

As an example, in the indictment no. 699/P/2019 of the Prosecutor's Office attached to the Pogoanele First Instance Court the author was charged of rape against the minor aged 14 years. From the legal-medical expertise, it resulted that although the victim had consented formally, she was unable to understand correctly the content and the consequences of the actions, having abolished discernment.

As an another example, the Prosecutor's Office attached to the Buzău First Instance Court transmitted the indictment in the file no. 2726/P/2019 for the acts committed against a minor of 13 year old classified as rape. The psychiatric forensic expertise revealed that the victim did not have the mental capacity to appreciate critically the facts, because she had abolished discernment, therefore she was not able to freely consent to sexual relations with the author.

2.13. The Prosecutor's Office attached to the Târgu-Mureş Court of Appeal informed that the analysis of the consent of the minors and/or the vulnerable persons for the purpose of classifying offences as sexual act with a minor or rape is done based on the psychiatric forensic expertise and psychologic evaluations in accordance with the regulations of the Criminal Procedural Code. In addition, the age, the psychological and physical development of the victim, the relation between the victim and the author, the legal-medical evidence of the injuries suffered by the victims and other evidence obtained through technical means, video-audio recordings are considered as well.

A person of the same sex gender performs the hearing in the presence of the legal representative and the *ex officio* lawyer with the victim, if possible. The personnel from the Guardianship Authority of the city hall at the victim's domicile and psychologists from D.G.A.S.P.C. are also involved in dealing with the case. As example, in a file of the Prosecutor's Office attached to the Miercurea-Ciuc First Instance Court the author was charged of rape against a minor aged under 14 years, which did not have the capacity to understand and critical appreciate the consequences of facts or inactions forbidden by law, thus lacking the discernment. Consequently, the victim could not express a valid consent for the sexual relations.

2.14. The Prosecutor's Office attached to the Craiova Court of Appeal informed that its practice is that of performing a thorough examination of the circumstances in which the offence was committed (if the victim knew the author, if previously he/she had consented to sexual relations, the place of the offence) by considering the vulnerable condition of the victims and the age of the minor victim, which is also important.

If the victim is of a very young age or following the psychiatric legal-medical expertise and the psychologic evaluation results the impossibility for her/him to express a valid consent to sexual relations of any kind, the offence shall be classified as rape and not sexual act with a minor.

Furthermore, if the victim has disabilities and it is necessary, a psychiatric legal-medical expertise to establish if the author took advantage of the victim's impossibility to defend or to express the will is ordered.

The hearings are done in the presence of the legal representative, the chosen or *ex officio* lawyer, and a psychologist of the local directorate for the child protection. If necessary and useful, a report of the psychologist is ordered.

The Prosecutor's Office attached to the Craiova Court of Appeal underlined that following the judgements of the Court the practice of the prosecution bodies is to order a psychiatric/psychologic evaluation/expertise to determine the existence of discernment and the normal reactions of the minor or vulnerable victims, in similar cases.

As an example, the prosecutor's office indicated files no. 2354/P/2018 and no. 2016/P/2015 of the Prosecutor's Office attached to the Caracal First Instance Court where the court held the charges of rape against a minor victim and a vulnerable person respectively, following, among other evidence, the

