

Ensuring the rights of the victims of sexual crimes

Analysis of the judicial practice in
the Republic of Moldova

Summary

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 Women Rights Protection and Promotion “La Strada” in the framework of the project “Ensuring access of sexual assault victims to adequate legal and social protection” financially supported by USA Embassy in Chisinau.

The research results, interpretation of facts, conclusions and recommendations presented in this publication reflect the view of the research team and do not necessarily reflect the position of the USA Embassy in Chisinau.

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Introduction

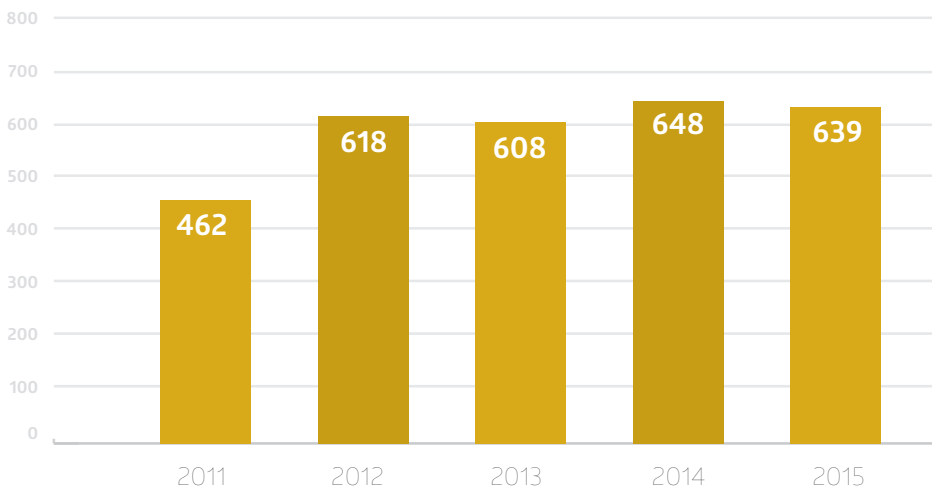
The Study „Ensuring the rights of the victims of sexual crimes. Analysis of the judicial practice in the Republic of Moldova” was developed with the goal of identifying the level of protection of victims of sexual crimes, the attitude of law enforcement bodies towards them, as well as elucidating the deficiencies spotted during the instrumentation and examination of criminal files that refer to this category of crimes, from the moment when the criminal investigation body is informed, until the issue of final decision by the courts of law.

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 prevention and combating sexual crimes, and of rehabilitation of women, in case they were victims of actions that threatened their life and sexual integrity. The state policy in this area should include the adoption of legal measures and a higher level of ensuring their effective implementation.

The importance of the development of the Study resulted from the constant number of sexual crimes, that show the lack of accomplishment of the purpose of punishment, provided by the Criminal Code of the Republic of Moldova, i.e. prevention of other crimes.

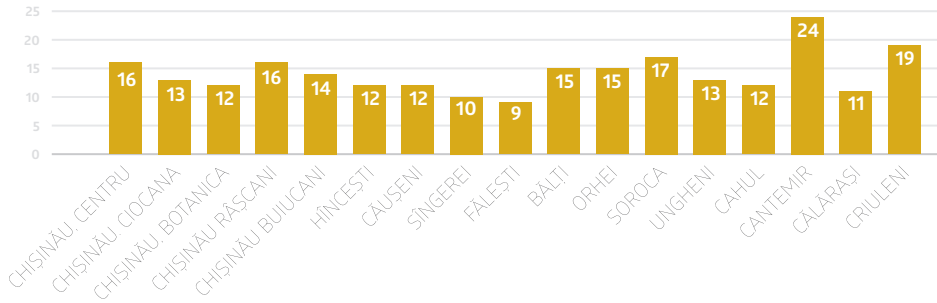
The number of criminal cases related to sexual crimes according to data from the National Bureau of Statistics



To develop the current study 240 criminal cases were collected from the courts of va-

rious districts, referring to sexual crimes investigated during the years 2011-2016.

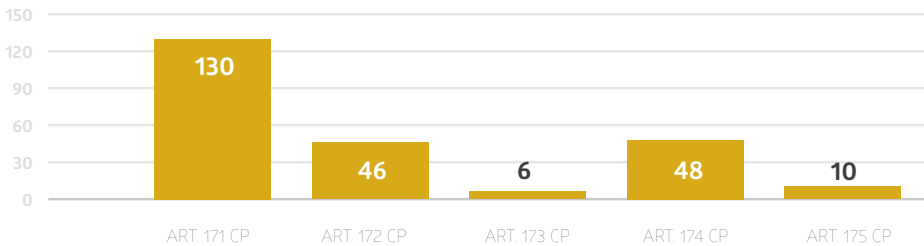
Number of criminal cases collected from the courts



The criminal cases examined relate to the following categories of crimes: art. 171 (rape); art. 172 (violent actions of sexual nature); art. 173 (sexual harassment); art. 174 (sexual intercourse with a person aged

under 16); art. 175 (perverted actions). The victims of the cases examined are minors aged between 14 -16 years old and women starting with the age of 18.

Number of cases per category of crimes



For conducting the study, only the cases with an irrevocable decision were collected and analyzed, omitting the criminal causes terminated at the criminal investigation phase, due to the fact that the General Prosecutor's Office refused the access to these criminal cases, quoting the secrecy of the criminal investigation and protection of personal data.

The authors of the study analyzed **the national legal framework related to the protection of victims of sexual crimes**, with a specific focus on every sexual crime: rape (art. 171 CC), violent actions of sexual nature (art. 172 CC), sexual harassment (art. 173 CC), sexual intercourse with a person aged un-

der 16 (art. 174 CC), perverted actions (art. 175 CC), including the rights and guarantees provided to the victims during the course of the criminal investigation and examination of the case in court.

As a result, it was established that the demarcation line between the sexual freedom and the crimes that threaten sexual life is the **consent of the adult person**, in case when the victim 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 commitment of sexual intercourse with the consent of the victim.

In this sense, it should be mentioned that in accordance with the legislation of the Republic of Moldova the consent is also the demarcation line between rape and a sexual intercourse with a person aged under 16. Or, **depending on the case, and based on the criminal cases analyzed, the criminal investigation body qualifies the deed as sexual intercourse with a person aged under 16 even in situations when the victim is financially and morally depending on the offender, and is 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 person will be fully protected.

As for the procedural law, 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.

The practice of respecting the rights of victims of sexual crimes

An important aspect analyzed within the study was **the extent to which the rights of the victims of sexual crimes are respected from the moment of filing a complaint until the termination of criminal investigation**. Thus, it was identified that the victim is not fairly treated and is not granted the possibility to make use of her rights guaranteed by law.

The practices allowed by the criminal investigation body starting with the initiation of the criminal investigation phase are opposing the principle of promptness in the accomplishment of urgent actions of criminal investigation.

- 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 actions of criminal investigation and in most cases do not inform the criminal investigation authority, but accept the victim's complaint. Then follows the procedure of registering the complaint and sending it to the criminal investigation body for examination as per its competence.
- The date of filing the complaint does not correspond with the date of the notification registration, the term being delayed by 24 hours from the registration of the notification, 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.
- Contrary to the acting legislation and the modifications to the Criminal Procedure Code, after the filing of complaint, the police officer asks the victim of sexual crime to provide explanations or statements (action not provided by the Criminal Procedure Code), in which the victim narrates in detail the circumstances of the cause, which represents a hearing without guaranteeing procedural rights express stipulated in the Criminal Procedure Code. In 30% of the analyzed cases this practice to solicit explanations was present. Moreover, in 65 cases of the 240 examined, the victim gives explanations about the sexual crime, and the second time she is interrogated as the injured party, being asked to retell again the circumstances of the crime and being submitted to revictimization by psychological and emotional stress as a result of the crime.
- In 82 criminal cases examined, contrary to the specifics of sexual crimes, after 2-3 days from the phone notification about the commitment of the crime, the criminal investigation body writes the document establishing the fact of crime, after which, obtains a typical complaint from the victim, although, immediately after the notification, the victim was supposed to be examined for collecting sperm and blood samples, and other traces from the clothes of the victim and the offender.

- In 12 criminal causes examined, the criminal investigation body exceeded the term of 30 days provided by art. 274, par. (1) of the Criminal Procedure Code for initiating the criminal investigation. This violation resulted in non-respect of the rights of victims of sexual crimes.

Also, it was identified that the victims of sexual crimes are not involved in the investigation process of cases, thus, turning into passive participants, whose rights and interests are neglected.

Contrary to the legal provisions, **none of the victims was informed about the order for initiation of criminal investigation.** 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. A serious violation identified in **76 of criminal cases examined** is that the criminal investigation officer initiates the criminal investigation on another deed, which is less serious than the one specified in the notification document.

In this sense, 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 of the Criminal Code 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.

In 15 criminal cases analyzed, a wrong qualification of crime was detected: from rape, provided by art. 171 of the Criminal Code, to sexual intercourse with a person aged under 16, art. 174 of the Criminal Code, while the victim made an express statement that she was raped. This wrong qualification is due to an erroneous interpretation of the rape victim's consent, especially when the victim is under the age of 16. In addition, during the entire process of the criminal investigation the victim's right to be informed about the decisions of the criminal investigation body was violated:

- although the complaint is filed against several people, the criminal investigation body does not inform the victim about the removal of one or more suspects from criminal investigation. The victim is informed about this action only at the termination of the criminal investigation, when she is handed the indictment, or already in court;
- the victim is not informed about the requalification of the criminal deed;
- in 50 % of the cases analyzed the victim is not informed about the case files not even at the termination of the criminal investigation, nor when she is handed the indictment.

Instead, the victims are informed about their rights and obligations, although they do not make use of them. This fact is generated by the lack of professional legal aid to the victim, when the attorney would demand the efficient respect of victims' rights. Moreover, the lack of professional legal aid transforms the victim from an active participant into a passive participant, or in a mean for pushing the criminal procedural action.

During the criminal investigation, the victims of sexual crimes are not granted in any way the right to psychological counseling, 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. Serious violations of the victim's rights also take place during the evidence collection process.

From the criminal cases 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 officer did not make any difference.

During the interrogation of the victim various procedures and specific language is used that infringes her dignity. 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 ex-

poses her to psychological 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 mentions additional facts.

During the interrogation of the victim, the criminal investigation officer usually asks questions that have no relevance for the qualification of the deed, but are mostly related to the victim's personal life.

- Have you previously had sexual relations? If yes, with whom?
- Have you previously had a sexual intercourse? If yes, how many times and which was the last one?
- How often or how seldom did you have sexual relations?
- What was your age when you started your sexual life?
- Are you upset with the offender for what he did to you?
- Did you drink alcohol? If yes, in which quantities? Were you drunk at the moment of rape?
- Do you think you are guilty for what happened?

These questions only emphasize the lack of trust of the criminal investigation officers in the victims' statements and, as a result, intimidate them. In the end, the victims are ashamed and they stop from narrating things.

A very common practice, identified in **50% of the cases analyzed**, is **the additional interrogation** of victims, performed by the crim-

inal investigation officer. In **20% of these causes the victims went through additional interrogation for 2-3 times**. Although the Criminal Procedure Code does not forbid additional interrogation in situations when the criminal investigation officer needs to determine specific circumstances, still, within the sexual crimes area 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.

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. Of all the cases analyzed, in **144 the procedural action of confrontation was identified**, although it is not recommended in case of sexual crimes, since this measure implies that the victim and the offender meet face to face to confirm or infirm their previous statements.

It should be mentioned that this confrontation is requested 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. **Only in two of the criminal cases analyzed the criminal investigation officer and the prosecutor refused to accomplish the procedural action of confrontation**, since it would cause a negative emotional state of the victim and would represent a violation of her rights. We believe that it is necessary to apply this practice in all the criminal cases related to sexual crimes.

The crime scene investigation is also a formality for the criminal investigation officer, although this evidence collection procedure

is very important for establishing the circumstances of crime commitment, collecting evidence from the crime scene etc. In this sense, based on the cases analyzed, the following was identified:

- the criminal investigation officer analyzes the crime scene the same day the complaint was filed only if the victim called the operative police forces. In the rest 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 the rest of cases, in the same circumstances, the crime scene investigation did not take place;
- in 90% of the criminal cases analyzed, the protocols from the crime scene investigations were followed by a photographic chart, indicating only the crime place and nothing else.

Another procedural action undertaken by the criminal investigation officer is verification of victim's statements at the crime scene. The goal of this action is not clear, considering the fact that the victim must go with the criminal investigation officer to the crime scene and make statements indicating concrete places and actions that took place that day/night. In such situations, the victim, who is already under the pressure of the psychological and physical trauma after the crime committed against her, is forced to describe repeatedly those moments, indicating the place and the way the crime was committed. This makes her go again through the horror of those circumstances and her trauma increases even more.

In the context of the mentioned above, the analysis of the criminal cases and protocols allowed us to identify several gaps.

- In two of the criminal cases analyzed this procedural action was undertaken in the presence of the offender, although it was not clear why his presence was needed and what was his status.
- If the action is not registered in audio/video format, a photographic chart is made, which includes photos of victims at the crime scene, indicating the positions and the way the crime was committed.
- In case of a crime related to a coerced oral sexual intercourse between mother and son, the victim, who was the mother of the offender, was photographed in the position in which she was held during the commitment of the crime, which is an obvious intimidation and a serious revictimization of the victim.
- In another case, the victim was photographed on the back seat of a car, demonstrating the way in which she was raped, with her legs raised up.
- Such actions are undertaken also in cases when the victim is a minor. Thus, in a criminal case related to perverted actions, the 8-year-old victim, in presence of her mother was showing to the criminal investigation officer how the perverted actions happened. Specifically, in order to reconstitute the deed, the victim was lifted on a metallic barrel, where she showed which were the actions of her step-father at the moment of committing the crime.

Important evidence for identifying whether a sexual intercourse or perverted actions of sexual nature took place is also the forensic, biological or chemical examination. Of 240 criminal cases analyzed, the examination was requested as an obligatory measure in cases of rape and violent actions of sexual nature. In case of the crimes related to perverted actions the examination was requested to be executed only if the victim was a child under the age of 14.

After analyzing one of the forensic examinations, it was established that, although the way the crime was committed, the circumstances and the victim's injuries are all different, still, the way the examination is

made and the research methods are absolutely the same. In this sense, it should be mentioned that the forensic examination is not individualized considering the specifics of each criminal case, but has practically the same content, except the conclusions, which are different.

Although the Criminal Procedure Code provides for the criminal investigation authority to bring to the knowledge of the victims both the request for the examination and its results, this obligation is not fulfilled. In **90% of the cases analyzed the criminal investigation authority didn't inform the victim about the request and the results of the forensic, biological and chemical examination.**

Also, a separate place in those files has the request for **psychologic-psychiatric examination**. The study demonstrated that although the psychologic-psychiatric examination is requested to determine the psychological condition of the victims of sexual crimes, the evaluation commission consists of psychiatrists, and the questions asked during the examination do not have the goal to assess the psychological condition of the victim or her physical constraint, but to exclude the guiltiness of the victim, whether she suffered from a psychiatric disease or whether the victim is lying or not. The criminal investigation officer does not bring any argument to explain the need to request the psychologic-psychiatric examination.

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; the crimes refer to sexual harassment and perverted actions; marital rapes (in 13 of the cases analyzed); the victims are elderly people (in 27 of the cases analyzed).

Special attention during the development of the study was paid to the victims of sexual crimes aged between **14-18 years old, as they were subjects of 122 of the total of cases analyzed.**

One of the biggest problems in the cases in which the victim of a sexual crime is a minor, is qualifying the deed as a sexual intercourse with a person aged under 16 instead of rape. We believe that improper qualification of the deed is a systemic problem, when the fear of potential physical violence coerces the person to have a sexual intercourse, and the law enforcement bodies interpret this as a voluntary consent, and treat it as an element for qualifying the deed.

As for the cases of violation of minor victims' rights, these are similar with the cases of adult persons, with some exceptions, as follows:

- the pedagogue or psychologist is not present during the hearing, which is a mandatory requirement for the criminal investigation authority. This is a serious violation of the procedural rights, which is not frequent, but 4-5 existent cases are already a sign it should be eliminated;
- the criminal investigation officer additionally interrogates the victim, without taking into consideration the fact that additional interrogation makes the victim feel more psycho-emotional stress;
- in these cases the confrontation is also practiced, although this measure is not recommended; the confrontation is used even in those criminal cases in which the offender is the biological father of the injured party or her mother's boyfriend, and the victim initially stated that she is afraid of him; therefore, in such cases, the criminal investigation officer, without establishing the certain approval of the victim and the conditions in which she gave that approval, forces the victim to make statements during the confrontation, being morally pressed by the presence of the offender.

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

Another problem in the criminal cases related to sexual crimes is the appointment of the legal representative of the victim during the criminal trial and the person that is to be approved as a legal representative. Only in one case the criminal investigation authority did not accept as legal representatives the victim's parents, motivating the decision by the fact that it was not in the best interest of the child, since there were hostile relations between them. The social worker was appointed as the legal representative of the victim, which is actually a good practice and a proof that the criminal investigation authority examined in detail all the circumstances of the case, and took into consideration the best interest of the child.

Nevertheless, there are cases when the criminal investigation authority accepts as a legal representative the mother or the father of the victim, even if the victim states that she has hostile relationships with these legal representatives. In addition, they submit the victim to physical violence.

Also, the criminal investigation officer accepts the minor victim's mother as her legal representative, although she was aware of the sexual relations of her partner with the child, but did not inform the criminal investigation authority. Therefore, the ability of the mother to represent the procedural rights of the minor victim are questionable, since she could not protect the child's interest before the criminal investigation authority got involved.

Criminal investigation and practices of examination of sexual crimes in court

When the causes are examined in court, the victims of sexual crimes have the same rights as during the criminal investigation phase. In the criminal files analyzed, many violations of rights of the victims of sexual crimes were identified during the examination of the case in court.

Thus, in **90% from the total number of cases analyzed** the victims are not present at the preliminary session or case examination session, the cause of the absence of the injured party and the need to reschedule the hearing to examine the cause in the presence of the victim is not even questioned. **In all the cases** the victim **was not assisted by an attorney who provides free state legal aid**, although the law provides for this right for the victim. Moreover, in all the cases the victim was not even asked if she wanted to be assisted by an attorney who provides free state legal aid and the trial was not postponed for contracting an attorney.

The judging process of the category of crimes related to sexual life usually takes place during a closed hearing, following the provisions of art. 18 of the Criminal Procedure Code. In **20% of the total number of files analyzed the cause was examined in a public trial, and in 10% of the causes analyzed the court protocols indicated that „the cause is being examined in a public/closed trial”, with no specifications on what kind of hearing would actually take place.**

If the victim participates in the examination of the cause, the court avoids to ask for her opinion even in matters related to the initiation of the next procedural phase, of whether she has questions for the witness or the offender.

The injured party is interrogated following the general procedure. Only in one case the prosecutor requested the culprit to be taken out of the court room before the hearing of the victim, motivating that his presence could affect the psycho-emotional state of the victim. In all the other cases the victim was making statements in the presence of the culprit.

After taking her statements, the victim must answer some clarification questions, and the biggest number of questions comes from the prosecutor. In some cases, prosecutors ask up to 32 questions. Most of them are not related to the object of the cause, do not influence the qualification of the deed, do not individualize it and concern only the intimate life of the victim. **The prosecutor asks questions about the previous sexual relations, if the victim was a virgin or not, if she consumed alcoholic drinks, how much she consumed and if she has any claims towards the culprit.**

Based on the findings, we concluded the passive role of the court in formulating and asking questions to victims. Still, if the prosecutor does not formulate questions related to the victim's personal life, these questions are asked by the judge.

In the trials where the victims of sexual crimes are children, the legal representative of the injured party participates in the judging of the case. In all the criminal cases analyzed, the victim's opinion on the decisions taken during the examination of the criminal case was not asked. Although, starting with the age of 14, the victims are entitled to express particular procedural rights.

The criminal causes analyzed revealed three types of court decisions:

Acquittal

From all the causes 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, and were issued by the same court.

Conviction

In the majority of cases, the courts convict the offenders for the crimes incriminated. In this sense, it should be mentioned that in all the cases the court issued the decision of conviction. Nevertheless, in 68% of cases after issuing the decision of conviction art. 90 of the Criminal Code was applied, with suspension of the sentence executions and setting a probation period. Still, it is not clear from the court's motivation which are the specific circumstances that influenced the court decision to apply art. 90, par. (1), of the Criminal Code. The court applied art. 90 of the Criminal Code also in cases when victims of crimes were minors.

The high number of convictions proves the state's zero tolerance policy towards the crimes of sexual nature.

Termination of the criminal case due to reconciliation of parties

In 120 of the total of cases analyzed, the victim submitted a request for termination of the criminal investigation due to reconciliation of parties, of which, in 83 cases the requests were accepted and in 37 of cases they were rejected and the culprit convicted, and in one case the offender was acquitted.

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 case of minor victims, in 90% of 122 criminal cases the request for termination of the criminal case due to reconciliation was submitted by the legal representative of the minor injured party, and neither the court nor the prosecutor requested 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. The court issued the decision only based on the request of the legal representative of the minor injured party and the request of the culprit.

Compensation of moral and financial prejudice caused to the victim as a result of crime is an essential element of the victim's right to a fair trial. Only in 86 of all 240 criminal cases the civil action was initiated, of which 1/3 were terminated due to reconciliation of parties and the court did not indicate the amount of moral and financial prejudice in its decisions. In this context, it was established that in the majority of cases the courts approve the civil cases of victims by decisions, in case the offenders are convicted.

The highest amount of the moral prejudice caused that was allowed by a court decision was equal to 50.000 lei. Nevertheless, this quantum of the moral prejudice was allowed only in 5 causes of all the causes analyzed. As for the financial prejudice, it should be mentioned that the request for payment was submitted in very few cases, and in the majority of cases this request was rejected, due to the fact that the victim did not submit evidence confirming the quantum of the financial prejudice.

Another problem that refers to the right of the victim to compensation is the general acceptance of civil cases, and the quantum is decided by the court in a civil trial.

Perception and stereotypes during the examination of sexual crimes

As a result of the analysis of the criminal courts erroneous perceptions and stereotypes towards victims of sexual crimes were identified. The law enforcement bodies and the court follow them during the examination of crimes from this category. These perceptions result in the creation of an im-

proper opinion related to the guiltiness of the victim in the commitment of the crime.

According to the causes analyzed, the wrong perceptions about the victims are based on the following:

- if the victim previously had sexual relations both with the culprit, and with other persons;
- if the victim was drunk at the moment when the crime was committed, or was spending time with the offenders;
- if the victim got corporal injuries or not;
- if the victim was the wife/life partner/girlfriend of the offender;
- if the victim was from a socially vulnerable family.

The victim gets trust and compassion from the criminal investigation authority and in court, only if along with the sexual intercourse she was submitted to physical violence and has visible body injuries.

The questions asked show a biased attitude of the judges towards the victim as if she had voluntarily drunk alcoholic drinks or had those sexual relations also voluntarily.

Stereotypes faced by victims:

- the victim has her part of guilt for the crime committed;
- a married woman or a woman who lives with a male partner cannot be a victim of sexual crime;
- if the victim was drunk or was spending time with the rapist, it means she gave her consent to the sexual intercourse;
- if no signs of specific physical violence were detected you are not a victim of a sexual crime;
- if you had sexual relations prior to the coerced sexual intercourse, probably this sexual intercourse was also consented;

- a woman with a bad reputation is less probably to become a victim of sexual crimes;
- the victims of sexual crimes do not need medical, psychological or legal assistance.

The fact that such wrong perceptions and stereotypes are spread by the members of criminal investigation bodies, prosecution, courts, and also the modern society, is a substantial barrier in the expression of rights of victims of sexual crimes to a fair trial. These specific stereotypes stop the victims from addressing the police. In addition, such stereotypes contribute to the decision of victims to file reconciliation requests for the fastest termination of the criminal trial.

Conclusions and recommendations

In **conclusion** we can mention that the analysis of the 240 criminal cases demonstrates that despite the granted material and procedural rights, the victims of sexual rights face a bureaucratic system, which is not prepared to fully accept the status of the victims of these crimes, provide them with protection, assistance and respect their right to a fair trial. Thus, it was identified that from the moment the crime is committed, till the conviction of the guilty person, the victim of a sexual crime has to face several violations of her procedural rights, wrong approaches, stereotypes, procedural actions that aim at intimidating her, put her in bad situation, discriminate her in relation to the crime committed against her, although she is the victim and is not responsible for the crime committed. These violations, approaches and stereotypes not only discriminate the victims, but also discourage them to inform the competent authorities or to file complaints, being mostly coerced to withdraw the complaint, reconcile with the criminal etc.

The rights of victims of sexual crimes are violated both at the phase of criminal investigation, as well as at the phase of judging, law enforcement actors often diminish the role of the victim and her rights in a criminal trial. Thus, from the very beginning, the victims of this category of crimes struggle to convince the criminal

investigation authority about the coerced sexual intercourse, to make evaluations, to make statements, to seek medical and psychological assistance, to face confrontations with offenders and witnesses, to go through evaluations that would prove they are telling the truth. They are not involved in the criminal cases, and are not provided with legal and psychological aid. Thus, they are not only the victims of sexual crimes, but also of a legal system, which forces them to repeated revictimization when such procedures are not appropriate nor necessary. Moreover, till now, the victims of sexual crimes were not provided with any rehabilitation service, any chance to recover, being forced to follow bureaucratic and humiliating procedures. For this particular reason the majority of victims adopt a passive position and in most of the cases prefer not to inform the criminal investigation authority about the crime committed.

Based on the findings and in order to improve the existent legal framework, and avoid violations of victims' rights both at the criminal investigation stage and during the examination of cases in court, the **following are recommended:**

- 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 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;
- 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 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;
- interrogate the victims of sexual crimes in friendly conditions;

- 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;
- 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;
- 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;
- 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;
- 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 with reference to the respect of the procedural rights of victims.

