

# Child-Friendly Justice: Developing the Concept of Social Court Practices

Report on Existing Judicial Practices in Romania



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## **Project**

The goal of the “Child-Friendly Justice: Developing the Concept of Social Court Practices” project (CFJ-DCSCP) is to improve access to justice for children with enhanced vulnerabilities in the criminal justice system by developing and disseminating specialised models of individualised assessment of their needs in line with international and European law. To that end, the project includes a research component, which seeks to identify existing and ongoing problems and make recommendations connected to individual assessments in criminal proceedings involving vulnerable child victims or children who are suspects or accused of committing a crime. It has a special focus on children deprived of parental care, unaccompanied minors and children with mental disabilities. This report sets out the research’s main findings in Romania, which corresponds to deliverable no. 4.1 (“Report on existing judicial practices in Romania”), activity no. 4.1 (“Research on existing judicial practices in Romania”) in this project.

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## **Disclaimer**

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# Child-Friendly Justice: Developing the Concept of Social Court Practices

*Report on Existing Judicial Practices in Romania*

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## Executive Summary

The project 'Child-Friendly Justice – developing the concept of Court practices' is co-funded by the European Union Rights, Equality and Citizenship Programme (2014-2020) by means of the Request for Projects Proposals REC-AG-2019 / REC-RCHI-PROF-AG-2019-878552 and it will focus on children in particularly vulnerable situations who experience multiple barriers within the criminal justice system and who are often side-lined or excluded.

The aim of this project is to improve access to criminal justice for children with mental disabilities individual assessments of children in vulnerable situations in Bulgaria, Italy and Romania. In particular, it will focus on improving the situation for children with disabilities, children deprived of parental care and unaccompanied minors. The project will develop a set of specialist tools which will contribute to ensuring access to justice, a child-centered approach and ensuring that appropriate measures are taken to enhance their participation and to protect them from harm throughout the criminal justice process.

The aim of this project is to improve access to criminal justice by developing and disseminating specialized models for individual assessment of their needs, in accordance with the relevant European and international law. The project will take place and benefit directly 3 EU countries (Bulgaria, Italy and Romania), with the resulting tools and methods being of relevance more widely across the EU. The project is coordinated by the Validity Foundation, in partnership with 3 organizations (Centre for Legal Resources, PRISM Promozione Internazionale Sicilia Mondo and the Bulgarian Centre for Not-For-Profit Law), from the 3 member states (Romania, Italy and Bulgaria). The Centre for Legal Resources is the Romanian partner of this project.

The objectives are:

- i researching promising practices in each jurisdiction;
- ii developing models on promoting child-friendly justice and individual assessments focused on their needs;
- iii enhancing the capacities of multidisciplinary teams of judges, lawyers, social workers and allied professionals;
- iv analyzing the cascade impact for children through cross-border collaboration and international dissemination;

Chapter 1 provides an overview of the rights of children victims of crime, but also of those accused of committing a crime in Romania, of the existing support services, as well as on the specific problems faced by vulnerable categories of children within country (especially those with psychosocial and / or intellectual disabilities). Three topics are covered in detail, each in a separate subchapter of Chapter 2: Subchapter 1 addresses the lack of appropriate procedures in hearing and supporting children with psychosocial disabilities; Subchapter 2 analyses the relationship between public and institutional actors - lack of training, education and working tools, while Subchapter 3 addresses the lack of adequate social reintegration. The last chapter (Chapter 3) provides an overall conclusion of the report, as well as a set of recommendations addressed to the authorities with responsibilities in the areas covered by this report.

In Romania, children with psychosocial and intellectual disabilities (part of the category of children with enhanced vulnerabilities), is one of the most vulnerable categories of participants in the criminal process, whether they are victims or defendants / suspects. Prejudices and the undue formalism of procedures are combined with a lack of knowledge and / or expertise of professionals, often resulting in decisions that fail to reach the child's best interest.

Despite the latest improvements in Romania, specialized assistance services remain underdeveloped, insufficient and often inaccessible. Although the Victims Directive (2012/29/EU) and the Procedural Safeguards for Children Directive (2016/800 / EU) have been largely transposed into national law, in practice their implementation is unsatisfying.

However, there are some specialized services for child victims who are considered vulnerable, especially children who are victims of abuse and neglect, children who are victims of domestic violence and children who are victims of human trafficking. We've noted examples of good practices towards children in terms of guiding them to the competent services and assessing their needs. Some of these practices are initiated by the state: multidisciplinary teams that assess the needs of children (both victims and accused of committing a crime, whether or not they are criminally liable), coordinated by DGASPCs; special hearing room for children in Cluj-Napoca, Craiova and Bucharest; the existence of general school courses and professional qualification / requalification courses for children serving a custodial measure.

Last but not least, Chapter 3 brings together a series of recommendations addressed to the competent authorities, which aim to facilitate the access of child victims, but also of those accused of committing a crime, to justice and assistance services. These recommendations include: adaption of procedures in order to become more child-friendly; developing and expanding existing procedures for assessing the needs of victims and defendants; adequate training of specialists working with children in the above-mentioned areas and adaptation of social reintegration programs.

The report's results will help improve the capacity of trained professionals to implement individual assessments and child-friendly justice. In the long run, the targeted dissemination of results will increase the understanding of the specific needs of children with enhanced vulnerabilities by professionals in the EU and beyond.

We analyzed below the main issues found upon conducting legal research and interviews with professionals:

- **Problem 1:** Lack of adapted procedures when hearing and supporting children with psychosocial disabilities;
- **Problem 2:** The relationship between public and institutional actors - lack of preparation, training and working tools;
- **Problem 3:** Lack of adequate social reintegration.

## Chapter 1 - Introduction

This report provides an overview of the children's situation - victims of crime, as well as those accused of committing a crime, in Romania, in terms of support services, assessment of their needs and provision of information.

The report's results are based on quantitative and qualitative research conducted between September 2020 and March 2021, combining theoretical research, legislation and public policies analysis with 28 semi-structured interviews with specialists from across the country and 31 requests for public information addressed to state institutions with responsibilities in protecting and supporting children involved in criminal proceedings<sup>1</sup>.

### **All Member States must ensure effective protection of rights and unrestricted access to justice and equal recognition before the law of children with disabilities.**

In Romania, the relevant legislation in criminal matters regarding children with disabilities consists of primary legislation - the Criminal Code (Law 286/2009), the Criminal Procedure Code (Law 135/2010), Law 272/2004 on the protection and promotion of children's rights, Law 252/2013 on the organization of the probation service, Law 211/2004 on measures to provide information, support and protection to victims of crime (transposing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, hereinafter referred to as the 'Victims Directive'), and secondary legislation - Decision no. 1439/2004 on specialized services for children who committed a crime and are not criminally liable.

In accordance with the Victims Directive provisions, C.C.P. provides that the following categories of victims are more vulnerable: 'Child victims, victims with a dependence relationship with the offender, [...], victims of human trafficking, victims of violence in close relationships, victims of sexual violence or exploitation, [...], victims with disabilities [...].'<sup>2</sup> For these categories of victims, judicial authorities may institute special protection measures if victims are to be considered threatened or vulnerable witnesses<sup>3</sup>. However, interviews with specialists have shown that, in practice, judicial authorities rarely institute such protection measures<sup>4</sup>. Likewise, protective measures for victims presumed to be vulnerable may also include a hearing carried out by the judge, police or the prosecutor in special places and in the presence of a psychologist or social worker whose purpose is to reduce the risk of secondary victimization. These victims should, as

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<sup>1</sup> The 31 requests for information, based on Law no. 544/2001 regarding the access to information of public interest, were addressed to: DGASPCs pertaining to the 6 districts of Bucharest, as well as to those from Cluj, Sibiu and Timiș counties; The National Administration of Penitentiaries; Brăila-Tichilești and Craiova detention centres; Baziaș and Târgu Ocna educational centres; General Inspectorate of the Romanian Police; The Prosecutor's Offices attached to the 1st Courts of the Capital's districts, Cluj-Napoca, Sibiu and Timișoara; The Prosecutor's Offices attached to the Bucharest, Cluj-Napoca, Sibiu and Timiș Court; Probation Services within Bucharest, Cluj, Sibiu and Timiș; and the National Probation Directorate. Extensive geographical coverage was targeted. Almost all institutions responded, but not all answers were relevant to the research, some of them only referring to the legislation in force and could not be used to extract information.

<sup>2</sup> Art. 113, (2), C.C.P.

<sup>3</sup> Art. 113, C.C.P. – Protection of the victim and the civil party: '(1) When the conditions laid down by law regarding the status of threatened or vulnerable witness or for the protection of privacy or dignity are fulfilled, the criminal prosecution body may impose against the victim or against the civil party the protection measures set out in art. 124-130, which applies accordingly'

<sup>4</sup> Psychologist, female.

far as possible, be heard a second time, only if strictly necessary and by the same person<sup>5</sup>. At the same time, vulnerable victims are granted the right to be heard by a person of the same sex, upon request<sup>6</sup>.

The first part of the research consisted of gathering and researching the relevant legislation for the report, both at national and international level, as well as the doctrine and any other practical guidelines relevant to this topic. Following the analysis of the legal provisions, we were able to extract the relevant information, both for this report and for creating the methodology of the interview questionnaires, in order to be able to reach as different topics as possible.

The second part of the research was the attempt to disseminate this project - thus, by Law 544/2001 on free access to information of public interest, we sent requests to over 30 institutions (prosecutor's offices, courts, DGASPCs etc.) or requests for support to associations / NGOs having this profile (from which, unfortunately, we did not receive a response), in order to find out about their specific attributions in cases with children involved in criminal proceedings, about the utility of the assessment report, what crimes are committed in general by children, but also about the protection measures applied for child victims with disabilities.

For the last part of the research, we conducted interviews with people who work with children with or without psychosocial disabilities in the criminal field. Interviewees and institutions that were contacted were selected in order to obtain comprehensive and multidisciplinary information from professionals with different backgrounds, especially from the public sector, who provide support and protection for a wide range of children in vulnerable situations. Although interviews and requests for public information did not cover the whole country, the representativeness and diversity of sources is a strong indicator of the state of affairs at national level. A total of 28 interviews were conducted, divided as follows: 3 with children who were accused with a crime, 1 with a lawyer, 3 with judges, 2 with prosecutors, 10 with professionals in the social assistance and child protection system (psychologists, social workers and legal advisers), 2 with police officers, 4 with employees of educational or detention institutions for children, and 3 with probation officers within the Probation Service. 21 of the interviewees were female and 7 were male. Most of the interviews were conducted on Zoom (to avoid contact with strangers, as a measure of additional protection against increased fluctuations in cases of SARS-CoV 2 infection in Romania), having the persons' consent to be recorded, and 4 of them were carried out face to face - 3 with the help of a specialist psychologist (those with children - as an additional guarantee to protect them; also, for reasons of confidentiality, their identity is protected, being named in the report as Child 1, 2 and 3), 1 at CLR's headquarters. Two were also taken by e-mail. The participants come mainly from Bucharest, or from counties such as Timiș, Sibiu, Iași or Cluj.

### **Data on child victims**

In Romania, both existing services and legislation target categories of victims who are perceived as more vulnerable, especially child victims, victims of domestic violence and victims of human trafficking. The assistance services are provided by a series of state institutions, mainly: the General Directorates of Social Assistance and Child Protection, hereinafter referred to as DGASPC (an

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<sup>5</sup> Art. 111, C.C.P. – Procedure regarding the victim's hearing

<sup>6</sup> Art. 111, C.C.P. – Procedure regarding the victim's hearing: '(7) The victim's hearing conducted by the criminal prosecution bodies [...], shall be carried out only by a person of the same sex as the victim, at his / her request, unless the criminal prosecution body considers that this is detrimental to the proper operation of the proceedings or the rights and interests of the parties'



institution as such for each of the 41 counties and the 6 districts of Bucharest), the Public Social Assistance Services (SPAS), organized at a local level (municipality, city, village), National Agency Against Human Trafficking (ANITP). NGOs also often provide specialized services to victims, in addition to or even substituting for state services, sometimes without receiving financial support from public funds.

Mention should be made that Law no. 211/2004 on some measures to ensure information, support and protection of victims of crime underwent a series of substantial amendments in April 2019 by Emergency Ordinance no. 24 / 04.03.2019. Thus, the foundation was laid for creating generic victim support services in Romania, in the form of specialized departments that will operate within each DGASPC and whose teams will consist of at least three specialists: social worker, psychologist and legal advisor<sup>7</sup>. Services provided by departments for victims of crime may include<sup>8</sup>: information on victims' rights, psychological counselling, counselling on financial matters related to the crime, emotional support, information on the victim's role in criminal proceedings and preparation for trial, as well as referral to other specialized support services<sup>9</sup>. These services are free of charge and are provided at the request of the victim or his / her family. Upon request, free legal aid is provided for victims of crime, mainly of attempted murder, bodily injury and sexual violence<sup>10</sup>.

Although Law no. 272/2004 provides a series of guarantees regarding the observance, promotion and safeguarding the children's rights, guided by the principle of the child's best interest, it is known that children with disabilities face many more barriers when trying to access public health information and reporting or complaint mechanisms are weak or ineffective for cases of violence against children or other violations of their rights. Children with psychosocial disabilities must actually benefit from and be informed about their right to receive multidisciplinary specialized assistance, which includes, where appropriate, legal and psychological assistance services, and the precise manner in which these can be granted.

**Statistical data:** in 2019, 1459 perpetrators were prosecuted, accused of crimes committed in the family against 1700 victims, out of which 661 minors<sup>11</sup>.

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<sup>7</sup> Art. 31, Law 211/2004: '(1) In order to provide support and protection services for victims of crime, within the organizational structure of each general directorate, a department is set up to support victims of crime, a structure in which at least three specialists will work, such as: a social worker, a psychologist, a legal advisor'

<sup>8</sup> Law 211/2011 does not impose an obligation for these specialized departments to provide any of the support services mentioned above, probably to allow DGASPCs greater autonomy in managing existing resources and assessing the needs of victims. However, the optional provision of these services involves a risk in providing support to victims of crime.

<sup>9</sup> Art. 7, Law 211/2004: '(4) Support and protection services provided to both victims of crime and their family members could be: a) information on the victim's rights; b) psychological counselling, counselling on the risks of secondary and repeated victimization or intimidation and revenge; [...]; g) guiding the victim towards other specialized services, when appropriate: social services, medical services, employment, education or other services of general interest provided under the law.'

<sup>10</sup> Art. 14, Law 211/2004: '(1) Free legal aid is granted, upon request, to the following categories of victims: a) persons on whom a murder or aggravated murder attempt has been committed, as provided in art. 188 and 189 of the C.C., persons on whom the following has been committed: an offense of bodily injury, provided in art. 194 of the Criminal Code, an intentional crime that resulted in bodily injury to the victim, a crime of rape, sexual assault, sexual intercourse with a minor, sexual corruption of minors, provided in art. 218-221 of the Criminal Code; b) the spouse, children and dependents of the persons deceased due to murder, aggravated murder, provided in art. 188 and 189 of the Criminal Code, as well as other intentional crimes that resulted in the death of the person'

<sup>11</sup> Cited from <https://vedemjust.ro/2019-minori/?fbclid=IwAR38lOz0rK6gLesKI0fw2819bfDxYHsJp5edFhKSJ77Nqax3nHo1AHMf88l>

Year	Charged for child trafficking	Child pornography	Non-compliance with child custody measures	Family abandonment	Sexual act with a minor	Domestic violence
2017	211	163	29	651	301	1491
2018	169	156	31	597	319	1360
2019	175	174	27	510	323	1459

### Data about child defendants

Data gathered regarding the number of children accused or convicted in Romania show that, for example, at the level of the 4th District Court in Bucharest<sup>12</sup>, in the last two years (2019-2020), 20 non-custodial educational measures and 19 custodial educational measures have been applied, for 37 child defendants (of which 20 were male), not being specified if and how many of them had psychosocial disabilities.

From other data gathered from the Timiș Probation Service, it emerged that in 2019 and 2020, the categories of crimes for which children who are criminally liable (i.e., those over 14 years of age) entered in their records were mainly traffic violations - 58 (driving without a license / unregistered vehicle), common assault - 20, theft - 15, robbery - 10, drug trafficking - 4, other crimes - 13. The number of cases of children under supervision of the Probation Service sanctioned with a custodial educational measure or against which the release from an educational or detention institution was ordered amounted, in 2019, to 78, and in 2020, to 42. There were 9 girls and 111 boys registered, of which 6 aged 14-16, 16 aged 16-18, 84 aged 18-20 and 14 over the age of 20. Again, we noted the lack of data on children with psychosocial disabilities who came to the attention of the Probation Service.

Also, according to the available data centralized at the level of ANP, on 11.30.2020, in the subordinated units there were 248 persons in custody (242 boys and 6 girls) for the following crimes: robbery (110), theft (57), murder (37), rape (26) and other offenses (18). For 156 of them, the decisions are final (for 86, the measure of placement in an educational institution was ordered, and for another 70, the measure of placement in a detention institution was ordered). During 01.01.2019 – 12.23.2020, 729 children (711 boys and 18 girls) were placed in the 4 institutions, as follows:

<b>Craiova Detention Centre</b>	14-17 years old	174 boys	5 girls
<b>Târgu Ocna Educational Centre</b>	14-17 years old	171 boys	-
<b>Buziaș Educational Centre</b>	14-17 years old	152 boys	13 girls
<b>Brăila Tichilești Detention Centre</b>	14-17 years old	214 boys	-

<sup>12</sup> These data were obtained following our request based on law 544/2001 on access to information of public interest

## Chapter 2 – Identified problems

### 2.1. Problem 1 - Lack of adapted procedures when hearing and supporting children with psychosocial disabilities

*#About: This chapter provides an overview of the current legislative framework in Romania, pointing out its inability to adapt to children's needs, especially for those that are in a vulnerable situation.*

The lack of adapted procedures affects both a) children with disabilities, victims of crime, during the criminal prosecution phase; as well as b) children with disabilities, having the status of suspect or defendant in committing an act provided by the criminal law, in the phase of criminal prosecution / throughout the trial.

The main ways in which communication and the effective understanding of children's rights are affected have resulted from the inefficient / inadequate communication of procedural rights depending on the type of disability and this lead to their misunderstanding by children; the lack of tools adapted for children hearing (especially of the victims in cases of crimes against the person) leads to the phenomenon of 'revictimization' by their repeated hearing, but also to the lack of evidence in the criminal proceedings; as well as the lack of specialized practitioners conducting hearings and building a trusting relationship with children.

In this subchapter of the analysis, the applicable legislative provisions are represented by the provisions of the national legislation - C.C., C.C.P., Law 272/2004, Law 211/2004, as well as those of the relevant international legislation.

In general, the main legislative problems identified in national criminal law are the lack of procedures and mechanisms adapted to the specific needs of children with disabilities, both victims and accused of committing a criminal act. We found the absence of express regulations regarding the place where the hearing takes place during the criminal prosecution phase.

At the same time, the lack of techniques and methods for conducting individual assessment of children (both victims and defendants), in line with the provisions of Article 22 of the Victims Directive, and Article 7 of Directive 2016/800/EU, represents another problem identified during the research. Except for the assessment of the child defendant by the Probation Service, which at the request of the Court is mandatory carried out, and at the request of the criminal prosecution bodies when they consider it necessary, according to Art. 506 par. (1) C.P.C., nowhere in the Romanian legislation is there any reference to the obligation to conduct such an individual assessment report. It is provided, at the level of DGASPCs, that children who have committed a criminal act and are criminally liable, who benefit from special protection measures - family placement, residential care institutions placement or foster care centers placement, benefit from assessment by a psychologist and a social worker, but this is only conducted for internal use and it is not required by the criminal prosecution bodies to be used as evidence in the file. For children who have committed a criminal act but are not criminally liable, the DGASPC generally carries out an individualized protection plan and a specific action plan, which is used to find out the child's psycho-social care needs. For child victims, after the performance of an internal report concerning their needs, psychological counselling is generally provided, appropriate to their observed needs.

Also, the Romanian legislator provides in C.P.C. a special procedure for hearing the victim, not much different from hearing the defendant / suspect, but not at all differentiated for child victims and even more so for child victims with psychosocial disabilities, although, on the one hand, the defendant and the victim do not stand on the same position of equality, in terms of procedural rights granted by the law, and on the other hand, there are essential differences between an adult and a child.

Concerning a more detailed description of the problem, in the Romanian criminal legislation, the right to compulsory legal aid is granted, according to **Art. 90 of C.P.C.**, only to children considered suspects or defendants - there is no special provision regarding child victims, much less provisions covering children with psychosocial disabilities. Thus, most of the time, the significance of the legal provisions or the way in which they can exercise their rights during the stages of the criminal process are explained to the child victims with disabilities by police (criminal investigation bodies) or by psychologists and social workers within the DGASPC. However, when it comes to their effective understanding, the authorities have difficulty adapting their dialogue in the relationship with children. Here, for example, is the testimony of P.C., a child accused of committing several acts of theft, currently in a foster home:

'The prosecutor spoke nicely, he explained what rights I have granted. The police gave me a sheet of paper containing my rights, but they didn't read them to me and I didn't read them either [...]. The prosecutor was saying the acts I committed, I didn't really understand what they were talking about. [...]'

His colleague, B.I., when asked if in every important moment of the trial he was being made aware of and explained what was happening to him, what rights he benefited of, replied<sup>13</sup>: 'I didn't know what rights meant. Nobody explained to me what it means to have rights.' The child was involved in a robbery in the past, along with several colleagues from the foster care center in which he was living.

Difficulties are also encountered by the authorities' representatives, the hearings being indispensable without a psychologist within DGASPC or a teacher within the center where the child is living. P.D.<sup>14</sup>, a police officer within a police station from the capital, highlighted the essential help received from the specialists:

'The psychologist helps the criminal prosecution body to understand what the child meant, by using certain drawings, games - the hearing is preferred to be conducted by a psychologist or at least someone within DGASPC [...] but, (o.n. - about files regarding children with disabilities) it is in vain to have a psychologist, lawyer, DGASPC social worker to communicate with him, you cannot find out what is of interest to you, the information you need

BD, a police officer in another section, with more than 10 years of experience in criminal investigations, stated that<sup>15</sup> '*when children do not understand, the presence of a family member / relative is ensured, when they do not have a close one, we resort to legal aid in order to inform them and explain to them their rights - the police officer reads his rights to him, tries to explain them, but a representative of DGASPC is also present*'. The police officer told us that he tries to approach each child according to his level of understanding, that there are no differences depending on the

<sup>13</sup> Child-Accused, male.

<sup>14</sup> Police officer, male.

<sup>15</sup> Police officer, male.

crimes committed by the child, and in the victims' case, the events are recorded exactly as described by the injured person. Procedural guarantees were granted with the provisions from **art.105 par. (3) C.P.C.**, in order to ensure the right to a fair trial of people with physical or psychosocial disabilities, those stating that *'if the interrogated person is deaf, mute or deaf-mute, the hearing is done with the participation of a person who has the ability to communicate by using special language. In these situations, the communication can also be carried out in writing'*.

For example, within DGASPC Sector 3<sup>16</sup> operates the Counselling and Resource Centre, which offers counselling services to victims of crime, as well as to their families, in order to overcome the traumas suffered. Specifically, C.C.<sup>17</sup>, a psychologist within DGASPC in the same district, confessed to us that the most common situations he encountered were those where children were victims of crimes of ill-treatment, especially inside the family. Another quite common situation, unfortunately, was the one where children become victims of false claims, or other claims made for reasons other than the actual existence of a crime - as in the case of non-amicable divorces between the parties, where children become instruments in the parents' dispute. Thus, there are situations in which the OUP (criminal prosecution bodies) are faced with requests for hearings of child witnesses, being forced to decide on the usefulness or relevance of such evidence, as is the case narrated by Ms. Prosecutor M.H.<sup>18</sup>:

'I am revolted by another situation, in which the parents are arguing for various reasons, and they have civil interests, and one of the parents asked us to interrogate the child because he would have done something to the other parent and I told the police officer from the beginning that we will not interrogate the child again, in order not to re-traumatize him'

Under no circumstances is it desirable to repeat the hearing of a child victim, with or without disabilities, as the phenomenon of 'revictimization' is known in the literature - victims of crime may go through a process of secondary victimization when they suffer from negative reactions following the victim's initial experience<sup>19</sup>, reactions that may occur during investigations and procedures particular to the judicial system, including repeated hearings in which the victim recounts his traumatic experience. Of extreme utility we can appreciate the existence of the provisions of **Art. 308** regarding the Early Hearing Procedure, which provides that 'when there is a risk that the injured person [...] may not be heard during the trial, the prosecutor may notify JDL for the early hearing of the injured person' - although there is no express reference to the early hearing of children (being left, according to paragraph 2 of the same article, to the 'JDL' personal assessment'), we consider it necessary to remedy this legislative shortcoming.

*(o.n - about the court hearing) 'I sincerely and solemnly guaranteed them that they would not meet the offender - for them this is extremely important [...] it was a lesson for me and I guaranteed to those 2 boys that they will not meet the person who abused them'*

V.C., judge

'In cases with child victims, during trial I do not call children in the court, I oppose when the hearing before the court is requested'

R.F., legal adviser, DGASPC

<sup>16</sup> These data were obtained following our request based on law 544/2001 on access to information of public interest

<sup>17</sup> Psychologist, female.

<sup>18</sup> Prosecutor, female.

<sup>19</sup> Shoham, S.G., Knepper, P., Kett, M. (eds.) 2010

Regarding the hearing of child victims with disabilities, although the legislation provides as mandatory the audio-video recording, under the conditions stated in **art. 111 par. (8) C.P.C.**, corroborated with **art. 111 par. (4, 6, 7)**, as a form of victims' protection, the authorities often encounter logistical difficulties in making audio-video recordings, either due to the lack of an adapted space to ensure the privacy and safety of the child, or even due to the lack of interrogation tools. For example, in the case file<sup>20</sup> regarding a 3 years old child victim of sexual abuse, V.C., the judge, told us about how

"The room is just an instrument, what matters is the hearing, the NICHD protocol, which is extraordinary, uses children's words and it does not ask direct questions until the end, in extremis, to clarify certain issues, it gives the child the opportunity to provide as many details and aspect as possible, so that the statement is very plausible and can later be used in the process, but for that all participants should be trained in this regard, which does not happen [..]"

he approached a psychologist, *'to see if he could interrogate him, although it is not indicated to talk to him because he is very young, but the child, because he was taken to psychotherapy and his parents took care of him, had the chance to overcome the abuse'*, thus managing to conduct the hearing of the child. We remind you that the Criminal Code of Procedure contains several provisions regarding the protection of injured persons (including children).

In fact, the issue of the lack of appropriate tools was raised in several interviews that we had the chance to conduct with criminal law professionals. From the first contact with children, psychologists or social workers within DGASPCs must adapt to the austere conditions in the police stations (or sometimes in the prosecutor's offices), in an attempt to establish, build a relationship with the child - defendant or victim. I.D., a psychologist within DGASPC, stated in a dialogue that *'discussions with the minor take place in the hallway / outside the institution, this marking the creation of a negative therapeutic relationship - locations are deplorable, with the potential to affect the message sent to the child'*<sup>21</sup>. In the same way, Mrs. P.A., a psychologist and center manager, when asked what she considers to be a useful tool for a better observance of the rights of children with disabilities, replied<sup>22</sup>: *'There should be a space inside the police station where you can talk to the child, especially in more delicate cases, under video surveillance, the ways of speaking and asking questions should be adapted, a person within the station should be prepared for dealing with such children, and the psychologist with whom the minor collaborates should always be present'*

'We have a specialized room for hearing child victims of various forms of crime (sexual, physical, emotional abuse), this interviews being conducted in 3 stages - the first time we enter into the room called "Audis" (it has 2 rooms: one - the technical monitoring room, containing the device that carries out the audio-video recording, in which are present the child's legal representative, the ex-officio lawyer, the criminal prosecution bodies) [..]'

### Examples of promising practices

However, there are situations in which it has been possible to build a hearing room for children to the highest standards - currently there exist 3 such rooms, within the Bucharest Court, Cluj Court

<sup>20</sup> Judge, female.

<sup>21</sup> Psychologist, female.

<sup>22</sup> Psychologist, female.

and Craiova Court. The room was presented to us via Zoom, during an interview with Mrs. A.D.<sup>23</sup>, psychologist within DGASPC Cluj, this being a soundproof room, having microphones in the ceiling, in order for the child not to be distracted by stimuli, having a round, transparent table in the center (in order to analyze non-verbal language). The room has unidirectional windows, is equipped with an audio-video recording camera and is properly furnished for children. She told us that in general the criminal prosecution bodies should conduct the hearing, but the DGASPC representative is present in the hearing room (the room being equipped with toys) together with the child and wears a headset by which the questions of others can be heard - the psychologist creates a relationship with the child and they perform unstructured activities. Thus, the child manages to move from a state of anxiety, stress, to a more relaxed state, of leisure, being ready for the hearing process, and then the competent bodies try to talk about the unpleasant event.

‘During the hearing of the child victim or witness, being in vulnerable situations, it was discovered the need to learn a technique that has been improved and validated over time, observing the limits and abilities of children, integrating information from cognitive techniques of interviewing and having a non-directive approach. The children hearing technique used within the Romanian Police includes a systematized hearing protocol that observes the principle of transition from the general framework of the child (which is non-threatening, neutral) to the specific (affective) one, objectifying to the maximum the interaction with the child.

In the case of children with disabilities, the psychological level of understanding is assessed before the hearing, being aware of the degree to which the child has cognitive disorders, language disorders or emotional disorders that may interfere with the hearing process. This information is examined from parents, teachers etc. and possibly, if the child was presented to a Child Protection Institution, the psychological assessment report of the minor is requested, for a better understanding of his / her level of functioning. Depending on the disabilities presented by the child victim, he / she is approached by taking them into consideration during the hearing process and thus choosing the best manner for obtaining the information, without affecting the child in any way. If during the hearing process, the child with disabilities does not want to provide information, he / she is not constrained in any way.’

At the same time, L.M., a prosecutor within the public prosecutor’s office in the same city, the prosecutor told<sup>24</sup> us about the use of the **NICHD**<sup>25</sup> protocol, specially designed for hearing children in criminal proceedings. Although this hearing room exists, built since 2014 on the premises of DGASPC, the main disadvantage is precisely this positioning, the room not being always available or accessible and requiring prior appointment - or, this can be an impediment when it’s required urgent conduct of the hearing, in these cases the hearing being conducted at the police station.

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<sup>23</sup> Psychologist, female.

<sup>24</sup> Prosecutor, female.

<sup>25</sup> <http://nichdprotocol.com/>

Promising practices also include the response provided by IGPR (*o.n.* – transposed in the box above), obtained after requesting information on the attributions of police officers regarding children involved in criminal proceedings, based on Law 544/2001 on free access to information of public interest.

We mention the publications found outside the legislative framework regarding the children hearing, Guide on children hearing during legal proceedings<sup>26</sup> and Methodological Guide on child victims of violence hearing<sup>27</sup>.

*‘The first time they didn't behave badly. The second time with the robbery they spoke very ugly. They took everyone I was with. One time the police officers hit me 6 times with the sticks. I went to wash my hands and he said don't wash your hands, leave them like that and stretch out your palm! If the hand is wet, it doesn't swell and leaves no marks’ they hit him in the wet palm with the stick to hide any evidence.*

### **Preliminary conclusion**

Although, in general, the opinion of children matters, and the authorities investigate what they want to affirm, the communication is difficult, due to the lack of tools adapted for children with psychosocial disabilities hearing. Often, the actors involved in the criminal proceedings differentiate depending on the trial status of the child - defendant or victim, ignoring the fact that what should prevail is, in fact, the communication adapted to the type of disability. In this regard, Mrs. C.A., a clinical psychologist within DGASPC, told us that<sup>28</sup> *‘there is a lack of empathy in Courts, especially in the case of mentally retarded children, who understand very little about the committed illegal act and there are situations in which the judge treats them as offenders from the beginning and they take their barrier [..]’.*

#### About NICHD protocol

This Protocol is intended to encourage the use of open-ended prompts, which are more likely to lead to verbal narrative accounts, thus being adopted as practical guidelines, recommendations widely supported by research. The NICHD protocol is the structured interview of the child victim, containing, equally, the different activities and stages to be carried out during the hearing, as well as the questions to be addressed to the child.

The purpose of using the NICHD protocol is to reduce the suggestibility of professionals participating in the legal proceedings when hearing a child victim, to allow them to adapt their questions according to the child's level of understanding, helping in the same time children to make as detailed and accurate allegations as possible. The NICHD protocol is a structured way of interviewing and covers all phases of a hearing: introduction, rapport-building development, exercise of episodic memory, the narrative part of the hearing and its closure.

Using a standardized approach to interviewing has important advantages that go beyond simply conducting superior interviews. A standardized approach gives all children who are interviewed an equal opportunity to disclose or not disclose alleged abuse. Personal biases such as underestimating children's capabilities, or those resulting from certain case characteristics, are minimized.

<sup>26</sup> Coordinators Mona-Maria Pivniceru, Cătălin Luca, Publication Hamangiu, 2009

<sup>27</sup> Viorel Badea, Bogdan Nicolae Trandafir, Gabriela Udrea, Cristina Iova, April 2017

<sup>28</sup> Clinical psychologist, female.



## 2.2. Problem 2 - The relationship between public and institutional actors - lack of preparation, training and working tools

*#About: This chapter presents the professionals' difficulties in interacting and understanding the needs of children with disabilities, as well as the lack of systematic initial and specialized training programs for all professionals working with victims.*

The lack of specialized training in children criminal justice affects both a) children with disabilities, victims, suspects, defendants, witnesses, active procedural subjects of an act provided by the criminal law / a crime, throughout the criminal proceedings and during the subsequent phase after executing the sentence; and b) professionals who carry out their activity and apply their knowledge when interacting with children.

The main ways in which these shortcomings are affecting the justice system resulted from: the lack of bilateral understanding (child - practitioner / practitioner - child); the lack of effective communication with children, which can be translated in depriving children of their rights and exempting professionals of their duties, such as: the right to information, the right to legal aid, the conditions and procedure for being granted free legal aid, the procedural rights of the victim, the civil party, the suspects and defendants, the victims / witnesses right to be informed of the conditions and procedure to benefit from the provisions of **Art. 113** of the Code of Criminal Procedure, as well as the provisions of Law no. 682/2002 on the protection of witnesses, with subsequent amendments, the victims' right to be informed on the conditions and procedure for being granted financial compensation by the state; the right to request a mediator in cases permitted by law etc.; the lack of appropriate tools for communicating with children that can lead to the phenomenon of 'revictimization' by conducting repeated hearings; the lack of evidence in criminal proceedings; obstructing social reintegration and not taking measure for obstructing the child in committing another crime; from not building a trusting relationship with children and also from the lack of complex, multidisciplinary services, adapted to the specific needs of each child, in order to 'treat' the causes that led to committing a crime and to prevent further criminal behaviour, to prevent distrust in the criminal justice system and in the participating actors (especially the police officers);

We found out from interviewing child defendants that they do not trust the actors involved in criminal proceedings, this being explained by the humiliating and unprofessional behaviour of some of them towards the children, when they were asked how the police officers were treating them. In the below charts we can notice some examples of such<sup>29</sup>. Being asked 'If you were to change something, what would you like to change?', the children gave the following answers:

- *To stop beating children to recognize the crimes. You didn't give birth to me so you can beat me.*
- *To change the violence. You are not allowed to hit anyone. All you allowed to do is put him down, not break his bones.*

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<sup>29</sup> Excerpts from interviews with minor.

*'The police jumped on to me, beat me, to confess'*

*'It was ugly at the police station. I stayed there for 24 hours. I stayed with a boy from the foster care centre. I received a baton in my hand for my theft. Sometimes the police officers screamed.'*

*'They cursed me in every possible way. Most of them spoke like that. I was outside with a child, I don't think he did anything, they kicked the 14-years-old boy in the head with the leg. Well, what's this?'*

In this subchapter of the analysis, the applicable legislation is represented by the obligation to train professionals, which is provided by **Article 25** of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA and **Art. 2** of Law no. 211 of 27 May 2004 about certain measures to ensure the information, support and protection of victims of crime.

In general, the main problem identified is the lack of practical training of professionals, so we consider that training practitioners for treating respectfully, impartially and professionally the children should be the first step to address in practical existence of a child-friendly trial.

The legislation contains references regarding the training of practitioners only in relation to child victims of crime, giving to the interaction with them a higher rank than the interaction with child defendants, which from our point of view should be at least as important and treated with much care and delicacy, being of the conviction's essence precisely the prevention of committing another crime and the social reintegration of the convicted persons (children in this case).

Regarding a more detailed description of the problem, we found that although this obligation of training practitioners is provided by law, at least on child victims of crime, established by the articles mentioned above, and it is incumbent to the Ministry of Foreign Affairs, the National Institute of Magistracy, The Ministry of Internal Affairs, the Institute for the Training and Improvement of Lawyers, as well as to the county councils, respectively the local councils of the Bucharest's districts, by the general directorates of social assistance and child protection (DGASPCs), in practice, these institutions did not ensure the specialization of their professionals, which, by way of performing their legal attributions, establishes direct connections with the victims of crimes.

We show, for example, the statement of T.C.G.<sup>30</sup>, lawyer, with more than 10 years of experience in criminal proceedings, including those with children involved, in relation to the professional training of lawyers, when asked if she has ever benefited from specialized training in this area / or training on how to use any international guideline or legislation (e.g., the CoE guideline):

*'No. I did a profiling course on my own and I've studied investigation techniques etc. The courses should be held at the institutional level. INPPA should held trainings that are really helpful, not teaching the same subjects as in college. Psychologists should learn lawyers. A useful tool for a better observance of the children's rights is the specialization of professionals. From a legislative point of view, the criminal code is very generous, I do not see the need for an amendment. It would be appropriate to be provided the specialization of police officers, lawyers, prosecutors and judges'*

From the statements of the other professionals (prosecutors / judges), the same lack of institutional training and formation is shown when asked if they benefited of guidance<sup>31</sup>:

Most of the professionals we interviewed acknowledged the need to improve communication with child victims or defendants / suspects and the need for specialization and training when interacting with them, for a better performance of their attributions during the criminal proceedings, from the first interaction with the child, to the hearing, the information notice about their rights, during the exercise of their rights and alongside their understand by the children, during the trial unfolding and until the social reintegration process and healing of their traumatic experiences.

*'Organized training sessions by associations on domestic violence or on the hearing side, unfortunately the training of the prosecutors is insufficient'*

*'I did not benefit from specialized training, but lectures are also organized at the level of INM (for example – child hearing techniques); A useful tool would be a Guide of clear rules, clear instructions, adapted to the child's needs, on how to interview them'*

*'it would be useful a discussion with psychologists, with experienced people in order to teach us about the human side of the approach, because we channel ourselves here, we gather evidence so that we can send them to the court, to charge those who comitted such illegal acts''*

*'they did not have specialized trainings; The INM does some training on all practical aspects, but more than a lecture in which you receive a series of tips - you do not learn from practicing with children, from their experience; Training sessions would be very useful because the legislation does not explain how to speak with children.'*

Judge C.D. mentioned to us that<sup>32</sup> *'I basically interacted with the child with the help of a psychologist and he also regained his attention after the child was distracted by the environment in the office, after speaking his first 2-3 words, [...] and by all kinds of gestures, sounds, so the psychologist caught his attention and I managed to gather the necessary information from the fragments'*, emphasizing the importance of training in communicating with children.

<sup>30</sup> Lawyer, female.

<sup>31</sup> Prosecutor, female.

<sup>32</sup> Judge, female.

In Romania, during the criminal proceedings in which children are involved, there are no working tools adapted to the level of children’s understanding or to the level of their degree of disability (hearing rooms / special objects, this topic being addressed at point 1 of this report) and there are also no working tools for professionals for helping them interact with children (good practice guides, books, organized lectures, training sessions, specialized teachers etc.).

There is a gap in the criminal system in terms of tools for assisting professionals in criminal proceedings with the purpose of discovering the illegal acts and investigating them, such as psychological expertise<sup>33</sup>:

*‘very few forensic experts in psychology; DGASPC does not have the right to proceed to the psychological examination of children’*

Psychiatric medical expertise for those between 14 and 16 years old is mandatory, and between 16 and 18 years old it is only required if the practitioners have doubts regarding the children’s judgement.

We also noticed that DGASPC’s reports on children are not required in most cases by professionals, as they are not mandatory. We consider it useful from the point of view of children’s psychology, inter-institutional collaboration and preparation of a multidisciplinary plan of measures to reintegrate or support the child in overcoming the trauma, taking into account the lack of training of the practitioners interacting with children in criminal proceedings.

Mrs. T.C.G.<sup>34</sup>, lawyer, while telling us about the case of a little girl sexually abused within her family and treated completely inappropriate by the criminal prosecution bodies, ex-officio lawyer, case manager etc., stressed that the specialists within the Institute of Forensic Medicine Mina Minovici did not know how to communicate with the girl and how to approach her when carrying out the consultation from a gynecological point of view:

*‘At the Institute of Forensic Medicine it was concluded that the examination could not be conducted entirely due to the **low compliance of the patient**. A female doctor should have performed the examination, the family should have been by the girls’ side or she should have been offered psychological help because a **12-year-old child is not prepared for gynecological examinations**’*

*The major blockage occurred at the police station. She waited on the corridors for 4 hours, after which she returned the next day with the little girl to submit the complaint.*

*The police officer’s attitude was not directed towards the child, but towards his convenience of not investigating another crime anymore because they were told that if they register the complaint, the girl will be placed at the foster care center*

<sup>33</sup> Prosecutor, female.

<sup>34</sup> Lawyer, female.

After the requested drawing, the criminal prosecution bodies explained to her the consequences of misleading them and of the false testimony. Please note that the legal age for a child to be criminally liable is more than 14 years of age and she was 12.

An ex-officio lawyer and a psychologist were called for the second hearing, which lasted about 4 and a half hours. After the first statement, **the police officer asked the 12-years-old girl in the presence of all people to draw an erect male sexual organ**

In the case presented above, the ex-officio lawyer was as unprepared as the police officers. She treated the child as an adult. The same training sessions should be taken also by lawyers in this regard of defending children and communicating with them.

In the end it matters the interest that ex officio lawyers put in performing their profession related to the criminal proceedings. Usually, the assistance is done "as a plant", to obtain an additional income.

### Examples of promising practices

At the level of criminal prosecution bodies in Bucharest, but also of other specialists such as prosecutors, lawyers, judges, we found that some practitioners adopted a self-taught behavior and they are learning and improving based on their experience and they also study on their own to better communicate and deal with children.

Thus, Mr. B.D., specialist officer within IGPR - Criminal Investigations Department, stated that at the IGPR level *'quite a lot of such lectures are held - with partners also from abroad (more on serious crimes); Specialization in hearing techniques in general – my colleagues participated in a training organized at the US Embassy by the FBI - statement analysis - analyzing the statement according to how it was given and figuring out what the person wants to communicate in real time when conducting the hearing<sup>35</sup>.*

It is also organized within the IGPR the Homicides Service, Sexual Assault Office, in which trained people work, according to Mrs. T.C.G., lawyer<sup>36</sup>:

*'Within the Homicides Service, the Sexual Assault Office, I've noticed trained police officers, who studied the child's psychology, special methods of interviewing with a child, the hearings took place in specialized rooms, the child was not interrupted, the specialist did not repeat the hearing, everything took place in a comfortable setting for a 12 years old child and the statement was later transcribed after a video recording. This is how I would see the reality ab initio. What I would find useful would be the establishment at the city level of such departments of sexual assault offices to which each such case would be redirected'*

<sup>35</sup> Specialist officer, male.

<sup>36</sup> Lawyer, female.

## **Preliminary conclusion**

We consider necessary to improve the quality of the criminal proceedings for children, either victims or defendants, from the first interaction with any professional (OUP, prosecutor, case manager, legal guardian etc.) until his / her full support in the end. For this to be possible, well-trained professionals are required, qualified for the adaptation of techniques and communication in relation to children, especially those with disabilities and who can put into practice these techniques and measures. In order for children to be protected and supported and for the observance of the child's best interest, it is necessary to involve and collaborate with all competent institutions (including DGASPC, case manager, psychologist, etc.) involved in criminal cases.

### **2.3. Problem 3 - Lack of adequate social reintegration**

*#About: The last chapter will show how specific means of integration for children who have been accused of committing a criminal act are non-existent or inadequately adapted for the effective reintegration of children into society.*

The lack of adequate social reintegration mechanisms affects both a) children with disabilities, suspects / defendants of committing an illegal act, during the criminal proceedings; b) children with disabilities, accused of committing an unlawful act, during the execution of the sentence and during the post-executory stage;

The lack of educational measures, and less of the coercive ones pertaining to the criminal trial, impedes the full understanding of the consequences of committing a crime, and at the end of the sentence, the child / the child who becomes an adult returns to society without an actual support or help for reintegration, which often leads to the phenomenon of repeated offence.

In this subchapter of the analysis, the legislative provisions of interest are those of the national legislation - C.C, C.P.C., Law 272/2004, Law 254/2013, as well as those of the relevant international legislation.

In general, the main legislative problems identified following our research into national criminal law are the lack of methods and means of post-enforcement reintegration tailored to the specific needs of children with disabilities.

As for a more detailed description of the problem, the last stage of the criminal trial is represented by the execution of the punishment imposed by the court - either the placement of the accused child or youth who turned 18 but committed the crime before 18 years old, in an educational or detention center, or of young people who have turned 18 but have committed the act in a minor, in educational or detention centers, or the supervision of children in the execution of a non-custodial educational measure, coordinated by probation officers. However, the duration of these measures is either too short (this being the case for the non-custodial educational measure) or the resources used are insufficient to prepare the child for a proper reintegration into society.

Elements included in the probation service report

However, the reports of the evaluation service reveal a sad reality - when the welfare report from the child's home is carried out, it is discovered that the environment in which they live is extremely vicious, alongside people who are uneducated, live in poor conditions and children do not attend school.

elements regarding the child's social status

the environment in which he / she grew up

what relationship the child has with his family

details of the crime / context

identification of the child's vulnerabilities

quantification of risk and protective factors

counsellors' recommendations etc.

In one of the cases he was assigned with a few years ago, V.C.<sup>37</sup> remembers how the 15 years old defendant sexually assaulted the 3 years old victim, they were primary cousins - the probation service's assessment report revealed the lack of sexual education within the family (parents refused to talk about the subject), and the child tried to experiment [..]

Most of the time, the lack of education becomes a circumstance that leaves a hard mark on the whole process of reintegration of the child. M.H., psychologist and probation officer, disclosed<sup>38</sup> to us that *'it is difficult to perform counselling or to put into practice the civic probation (o.n. - one of the 4 non-custodial measures) when the child does not know how to write or read – he / she can understand the concepts, but the concepts must be adapted to their his / her level of understanding. I was assigned with a case with a child in which the adaptation was carried out by taking certain themes / concepts from the 7th grade civic education textbook [..]'*

How could we overcome this impediment? From building a better relationship with the DGASPC at the level of each county, with the teachers working at the school or the social assistance from the child's home town - all the services that could be as close as possible to the child in order to support him in his reintegration efforts. During one of the interviews, A.I., probation officer, proposed an approach that could be achieved right from the school benches<sup>39</sup>:

*'Training sessions could be organized in schools, up to the 8th grade, in order to give details of the types of crimes (o.n. – to the children) that are most often committed by children, to explain them the consequences of committing crimes etc. by a probation officer'*

*'There should be special inclusion centers for children, former convicted, especially as many of them have nowhere to return to - to build the gradual transition from detention to freedom.'*

As far as imprisoned children are concerned, the situation is just as sad - recovery and reintegration programs run by penitentiaries under the ANP are not specifically designed for children and youths, often psychologists or educators being forced to extract important information and to adapt them for these

<sup>37</sup> Judge, female.

<sup>38</sup> Probation officer, female.

<sup>39</sup> Probation officer, female.

categories. The lack of tools adapted to children, especially for those with psychosocial disabilities, is also highlighted during the execution of the sentence. Asked what she considers to be a useful tool for a better observance of the rights of children with psychosocial disabilities, M.A., social worker within a Children Detention Centre, declared *'It should be easier for people with disabilities because it's harder to work (o.n. – with them) to have tools and figures and pictures - it is difficult to work with children who are functionally illiterate and who do not understand certain information. We should have interactive items, videos [...]'*.

Also in the same interview, Mrs. M.A. revealed another obstruction to the proper reintegration of children into society, namely the long distance between the enforcement centers and the children's home. Until the beginning of the pandemic, children were rarely visited by family or friends, who preferred to send them money rather than spend it to cover the costs of such a long-distance travel. However, a good thing that happened after the state of emergency in Romania was declared is the possibility of video calls with families, which compensated for the lack of visits (before, video calls were available only to children with family members who were also detained / also serving a sentence). We reproduce below part of the dialogue with M.A.:

*'we have children from Baia Mare, Bistrița Năsăud, children who come from 600 kilometres, and as for the girls, we are the only centre that has girls, they come from all over the country'*

*'and isn't reintegration more difficult / is it more heavily felt the punishment?'*

*'there was a way to do some legal business to get closer to home, for example the child declared that somebody else stole it and the court summoned that person and the child would go home for a week - now I don't think this will work anymore because the courts have developed a video system since the pandemic and there is no need to travel'*

*'yes, they feel it, for the fact that they are farther from home, as the family has no possibilities, they prefer to send money and talk on the phone with them than to spend the money on a return trip to Craiova, many of them ask us about the possibilities of getting closer to home, but these are the provisions of the criminal code'*

However, many activities are also organized in prisons with external collaborators specialized in reintegration, and now, in the context of the COVID-19 pandemic, online activities are organized together with community partners or county employment agencies. Also, as part of the preparation program for being released, information is provided on how to access data about institutions or how to be able to access certain social benefits and we constantly collaborate with the probation service.

O.J., social worker in another detention center, told us that he would like *'to engage in collaborations with institutions, NGOs, that they are welcomed, or to benefit from a greater offer of programs and activities, which would be also useful for the children's contact with the outside world, so that they*



*feel the involvement of the community, so that they no longer feel marginalized<sup>40</sup>[...]*. Unfortunately, there are many obstacles within the provisions of the legislation, especially since the role of the social worker ends when the child leaves the center - there are situations in which it is quite difficult, for example, for children coming from child protection institutions, when their non-custodial measure ceases and it is not possible to identify the family in time and solutions must be found quickly – we resort to their temporary institutionalization.

*'it is sad that when children are released from here (o.n. - from the detention centre), they are transferred to foster care institutions, but those who have nowhere to return to who don't have a family, go where they see with their eyes [...] or foster care institutions do not want to take them back, arguing various reasons, we can not keep the children here and a social institution must come to pick them up [...] meanwhile the children live on the streets, they see that they do not have any resort, so in consequence they commit other crimes, stealing a chicken for example and return here'*

### **Examples of promising practices**

At the level of the detention center in Craiova is organized the only penitentiary unit where it functions an independent school, 'Pelendava Special Technological High School' – having the grades 1-12, being educated there including a young man who graduated from high school last year. The high school has professional specialization, but the law does not allow the children in pre-trial detention to be included in school (because it is not known for how long they will be executing the pre-trial detention measure). This also depends on when the child arrives in the penitentiary, for example *'if he / she arrives in February when it is already the second semester, you cannot enroll him / her in school, you need to wait until September<sup>41</sup>'*.

Another useful idea for children reintegration is the availability of qualification courses - they are more organized, they are chosen by mutual agreement because not all courses can be carried out in the unit (for logistical reasons) - the last organized courses were for barber, waiter. There were also situations in which the approval was denied for a bartender's course because it involved bringing drinks to the center, which is prohibited by law<sup>42</sup>.

### **Preliminary conclusion**

Although both probation officers and social workers try to help to re-educate and understand the consequences of the crime by the child, it has often been shown that they are only interested in performing what is required of them, in obtaining the necessary credits (at least in the penitentiary system), the lack of concrete measures and actions being visible, as these children often return to adult penitentiaries, recurring.

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<sup>40</sup> Social worker, female.

<sup>41</sup> Social worker, female.

<sup>42</sup> Social worker, female.

## Chapter 3 – General conclusion

*If a child lives in a spirit of acceptance and friendship, he learns to find love everywhere. Where did we get the crazy idea that in order to make children act better, we must first make them feel worse? Think of the last time you were humiliated or wronged. Did you want to cooperate or act better?*

Children, including those with psychosocial disabilities, should specifically benefit from multidisciplinary specialized assistance, which includes, as the case may be, psychological, legal, educational, recovery assistance services etc.

The state, by means of its professionals, must ensure that from the first contact with a child victim or suspect, all his rights granted by law are observed and the child will actually benefit from all these rights, including after the cessation of the criminal trial.

First of all, in order to ensure that these rights are observed and granted to children, professionals must acknowledge them, apply them and continuously improve their practice.

Following the interviews we've conducted and the legal research, we noticed a lack of knowledge and awareness of all the rights that children should enjoy by those who are bound to enforce them, in particular the rights more recently provided by law such as the those contained in the Victims Directive and the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings, subsequently transposed into Romanian law.

The lack of knowledge of these provisions leads of course to the lack of their application in practice and to the application of inadequate treatment of children both during the criminal proceedings and later, during the rehabilitation stage.

We've noticed a distrust of children towards the criminal justice system, founded, a distrust born from the defective and clumsy interaction of the authorities with them.

This defective interaction was observed in all stages of the criminal proceedings, from the first stage due to the lack of understanding of children's rights when they are informed about them, to the rigidity of the hearing and towards the last stage due to the lack of adapted methods and means of reintegration into society and education.

Both child victims and accused of committing a crime should have the right to an individual assessment in order to identify: the risks to which the victim / defendant / their families may be exposed, the risk of intimidation and retaliation, appropriate support services suitable to the victim's situation, how to facilitate the reintegration of children into society, as well as the necessary protection measures. Considering that the first contact of victims with specialists / authorities is usually with the Police, the latter should carry out an initial assessment of individual needs, preferably with the help of social services representatives or victim support organizations. All judicial authorities should carry out an individual assessment for all victims of crime or at least ensure that this individual assessment is carried out by the competent authorities and in accordance with formal templates (templates, sheets).

The individual assessment should take into account the criteria set out in Article 22 of Directive 2012/29/EU (including the personal characteristics of the victim, the type and circumstances of

the offenses) as well as the victim's willingness to benefit from the protection measures and special attention should be given to vulnerable victims, as laid down in paragraphs 3 and 4 of Article 22. With regard to children accused of a criminal offense, the individual assessment should comply with the criteria set out in Article 7 of Directive 2016/800/EU (the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have).

The risk of re-victimization or intimidation and revenge from the offender or as a result of participating in criminal proceedings should be limited by conducting proceedings in a coordinated and respectful manner that allows victims to trust the authorities.

In order to minimize this risk, a very important part is conducting an adequate hearing, both from the perspective of using adapted working tools, of disposing of a suitable hearing room and from the perspective of observing the hearing procedures and relying on trained professionals who are participating to such hearing.

Thus, we acknowledge a significant need for continuous training and education of professionals involved in criminal proceedings with children (psychologists, social workers, police officers, prosecutors, judges, lawyers etc.) in order for them to achieve a complete and thorough knowledge of children's rights and subsequently to apply them when performing their tasks, with the consequence of a better operation of the criminal proceedings whose purpose is discovering the truth, holding those responsible accountable, but also their social reintegration.

Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner and also to be able to identify the needs of suspects / defendants and support them in the process

Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures and to identify defendant's needs (Probation Service, DGASPC) should receive specific training on how to carry out such an assessment.

Romania should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or educational and restorative justice services for defendants. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. The training should include information about the following aspects: legal obligations of the authorities to inform victims about their rights, individual assessment and guiding them; existing support services and guiding victims to the appropriate services; conducting individual assessment; providing information to victims in a timely and appropriate manner; ways to avoid secondary and repeated victimization; and transdisciplinary issues aimed at increasing the level of understanding of professionals regarding the vulnerability of victims of crime. The latter may include elements of psychology, human rights and non-discrimination legislation, which could provide professionals with a better understanding of the barriers faced by vulnerable groups in accessing justice.

The child's best interests should be always a primary concern.

Mention should be made that in Romania are working extraordinary professionals involved in criminal proceedings with children, who have covered the gaps of the criminal justice system by themselves, through self-training and a proactive spirit of acting in the children's best interest, as if they were their own children. We've noticed awareness among practitioners of the importance of training for interacting with children. Several specially designed children's hearing rooms are already organized and we hope that this practice will continue to grow.

We, adults, often forget that we were children. And we should remember this, especially when we are in front of children. It is our duty to prove them that they can trust us.