In this same context, it should be mentioned that the victims are not informed in any way about the course of the criminal investigation, especially about the exclusion of persons from the criminal investigation, requalification of the deed or other decisions of the criminal investigation authorities/ prosecutors, issued within a criminal case. Last but not least, in a big number of criminal cases analyzed, the victims were not properly involved in the termination of criminal cases, i.e. they were not informed that the criminal investigation was terminated and that the file was sent to court.

Although in the majority of cases the victims of crimes are informed about their rights and obligations, most of the times they don't use the opportunity to be informed. This happens due to the lack of qualified legal aid for the victim, they don't have an attorney who would contribute to the efficient respect of their rights. Moreover, the lack of qualified legal aid transforms the victim from an active participant into a passive participant, or simply a mean to continue the criminal procedural action.

The victims of sexual crimes are not granted in any way the right to psychological counselling, and medical care is provided to them only in the limits of the mandatory health insurance, in case the victim has such kind of insurance. If the victim does not have the medical insurance, she is only sent to medical check-up, mainly for obtaining the forensic report.

As for the probation means, it should be mentioned that in regard to the ways of evidence collection and interrogation, no different tactics were identified when it comes to minor and adult victims. The criminal investigation authority insures the rights of the minor victims only in the limits of imperative norms provided by the Criminal Procedure Code. In rest of the situations the minor victims were not interrogated in special conditions or at least favorable conditions for their psychological comfort. During the interrogations, the fact that they are minors is not taken into account and they are asked the same questions as the adult victims, especially in relation to their personal life, circumstances that are not relevant for the criminal case. Moreover, when addressing the minor victims, the criminal investigation authority does not make any procedural difference between the range of rights granted to minor victims aged between 14-16 years old and 16-18 years old.

It was also identified that the criminal investigation officers abusively request verification of the victims' statements at the crime scenes. They create photographic charts, excessively request for unreasonable additional hearings, confrontations between the victim and the offender, not taking into consideration the relationships between the victim and the offender, as well as the fear of the victims of their offenders. During the criminal investigation, there is no particular action plan, the age of the victim and her condition as well as the nature of the crime is not taken into account. The criminal investigation limits its activity only to strictly necessary actions without an individual treatment of the victim according to the circumstances of the case.

As for the examinations made within the criminal cases analyzed, we concluded that these are made under general conditions, with no individual approach, using the same research methods. Moreover, the criminal investigation officers bring no argument to prove the actual need of a psychiatric-psychological examination of the victim, without having a psychological assessment report. Although the psychological-psychiatric evaluation reports must be done to identify the psychological condition of the victims and the effect of the crimes on them, which already means prejudicial consequences, the criminal investigation officers request such evaluations only to exclude the guiltiness of the victims.

In the end, we should mention that the statements of the victims of sexual crimes are not treated as important by the criminal investigation authority, which is the reason why the victims of sexual crimes do not address law enforcement authorities.

Recommendations

- analyze all the aspects of the sexual crimes creating a relevant legal framework, appropriate for the protection of victims of this category of crimes, such as provision of mandatory legal aid, provision of psychological counselling and medical assistance, interrogation of victims in friendly conditions, defining clear criteria for additional interrogation of victims, avoiding the procedure of confrontation with the sexual aggressor during the criminal investigation and trial.

- include the medical services inherent to examination and treatment of the victims of sexual crimes in the mandatory insurance policy.

- inform victims on decisions issued on the criminal case, initiated of the fact of crimes related to sexual life.

- explain efficiently and clearly the rights to the victims of sexual crimes.

- organize information campaigns for victims on how to inform the criminal investigation authority and their rights at the phase of informing, initiating and developing the criminal prosecution.

- bring to the attention of the victim the decisions of the criminal investigation bodies related to interruption of the criminal case, release of a person from criminal prosecution and termination of the criminal cause.

- carefully treat the testimonies made by the victims during the criminal cases referring to sexual crimes.

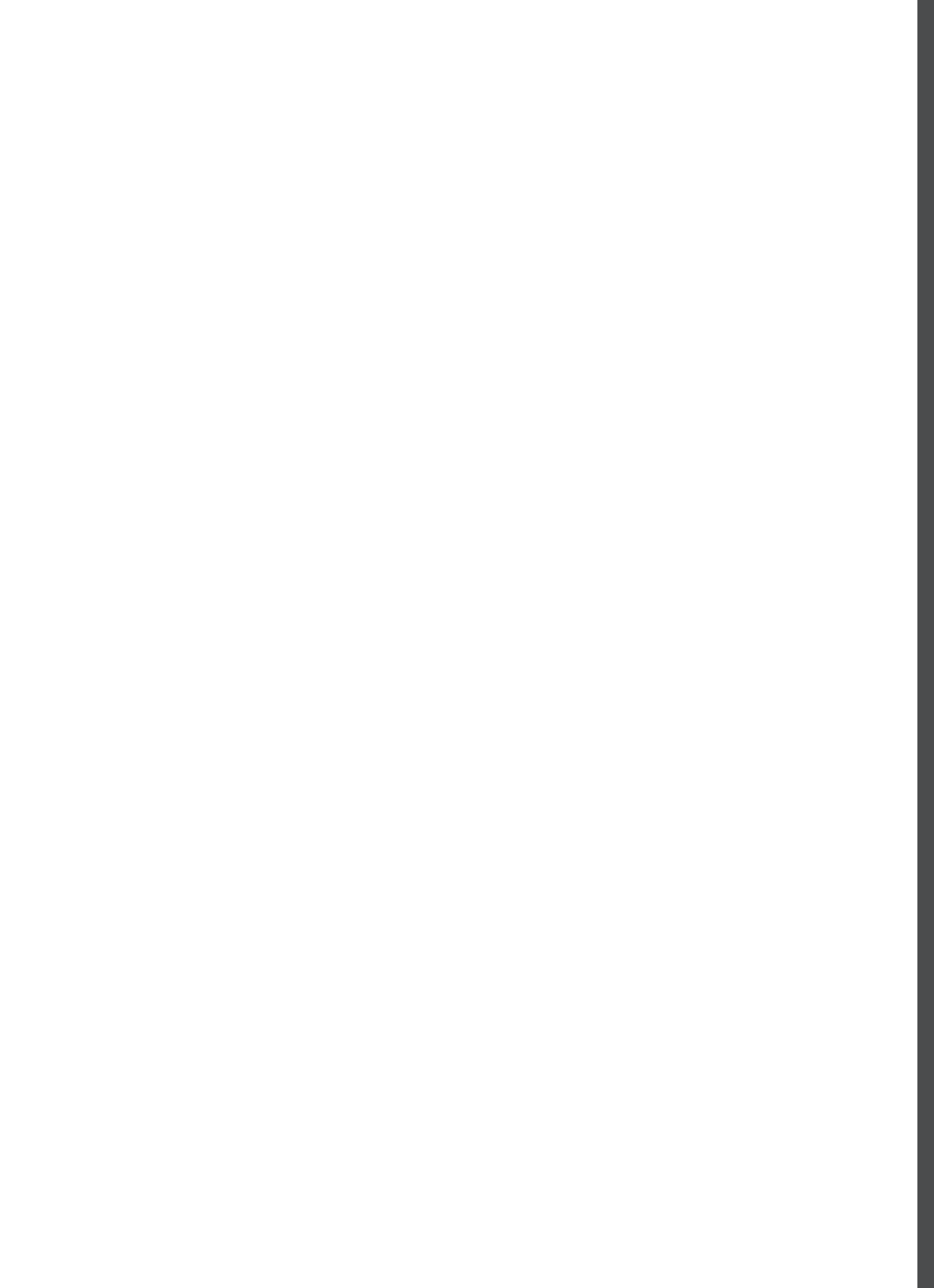
- organize an information campaign for victims on their rights at various stages of the criminal investigation, the ways to express their rights during the criminal case examination, explained in an accessible language for victims.

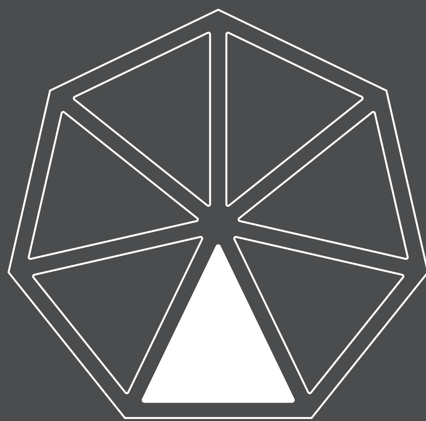
- explain the prosecutors' decision on interruption of the criminal case, release of a person from criminal prosecution and termination of the criminal cause.

- inform the victim on the way they can appeal against the actions of the criminal investigation authority or prosecutor.

- interrogate the victims of sexual crimes in friendly conditions, avoid interrogating victims several times.

- request for the psychological evaluation of the victim and use the results of such evaluation as an evidence similar to the forensic examination.
- request for the psychiatric examination only in case there are doubts related to the clear judgement of the victim of sexual crime.
- individualize the forensic examination, so that it results from the circumstances of each cause.
- develop informational support related to the rights of victims of sexual crimes.
- avoid to request explanations and statements from victims related to their sexual life beyond the criminal cases.
- provide effective defense and respect of the procedural rights of children victims of sexual crimes.
- more active implication of foster care authorities, teachers and psychologists in the examination of criminal cases related to sexual crimes when the victim is a minor.
- amend the legislation to avoid termination of the case as a result of reconciliation of parties in cases of criminal crimes.
- avoid accepting parents as legal representatives of the minor, in case of a conflict between them or in case the legal representative puts physical/psychological pressure on the minor victim.
- take efficient action towards protection of the victims of sexual crimes when necessary.
- provide training to police officers, criminal investigation officers, prosecutors, judges on ways of analyzing and examining cases related to sexual crimes under the aspect of respect of victims' rights.
- implement information campaigns for victims of sexual crimes on their procedural rights during the criminal investigation.





4

Examination of sexual crimes in court

4. Examination of sexual crimes in court

4.1. Timeframe for judging the case

The national legislation does not provide for a timeframe for judging cases related to sexual crimes, therefore, the courts examine the files following some general timeframes, i.e. in due time. Based on the analysis of files within this study, it can be concluded that in the Republic of Moldova the courts do not violate the reasonable terms, but on the contrary, such criminal cases are examined in due time, the average period of case examination is 6 months. Only in one case, both the criminal investigation, as well as the case judgement lasted in total for 2 years, and during the hearings in court the victim stated that: „***It has been long time since the moment of the crime, and I don't remember how the things happened anymore***". Thus, violating the reasonable examination term of a case affects the quality of the statements both of the injured party and of the witnesses. Or, the court issues the decision based on the evidence analyzed in court.

Timeframe violations were not identified even when the criminal case is registered and put on hold before trial. The courts respect the term of 3 days, as provided in the Criminal Procedure Code. The term for the appointment of preliminary hearings is also respected.

It should be mentioned that the case examination term results from the 4 criteria as follows: ***the court's conduct, parties' conduct, the complexity of the case and the importance of the case for the parties***. But following the provisions of the Criminal Procedure Code, the timeframe for judging a case also results from the judgement procedure:

- general procedure;
- based on evidence collected during criminal investigation;
- based on the agreement of guilt recognition.

In this regard, it should be mentioned that 40% of the criminal cases analyzed are examined in general procedure, in case if the culprit does not plead guilty. This term varies depending on the locality where the case is examined. For example, in Chisinau the criminal case is examined in average during one year, while in other cities it takes approximately 4-5 months. This probably depends on the workload of the judge. The judging of criminal cases based on evidence collected during criminal investigation or based on the agreement of guilt recognition lasts 2-3 months.

As for the examination of appeal and re-appeal cases, it should be mentioned that only 30% of the decisions issued are challenged with appeal and 20% with re-appeal. The term for case examination in appeal is in average 3 months, similar to the examination of cases in re-appeal.

4.2. Ensuring the rights of the victims of sexual crimes during the case trials

In accordance with the Criminal Procedure Code, during the examination of the case in court the victim has ***the same rights*** as during the criminal investigation process. The victim can participate in court hearings starting with the preliminary hearing and till the issue of the decision, having the right to be informed about the case files, ask questions, make objections or file requests and challenges.

During the examination of the case, the court does not ensure the expression of rights and obligations of all participants in the trial. From the analysis of the criminal files it was identified that the rights of the accused are more efficiently insured rather than the rights of the victims. In this regard, we conclude that the court never examines the criminal case in the absence of the culprit,

but if the victim is absent from the hearings, the court admits the possibility to examine the case in her absence. Moreover, the court never makes sure whether the victim needs an attorney, while it is mandatory for the culprit to be provided with an attorney.

As for the examination of cases in the absence of the injured party we must stress out several gaps. During the preliminary hearing, according to the protocols analyzed, the injured party is absent in the majority of trials. The reason of the injured party's absence and the possibility to postpone the hearing for a later examination in presence of the victim is not even under discussion.

In accordance with the Criminal Procedure Code the participation of the victim in the examination of the criminal case is mandatory, otherwise the contradictory feature of the criminal case is not ensured. In 90% of the total of criminal cases analyzed, the victims of sexual crimes are not present at the preliminary hearing or at the first court hearing for the examination of the case.

The court has the obligation to summon victims, and the prosecutor ensures the presence in court. The victim is not summoned for the examination of the case, and the prosecutor, when asked during the court hearing about the absence of the victim, usually reports the following: ***„I contacted the victim on the phone and she said she will be present. I have no information about the reason of her absence"***. Or: „The injured party called me and said that she cannot travel, since there is no transportation from her locality". If the victim repeatedly misses the hearings, the prosecutor informs the court about the following: ***„I don't know why the injured party was not forced to come"***.

It was impossible to check whether the victim was informed about the court hearing, although, the fact that she was contacted by phone will not necessarily ensure her present in court.

The court questions the possibility to examine the case in the absence of the victim only during the general examination and if needed, cancels the examination of the case in the absence of victim and schedules another hearing. At the same time, it should be mentioned that if the victim made statements and the hearing is cancelled for judiciary debates, and the victim does not attend the next examination session, the court approves examination of cases in the absence of the injured party, without questioning the reason of absence and the possibility to examine the case without the victim.

Another fundamental right of the victim is the right to have an attorney. This right ensures the effective expression of the procedural rights and guarantees. From the total number of criminal files analyzed, only 2 victims had an attorney at the judging phase, who was contracted by the victim by signing an agreement for legal aid provision. In none of the cases the victim was assisted by an attorney who provides free state legal aid, although the law provides for this right. Moreover, in none of the cases the victim was asked whether she wants to be assisted by an attorney who provides free state legal aid, or she prefers the hearing to be rescheduled until she contracts an attorney.

The lack of qualified legal assistance for victims of sexual crimes leads to an inefficient respect of the victims' rights. In the absence of an attorney, the victims cannot have an active position during the examination of cases, and their participation is limited only to statements required during the court hearings.

An important phase in the judicial analysis is the explanation of rights and obligations to the participants to the criminal trial. Although in the protocol of the court hearing it is indicated that the rights and obligations were explained to the victim, we believe that these explanations are not effective. The reason for this conclusion is that the victim does not have an active position during the criminal trial.

The right of the victims of sexual crimes to intimacy is expressed by not allowing the disclosure of the personal data, and of the circumstances of the criminal case, since the sexual life of a person is an important aspect of the private life. The law enforcement bodies that investigate and examine the cases related to sexual life have the obligation to take all the necessary measures for excluding disclosure of personal data about the victims of sexual crimes. The judgement of cases included in the category of sexual crimes usually takes place in closed hearings, respecting the provisions of art. 18 of the Criminal Procedure Code.

Nevertheless, it should be mentioned that from the total number of criminal files analyzed, in all the cases the preliminary sessions took place in public hearings, and during the preliminary session, the court was deciding whether the trial will take place in closed or public hearings.

In 20% of the total number of files analyzed, the cases were examined in public hearings, and in 10% of the protocols of the court hearings it was indicated that ***„The case is being examined in public/closed hearings"***, without specifying which is the exact way the case will be examined. Thus, we conclude that the victim's right to intimacy and inviolability of private life is violated when the criminal case from the category of sexual crimes is examined in public hearings.

As for the involvement of victims in the process of issuing decisions during the court hearings, it should be mentioned that in most cases the victim, being summoned as provided by law, is absent from the case examination, or submits a request and solicits the examination of the case in her absence. When the victim participates in the case examination, the court avoids asking for her opinion even in issues related to moving to another procedural phase or whether she has questions to witnesses or the culprit.

The Criminal Procedure Code, grants the victim the right to make objections against the actions of the court. Based on the protocols of the court hearings, in none of the criminal cases analyzed the victim objected when the court didn't ask for her opinion, although the court is obliged to do it. In the same context, we can mention that if the injured party is a minor, she participates when she has to make statements, in all the other situations, her legal representative participates in the examination of the case.

As for the participation of the victim in judicial debates or in the phase of remarks, in all the cases she agrees with the requirements of the prosecutor, if she didn't file a request for reconciliation.

It should be also mentioned that the law does not provide for the psychological assistance to the victim within the court, except the cases when the victims are minors. We believe that all the victims of sexual crimes, no matter their age, should be granted the right to be assisted by a psychologist during the criminal trial.

4.3. Ways to analyze evidence while judging the case

As provided by the Criminal Procedure Code, the evidence is examined in the process of judicial examination. In the majority of cases, first the court examines the evidence of the prosecution. The way to analyze evidence is suggested by the prosecutor, who proposes to start analyzing evidence with the interrogation of the injured party. In none of the criminal cases analyzed the injured party did not object against the order of analyzing evidence.

Following the general procedure, after presenting the accusation and reading the in-

[15] Decision no. 17 of 7.11.2005 of the Plenum of the Supreme Court of Justice of the Republic of Moldova on judicial practice in cases form the category of sexual crimes.

dictment, the injured party is heard. In the opinion of the authors, taking into account the specifics of the sexual crimes, along with the judgement of the case in a closed hearing session, the court should take action to ensure the inviolability of the private life of the injured party and the conditions required for a favorable psychological atmosphere. In this regard, it should be mentioned that only in one criminal case, during the hearing of the victim the prosecutor asked for the removal of the culprit from the court room, as his presence could influence the psycho-emotional condition of the victim. In all the other cases the victim made statements in the presence of the culprit. Making statements in the presence of the culprit, and retelling the traumatic experience emotionally affects the victim, submitting her to revictimization or to secondary victimization.

In a case initiated on the fact of violent actions of sexual nature, the culprit stated in court that the victim asked him to have an oral sexual intercourse, during which the victim was ***„dying of pleasure”***. These statements were made in the presence of the victim.

During the interrogation of the victim, the culprit asked her: ***„Why do you say I forced you, if you were moaning of pleasure?”*** After this question the victim asked for a break.

P.S. On this case the court convicted the offender, deciding upon the maximum imprisonment punishment and totally accepted the civil action in amount of 45 000 lei.

After making statements, the victim is asked clarification questions and most of them are from the prosecution. In some cases, the prosecutors ask 32 questions, some of them being irrelevant to the object of the cause, do not influence the qualification of the deed and are only related to the personal life of the victim. ***The prosecutor asks questions about the previous sexual relations, whether she was virgin or not, if she drank alcoholic drinks, how much she drank and whether she has any claims towards the culprit or not.***

From the files analyzed it was concluded that the court has a passive position when formulating and addressing questions to victims. Still, in case the prosecutor does not formulate questions related to personal life, these questions are asked by the court. Thus, based on the answers provided in the statements of the injured party, the court addressed the following questions:

1. How much did you drink that night?
2. Have you previously had sexual relations?
3. Whom did you have sexual relations with?
4. Do you have any claim towards the culprit?

Also, in a criminal case on the fact of committing the crime of rape and violation of domicile, the victim answered the court's question in the following way: „Finally the rape took place", which means that the court's question was: ***„Finally the rape did or did not take place?"***

In a criminal case:

The prosecutor asked – 34 questions;

The court asked – 18 questions;

The culprit's attorney asked – 15 questions.

Total: 67 questions addressed to the victim during a hearing in court.

If the victim states that she has no claims towards the culprit, she forgave him and does not want him to be held accountable, the court does not ask any question regarding the reason of reconciliation and whether someone pressured the victim to reconcile with the culprit. Moreover, of the total number of 240 cases, in 12 criminal cases the victim filed a request for action to be taken against the culprit and his family, because they were pressuring her to withdraw her complaint and change her statements. The criminal investigation officer and the prosecutor did not do anything for examining the request and ensure the protection of the victim. Although such a request is attached to the case files, when in court, the victim still insists on the termination of the criminal investigation due to reconciliation. The court accepts the request for reconciliation without identifying the reason of the reconciliation or whether the request for reconciliation has anything to do with the pressure from the culprit or his relatives.

It should also be mentioned that in all the criminal cases analyzed the court did not reject any question from the culprit, attorney or prosecutor, although some questions were related to the personal life of the victim and had no connection to the examination of the case, which confirms the passive position of the court.

During the trial victims are also additionally interrogated, usually after the hearing of the culprit, in order to clarify some moments. Considering the questions addressed, the victims are actually asked to confirm or infirm the statements of the culprit.

As strange as it might sound, but in many cases, it was established that if the victim changes her statements during the judging of the case, the prosecutor insists to read her statements made during the criminal investigation, informing the victim that she bears criminal responsibility for her statements. After reading the statements of the injured party and making remarks on criminal responsibility for false statements, the prosecutor asks the victim whether she still confirms her statements made in court. Contrary to the specifics of the criminal cases related to sexual life, the prosecutor or the court do not address questions to victims for identifying the circumstances that forced the victim to change her statements. It is also not taken

into account whether the culprit is investigated in freedom and could make pressure on the victim to withdraw her complaint. Or, very often the culprit is in close relations with the injured party (concubine, stepfather, husband etc.) and in such situations, it is very easy to „convince" the injured party to change her statements.

After the victim's hearings, other evidence of the prosecution is analyzed. According to the protocols of the court hearings, the court reads out the list of the written evidence (examination reports, documents), without reading the content, and without analyzing which circumstance is confirmed by the particular evidence, and obviously, without asking the opinion of the victim on the pertinence and concluding nature of the evidence, which is not an efficient way to respect the victim's rights. Moreover, since the victim is not a legal specialist and has no attorney, she cannot understand the evidence that was read and doesn't know which objections she might have in this regard.

Also, if the injured party participates in the examination of the case, the witnesses are interrogated in her presence.

During the interrogation of the culprit, the victim is also present, if she participates at the case examination. But her participation is passive, she does not ask any question.

At the same time, it should be mentioned that if the victim participates in the examination of the case in general procedure, she has the possibility to ask questions, make objections etc. But if the case is judged bases on the agreement of guilt recognition or based on evidence collected during criminal investigation, she does not participate in any way in the examination. Her statements made during the criminal investigation become the evidence analyzed by the court for deciding upon punishment. This fact is due to the legislation in the field and not due to procedural errors.

As for the victim's participation in the judicial debates, it should be mentioned that in the majority of cases, after the interrogation of the victim, she does not attend the trial in court and the court does not even question the examination of the case in absence of the victim, and does not solicit the prosecutor to communicate the reasons why the victim is absent, but continues the examination of the criminal case. If the victim participates in the criminal case examination and in the judicial debates phase, she supports the position of the prosecutor, without having a distinct appreciation of evidence. Even in case of a court petition related to compensation of moral and financial prejudice, the victim is not given the possibility to express herself regarding the civil action.

In the cases when the victims of sexual crimes are minors, the legal representative of the injured party participates in the case trial. In none of the criminal cases analyzed the opinion of the minor victim on the decisions taken within the case examination was asked. Although, starting with the age of 14, minor victims are granted with the possibility to express their procedural rights. [16]

A systemic problem in judicial practice is related to the minor victim's consent when the criminal investigation is terminated due to reconciliation of parties. In 90% of 122 criminal cases analyzed that include minor victims, the request for termination of the criminal case due to reconciliation of parties was filed by the legal representatives of the injured parties, with the following content: ***„With this I request termination of the criminal investigation, due to the fact that we reconciled with XXXX, he paid the compensation of the financial and moral prejudice and I have no other moral or financial claim towards him"***.

[16] Art. 75, Criminal Procedure Code.

From the content of the requests, that is identical in all cases, it is clear that the legal representatives of injured parties file the requests from their own name, without taking into consideration that the moral and financial damage was caused to the minor victims and compensation of these damages must be made to the minor injured party. Moreover, the minor victim herself should decide on the amount of the prejudice and on the fact whether it was totally compensated or not. But, this is not taken into consideration by neither the legal representative of the minor injured party, nor by the prosecutor, nor by the judge. Also, in all 122 criminal cases analyzed that included a minor victim, the court and the prosecutor took the decision of termination based on the request of the legal representative and of the culprit, and did not ask for the opinion of the minor victim about the termination of the criminal trial, or whether she forgave the culprit and has/doesn't have anything to claim.

At the same time, although the compensation of financial damage is established on the basis of concluding evidence that is submitted, the moral damage is decided by the victim based on her own pain. In this case, it is not clear how did the legal representative of the minor injured party evaluate the moral prejudice, and the court accepted the reconciliation without asking the opinion of the injured party/victim.

4.4. Court decisions issued after examination of sexual crimes

From all the cases analyzed only 4 resulted in acquittals by the court. One of them was appealed in a hierarchically superior court, and 3 other acquittals were approved by the hierarchically superior courts. All of them were issued by the Hancesti District Court.

The fact that in 99% of the cases the court issued conviction sentences proves the state's zero tolerance policy towards the crimes of sexual nature. At the same time, although the number of convictions is high, 30% of the sentences are related to termination due to reconciliation of parties.

As provided by art. 61, par. (2) of the Criminal Code, the punishment aims at re-establishing the social equity, educating the convicted, as well as preventing the commission of new similar crimes by both the convicted and other people. It still has to be identified whether the punishment applied is efficient and whether it reaches its goal.

The following decisions are issued in cases of sexual crimes:

- termination decisions;
- acquittal decisions;
- conviction decisions.

Termination decisions

In 120 of all the criminal cases analyzed the victim filed a request to terminate the criminal case due to reconciliation of parties, of which, in 83 cases these requests were accepted, in 37 cases they were rejected and the offender was convicted, and in 1 case the culprit was acquitted. One criminal case was terminated due to the death of the offender.

Total of cases: 240.

Requests for termination filed by the victim due to reconciliation of parties – 120.
Reconciliation requests approved – 83.
Reconciliation requests rejected – 37.
1 case terminated due to the death of the person.

The court issued reconciliation decisions in all cases, even in those where the victim was a minor or incapable, accepting the requests for termination submitted by the legal representatives. After the analysis of the termination decisions and the protocols written, it was identified that the court does not try to find out what was the reason of the reconciliation and whether the victim was or wasn't influenced by the offender or his relatives.

In the termination decisions, the court indicates the following:

„Taking into consideration the circumstances mentioned above, the court concludes that there are reasons for terminating the criminal trial.

The culprit is accused of committing the crime provided by art. 171, par. (2) of the Criminal Code, which, following the provisions of art. 16, par. (3) of the Criminal Code, is attributed to the category of less serious crimes, and following the provisions of art. 109 of the Criminal Code, reconciliation is the procedure that excludes criminal responsibility for committing light or less serious crimes, and in case of minors for committing serious crimes".

Based on the availability principle, the court must accept the requests of the injured parties regarding the reconciliation with the culprit, who does not reject the reconciliation, and this reconciliation should not come against the provisions of art. 109 of the Criminal Code.

This specification is identical in all the reconciliation decisions, which means that the court accepts the requests and approves the reconciliation without analyzing the specific circumstances of the case, without identifying which will be the effect of the reconciliation on the victim and whether the reconciliation request was filed with no influence from the offender or his relatives. The court issues the same specification even in situations when the victim requested for action to be taken towards the offender and his relatives, who insist on withdrawal of her request and change of statements. Moreover, the courts do not take into consideration the fact that, although the victims filed a termination request due to reconciliation, they make different statements when in court. And despite this fact, the criminal trial terminates.

On December 17, 2012, the court received a reconciliation agreement between the culprit and the injured party with the following content: „With this, we confirm that the injured party XZ and the culprit XX accused of the rape that took place on XXXXX, have reconciled.

The effects of the reconciliation agreement were explained to us.

We have no claims towards each other on this case".

On December 26, 2012, the victim filed a request about the following: „I, XZ, year of birth XXXXX, explain that on December 15, 2012 the culprit XX called me at home, threatened me with physical abuse and humiliated me using uncensored words. Around 02:00AM his wife called me and woke me up. I kindly ask you to help me, as for the moment I have the second degree of invalidity with a fractured leg and cannot defend myself".

During the judicial debates, the prosecutor asked for the termination of the criminal case due to reconciliation, and the victim stated: „I believe it would be better if culprit is convicted, as he terrorized my family. I request a softer punishment of the culprit".

During the hearings, the victim mentioned that the agreement was not written by her, but by a police officer, who read it out loud and she signed it.

Nevertheless, the court issued the decision to terminate the criminal trial.

This demonstrated a formal attitude of the court, which although having a reconciliation agreement signed by the victim, did not take into consideration that the will of the victim is different, and that she wants the culprit to be held accountable. In addition, the victim stated that the culprit terrorizes her family, threatens her and humiliates her. But these statements were not taken into consideration neither by the prosecutor, who asked for the reconciliation, nor by the court that decided upon reconciliation. Moreover, the court did not clarify the circumstances related to the participation of the police officer in the drafting of the reconciliation agreement, in case the criminal file was forwarded to the court, and if the police officer was the one who explained the reasons of reconciliation, although the law does not give him this right in such circumstances.

This is not the only case when the victim files requests reporting the pressure made by the culprit, and the court, without taking into consideration these requests, terminates the criminal case. Moreover, such circumstances are not analyzed by the court not even in cases involving minors; the court does not ask them whether they agree or not with the reconciliation. The request for termination of the case is signed and submitted by the legal representative of the victim, stating the following: ***„I ask the court for termination of the criminal case, because I forgave XX, and I have no moral or financial claims towards him”***. Or: ***„I ask the court to terminate the criminal case, because XX has compensated the moral and financial prejudice”***.

During the examination of termination requests and reconciliation agreements the court does not ask the minor's approval in this regard, although she is 14 and has a limited capacity of expression. Also, while examining reconciliation requests the court does not take into consideration the amount of the moral and financial prejudice indicated, and who decided upon it, when the moral prejudice represents physical and psychical pain of the minor victim, and not of the legal representative. The court decides upon termination of the criminal case without analyzing all the circumstances mentioned above.

The decisions on termination of the criminal cases are not explained by the reasons of reconciliation, and compensation of moral and financial damage. If the victim initially stated that she was influenced, the court does not examine whether the reconciliation was voluntary or the victim was submitted to some pressure in this regard, which means vitiation of consent during the reconciliation agreement.

Acquittals

From all the files analyzed, only in 4 criminal cases the court decided upon the acquittal of the culprit. In one of the cases the court decided upon the acquittal of the person for not identifying the objective and subjective side of the crime, but the court of appeals quashed the decision and convicted the person, deciding upon a real punishment of imprisonment. This decision was supported also by the Supreme Court of Justice.

Marital rape

The victim filed a complaint stating that her husband, who lives separately, came to her house drunk, threatened her and raped her. As a result, she requested his criminal prosecution.

The offender stated that the victim came home from abroad, invited him to her house to talk about some common property issues, since they are going through a divorce procedure. After the discussion, they had a consented sexual intercourse. Moreover, he stated that the victim, who was his ex-wife, wanted to get all their common goods in her property, and for reaching this goal she filed complaints against him.

The first-level court acquitted the offender, due to the lack of the objective and subjective side of the crime.

The Court of Appeals quashed the decision of the first-level court, stating the following: „The court did not take into consideration the fact that previously, several protection orders were issued by the court to the victim due to physical violence practiced by the offender, and also, didn't take into consideration that the forensic report indicated an ecchymosis on the neck of the victim, which confirms the practice of physical violence by the offender. Moreover, referring to this ecchymosis, the first-level court decided that it is not the result of the rape crime".

Thus, in a criminal case, the first-level court acquitted the offender, explaining its decision by the lack of objective and subjective side. The Chisinau Court of Appeals quashed the decision of the first-level court and convicted the person. The Supreme Court of Justice quashed the decision of the Chisinau Court of Appeals and sent the case for retrial. After retrial, the Court of Appeals rejected the request of the prosecutor to support the decision of the first-level court. This decision was approved also by the Supreme Court of Justice.

Below is the story of another case with acquittal decision.

The victim filed a complaint stating that XX and XZ, while being in her house drunk, took advantage of her drunk condition, and had sexual intercourses with her in front of the minor children.

The culprits stated that they met the victim in the bar of their locality, and after that the victim invited them to her house to drink a glass of wine. They consumed 6 liters of wine, and then the victim had a consented sexual intercourse with XX, and then with XZ. None of them forced her. No signs of corporal injuries were found on the victim's body.

The victim stated in court that during the criminal investigation she made false statements, because the police officer threatened her with taking her children away from her. Also, she stated that she and XX are lovers for a long time. In that specific night, her husband was at work in another locality, and she invited XX and XZ to her house. After they consumed alcoholic drinks she had a consented sexual intercourse with XX, and then with XZ. The sexual intercourses did not take place in front of the minor children, as they were in another room.

The next morning her husband came home from work and found the three of them sleeping in the house. She was afraid of her husband and said that she was raped, and the husband called the police.

Therefore, the victim stated that she does not want XX and XZ to be held accountable.

Taking into consideration the correlation between the acquittal decisions and the conviction decisions, we have no reason to say that the court decided upon unfounded acquittals, without examining and analyzing the evidence.

Conviction decisions

In the majority of cases related to sexual crimes, the courts condemn the offenders for the actions incriminated. In this study, we wanted to identify whether these convictions reach the goal of the punishment provided by the Criminal Code, i.e. restoration of social equity, re-education of the accused, as well as prevention of new crimes commission by the culprits and other persons. The execution of the punishment should not cause physical pain, neither it should humiliate the dignity of the convicted person.

In this regard, it should be mentioned that in all the cases the court issued the decision of conviction. Nevertheless, after the application of such punishment, in 68% of cases art. 90 of the Criminal Code was used, the execution of punishment being suspended, with a probation period. In case of crimes provided by art. 173 (sexual harassment), and art. 175 (perverted actions) the court also applied art. 90 of the Criminal Code in all criminal cases, execution being suspended, but with a probation period shorter than the period of the punishment. In case of crimes provided by art. 174 (sexual intercourse with a person aged under 16), only in 2 files the court decided upon the execution of the real punishment, without application of art. 90. Finally, in case of the crimes provided by art. 171 (rape), and art. 172 (violent actions of sexual nature), in 50 % of cases the courts found it necessary to apply art. 90.

In accordance with art. 90 of the Criminal Code, if, when deciding upon the imprisonment punishment for a term of maximum 5 years for crimes committed intentionally and of maximum 7 years for crimes committed by imprudence, the court ***taking into account the circumstances of the cause and the person of the accused, concludes that it is not rational that the culprit follows the execution of the punishment, it can decide upon conditional suspension of the punishment applied to the accused, mandatorily indicating in the decision the reasons of the conviction with conditional suspension of the punishment execution and the probation period***, or, according to the case, the trial period. In this regard, the court decides upon the non-execution of the punishment applied, if during the probation period or trial term the culprit does not commit another crime and will justify the court's trust through exemplary behavior and honest work.

The control over the behavior of the offenders convicted with conditional suspension of the punishment execution is made by the competent bodies, and over the behavior of military – the particular military commandment.

Thus, when applying art. 90 of the Criminal Code, the court must identify the circumstances of the case and to provide the reasons that lead to the application of art. 90. Here is how the court motivates its decision:

In accordance with art. 485, par. (1) of the Criminal Procedure Code, when issuing a decision in a case that involves a minor, the court should also examine the possibility of releasing from criminal punishment or conditional suspension of the punishment execution. Based on the mentioned above, the court finds it reasonable to apply the punishment of imprisonment with conditional suspension of the punishment execution to both culprits, and to appoint a trial period.

Thus, the court convicted one culprit to 5 years of imprisonment with a trial period of 4 years, and another culprit was convicted to 4 years of imprisonment with a trial period of 3 years.

Thus, from the court's motivation it is not clear which are the exact circumstances that made the court take the decision to apply art. 90, par. (1) of the Criminal Code. At the same time, it should be mentioned that there are criminal cases, in which the court provides the reasons that led to the application of art. 90, which is an example of good practice.

„...Taking into account the general circumstances described above, the court decides that the imprisonment punishment will be applied to the culprit XX with conditional suspension on the basis of art. 90 of the Criminal Code, because:

The culprit committed a less serious crime for the first time; he actively contributed to the crime investigation and examination of the case in short time; he honestly repents for his actions; he compensated the moral and financial damage. In addition, the culprit got only positive characteristic, was not previously hold accountable for criminal or contravention actions; he is married and his wife is not employed; he has two minor children in his care; he has a socially useful activity in his locality, being a good householder and family man, as well as a responsible parent.

Taking into account the general circumstances described above the court believes that correction and education of the culprit XX is possible without the immediate execution of the imprisonment punishment, giving him a chance, by suspending the punishment for a probation period of two years."

Still, we identified the justification for applying the art. 90 of the Criminal Code only in one decision. Moreover, contradictory decisions were found, as the one presented below.

„... Also, the court establishes that the case is lacking the circumstances provided by art. 90, par. (1) of the Criminal Code, and therefore, it is not possible to decide upon the conditional suspension of the punishment. The extenuating circumstances of the case made the court to take the decision on application of a punishment reduced to a minimum sanction for committing a crime. At the same time, the same circumstances cannot be take into consideration again for the application of art. 90, par. (1) of the Criminal Code ..."

Nevertheless, the court makes the decision to apply art. 90 of the Criminal Code, with suspension of the punishment execution.

At the same time, the court decides upon the application of art. 90 of the Criminal Code also in cases when the victims of crimes are minors.

A minor victim filed a complaint in which she stated that 2 drunk persons had sexual intercourses with her against her will, using their physical strength against her.

The criminal investigation terminated for one of the offenders due to reconciliation of parties, the other offender was convicted to 5 years of imprisonment, by applying art. 90 of the Criminal Code, and suspending the execution of punishment for a probation period of 3 years.

Although the victim was a minor, the court did not motivate in the case files the acceptance of the reconciliation, neither the application of art. 90 of the Criminal Code. Thus, the question is whether the goal of the criminal trial was reached and whether the victim was actually granted a fair trial.

Application of art. 90 is decided even in situations when the criminal case includes two persons accused of two crimes.

Case study

The victim filed a complaint about being raped by 3 persons. They lured her to their house and forced her to consume alcoholic drinks. 2 of them had sexual relations with her in natural and perverted form, and the third one was holding her so that she could not run.

After filing the complaint, the criminal investigation was initiated on the fact of crime that falls under art. 171, par. (2), let. c), as well as art. 172, par. (2), let. c) of the Criminal Code. According to the forensic reports many ecchymosis and excoriations were found on the victim's body, as well as ruptures of hymen and anus.

Nevertheless, the prosecution issued an order to stop criminal investigation against one of the offenders based on the fact that he did not have a sexual intercourse with the victim, although he was holding her all that time. After excluding one person from the criminal investigation, the criminal investigation authority initiated a criminal case against the victim, based on art. 313 of the Criminal Code, specifically for making false statements.

The criminal case on the fact of false statements was initiated based on the forensic examination reports, which show that the sperm of the third person was not found in the victim's vagina, and on the basis of the statements of the other two offenders, who confirmed that he didn't have a sexual intercourse with the victim. The person released from criminal investigation was later interrogated as a witness.

The victim filed a request in which she asked for protection, due to the pressure from the offenders and their wives, but her request was never examined but simply attached to the file.

The court decided to terminate the criminal investigation for one of the offenders on the basis of art. 171, par. (2), let. c) of the Criminal Code, due to the withdrawal of the complaint, and based on art. 172, par. (2), let. c) of the Criminal Code, the offender was convicted to 5 years of imprisonment with conditional suspension of the punishment on a period of 5 years.

As for the second offender, the criminal investigation was terminated on the basis of art. 171, par. (2), let. c) of the Criminal Code, due to the withdrawal of the complaint, and on the fact of committing the crime provided by art. 172, par. (2), let. c) of the Criminal Code, he was convicted to 5 years of imprisonment with suspension of the punishment execution, for a probation period of 2 years.

In the sentence, the court motivated the difference between the probation period in the following way: „... Unlike X, Y had a more generous behavior towards the victim, he only tried to have a perverted sexual intercourse, but stopped when asked by the victim. The latter already suffered from the incriminated deeds. As a student, graduating from high-school and being under arrest, Y did not have the possibility to take the graduation exams and was expelled from high-school. Although he did not plead guilty for the deeds incriminated by the prosecutor, Y sincerely expressed his regrets, he reconciled with the victim and compensated the moral and financial prejudice ...”

The analysis of this file raises many questions.

- Legality of removing the person from the criminal investigation, when the commitment of an element of a subjective side already assumes a completed act.
- Legality of initiating a criminal investigation against the victim. Or, this is a mean to intimidate her (after initiating the criminal investigation against the victim, she withdrew her complaint on the fact of rape).
- Failure to examine the request in which the victim asked for protection.
- Which were the reasons for the termination of the criminal case on the fact of committing the crime provided by art. 171, par. (2), let. c) of the Criminal Code, given the fact that art. 276 of the Criminal Procedure Code does not provide that the criminal investigation on the fact of committing the crime of rape can be initiated only after the victim files a complaint.
- The reasons that favored the application of art. 90 of the Criminal Code.
- The motivation of the court decision related to the behavior of one of the culprits.

It should be mentioned that in 7 criminal cases the court of appeals quashed the decision of the first-level court about the application of art. 90 of the Criminal Code, and decided upon a real punishment to the accused, by imprisonment.

Another situation is the examination of the criminal case following the procedure provided by art. 364[1] of the Criminal Procedure Code. In this simplified procedure, the offender has to comply with the mandatory condition and accept his guilt and the evidence gathered against him by the criminal investigation body. Although this circumstance is mandatory for the application of this procedure, which has as effect shortening of the punishment limits by one third, the court appreciates this circumstance as softening, with a double appreciation of the situation.

We may conclude that if the court issues a decision of conviction and unreasonably applies art. 90 of the Criminal Code, the goal of the criminal punishment in relation with the victim of sexual crimes is not accomplished. As a result, the victim is not granted restorative justice.

4.5. Compensation of the moral and financial damage (efficiency of the civil action)

Compensation of moral and financial prejudice caused to the victim as a result of a crime is an essential element of the victim's right to a fair trial. In this regard, the Criminal Procedure Code provides the victim with the right to file a request to be approved as a civil party and initiate a civil action within a criminal case.

Although this right is fundamental for the rehabilitation of the victim and for the compensation of the prejudice, taking into consideration the specifics of sexual crimes, it was established that the expression of this right depends on the position of the criminal investigation body. As mentioned before, in 99% of the cases analyzed the victim was not assisted by an attorney during the examination of the case, and communication of her rights and obligations was more like a formal procedure. In reality, the victims did not benefit from their actual rights, since they didn't even know about them. Thus, in several districts – Cantemir, Hancesti – and in Chisinau municipality, the criminal investigation officer was asking the victim during the interrogations whether she wanted to be approved as a civil party. In all the cases, she was signing requests, that were forms prepared in advance by the criminal investigation body, and in several files, there were typical court petitions.

For the moment, this attitude of the criminal investigation body is the most effective in the expression of the victim's right to compensation of moral and financial prejudice. Still, only in 68 of 240 cases analyzed the civil action was requested, of which, 1/3 were terminated due to reconciliation of parties, and the court did not specify in the termination decisions which was the moral and financial prejudice that was compensated.

Although the civil action was requested, the probation of the moral prejudice quantum was left to the decision of the victim. The victim, not being assisted by an attorney, simply didn't know they way to prove the moral prejudice, and indicated only a fixed amount, without bringing evidence in this regard.

Nevertheless, the decisions on those criminal cases are different:

- courts fully accept moral and financial prejudice;
- courts partially accept moral and financial prejudice;
- courts reject the request for compensation of financial prejudice and totally/partially accept the compensation of moral prejudice;
- courts accept the civil action, but the quantum of the compensation will be decided in the civil procedure.

In this context, it was established that in most situations the courts, by a separate decision, approve the civil actions of the victims, when the offenders are convicted. In this regard, it should be mentioned that, for example, in Cantemir district the court approved the civil action in the amount requested and decided upon its compensation by the offender.

4000 lei financial prejudice and 15 000 lei moral prejudice as a result of committing a rape – the court fully accepted;

498 lei financial prejudice and 50 000 lei moral prejudice as a result of committing violent actions of sexual nature – the court fully accepted;

50 000 lei moral prejudice as a result of committing a rape – the court fully accepted;

5000 lei moral prejudice as a result of committing a rape, kidnapping and dragging – the court fully accepted;

500 lei financial prejudice and 10 000 lei moral prejudice as a result of committing sexual harassment – the court fully accepted;

50 000 lei moral prejudice as a result of committing a rape and violent actions of sexual nature – the court fully accepted;

5 000 lei moral prejudice and 265 de lei financial prejudice as a result of committing a rape – the court fully accepted;

5000 lei moral prejudice as a result of committing a rape – the court fully accepted;

30 000 lei moral prejudice as a result of committing a rape – the court fully accepted;

50 000 lei moral prejudice as a result of committing a rape – the court fully accepted.

Also, civil cases were initiated to solicit compensation of the moral prejudice in amounts of ***2000 lei***, ***3000 lei***, and all were accepted.

The highest amount for the moral prejudice caused that was allowed by the court decision is of 50.000 MDL, but the moral prejudice in this amount was only granted in 5 cases of those examined. It should be also mentioned that the solicitation of the amount of 5.000 lei as moral prejudice is not an effective fulfillment of the prejudice, but the court does not have the competence to raise the quantum of the moral prejudice ex-officio, also taking into account that the victim defines this amount based on her own trauma. Also, the reason for soliciting a low amount of moral prejudice is due to the lack of professional legal assistance to the victim and the lack of information about her rights.

As for the financial prejudice, it should be mentioned that in very few cases the request for compensation of such prejudice was filed, and in most cases the request was rejected, due to the fact that the victim did not submit evidence that would confirm the quantum of the financial prejudice. In some cases, the amount of the financial prejudice also includes the payment for the forensic examination made for the judicial evaluation purposes, when it is the state's obligation to cover these expenses. In most of the cases analyzed, the courts reduce the amount of the moral prejudice from 100.000 lei to 10.000 lei, form 10.000 lei to 5.000 lei, justifying this in the decisions.

Another problem related to the victim's right to compensation is the general admission of civil actions, and the amount decided by the court in a civil case. We believe that it is a vicious practice that violates the victim's right to a fair trial. During the criminal investigation, the victims of sexual crimes face a bureaucratic unfriendly system, being forced to go through negative emotions all over again. Their participation in a civil trial for the probation of the amount of the moral and financial prejudice also contributes to stressful emotions related to the trauma cause by the rape.

In case of termination of the criminal case due to reconciliation of parties, the court does not mention in the termination decision what was the amount of the moral and financial prejudice paid to the victim of a sexual crime.

Conclusions

During the judgement of the criminal cases related to the category of sexual crimes, the victims have the same rights as at the phase of criminal investigation. It was established that at the phase of examination of the criminal cases in court the victims of sexual crimes participate only when making statements and confirm or infirm the statements and solicitations of the prosecution. Passive implication of victims of sexual crimes is a result of the lack of qualified legal assistance and lack of information in an accessible language on the victims' rights.

Also, during the examination of cases in court, the victims do not get any psychological assistance, and the courts do not create favorable interrogation conditions for the victims by removing the culprit from the court room. Interrogating the victim in the presence of the culprit and asking questions about her private life affects the psychological condition of the victim and infringes her dignity.

A problem that is similar to the one from the criminal investigation phase is asking questions about the intimate life of the victim that have no relevance to the circumstances of the cause. Nevertheless, the victim repeatedly answers such questions.

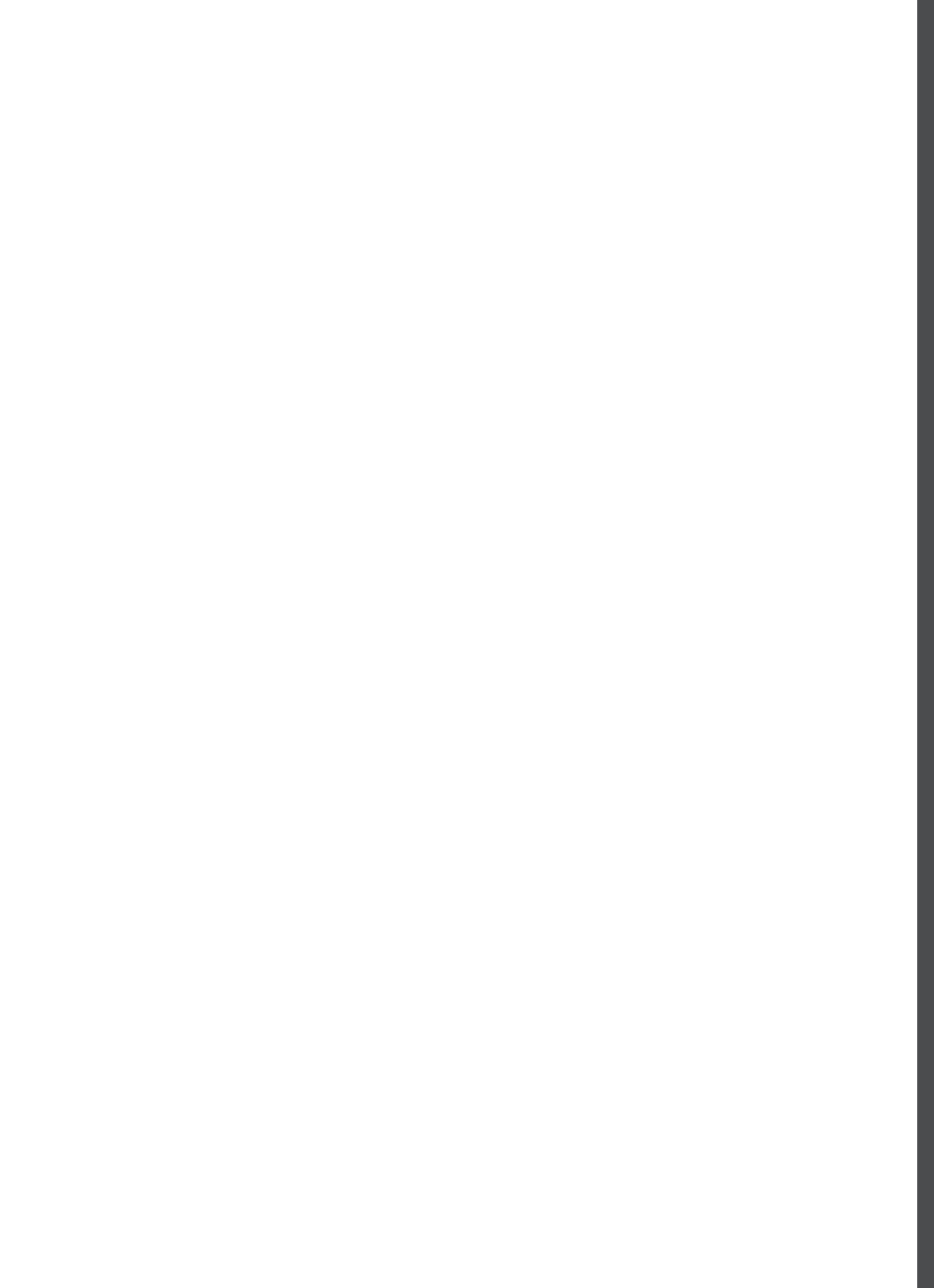
As for the decisions issued, we concluded that the courts do not explain the reasons for accepting requests for termination of cases due to reconciliation of parties, stating in the decisions only the legal provisions in this regard, without analyzing the reasons and motives that led to reconciliation and what will be the effect of the reconciliation on the victim.

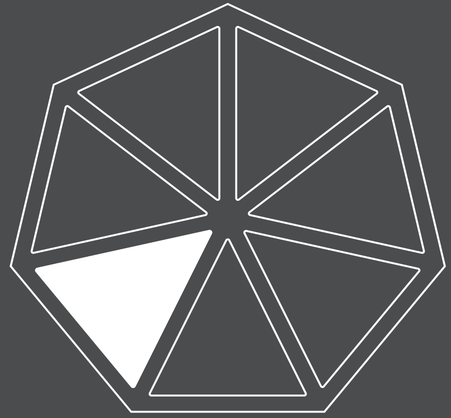
Although in the majority of situations the court issues decisions of conviction in cases of sexual crimes, the conviction is not effective. The court suspends the execution of imprisonment punishment, establishing a probation period. Although the law expressly provides that the court must justify the need to suspend the execution of punishment, no such justification was found in the courts' decisions.

As for the participation of minor victims in the examination of the criminal case, irrespective of their age, the court does not involve them in any way in this process, their rights being expressed exclusively by the legal representative. Moreover, in situations when the request for termination of case due to reconciliation of parties is submitted, in none of the cases the court asked for the opinion of the minor victim.

Recommendations

- examine the criminal cases in closed trials;
- examine the possibility to interrogate the victims of sexual crimes in the absence of the culprit;
- provide victims of sexual crimes with the right to defense, as well as to medical and psychological assistance during the examination of the case;
- provide effective information and explanation of rights to the victims of sexual crimes;
- avoid questions that infringe the dignity of the victims of sexual crimes;
- analyze the reasons and effects of the termination of criminal cases due to reconciliation of parties;
- involve minor victims of sexual crimes into the case examination in court, take into account the opinion of the minor victim about the decisions that refer to: agreement to reconcile with the culprit, rejection of the legal representative who acts in disfavor of the victim during the criminal trial, the civil action initiated and the amount of the moral and financial prejudice;
- solve the issues related to the approval of the civil cause and define the amount of the moral and financial prejudice along with the conviction decisions;
- apply art. 90 of the Criminal Code in strict accordance with the law requirements, motivating the need to suspend the execution of conviction and the reasons which show that the culprit can improve his behavior without being imprisoned;
- organize training courses for judges on the rights of the victims of sexual crimes;
- develop informational materials for the victims of sexual crimes, that would include information about their procedural rights at any phase of the criminal trial, informing the victims of sexual crimes about the services available to support this category of victims;
- undertake rehabilitation measures for victims of sexual crimes;
- ensure protection of personal data of the victims of sexual crimes.





Partnership between the law enforcement bodies, the courts and the social services for ensuring protection of victims of sexual crimes

5

5. Partnership between the law enforcement bodies, the courts and the social services for ensuring protection of victims of sexual crimes

5. 1. Non-Governmental organizations in the field

Cooperation of criminal investigation authorities with the organization in the field is critically important for ensuring the respect of rights and protection of victims of sexual crimes, for provision of psychological assistance and victims' rehabilitation. In the Republic of Moldova there are no specialized organizations that would work with the victims of sexual crimes. There are several non-governmental organizations, which, along with other services, specifically legal aid and psychological assistance to victims of domestic violence and victims of human trafficking, also work with the victims of rapes. Or, services for this category of people practically do not exist in the public administration field. From the files analyzed, only in 2 criminal cases the victim was provided with psychological assistance from specialized organizations and only in one case the victim was hospitalized in a rehabilitation institution.

It should be mentioned that in the criminal cases analyzed we identified situations when the victims were abused and submitted to degrading treatment. In such situations, it was necessary that a psychologist assists the victim from the initial phase, so that she gets protection from a public organization in order to get over the physical and psychical pain and reintegrate in the society.

While going to the bus station in the locality, a minor and her mother were captured by several individuals, who abused them both, and raped the daughter in the presence of her mother.

Although this is a case that includes a strong psychological and physical trauma for both mother and her daughter, they were not provided with psychological assistance, and the involvement of a public organization in their rehabilitation process was urgently needed.

In cases when the victims got psychological assistance, they were informed from various sources and therefore asked the organizations in the field to provide them with legal and psychological aid. Still, this mechanism is currently not valid for several reasons. First of all, the public organizations find out about these criminal cases only when they become public or when the victim, being informed from her own sources, finds out about the public organization that provides specific services, or when a third party addresses such organization on behalf of the victim. It would be useful and necessary if the criminal investigation authorities had a better cooperation with the specialized public organizations and in case it is required, provide information about the availability of services for the victims of sexual crimes. Moreover, provision of psychological assistance and qualified legal aid will efficiently contribute to more active involvement of victims in the criminal trial and provision of their rights.

We did not identify any case when the victim was assisted by a psychologist from public organizations during the phase of case trial.

5.2. Other state authorities (social workers, psychologists, medical institutions, police officers)

If a criminal case is identified, it passes into the phase of combating criminality, and the criminal investigation authorities only analyze the circumstances of the case in order to hold accountable the guilty persons. Social workers, psychologists, medical institutions, and police officers should have a more active role at the crime prevention phase, which is particularly important, because prevention actions can help avoid the effects of crimes, physical and psychological pain of the victims, and even the criminal trial, which is bureaucratic and very difficult.

We must admit that in the Republic of Moldova the activity of the prevention bodies is not efficient. Or, development of such an activity at a large scale and at high intensity can essentially contribute to the decrease of the number of crimes committed. As mentioned before, in many criminal cases from the category of sexual crimes, the victims are minor persons. This category is particularly vulnerable, often being deprived not only of parental care and education, but also of protection and social assistance, these victims are left in their own care.

From the content of many cases we deducted that the intervention of adoption authorities (social worker, educational institution, psychologist) and awareness raising activities would help avoiding the circumstances in which these people end up as victims of crimes. Although we already concluded that often a social investigation is requested for the minor victims, in the files analyzed we didn't find any specification that the family of the victim is under observation as socially vulnerable, and that the prevention bodies and the adoption authorities took any action to improve the situation of vulnerability.

Also, victims of sexual crimes become the children, whose parents (especially mothers) get married for the second time, and the concubine/ new husband of the mother is threatening the sexual integrity of the minor girl. As an example, we will quote from a criminal case, in which a minor aged 14 was positively characterized at school: ***„Quiet, responsible, hardworking, introvert and not communicative", was having sexual relations with her mother's concubine, who was telling her he loved her. When asked by the criminal investigation officer why she didn't oppose him, didn't tell her mother, she answered that she was afraid of her mother's concubine, as well as of her mother.*** The criminal investigation was initiated on art. 174 of the Criminal Code (sexual intercourse with a person aged under 16). The criminal investigation body did not examine objectively and multilaterally the circumstances which would prove the vitiation of the victim's consent to have sexual relations. After the criminal case initiation, the victim continued living with her mother and her mother's concubine, and the adoption authority did not get involved in any way to take the victim out of that environment at least for some time.

During the hearings, the victim stated that ***from the moment when her mother's concubine started to have sexual relations with her, she started visiting her grandmother more often, but she was afraid to stay there with her, alone in the grandmother's house. This situation lasted for half a year. A long period of time, in which nobody could notice the changes in the victim's behavior?!*** All the more, within the criminal case, the social worker developed a social portrait, describing the environment and the living conditions of the victim of the sexual crime.

In many criminal files, we observed that victims of sexual crimes become the minors, whose parents are abroad for work, and the children are left in the care of grandparents. Also, in these cases the social workers and the adoption authorities do not get involved unless it is clear that the deed already happened.

Another category of victims are people who consume alcoholic drinks. Due to the abusive consumption of alcohol, the person cannot defend herself and easily becomes victim of sexual crimes. In these cases, we didn't identify any prior intervention either. At the same time, it should be specified that only in one criminal case in which the victim of a sexual crime was a minor, the social worker was interrogated as a witness, and the criminal investigation officer asked which prevention actions were taken, knowing that the parents of the minor were alcoholics and the victim was sexually abused by her own father.

From the perspective of cooperation between the criminal investigation authorities and educational institutions, it should be mentioned that the latter are not involved in the criminal investigation, but only issue the characteristics of the minor victims and the minor offenders at the request of the criminal investigation officer. From the files analyzed we identified that the educational institutions sometimes take the side of the offenders, and make negative characteristics of the victims: ***„...She is on her own, not always in good relations with others. She is peevish and sometimes even loud"***. While the offenders get a positive description, with the following content: ***„...Is characterized positively, in responsible, in good relations with colleagues and teachers"***.

In many cases related to the crime of committing a sexual intercourse with a person aged under 16, parents, the educational institution and the social worker were aware of the victim's concubinage, since she was not attending school, but the criminal investigation authority was informed too late, in most cases by the doctors who took victims under observation already at the moment of pregnancy. Consequently, if the victim was not attending school for a longer period of time, why wasn't this a reason to worry for the educational institution?

We should admit that during the research cases where identified when the criminal investigation body was informed by the school teacher, after observing a change in the behavior of the student or as a result of a psychological test given to students, which revealed some intimate details. One of the criminal cases on the fact of committing perverted sexual actions was initiated due to the intimation of a teacher, who gave a test to her students. The test included a question about the students' fears. ***The minor wrote that she is afraid of her mother's concubine, who touches her genital organs in the absence of her mother***. After checking the tests and talking to the minor, the teacher informed the criminal investigation authority about this situation. Moreover, in case of a crime provided by art. 174 of the criminal Code – sexual intercourse with a person aged under 16 – where the offender was a priest and the victim was singing in the church choir, the education institution, in the person of the teacher and psychologist provided moral support to the victim, who was submitted to social pressure by the community. In the end, this cooperation led to the conviction of the offender.

The results of this study also confirm that in general, the cooperation between medical institutions and criminal investigation bodies starts at the moment of intimation and during the entire criminal investigation. ***As mentioned before, in many cases the criminal investigation body is informed by doctors, who attend victims when they need medical assistance for abortion or observation of pregnancy.*** From the cases analyzed we concluded that the doctors immediately inform the criminal investigation bodies. At the same time, from the cases analyzed, no way of cooperation was identified between the courts and medical institutions.

Another form of cooperation observed in the emergency cases are the situations when the victims are hospitalized as a result of physical violence, and the criminal investigation officer has to interrogate the victim

right in the emergency section of the hospital. Obviously, the most frequent cooperation with the medical institutions happens when forensic examination and evaluation reports are required. In the cases analyzed, no refuse from doctors to examine the victim and prepare the required documents was identified, the doctors being open to the requests of victims. Only in one case the family doctor, to whom the victim addressed for medical care after a rape, sent the victim to the mayor, without providing medical assistance.

As a preventing and combating factor, the police officer has a very important role, especially in rural areas, where victims submit the complaints about the commission of sexual crimes specifically to him. Although, as a police officer, he is obliged to accept the notification, and register it, due to a bureaucratic system, the registration of the complaint and the forwarding to the criminal investigation body takes place belatedly, since the police officer has to write several reports to his superiors in order to get permission to register the complaint and forward the documents and reports etc.

As for the cooperation of criminal investigation bodies with the psychologists, it should be mentioned that the psychologists, at the request of criminal investigation bodies, participate in the interrogation of minor victims and in the development of victims' psychological evaluation reports. The role of the psychologists, especially in schools, is very important both at the prevention phase, as well as at the combating phase. At the same time, it should be mentioned that the psychologist is not so often involved in the examination of the case, the criminal investigation body limits this involvement only to strictly procedural actions.

Also during the judging of the case the psychologists and the pedagogues participate at the hearings of the minor injured party. But their participation is passive. No case was identified in which the psychologist or the pedagogue would find that the criminal investigation officer, the prosecutor or the court ask questions that morally and psychologically affect the victim. Although, as mentioned before, some questions emotionally affect the victims and infringe their dignity. Thus, the role of the psychologist / pedagogue during the hearing of the minor victim is mostly formal, being limited to the provisions of the Criminal Procedure Code, without taking into consideration the interest of the victim.

Conclusions

The state has the obligation to ensure the respect of rights and protection of victims of crimes related to sexual life. Still, development and application into practice of alternative mechanisms for the defense of the victim's rights by more active involvement of civil organizations, psychologists and social workers would contribute to an increased level of protection of the victim's rights.

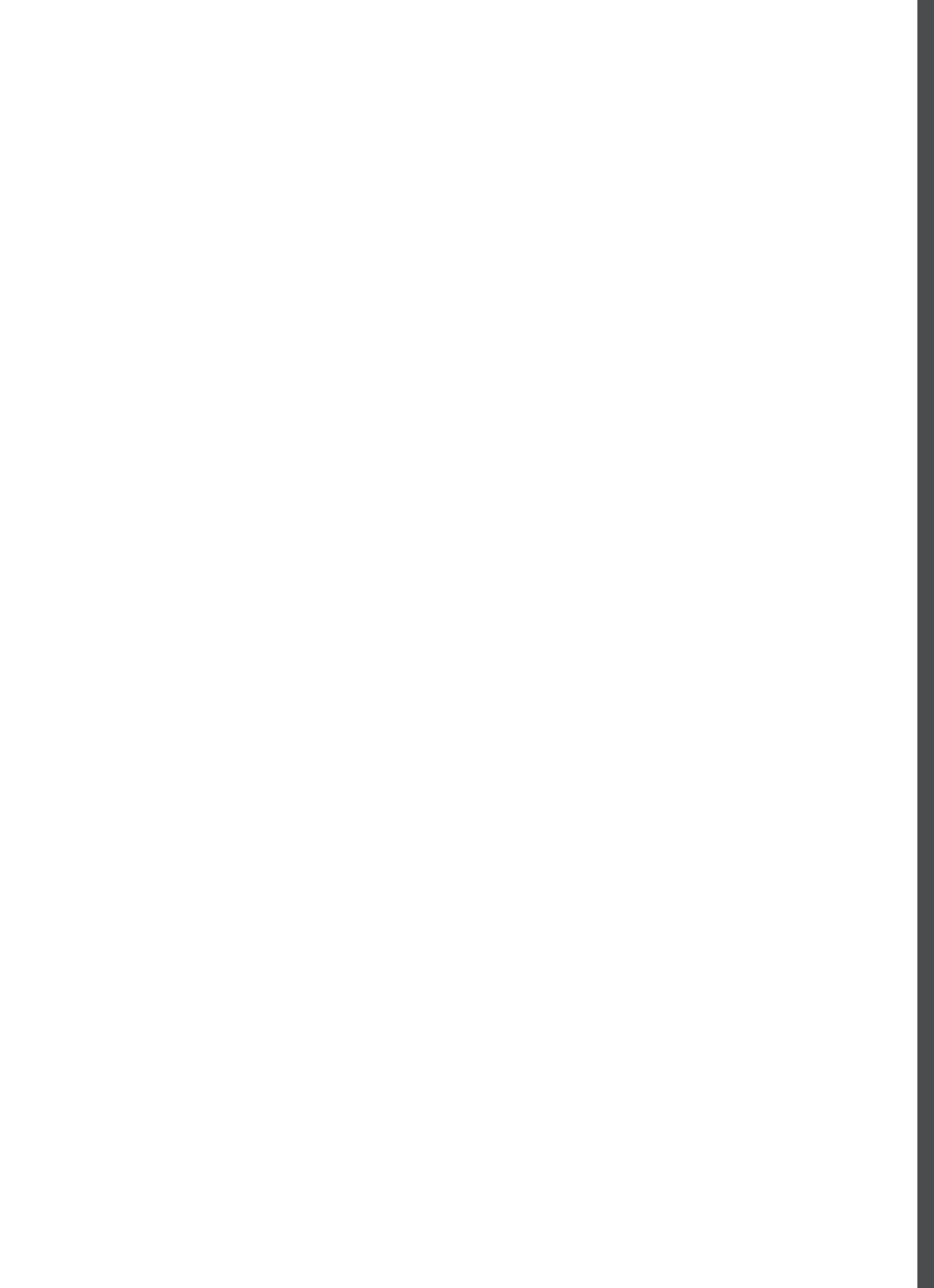
It was identified within this study that the criminal investigation authority is training specialists in promotion and provision of victim's rights only in cases expressly provided by law. But informing victims about the existence of specialized non-governmental institutions and governmental services would be much more efficient and serving the interest of the victim.

From the content of the criminal cases analyzed, it was also concluded that there is a passive behavior of the institutions that have the competence to prevent crimes. If their involvement was more active, by means of information and efficient monitoring, they could reduce the commitment of sexual crimes by 90%.

At the same time, the law does not provide for any viable mechanism that would involve the state prevention bodies in the development and promotion of some policies and strategies of combating crimes, that would combine prevention, education and social assistance actions and provide a complex approach towards the respect of rights of the victims of sexual crimes, their protection and reintegration in the society with minimal negative effects.

Recommendations

- create and develop specialized services for the victims of sexual crimes;
- involve social workers, teachers, doctors, psychologists and police officers in activities that would prevent sexual crimes;
- organize training courses for social workers, teachers, school psychologists, family doctors and police officers on identification and prevention of cases of sexual crime;
- develop guidelines for identification and documentation of cases of sexual violence for professionals – social workers, family doctors, teachers and school psychologists.



Perceptions and stereotypes among law enforcement bodies and courts during the examination of sexual crimes

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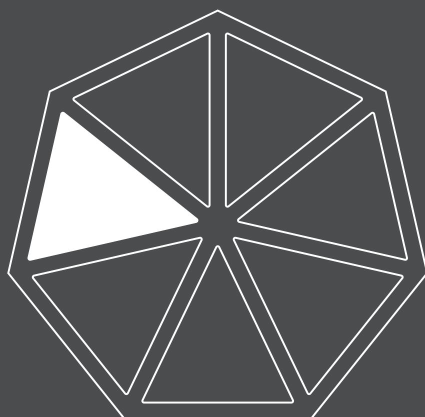


6. Perceptions and stereotypes among law enforcement bodies and courts during the examination of sexual crimes

In the process of the criminal files' examination, in many cases the victims of sexual crimes are still perceived by the criminal investigation authorities and the judiciary the same way as in their communities and the society in general. Or, the actors of the criminal investigation process and of the judging process are members of the same society.

Based on the cases analyzed within the study, the biased perceptions towards the victims of sexual crimes and the stereotypes that cause their bad treatment are due to several discriminating beliefs.

Whether the victim has previously had sexual relations both with other people, as well as with the culprit.

Whether the victim was drunk at the moment the crime was committed and whether she was just spending time with the offenders.

Whether the victim got physical injuries or not.

Whether the victim is the wife/concubine/girlfriend of the offender.

Whether the victim comes from a socially vulnerable family.

All these attitudes are discriminating and put the victim in an inferior position compared to the other members of the society, creating a biased opinion related to the victim's guilt in case of a sexual crime commission. Moreover, in the eyes of the court and the prosecutor the victim deserves trust and compassion only if in addition to a sexual intercourse she was submitted to physical violence and has visible corporal injuries. Other circumstances such as age, fear, financial situation etc. are not actually taken into consideration.

The attitude of the judge and the prosecutor towards the victims of sexual crime in court is mostly deducted from the way their interrogation takes place, the way the questions are asked and the way in which procedural rights are respected. Thus, all the victims end up to answer the question whether they previously had sexual relations, although this has no importance for the qualification of the deed, individualization or decision upon the punishment. Moreover, both the judge and the prosecutor do not take into account that the victim is a minor, and ask questions similar to those addressed to adult victims.

Thus, the victims who were drunk at the moment of crime, or used to consume alcoholic drinks are being requested to provide details about the quantity of alcohol they drank, the type of alcohol, and if they generally drink alcohol. These questions are usually asked mostly by the prosecutor, although the biological blood test to identify the level of alcohol was not made.

In a criminal case, the victim gave the following answer to the court's question: „I do not usually drink alcohol, but that night I did". This answer caused a biased attitude of the court towards the victim. Specifically, the court perceived this as she consumes alco-

holic drinks and for this reason such a sexual offence was possible.

If the victim went to a party with the offender and drank alcohol, the court clarifies the following circumstances:

- Who proposed to go all together?
- How much she drank?
- Why didn't she shout for help?
- Why didn't she oppose to the sexual intercourse?
- How many people were in that group?

Case study 1.

Rape and violent actions of sexual nature committed by 2 or more persons; minor victim, aged 14.

Circumstances of the case

3 persons forced the victim to go to an abandoned house, abused her and coerced her to consume alcoholic drinks. Later, the victim woke up half naked, next to a steep.

Although initially there were 3 offenders, only 2 of them ended up in court, and the third was qualified as a witness. All together they stated that the victim voluntarily consumed alcohol and had consented sexual intercourses with them.

During the criminal investigation, the victim went through all the procedures: explanations, statements, additional statements, confrontations with the offenders and witnesses, and, in addition, she was not informed about results of the examinations and about the termination of the criminal investigation. In court, during the hearings, she gave the following answers to questions:

- I sometimes drink alcohol, but that night they forced me to drink.
- X asked me to go to that abandoned house and I went, but when I came closer to the house, they dragged me inside by hands and feet.
- I didn't run, as one of them was beating me and the other 2 were holding me.
- I didn't voluntarily drink alcoholic drinks.
- I don't remember how I got to be naked.

- I remember the culprits, as they dragged me.
- Previously I had sexual relations, but not with the offenders.
- I want them to be charged for crime.

P.S. It should be pointed out that in this case the victim was interrogated in the presence of offenders.

The questions asked show the biased attitude of the court towards the victim, presuming that the victim consented to consume alcoholic drinks, and also consented to have sexual relations. The lack of corporal injuries is another circumstance that causes the biased attitude towards the fact whether the sexual intercourse was coerced or not.

Case study 2.

A minor victim was raped by 4 persons, but there were no injuries on her body. She stated: „I didn't want to have sexual relations with them, but X took me to another room, pulled my hair and told me to take off my clothes. I was afraid he would have beaten me, so I got undressed and he had a sexual intercourse with me. Later, when I was getting dressed Z came into the room, I started to cry, but he told me he would beat me if I didn't do what he said. This way I also had sexual intercourses with the other two. After that I was sitting in the next room and crying, and Y came in and saw me crying and against the will of the other tree he let me go home, and I went to the police station".

In court, the victim gave the following answers:

- I went to that house with X because I knew him and he told me he would not hurt me.
- I kept drinking alcoholic drinks.
- I told him I didn't want to have sexual relations with him and I started to cry.
- I got undressed because I was afraid they would beat me, as they were in four and I was alone.
- He pulled my hair and pushed me on the bed on my belly.
- During the sexual intercourse, I was crying and asking him to let go of me.

- He hit my back with his fist.
- I also told the others that I didn't want to have sexual relations with them and I was crying.
- I did not oppose, as I was scared.

If the victim and the offender are concubines/husband and wife/girlfriend and boyfriend there is also lack of trust into the victim's statements.

In a criminal case, the first level court acquitted the rapist husband, justifying the decision by the fact that the victim had a negative attitude towards her husband and filed many complaints and requests against him to the police. Thus, the court concluded that the sexual intercourse was consented. Nevertheless, the court of appeals quashed the decision of the first-level court, and convicted him to imprisonment with suspension. Moreover, along with the biased attitude of the court, the victims of the coerced marital sexual intercourse are forced to state when was the last time they had consented sexual relation; whether they live together or are separated; whether during the sexual intercourse the husband showed signs of violence.

Obviously, the coerced marital sexual intercourses are hard to prove, because in most of the cases the victims, when getting in court, were stating that the intercourse was consented, and that the bruises are from a casual hit with an object in the house, that she has no claims towards the offender and wants him home with their children, since they have a family. At the same time, a positive evolution was registered in this sense, when the court took the side of the wife and convicted the husband for the violent actions of sexual nature.

Case study 3.

The victim filed a complaint about the violent sexual actions, stating that her husband, after returning from the Russian Federation, forced her during a long period of time to have sexual relations of perverted nature (anal and oral), and if she refused, he would abuse her. The criminal investigation authority initiated a criminal case based on art. 172, par. (2), let. b1) of the Criminal Code and forwarded the case to the court.

In court, the culprit stated that for a long time they are having sexual relations in perverted ways, but his wife never complained. Also, he stated that he hit her that night, but not for forcing her into sexual intercourse, but because he was drunk and she called him an alcoholic. Nevertheless, they reconciled shortly and had sexual relations in usual and anal form.

The court convicted the culprit to 5 years of imprisonment.

As for the victims from the socially vulnerable environment, the files analyzed proved that they are facing a biased attitude from social actors, teachers, criminal investigation authorities, prosecutors and court. The biased attitude towards these victims consist in promptness of the criminal investigation, the way the victim is treated, the characteristics issued to them, the qualification of the deed, the way interrogations are held by the criminal investigation authority as well as by the court, and the final decision of the court. In the case of a minor victim from a socially vulnerable family who was living in a boarding house, the principal of the boarding house issued the following characteristic of the victim: „She is solitary, not always in good relations with others. She is huffy and sometimes even garrulous. She has an arrogant behavior with her peers and with teachers". The criminal case was developed based on these particular characteristics, and even an examination was required to identify whether the victim was not influenced by some constraints of medical nature. In court the minor victim, whose legal representative was the principal of the boarding house, was asked the following questions: why doesn't she attend classes, whether she smokes or not, whether she consumes alcoholic drinks or not.

Discriminating and biased attitudes were also identified in relation to the victims of crimes of sexual intercourse with a person aged under 16. In 60% of the criminal cases from this category the victims were stating in court that they had a consented sexual intercourse, that they live together with the offender and are going to get married. Thus, it is difficult for the court to take a decision. In such cases, the courts do not terminate the judging process due to reconciliation, but establish a minimal punishment with suspension. In 40% of cases the complaints are filed by the legal representatives of victims, and they insist on the conviction of the culprit, while the victim has a passive attitude in this regard.

A separate thing to mention is that in case of requalification of the crime during the criminal investigation from art. 171, par. (1) – (2) in art. 174 of the Criminal Code, the court does not address questions to the victim to find out her opinion about this requalification, and does not clarify the circumstances of the sexual intercourse, trusting the statements of the prosecutor in the indictment. This is not exactly a violation of the victim's rights, but it creates the impression that the court consults the free consent of the injured party when it is an obvious qualification on art. 174 of the Criminal Code. And in case of requalification and analysis of specific circumstances the court avoids to clarify whether the sexual intercourse took place with the consent of the victim.

In relation to sexual harassment and perverted actions, the attitude of both the criminal investigation body, as well as of the prosecutor is biased from the very beginning and this can be concluded from the reports issued during the criminal investigation, and from the order to refuse the initiation of the criminal investigation, that later are cancelled and the criminal investigation is finally initiated. This biased attitude is visible even in court, through lack of trust in the victim's statements, questions addressed to her and punishments applied.

It should also be mentioned that from the files analyzed, those that referred to violent actions of sexual nature and sexual harassment, had as main characters minor victims aged under 14. This makes us believe that the prosecution does not even forward to court similar criminal cases involving adult victims. They practically do not exist in court.

Thus, erroneous perceptions and stereotypes mentioned earlier were deducted as a result of analyzing the criminal cases, the undertaken procedural actions, the way victims are interrogated, the way questions are asked, and the level of respect for victims' rights within a criminal case. The availability of such stereotypes within the criminal in-

vestigation authority, the prosecution, the court end even within the society is a serious barrier in expressing the victim's right to a fair trial. Such stereotypes make us understand what stops the victims, or why the victims of sexual crimes often avoid to address the police, and they also are factors that make victims file requests for reconciliation in order to terminate the criminal trial as fast as possible. Moreover, these stereotypes obviously limit the expression of victims' rights during a criminal trial. Thus, they have a passive behavior and avoid to participate not only in the criminal investigation, but even in the judging of the case.

Additionally, we concluded that these stereotypes put the victims in a discriminatory situation not only in relation to the victims of other crimes, but also to offenders. Or, the Criminal Procedure Code guarantees equality and contradictory positions in any criminal case. These perceptions and stereotypes make women vulnerable in front of the society, as well as in front of men and the law enforcement authorities, that should have an active and protective behavior, so that the victim feels safe both from the social, as well as from the legal point of view.

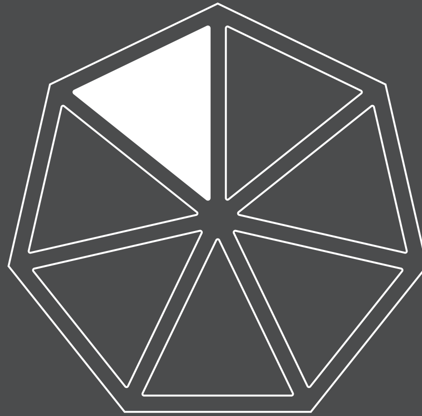
A general conclusion seems to be drawn up: although we live in the 21st century, the century of tolerance and non-discrimination, in the Republic of Moldova the victims of sexual crimes still have to face many stereotypes and biased perceptions, that put them in an unfavorable and discriminatory position and make their way to the fair trial much more complicated.

Stereotypes faced by the victims of sexual crimes

- The victim is partially guilty of the sexual crime committed against her.
- A married woman or a woman who lives with a male partner cannot be a victim of sexual violence or sexual crimes.
- If the victim was drunk or was spending time with the rapist, it means she voluntarily accepted the sexual intercourse.
- If no signs of specific physical violence were identified, you are not a victim of a sexual crime.
- If you had sexual relations prior to the forced sexual intercourse, most probably this last sexual intercourse was also deliberate.
- There is less probability that a woman with bad reputation becomes a victim of sexual crimes.
- The victims of sexual crimes do not necessarily need medical, psychological and legal assistance.

And these are not all, unfortunately.

7 Final conclusions and recommendations



7. Final conclusions and recommendations

7. 1. General conclusions

After 240 cases analyzed, the authors of the study concluded that, despite the granted procedural and material rights, the victims of sexual crimes are facing a bureaucratic system, which is not prepared to accept the victims of these crimes and provide them protections, assistance and the possibility to express their right to a fair trial. Thus, it was identified that from the moment the crime is committed and till the conviction of the culprit the victims of crimes related to sexual violence are facing many violations of their procedural rights, biased behavior, stereotypes and procedural actions that intimidate them, put them in a bad position and discriminate them in relation with the crime, although they are the victims, and bear no responsibility for the crimes that were committed against them. These violations not only discriminate the victims, but also discourage them from informing the competent authorities or holding on their complaints till the end. In most cases, they feel forced to back off, withdraw their complaint and reconcile.

The rights of victims of sexual crimes are violated both at the criminal investigation phase, and at the judging phase, when the law enforcement actors minimize the role of the victim within a criminal trial, and undermine their rights.

The victims of sexual crimes find themselves in the situation when they need to convince the criminal investigation authority that a coerced sexual intercourse took place, to do the medical examinations, to endorse their statements, to seek psychological and medical assistance, to participate in confrontations with the offenders and witnesses, and go through specific analysis to confirm that they are not lying. They are not efficiently involved in the criminal cases, and are not provided with legal aid and appropriate psychological assistance, thus, being not only victims of serious crimes, but also victims of a legal system that simply revictimizes them.

Till now, this category of victims was not provided with any efficient rehabilitation method, any effective possibility to get back to a normally decent life, being submitted to some bureaucratic and humiliating procedures. Due to this specific treatment, the victims of sexual crimes have a passive position and in most of the cases prefer not to inform the law enforcement authorities about the crime that was committed against them.

7. 2. Recommendations and suggestions

Suggestions for lex-ferenda

- apply modifications to the Criminal Code of the Republic of Moldova in view of revision of the term ***consent*** in the case of sexual crimes in accordance with the provisions of Istanbul Convention;

- define specific additional guarantees for the victims of sexual crimes, among which the right to intimacy, the right to psychological and medical assistance during the criminal prosecution;

- amend the Criminal Code and the Criminal Procedure Code to avoid elimination of criminal liability as a result of the reconciliation between the victim and the offender; as a rule, when the suspect is not taken into custody, he can easily influence the victim and convince her to accept the reconciliation;

- modify of the national normative framework related to sexual crimes in accordance with the provisions of the Istanbul Convention;

Suggestions for the accomplishment and control of the criminal investigation

- analyze all the aspects of the sexual crimes creating a relevant legal framework, appropriate for the protection of victims of this category of crimes, such as provision of mandatory legal aid, provision of psychological counselling and medical assistance, interrogation of victims in friendly conditions, defining clear criteria for additional interrogation of victims, avoiding the procedure of confrontation with the sexual aggressor during the criminal investigation and trial;

- include medical services related to the medical examination and treatment of victims of sexual crimes into the mandatory medical insurance;

- inform victims on the decisions taken on the criminal cases initiated related to sexual life;

- give clear and efficient explanation of rights to the victims of sexual crimes;

- organize information campaigns for victims of sexual crimes on how to inform the criminal investigation authority and their rights at the phase of informing, initiating and developing the criminal prosecution;

- bring to the attention of the victim the decisions of the criminal investigation bodies related to termination or interruption of the criminal case, release of a person from criminal prosecution;

- carefully treat the testimonies made by the victims during the criminal cases referring to sexual crimes;

- organize information campaigns for victims about the way they can use their rights during the examination of the criminal cause and the way to appeal against the actions of the criminal investigation authority or prosecutor;

- motivate the prosecutor's decisions related to termination or interruption of the criminal cause and release of a person from criminal prosecution;

- inform the victim on the way they can appeal against the actions of the criminal investigation authority or prosecutor;

- request for mandatory psychological evaluation of the victim and use the results of such evaluation as an evidence similar to the forensic examination;

- request for the psychiatric examination only in case there are doubts related to the clear judgement of the victim of sexual crime;

- individualize the forensic examination, so that it results from the circumstances of each cause;

- develop informational support related to the rights of victims of sexual crimes;

- avoid to request explanations and statements from victims related to their sexual life beyond the criminal cases;

- provide effective defense and respect of the procedural rights of children victims of sexual crimes;

- more active implication of foster care authorities, teachers and psychologists in the examination of criminal cases related to sexual crimes;

- avoid accepting persons who are in conflict with the minor victim and can put physical /psychological pressure on them as legal representatives of minor victims;

- take efficient action towards protection of the victims of sexual crimes when necessary;

- provide training to police officers, criminal investigation officers, prosecutors, judges on ways of analyzing and examining cases related to sexual crimes under the aspect of respect of victims' rights;
- implement information campaigns for victims of sexual crimes on their procedural rights during the criminal investigation;

Suggestions for the phase of judging the cases

- mandatory examination of criminal cases in closed hearings;
- identify the ways to interrogate the victims of sexual crimes in the absence of the offender;
- ensure the rights of the victims of sexual crimes to defense, medical care and psychological assistance during the examination of the criminal cases;
- provide effective information and explanation of the rights to the victims of sexual crimes;
- avoid questions that infringe the dignity of the victims of sexual crimes;
- involve of the minor victims of sexual crime in the examination of the criminal cases in court, so that the opinion of the minor victim on the following is taken into account: consent to reconcile with the culprit, removal of the legal representative who acts against the interests of the victim from the criminal case, the initiation of a civil case and the amount of the moral and financial prejudice;
- solve the issues related to the approval of the civil cause and define the amount of the moral and financial prejudice along with the conviction decisions;
- apply art. 90 of the Criminal Code in strict accordance with the law requirements, motivating the need to suspend the execution of conviction and the reasons which show that the culprit can improve his behavior without being imprisoned;
- organize training courses for judges on the rights of the victims of sexual crimes;

- develop informational materials for the victims of sexual crimes, that would include information about their procedural rights at any phase of the criminal trial, informing the victims of sexual crimes about the services available to support this category of victims;
- avoid accepting a civil action and forwarding the case civil court examination for establishing the moral and financial amount of damage;
- implement rehabilitation measures for the victims of sexual crimes;
- ensure protection of personal data of the victims of sexual crimes;
- develop informational guidelines for victims on measures for their rehabilitation and social reintegration.

Suggestions for enhancing the partnership between the law inforcement bodies and stakeholders

- create and develop specialized services for the victims of sexual crimes;
- involve the civil organization in the promotion and provision of rights of the victims of sexual crimes;
- involve the social workers, education institutions, doctors, psychologists and police officers in the expression of rights by victims of sexual crimes;
- organize training courses for social workers, teachers, doctors, psychologists and police officers on the rights of victims of sexual crimes;
- develop informational guidelines for victims about the competence of social workers, teachers, doctors, psychologists and police officers related to the respect of the procedural rights of victims.