

For many people, involving in judicial procedures is an appalling perspective, especially as not everyone has the ability to speak in public. The experience of victimization, as a result of actions far beyond the legal border, is more pronounced as the person has to bear in different stages the testimonial pressure. It is especially necessary to grant a particular attention to the juvenile victims' needs, measures for their protection, means of assistance and support. This because the psychological, physical, social consequences of a violent crime (no matter the form it takes) might be the most serious for a person not fully grown.

The Romanian judicial system is focused especially on the reaction towards the juvenile crime, rather than on the support measures for victims. There is a desperate need for a quick intervention for this type of victims. Ensuring a proper legal, professional and logistic frame is mandatory, a frame which will allow the victims *to have a voice, to be listened to*. Also, the parents must be seen as subjects of council and treatment, as the psychological pressure they will support at the moment when their children become victims and are involved in judicial procedures is equally severe as the one experienced by the victims themselves.

The interest towards victim, and especially towards the child victims of severe and violent crimes, appears to be in a full antithesis: the existence of legal provisions concerning the children involved in criminal system and the existence of an aggression level from the authorities involved, reflected in a specific form of victimization (gentle face/harsh face). Any approach, including the judicial one, implying a child's participation, can't be developed without respecting child's primary need. When a child is approached, this must be done in a different manner than the one used for adults, adapted for children and with concern for child's evolution.

The long involvement in the criminal cases concerning child victims and offenders created the frame for a criminal system which reaction to the juvenile victimization is not a *sensitive* one. Starting from this relatively remote hypothesis, this research aimed to analyze the issues of complying the children's rights involved in the criminal law system as victim, witness and even offender, the impact of interactions between the child and the law institution involved, the experts' reaction to the children victimization, from a legal, but even from a protective point of view, the creation of an answer to the question: the legal authority (police, prosecutor, court) is a *protector* of children's rights, or an *offender* which commits victimizing actions toward the child involved in the criminal law system?

Starting from the picture on the criminal law system in contact with children, created through a direct involvement, we've chosen to assign to our research project *three straight directions on investigation*:

- The experts' perception on the way of developing the judicial procedures in the criminal cases involving children and on the impact these procedures generate on the children;
- The children's perception and their legal representative on the legal procedures in which they are involved;
- Identifying the features of a new form of victimization – *institutional victimization*.

Considering the formalism of procedures involving children, as our own vision on the interaction of the judicial system with children, we sketched the following general and specific purposes of our research:

The main objective is to analyse the institutionally protective and risk factors of the juvenile court, in order to develop a work tool for the specialists in criminal law coming in contact with children (victims, witnesses and even offenders), which might ensure that the rights of these children will be respected, in balance with the rights of the other parties involved in the trial, and which might be responding to children's needs;

In order to accomplish this main objective, we needed firstly to identify these factors, the measures to be taken to organize the legal proceedings in a way that might ensure that the children's rights are respected (including the right to a fair trial, to participate to and understand the legal proceedings, to privacy, also the right to integrity and dignity, the right to be heard, the right to an opinion). But, an accessible justice, fit to child's age, swift, diligent, adapted to child's needs and focused on his rights, might be accomplished only by professionals who dispose of communication abilities adapted for children, trained in using a proper language, in evaluating the possible damaging effects that proceedings might have in children. For this, there is necessary to identify the needs of training of the specialists group interacting with children during legal proceedings. All these represent the secondary, specific objectives of this research.

This research tries to be original through two main elements, namely:

By choosing the investigation's direction – i.e. the analysis of the impact of legal proceedings, of the way of transposing them by the specialists on the child victims, witnesses and offenders; for this, I've chosen, first of all, the method of sociological observation developed in the courtrooms; to study thoroughly the views of the institutional

and social players (on one hand, of the specialists representing the institutions with jurisdiction in cases involving children – policemen, attorneys, lawyers, judges and psychologists - , and, on the other hand, the child victims or offenders, and their legal representatives), we organized *semi-structured interviews*;

By identifying the defining coordinates for a new model of victimization, i.e. the institutional victimization. Creating this new concept is a new element, and not only for Romania. Thus, the impact provoked by the victims' interaction with the criminal law system was known as secondary victimization, whose definition is focused on the specialists' attitude towards the persons in contact with the legal institutions. But, this attitude was not applied to the features identified in the present research. The victimization done by the state remains invisible and requires further research.

The research is structured on **four chapters, as following:**

1st chapter: The juvenile court – past and present;

2nd chapter: Children's interaction with the criminal law system;

3rd chapter: Legal proceedings – mean of abuse and victimization source for children?

4th chapter: Methodology and research developing

Further, we will make a brief presentation on these chapters, insisting on the 4th.

1st chapter: The juvenile court – past and present

This chapter is composed of 6 main sections and aims to highlight the connection between the state's obligation to protect the children and the need of proper, continuous and interdisciplinary training for the specialists interacting with children, regardless of their role in the trial (victim, witness, offender).

For this, we first chose to point out the origins of the juvenile justice system and the sociological approaches who led to its' developing (*The origins of the juvenile justice system*).

Furthermore, we referred to the social reforms who led to changes in the evolution of the juvenile justice system, to the state's role of *parens patriae* only when the parents' incapacity to raise and educate the children was proven, to the need to establish a personal connection between the judge and the child prior to the time when the latter is questioned directly concerning the illegal doing, an aspect known since the beginning of the XX century (*The juvenile justice system and the social reforms*).

The next two sections were dedicated to the arguments supporting the need for the child witness to a traumatizing event, along with the juvenile victims and offenders, to form the object of an analysis on the juvenile court, regardless of its' form: specialized court, specialized section or a panel of judges specialized on these cases (*The child – victim and/or witness – part of the analysis of the juvenile court?; Distinct juvenile court, specialized section or specialized judges?*).

We continued with the arguments on the need for the state to fulfil the obligation to protect the children, through financial and human measures and resources aimed to guarantee their wealth. Not fulfilling or partially fulfilling this obligation is a forming element of the *institutional victimization*. (*State's obligation for children's protection*).

The last section emphasized the lack of a continuous and effective training in the field of the *juvenile justice*, as the absence of a training for judges and prosecutors in the field of juvenile victimology, directly affecting the way and extent of proceedings' adaptability to children involved in criminal cases (*The need of professional and training for the persons working with children*).

2nd chapter: Children's interaction with the criminal law system

This chapter is composed of 8 main sections and it aims to highlight the fact that involving a child in the legal proceedings is part of his recovery process. Recognizing the needs of the juvenile victims and the translation of their procedural rights is a true challenge for the workers of the protection and justice system. The interdisciplinary character of the child victim, witness and even offender approach, requires the creation of professional groups to respond to all needs created by his involvement in legal proceedings.

The chapter begins by explaining a group of concepts used during the research (*Conceptual explanations*).

For the next section we chose to describe the child and childhood, seen as an age of imperfection and a defined social group, who raises a series of social, psychological, educational and legal problems, and, implicitly, requires explicit answers from the state for each one of these (*Child and childhood*).

The next two sections were dedicated to identifying the main approach in the victimology field, namely the relation *victim-offender*, and the major analysis implied by this relation: vulnerability, victimization risk, global designation as *victims* (*meaning the*

sacrificed ones) for the persons who suffered a damage following the perpetration of a crime. (*What is victimology and how it appeared?; Victim or survivor*).

Another section was dedicated to the first large idea of victimology, namely *the victimization*, which emphasizes the needs and the sufferings of victims. Also, we mentioned the differences between the various forms of victimization and the various groups of victims. We highlighted the fact that a sociological impact analysis of the victimization and its' risk, in a confined space, requires exact statistics concerning the various vulnerable social groups (which in Romania does not exist), a long term effect being the drop of the invisible crime. (*The victimization and its forms*).

The last two sections aimed to show the basic needs of the victims, as the principles and rights guaranteeing the juvenile justice, with an accent on the fact that the victims' rights are connected to their needs (*What do victims want?; Victims' immediate and long-term needs; Principles and rights guaranteeing the juvenile justice*).

3rd chapter: Legal proceedings – mean of abuse and victimization source for children?

This chapter is composed of 6 sections and it aims to emphasize the importance of adapting the proceedings to the growth level of the child involved, by a professional group trained for this, without any conflict between their interest and the offender's rights; the connection between the victim's satisfaction degree towards the evolution of their case and the recovery process.

The chapter begins by counting the results of various international researches, leading to the conclusion that the legal proceedings would enhance the children's trauma, due to restoring the painful issue and escalating the feelings of helplessness and guilt for the juvenile victims. (*The children – victims and witnesses*).

The next section was dedicated to emphasizing the various abuse forms on the children, highlighting the fact that they might suffer all forms of victimization suffered by the adults, as some forms of victimization to which they are vulnerable due to their vulnerability status (*Abuse forms on children*)

Furthermore, we analysed both the main theories of victimization (important for our research) and their separation from the beliefs towards the children's victimization – known as being important issues of juvenile victimology (*Theories on victimization*).

The next section analyses the response to the law's intervention on child's mind, i.e. *the therapeutic justice*, as the juvenile court must fulfil its role in recovering the juvenile victims (***The therapeutic justice and the juvenile court***).

The last two sections aimed to emphasize the fact that victim's satisfaction (produced by a group of variables studied in this section) towards the evolution of their case is proportional to the degree of reporting the crimes, and a high degree of satisfaction does not mean that the offender's rights are violated (***The degree of satisfaction for the victims involved in legal proceedings; The conflict between the victim's interest and offender's rights in the criminal justice system. Victim's empowerment***)

4th chapter: Methodology and research development

Victim's perception on the way they were treated during the trial is a strong indication of the victimization suffered during the legal proceedings (Orth, 2002).

When the juvenile victims chose to participate to the trial, by reporting the abuses they suffered to the authorities (many times from parents or close relatives), they hope that the feeling of helplessness and the physical stress will be reduced, to a normality ensured eventually by the judge. But what happens when the judge, when relating to these victims, is not creative enough to not confront the child to a cold and indifferent attitude, focused mainly on preserving the offender's rights? Moreover, what happens when the child experiences negative feelings to each interaction with the authorities, in various trial phases and with institutional players not trained to work with children, and especially with children who suffered harm, regardless of its nature?

To these questions we tried to answer in this research

The lack of a guide of good practice in adapting the legal procedures to the cases involving children, in uniform application of legal provisions and in child's best interest, the international practice in the field of victimology have determined us to presume the existence of a negative impact provoked by the legal provisions applied by the state authorities on the children involved, as a result of the way of transposing these provisions in practice. To identify and analyse the variables generating an improper attitude of the specialists towards child, to find solutions to avoid experiencing by the child of a new form of victimization during the legal proceedings by the authorities, to evaluate the validity of the hypothesis of a new victimization model, i.e. the institutional victimization, for the children interacting with the justice system, and to define a new set of social and legal

principles underpinning it, we chose the qualitative methods of research, to have a better picture on the complexity of this phenomenon.

Thus, the sociological observations made in the court rooms drove us to the conclusion that, during the legal procedures, some children rights are violated; moreover, they are experiencing the pressure carried by the set of aspects determined by the hearing procedure (time and space features, features of the social actors present in the court room, interaction's, verbal and non-verbal's general features); our partial conclusion is that the child victim is submitted to a new victimization process, an institutional process. Later, regarding the sociological qualitative analysis, developed through the semi-structured interview, this hypothesis was reevaluated, having as result a pack of legal and social features, which are underpinning it and defining it at the same time from other victimization models. Thus, we developed a group of semi-structured interviews with judges, prosecutors, police officers, psychologists and lawyers. Moreover, we deemed to be necessary to evaluate the children's perception regarding the impact of the contact between them and the state authorities involved in the legal procedures. Actually, we elaborated interview guides for the legal authorities actors (judges, prosecutors, police officers, psychologists and lawyers), the child victim involved in the legal procedures and his legal representative.

The justice does not mean only punishing the offenders or resolving the conflicts, regardless of their nature. The quality of ongoing procedures, the way of interpreting the legal provisions, identifying the proper way to protect the child's best interest, are also very important and shape the justice's social picture. The failure of experts to adapt the procedures to the child's level of understanding, regardless of his procedural role, depending on his intellectual capacity, on his potential speech difficulties, is causing to the child and his legal representatives the idea that they are being seen only as information sources needed for the case to be solved, and not as legal subjects with full rights. The discontent towards the justice system might have as a later result the non-reporting of crimes or the ignoring of law regulations.

This research is providing arguments to improve the procedures applied especially for the child victims and witnesses, but also for the child offenders, a field that is analyzed swiftly.

The main conclusion of the interviews we developed is that the experience of the children with the justice institutions is traumatic, because of the expression of the way of committing the crime, in a context producing stress and psychological pressure, starting

from the reporting of the crime, continuing with the first hearings made by the police, the forensic control (especially for the child victim), the hearing performed by the prosecutor (especially for the child offender). The peak of the traumatic experience comes in the courtroom, a cold environment, where the child must tell what happened, often confronted with the offender, to which he might meet in the awaiting room, before appearing in front of the court.

The procedures, through their developing, must have, besides a protective role (by following the rights of all the parties), a therapeutic role. The criminal procedural law (both previous and present) doesn't contain any provision regarding the way of listening the child victim by each authority (the actual provisions concern only the victims in general), *thereby special regulations are required for this category, which might ensure a different approach for the hearing.*

Our research discovered a thin form of *separation* of the professionals working with the child victims, witnesses and offenders. The lack of an effective and continuous expression of this separation is, as we appreciate it, the main reason of approaching both children and adults in a uniform manner, unfit for special needs of the first group. Children's contact with the justice system is very brutal, especially for those who are victims or witnesses of a violent crime. Thus, they interact often with police officers who lack any form of professional training for dealing with children. Also, the child victim continues his *victimization* through the contact with doctors and other persons they don't know, the prosecutor, the lawyers and the court (this term include both the location and the specialists involved in carrying the procedures), persons who didn't follow any specialty training, thereby requiring the creation of training programs, interdisciplinary training for the professionals concerning the work with children, and the recognition of leverages to ensure a proper support in this field.

All the elements we emphasized in this research, interconnected and interrelated, are highlighting the formal and improper character of the justice system, where the therapeutic function is failing, and the child is victimized through the behavior of the authorities (policemen, prosecutors, lawyers, judges, doctors), a result of the unawareness of such a need, through the indifference of the decision actors towards the provision of a proper environment for the interactions with the children involved in criminal proceedings. Actually, the child victim, witness, and even offender, becomes also a victim of the justice system. *This victimization appears not as a direct result of the crime committed against or by the child (or of which the child has any kind of information), but as a result of the*

improper way of developing the relation between the child and the authorities involved in the criminal proceedings (who should protect him), transposed in the destruction of the legal protection on one or more law areas, in the weakening and even the corruption of the physical and psychological protection of the child, in the violation of the child's right to dignity, to privacy, of the right to not suffer any additional harm during the criminal process, of the right to be informed regarding the upcoming proceedings, of the right to an opinion, of the right against discrimination, and of any other right guaranteeing the juvenile justice system, by professionals who didn't get any effective and continuous training, and given the lack of interest from the state for creating special conditions to apply the adapted procedures.

The research has also revealed a number of issues concerning the protection system of the child's rights, namely, delays in allocating the necessary funds when leaving the children to the child support agents. Also, the institutional environment is not perceived as a safe one, as the children speak about violent behaviors, stealing of daily use items, aggressive staff. Placing a child to a foster parent should be submitted to strict mechanisms of selection and evaluation of these.

This paperwork highlighted the specific needs of the criminal justice system in its relation with children, needs which, once fulfilled, are meant to remove the gap between the necessities of an approach adapted to the child and the current development of the justice system. We think that the victim's opinion is absolutely necessary in order to identify the innovating solutions, and the application mechanisms must meet the specific legal needs of child victim. In other words, the system must take a responsibility towards these victims.

The victims and the authorities to whom they interact make part of a relation where everyone's actions are affecting the other's. The research tries to close an empirical and analytical gap in the Romanian legislative field. The applicable proceedings need to be exposed, analyzed and corrected.

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