

EXECUTIVE SUMMARY

The study “**Children Victims of Crime and Legal Proceedings: Republic of Moldova Case**” had the **goal** of analyzing the situation with participation of children victims of crime in legal proceedings (*criminal prosecution, trial*) and the role of each participant (*criminal prosecution officer, prosecutor, judge, child, parent/ legal representative, tutelage authority, psychologist/educator*) in this process. In this context, experiences and opinions of children victims of crime, judges, prosecutors, criminal prosecution officers, local public administration, decision-makers were studied.

The study **objectives** focused on:

- Analyzing the legal examination system through the prism of child-friendly practices;
- Learning the respondents’ opinion on the changes in the legal examination system with regard to children victims of crime;
- Learning the respondents’ opinion on the need to accompany and provide psychological assistance to children victims of crime;
- Analyzing the expert opinion on the need, use and importance of psychological assessment reports on the child as evidence within legal proceedings;
- Examining the expert opinion on the need, use and importance of informing and psychological preparation of the child and their parent/guardian for participation in legal proceedings;
- Identifying the need in experts in law with specialized professional training in examination and presentation of cases of children victims of crime in court;
- Identifying the need to accompany and provide specialized (psychosocial) assistance to the child and family within legal examination (criminal prosecution, court);
- Formulating recommendations to make the legal examination system child-friendly.

The study is aimed at **legal experts** (criminal prosecution officers, prosecutors, judges) who examine cases of crimes against children; **psychologists** and **educators** involved in providing specialized assistance to children victims of crime, parents, children, and, not least, to decision-makers.

The legal proceedings in the Republic of Moldova are guided by the provisions of the Criminal Procedure Code regulating the status, rights and obligations, as well as protection provided to the minor victim of crime. The child victim of crime acting as the injured party

in the process is heard in the conditions of hearing witnesses¹ in the criminal trial, while according to the amendments to the Criminal Procedure Code made in 2012, in case of minors under 14 years of age who are to be heard with regard to crimes of sexual nature, trafficking in children or domestic violence, the law stipulates hearing in special conditions² (arranged spaces, equipped with audio and video recorders) with the help of an educational psychologist.

The Republic of Moldova has taken a commitment to comply with the international standards in the field, having formulated relevant priorities in different policy documents in this sense. Although development of a child-friendly justice system is a priority for the Republic of Moldova reflected in the 2011-2016 Justice Sector Reform Strategy, and the Parliament of the Republic of Moldova has taken measures to comply with these requirements (*ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation; amendments to the Criminal Procedure Code*), the study still outlined existence of many gaps in terms of law formulation and application.

Provisions of art.109, 110¹ of the Criminal Procedure Code imply that special protection measures for the child witness refer to the criminal prosecution stage only. This aspect proceeds from art.41 of the Criminal Procedure Code stipulating that the instruction judge has authority only at the criminal prosecution stage. It is worth mentioning in this context that international recommendations place an emphasis on child-friendly justice not only at the criminal prosecution stage, but also at the stage of case examination in court (limitation of repeated hearings, exclusion of confrontation and face-to-face encounter with the aggressor, etc.).

The Criminal Procedure Code mentions about participation of an educator, a psychologist and an educational psychologist³ without regulating their place in the criminal trial, corresponding rights and obligations, conditions to be met to participate in procedural actions, requirements to education and professional training, etc. Thus, we attest a legal deficit, which creates confusions and difficulties in the process of carrying out procedural actions and the actual protection of the rights of the child victim or witness of crime, especially since the Classification of Occupations in the Republic of Moldova does not include the specialty of educator.

The study data reveal growing number of cases examined within the justice system that involve children as victims of crime, and mainly children aged 10-16. Two out of ten children (23.5%) victims of crime come to the criminal prosecution officers themselves to report on a crime case. Healthcare and education institutions, tutelage authorities report to representatives of law enforcement bodies on every 10th case of crime against children.

¹ See art.110 CPC, including art.111 CPC

² See art.110¹ CPC

³ See art.110¹, 479, 481¹ CPC

Reporting on the part of community members is less frequent, even though a part of them interacts with these children daily.

In the opinion of quite a number of interviewed, the juvenile justice system has been negatively affected by introduction of integrated case management. For, this system excludes the possibility of specializing judges in child protection. 88.3% of criminal prosecution officers, 64.7% of prosecutors, and 67.3% of judges consider that their specialization on causes of crime against children is *very much* necessary.

Specialized psychological assistance services for children victims of crime are poorly developed in the Republic of Moldova. Thus, 67.3% of criminal prosecution officers, 61.2% of judges, and 52% of prosecutors have confirmed lack of specialized psychological assistance services. 72.9% of prosecutors, 74.5% of judges, and 54.9% of criminal prosecution officers have expressed an opinion, according to which a psychological assessment report on the child would be necessary in all cases.

Although provisions of art.110¹ came into force in October 2012, still no conditions have been created to implement those, and in particular rooms for hearing children have not been arranged yet. According to declarations of children, the majority of hearings take place at police stations, prosecutor’s offices, courts, or in regular rooms/offices. At the same time, representatives of the justice system themselves claim that lack of spaces arranged for hearing children is a problem, as follows: 57.4% of criminal prosecution officers, 64% of prosecutors, 88.8% of judges.

Preparation of the child to take part in legal proceedings is performed spontaneously by people the child trusts (parents, legal representatives) and is not a responsibility of the justice system, in spite of international recommendations. There is no single vision among legal experts with regard to the minimal age, at which a child should be informed about the stages and contents of legal proceedings to take place. Instead, all the interviewed children who had benefited from assistance aimed at their psychological preparation for legal proceedings confirmed the need for such.

Areas of activity in the field of assistance to children victims of crime recommended by the study include:

- Development of the legal framework to clearly regulate participation of a professional psychologist in hearing a child witness or injured party. The proposal to separately regulate and to provide for the role of a professional psychologist in the criminal trial is very important in order to exclude practices of their formal presence in trial.
- An express provision interdicting confrontation of the child with the abuser by amendment to the contents of article 113 par. (6) of the Criminal Procedure Code just stating that *“no minor shall be obliged to participate in confrontation with the person accused of crime against their physical and/or moral integrity”*. Such a formulation gives to understand that a minor’s confrontation is possible if the child agrees to it.

However, their agreement can be based on lack of knowledge of the right to refuse participation in confrontation.

- In order to ensure security of evidence, it is necessary to correlate procedural norms, and namely, legal dispositions of art.110-110¹ CPP and art.159 CPP. At the same time, it is the case to examine the possibility of express regulations with regard to storage and security of audio and video records. The Criminal Procedure Code regulates storage and corresponding security of corpus delicti and other objects within the criminal trial⁴. There is no express stipulation on storage or a way to ensure security of audio or video records. There are certain legal references related to keeping declarations of a witness or minor witness also applicable to declarations of the injured party⁵. We consider those to be insufficient leaving room for possible omissions, especially in case of ensuring security of information/data contained in declarations of the minor witness or injured party.
- Development of the regulatory framework, quality standards for organizing legal hearing of children. These regulatory acts would serve as methodological support for legal experts, tutelage authorities, and experts involved in the trial (psychologists, educational psychologists, interpreters, etc.) and would contribute to ensuring child-friendly conditions when hearing children in order to avoid their re-victimization.
- Creation of conditions stipulated by law and namely arrangement of specialized rooms for hearing children based on the standards approved by the Ministry of Justice. In this sense, it is recommended to improve communication and cooperation between all the actors in the justice system, local public administration, non-governmental sector, to make the efforts on arrangement and use of equipped spaces more efficient.
- Specialization of actors in the justice system (criminal prosecution officers, prosecutors, judges) on cases of children victims of crime and their training based on an adequate framework that would ensure obligatory training of professionals who due to the nature of their activity come into contact with children victims and witnesses of crime or are in charge to address the needs of children in the justice system.
- Development of preparation and legal assistance services for children in contact with the justice system based on the Law No.123 on Social Services dated 18.06.2010.

General recommendations of this study can contribute to positive change in the current child protection system – improvement of the regulatory framework, specialization of experts who participate in legal examination of cases involving children victims of crime, development of justice system-associated services in order to prepare and accompany children victims of crime within the legal proceedings.

⁴ See art.159-160 CPC

⁵ See art.110-111 CPC