



# RESEARCH of the judicial practice related to child sexual exploitation and abuse cases in the Republic of Moldova

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# **RESEARCH** **of the judicial practice related to** **child sexual exploitation and abuse** **cases in the Republic of Moldova**

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## Acknowledgments

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The Research was carried out by the international consultant **Nathalia Berkowitz**, a law reform expert and lawyer with working experience on sexual offences and trafficking in persons. Her background includes experience as a court advocate, a Ministry of Justice lawyer, a legislative drafter, a senior court manager and as an international advisor, based on valuable contributions of the national consultants **Arina Turcan-Dontu**, a lawyer with experience in providing legal assistance in cases of child sexual abuse and **Viorel Plopa**, a lawyer with experience in providing legal assistance in online cases of child sexual abuse, as well as Council of Europe project team.

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## Abbreviations

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CC	Criminal Code of the Republic of Moldova
Council of Europe Baseline Study	Council of Europe Baseline Study on systemic issues affecting the child protection system's response to child sexual exploitation and abuse in the Republic of Moldova
CPC	Criminal Procedure Code of the Republic of Moldova
CSEA	Child sexual exploitation and abuse
LC	Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse
International Centre "La Strada"	International Centre for the Protection and Promotion of Women's Rights "La Strada"
NGO	Non-Governmental Organisation
New Government Decision	Government Decision approving the framework regulation for a Regional Centre for Regional Assistance
SCM	Superior Council of Magistrates

## Criminal Offences Considered by this Research

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Art. 171 para. (2) let. b) CC	(rape of minor under 18)
Art. 171 para. (3) let. b) CC	(rape of minor under 14)
Art. 172 para. (2) let. b) CC	(violent sexual actions against a minor under 18)
Art. 172 para. (3) let. a) CC	(violent sexual actions against a minor under 14)
Art. 174 CC	(sexual intercourse with a person under 16)
Art. 175 CC	(perverse actions against a person under 16)
Art. 175/1 CC	(luring a minor for sexual purposes)
Art. 206 CC	(child trafficking)
Art. 208/1 CC	(child pornography)
Art. 208/2 CC	(recourse to child prostitution)

# Chap. 1 – Introduction

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This Research aims at analysing the practice in criminal cases of child sexual abuse and exploitation in the Republic of Moldova. In this way the Research aimed to complement the *Mapping study on systemic issues affecting the child protection's system response to child sexual exploitation and abuse and the effective implementation of the Lanzarote Convention* which was carried out in 2019 by the Council of Europe project Protecting children from sexual exploitation and sexual abuse in the Republic of Moldova.

This exercise has been initiated within the Council of Europe's project on Protecting children against sexual exploitation and sexual abuse in the Republic of Moldova<sup>1</sup> and continued and finalised within the Council of Europe project on Combating violence against children in the Republic of Moldova<sup>2</sup>, which is implemented in the framework of the Council of Europe Action Plan for the Republic of Moldova (2017–2020)<sup>3</sup>. The Project provides support to strengthening the country's child protection framework and judicial system with focus on the protection of children against sexual violence, promotion of child-friendly justice practices and the rights of the child in the digital environment, through more effective implementation of the [Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse](#) (the Lanzarote Convention)<sup>4</sup> in the Republic of Moldova. In particular, the Research contributes towards achieving the Project's intermediate outcome 2 "Legal and policy framework harmonised in line with Council of Europe standards on child sexual exploitation and abuse and rights of the child in the digital environment / best interests of the child".

The objective is to contribute towards providing key stakeholders with an analysis of the current criminal investigation and judicial practice challenges. To what extent are the Republic of Moldova's present legal norms applied by the relevant justice sector actors in practice and how effective are they in ensuring respect for children's rights under the Lanzarote Convention. The Research also aimed to examine the consistency of relevant case law and judicial practice. To the extent possible, the project also aimed to allow for reflection on any problems observed in practice and any potential capacity or training gaps.

The specific objectives of the Research are:

- ▶ to analyse criminal proceedings in cases of child sexual abuse/exploitation in order to provide objective information about current trends in practice in Moldova;
- ▶ to identify the factors most commonly taken into account by the courts when sentencing offenders convicted of offences of child sexual abuse/exploitation and identify whether additional guidance for professionals is required in sentencing for child sexual offences;
- ▶ to identify whether additional guidance for professionals is required to increase awareness of the importance of respect for the rights of the child in criminal proceedings and child-friendly justice.

The final Chapter of the Research will provide the key areas where recommendations for the authorities of the Republic of Moldova to take urgent action are presented to address critical issues for ensuring that the best interests of children in criminal proceedings are ensured.

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1. See more information of the project at <https://www.coe.int/en/web/chisinau/protecting-children>

2. See more information of the project at <https://www.coe.int/en/web/chisinau/combating-violence>

3. *Council of Europe Action Plan for the Republic of Moldova (2017–2020)*, approved by the Committee of Ministers of the Council of the Europe on 01 February 2017 (CM/Del/Dec(2017)1276/2.1bisa), available at: <https://rm.coe.int/16807023ee>

4. See more information about the Lanzarote Convention (25.10.2007) at: <https://www.coe.int/en/web/children/lanzarote-convention>

## Chap. 2 – Scope and Methodology

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### 2.1 SCOPE OF THE RESEARCH

The Research analysed cases of criminal offences of sexual abuse or exploitation examined by the courts of the Republic of Moldova during the period from **01 January 2017 till 31 December 2019**, in which the victim was a child (including the offences committed in the online environment). The Research analysed only those criminal cases in which a final decision had been issued by the court (in order to respect the confidentiality of criminal investigations and proceedings and the principle of respect for the child rights to freedom and dignity (Art. 10 para. 6 of Criminal Procedure Code of the Republic of Moldova (CPC)), privacy of correspondence (Art. 14 of CPC), inviolability of privacy (Art. 15 CPC), publicity of the court hearing (Art. 18 of the CPC). Cases involving the following criminal offences were analysed: Articles 171 (2) b, (3) b, 172 (2) b, (3) a, 174, 175, 1751, 206, 2081, 2082 Criminal Code of the Republic of Moldova (CC).

The Research examined the following:

- ▶ Compliance of national legislation with the relevant legal norms of the Council of Europe and other international standards, particularly the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention).
- ▶ Protection of the rights of the child victim of sexual abuse/exploitation from the stage of submission of the complaint until final court judgment.<sup>5</sup>
- ▶ Sentencing and Judgment analysis: including sentencing outcomes, considerations of the proportionality of the sentence to the material and physical damage suffered by the victim;
- ▶ Criminal justice outcomes in cases of child sexual abuse and exploitation, taking into account also the overall duration of such proceedings;
- ▶ Possible impact of legislative reforms on sentencing outcomes during the reference period;
- ▶ Collection of data and monitoring of proceedings.

In light of the pandemic restrictions were imposed while carrying out this exercise, consequently the Research took much more time than planned by the project team and not all aspects provided in the working methodology were analysed, e.g. statistical data on international legal assistance on CSEA cases, comparison of sentencing applied for crimes with child victims with those with adults victims, analysis of judgments published on the official court's websites in relation to privacy of data, punitive statistics deduced from the data provided by the General Prosecutor's Office for the decisions of the courts of first instance in 2019 etc.

### 2.2 OVERVIEW OF THE RESEARCH AND METHODOLOGY

#### Research Methodology

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The Research consisted of three main parts: 1) an analysis of Moldova's national legal framework 2) an analysis of statistical data from the police and prosecution and 3) an analysis of data gathered from court case files in respect of cases in which a final court decision was issued during the time period 2017 to 2019 (inclusive).

- ▶ *Methodology for part 1) analysis of Moldova's national legal framework*

In order to ensure consistency of the Research, the analysis of Moldova's national legal framework was undertaken in respect of each article of the Lanzarote Convention.

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5. For more details please see attached the Methodology in the Annexes to the present Study.



The Research also took into account and drew from findings of earlier studies conducted on Moldovan judicial practice in this area<sup>6</sup>.

- ▶ *Methodology for part 2) Analysis of the statistical data generated by the Criminal Justice System Actors (courts, prosecution, police and lawyers/bar), for the period from 2017 till 2019 inclusive*

In order to conduct the statistical analysis, the project team requested all available statistical data related to criminal offences of exploitation/abuse of children for the years 2017–19 inclusive. This included data from the courts, prosecution service, police and lawyers/bar.

- ▶ *Methodology for part 3) analysis of court files (in cases with a final court decision) covering the time period 2017 to 2019 inclusive*

Part 3 of the Research looks at how cases of child abuse/exploitation were handled by the criminal justice system during the time period 2017 to 2019. In order to identify and analyse practice, the national consultants obtained all relevant court files (and accompanying audio recording of child hearings) in which the court had made a final decision during the time period 2017 to 2019. The criminal files were obtained from all courts of the country, which dealt with relevant cases.

The analysis of the court files forms the basis of chapter 5 of this report, which sets out the findings as to the practice of justice sector actors in respect of crimes of sexual exploitation/abuse of children.

In order to ensure consistency in the analysis of each court file and to enable findings, each criminal case file (and any accompanying audio recording) was analysed by national consultants using standard questions in a checklist form<sup>7</sup>. All answers from the checklist were collated and generalised in order to obtain an overall picture of the efficiency and quality of the criminal process in relation to the rights and freedoms of child victims.

The questions aimed to elicit the most important information about the actions taken and decisions adopted by criminal justice system actors throughout the criminal justice process from the referral stage or the criminal process initiated until the issue of the court's final decision on the criminal case.

The basic criteria according to which the checklist form was drafted were:

- ▶ respect for the legality of the criminal case;
- ▶ respect of the reasonable term of the criminal case;
- ▶ opportunity and reasoning of the criminal investigation activities carried out or refusal to perform them;
- ▶ the quality of assistance and protection necessary for the child victim provided;
- ▶ representation of the interests of the child victim;
- ▶ compensation of the child victim;
- ▶ the outcome on the case and the level of special prevention carried out;
- ▶ solutions/actions undertaken on procedural violations identified in the process;
- ▶ national and international cooperation of law enforcement bodies in examining this category of criminal cases;
- ▶ protection of the personal data of the child victim, including following publication of the court decisions.

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6. The report "[National criminal norms and relevant international standards in the area of sexual offenses](#)" of 2018 and the study "[Ensuring the rights of the victims of sexual crimes. Analysis of the judicial practice in the Republic of Moldova](#)" of 2017 prepared by CSO International Centre for Protection and Promotion of Women's Rights "La Strada".

7. See the checklist form used for the current Research in the Annexes to the present Report.

# Chap. 3: Analysis of Moldovan Legal Framework compliance with Council of Europe Standards

## 3.1 INTRODUCTION & PURPOSE OF THIS CHAPTER

The purpose of this chapter is to briefly analyse the extent to which Moldova's current legal framework complies with the Council of Europe standards on child sexual exploitation and abuse as set out in the Lanzarote Convention. The chapter focuses on the CC and CPC provisions, but will also refer to important aspects contained in other relevant legislation or internal regulations. In this respect, it is important to note that Art. 2(4) of the CPC provides that legal norms of a procedural nature contained in other laws may only be applied if they are included within the CPC.<sup>8</sup>

To prevent duplication, this chapter will not address the aspects previously analysed by the Baseline Study on Systemic Issues affecting the child protection system's response to child sexual exploitation and abuse in the Republic of Moldova ("the Council of Europe Baseline Study")<sup>9</sup> or other recent Council of Europe reports in relation to training of criminal justice system professionals<sup>10</sup>. This report focuses on issues for child victims in the criminal justice process in relation to 1) substantive criminal law (i.e. Chapter VI of the Lanzarote Convention) and 2) procedural law (i.e. Chapter VII of the Lanzarote Convention).

Moldova's legal frameworks in relation to child sexual exploitation and abuse have been amended on numerous occasions in recent years. In broad terms, the Council of Europe Baseline Study<sup>11</sup> found that "important work" had been done by Moldovan authorities to bring the domestic legislation into compliance with the Lanzarote Convention. It concluded that "[s]ome issues remain to be addressed but generally the Republic of Moldova has reached international standards in terms of putting into place a legislative framework to address the sexual exploitation and abuse of children." During the preparation of the current report, Moldova's legal framework in relation to child sexual abuse and exploitation was again amended in July 2020 in relation to legal aid. Further amendments to the CC and CPC related to sexual abuse offences and investigation of such crimes are currently being developed and are expected to be approved in autumn 2020.

## 3.2 SUBSTANTIVE CRIMINAL LAW

Moldova's law broadly criminalises sexual conduct as required by Arts 18–23 of the Lanzarote Convention. The law provides separate crimes for rape (Art 171 CC) and (male) "homosexual" sexual activity ("violent sexual actions" Art 172 CC) although the penalties are the same for each. In 2015 the Council of Europe opined that this distinction was stigmatising for child victims.<sup>12</sup> Currently both Art 171 CC and Art 172 CC provide that the key elements of the offence are a) the relevant sexual action and b) that the accused committed the sexual action "by physical or psychological constraint of the person or taking advantage of its impossibility to defend

8. Art 2(4) CPC.

9. J.C. Legrand, "Baseline Study on Systemic Issues affecting the child protection system's response to child sexual exploitation and abuse in the Republic of Moldova", Council of Europe, 20 December 2019 Ref no. 1841/LP/2020/9.

10. A. Bradley, Report, Review of training materials, courses, programmes and strategies on online child sexual exploitation and abuse for law enforcement officials in the Republic of Moldova, Council of Europe, 27 March 2020, Ref: 1841/LP/2020/10 and P. Chiosac, Report, Review of training materials, courses, programmes and strategies on online child sexual exploitation and abuse for judges and prosecutors in the Republic of Moldova, Council of Europe, 28 March 2020, Ref: 1841/LP/2020/8.

11. Ibidem, see p. 19.

12. Council of Europe, "Lanzarote Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 1st Implementation Report, Protection of Children Against Sexual Abuse in the Circle of Trust: The Framework", 4 December 2015 at pp 16–17.

itself or express its will". The Council of Europe standards<sup>13</sup> stress that the key issue is consent or lack of consent by the victim (i.e. did the victim consent), while Arts 171 and 172 CC focus on what did the accused do. Substantial changes to sexual offences provisions are currently being developed, if adopted in the existing version of the draft law, these will among other things remove the distinction between rape and violent sexual activity and instead introduce definitions of sexual intercourse (to include vaginal, anal or oral penetration), of sexual actions (non-penetrative), and provide clearly that the test for unlawful sexual intercourse or actions is whether there is consent (rather than at present whether there is physical or psychological constraint). Under the draft provisions children under 16 cannot give full consent to sexual intercourse. If adopted, the proposed amendments should be accompanied with training.<sup>14</sup>

Both the existing law and draft amendments to Arts 171 and 172 CC appear to require that the defendant knew that the victim was under 18, 16 or 14 as applicable (this applies also to recourse to sexual services provided by a child under Art 208 CC). While this satisfies the requirements of the LC, in practice proof of such knowledge can be challenging for prosecutors and criminal investigation officers. In contrast, the law of England and Wales provides that the defendant must *reasonably believe* that the child is over the relevant age (where the child victim is under 13 there is strict liability).<sup>15</sup> In relation to disabled children Art 77 of the CC provides that where a victim is obviously or known to be disabled, this may be an aggravating factor for the purpose of sentencing. In contrast, English and Welsh law provides separate offences against persons with mental disabilities for which the standard is whether the accused knows or could reasonably be expected to know that the victim has a mental disorder.<sup>16</sup>

Criticisms made by International Centre for the Protection and Promotion of Women's Rights "La Strada" Moldova (International Centre "La Strada") that the CC failed to correctly incorporate Art 23 LC (online solicitation of children for sexual purposes)<sup>17</sup> are addressed by the draft amendment to Art 175/1 CC. However, Art 175/1 CC criminalises solicitation of children only for the purposes of sexual offences under Chapter IV of the CC<sup>18</sup> and thus does not cover solicitation of children for the offence of child pornography<sup>19</sup> or other offences which fall under Chapter VII (Offences Against Family and Minors)<sup>20</sup> as required by the LC. It is not known whether such solicitation is dealt with by Moldovan law as "recruitment" under the child trafficking provision (Art 206 CC). Art 208/1 CC does not specifically include the words "making available" and it is unclear whether the law criminalises putting child sexual abuse material online or creating hyperlinks to it as required by Art 20 LC.<sup>21</sup> Similarly, clarification is needed as to whether "using or holding images" includes both possession of child sexual abuse material and obtaining access to it through information and communication technologies as required by Art 20 LC.<sup>22</sup>

Art 175 CC refers to "attend or assist pornographic performances" without defining pornographic performance. This appears, at least potentially, narrower than required by the Art 22 LC, which requires states to criminalise intentionally causing a child to witness sexual abuse or sexual activities.

13. The Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence 2011 Art 36 stresses the lack of voluntary consent as the key factor in criminalising sexual activity. See also the judgement of the European Court of Human Rights in *MC v Bulgaria* (Application no. 39272/98) available online at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%5C22001-61521%5D%7D> (last accessed 3 September 2020).
14. Since the concept of consent can raise evidential issues, the law of England and Wales includes evidential presumptions as to what will and will not constitute consent see sections 74–77 Sexual Offences Act 2003 available online at <https://www.legislation.gov.uk/ukpga/2003/42/contents> (last accessed 3 September 2020).
15. Sexual Offences Act 2003 available online at <https://www.legislation.gov.uk/ukpga/2003/42/contents> (last accessed 3 September 2020).
16. Sexual Offences Act 2003 available online at <https://www.legislation.gov.uk/ukpga/2003/42/contents> (last accessed 3 September 2020).
17. National Criminal Norms and Relevant International Standards in the Area of Sexual Offences, International Centre "La Strada", Moldova 2018 at p. 57. According to a 2011 study, around 13% of 12 year olds and around 29% of 16 year olds interviewed reported receiving "indecent proposals" from foreigners they met online; see R. Rittenhouse, Barriers to Access to Justice for Child Victims of Sexual Exploitation: Legal Framework and Insights from Professionals in the Criminal Justice System in Moldova, ECPAT International, April 2017 at p. 13, available at [https://www.ecpat.org/wp-content/uploads/2017/04/Access-to-Justice\\_LF-and-Insights-from-Professionals-in-the-Criminal-Justice-System\\_Moldova.pdf](https://www.ecpat.org/wp-content/uploads/2017/04/Access-to-Justice_LF-and-Insights-from-Professionals-in-the-Criminal-Justice-System_Moldova.pdf)
18. Arts 171, 172, 174, 175 CC.
19. The term "child pornography" will be used in this Research only when reference to Art. 208/1 CC is made. In other cases, the expression "child sexual abuse materials" will be used.
20. Art 208 CC makes it an offence to attract/instigate minors to criminal activity, however the penalties are far lower than for Art 175/1 CC.
21. See Explanatory Report at pp. 20–22.
22. Ibid.

## Sanctions and Measures & Corporate Liability (Arts 26, 27, 28 LC)

The crimes analysed by the current Research mostly provide sentences of imprisonment for a minimum of 3 years for natural persons. Crimes of rape and violent sexual actions against children have a higher minimum sentence (5 or 12 years) depending on the age of the victim<sup>23</sup> as does child trafficking (minimum sentences range from 10 to 15 years imprisonment).<sup>24</sup> In this context the sentencing range available for the crime of child pornography appears low (imprisonment of 1–3 years) as does the sentencing for recourse to child prostitution (3–7 years). As a comparison, in England and Wales the possession of indecent images of children can attract a maximum sentence of 10 years imprisonment and recourse to child prostitution where the child is under 13 years old attracts a maximum sentence of life imprisonment.<sup>25</sup> Consideration should be given as to whether the punishments especially for child pornography, are effective, proportionate and dissuasive in the Moldovan context as required by Art 27 LC.

Moldova's CC provides that legal entities (except public authorities) are criminally liable in relation to the offences of child trafficking and child pornography but does not appear to provide for criminal liability for other child sexual abuse crimes. In contrast, Art 26 LC requires that States ensure that legal entities are liable under criminal, civil or administrative law when CSEA offences are committed for their benefit by leading persons and where lack of supervision of control has made such offences possible.<sup>26</sup> Public authorities are liable under civil and administrative law for failures to carry out functions as provided by law, but these do not include specific provisions regarding CSEA. The crimes of child trafficking and child pornography are subject to a fine (depending on the age of the victim and other aggravating factors) and deprivation of the right to carry out a specified activity for up to five years.<sup>27</sup> In relation to child trafficking the legal entity may be liquidated, but this does not appear to apply to legal entities convicted of child pornography.<sup>28</sup> The legal provisions should be reviewed to ensure that Art 26 LC is fully implemented.

Moldova's law provides for the seizure and confiscation of goods, instrumentalities and proceeds of crime.<sup>29</sup> There are extended powers of confiscation in relation to the offences of child trafficking, pornography and prostitution allowing unexplained income of the perpetrator to be confiscated.<sup>30</sup> The US State Department reports that in 2018 law enforcement officials recovered assets from traffickers (including of adults) of 4.2 million lei (\$247,160).<sup>31</sup> Confiscated items and monies become part of State funds; there is no special fund to finance prevention of CSEA or assist victims. *Moldova may wish to consider allocating confiscated items and monies to be allocated to a special fund to finance prevention of CSEA and/or assist victims as is done in some countries.* In this respect, a number of countries provide that confiscated property can be used for the public interest or social purposes.<sup>32</sup>

In cases of online sexual abuse of children care should be taken to ensure that all child sexual abuse materials (including, for example compact discs and other external data storage) are confiscated and effective action taken to ensure that the child sexual abuse materials are destroyed and cannot be further circulated. The relevant law and associated secondary legislation should be reviewed and, if necessary amended, to ensure that child sexual abuse materials are destroyed.

Courts in Moldova may order that convicted offenders cannot hold certain positions or exercise specific activity as a complementary sanction for up to five years (general provision), and in the cases expressly provided by certain criminal provisions, for a period from one year to 15 years (special provision)<sup>33</sup>; and in respect of legal entities, only for the offences of child trafficking and child pornography.<sup>34</sup> In practice, the general provision is rarely applied. Probation officers are responsible in law for monitoring offenders released for example following

23. For victims under age 14 imprisonment of 10–20 years or life, and for victims 14–18 imprisonment of 5–12 years. See Arts. 171 and 172 CC.

24. Art. 206 CC.

25. Section 47 Sexual Offences Act 2003.

26. For example, use of child prostitutes as part of corporate "hospitality".

27. Art 65, 206, 208/1, CC.

28. See Arts 63, 65, 206 and 208/1 CC.

29. Art 106 CC, Also, Arts. 160–162, 302, 388, 533(1)3) CPC.

30. Art 106/1 CC.

31. United States Department of State, 2019 Trafficking in Persons Report: Moldova, available online at <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/moldova/> (last accessed 13 August 2020).

32. These include Belgium, Bulgaria, Spain, Italy, Austria, Romania, Latvia, Lithuania and others. European Commission, Report from the Commission to the European Parliament and the Council, Asset recovery and confiscation: Ensuring that crime does not pay, Brussels 2 June 2020 available online at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20200602\\_com-2020-217-commission-report\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20200602_com-2020-217-commission-report_en.pdf) (accessed 4 September 2020) at pp. 12–13.

33. Art 65 CC.

34. Art 65, 206, 208/1 CC.

conditionally suspended sentences, as well as persons conditionally released of criminal responsibility, and those deprived of the right to hold a certain position or to exercise a certain activity, but it is unknown how effective their systems are, since it was not the objective of this Research. In light of the findings of this Research (outlined in Chapter 5 of the use of suspended sentences), the insufficiency of programmes to rehabilitate offenders or assist those who recognise their fear of committing such offences,<sup>35</sup> and the findings of the Council of Europe Baseline Study regarding pre-employment checks<sup>36</sup>, there appears to be a need to ensure that the law prevents convicted offenders of CSEA from working or volunteering with children. The legal framework should be reviewed to ensure compliance with Art 27(3)(b) LC so that, when sentencing, the court will apply the complementary punishments by which the convicted person is deprived of the right to hold certain positions or to carry out voluntary activity with the involvement of children.

The CC provides for aggravating factors to be considered in sentencing offenders. It appears that committing an offence within the framework of a criminal organisation appears specifically to be an aggravating factor only for the crime of child trafficking<sup>37</sup> however, in other cases commission of an offence through participation would be an aggravating factor<sup>38</sup>.

In light of the findings of this Research on the use of suspended sentences<sup>39</sup> in cases of CSEA (outlined in Chapter 5), it is important to note that the CC restricts the use of these sentences in relation to offences classified as particularly or exceptionally serious offences. This would appear to include some, but not all, CSEA offences.<sup>40</sup>

### 3.3 INVESTIGATION, PROSECUTION, PROCEDURAL LAW

Despite the amendments to legislation in recent years, there are provisions related to criminal process, which do not fully comply with the requirements of the Lanzarote Convention. The Council of Europe Baseline Study found that child victims of CSEA face a “bureaucratic system providing them with insufficient assistance and protection”<sup>41</sup>

Previous concerns related to the lack of specific provisions in the legislation to require legal support to be provided to children from the time of submitting the complaint or the notification to the criminal investigation body, have been solved by a recent amendment to the law. Child victims of CSEA must now be provided with free legal assistance from a lawyer from the time of reporting sexual abuse/exploitation and shall meet with their lawyer prior to investigation.<sup>42</sup> It is hoped that the amendment will ensure that children are well informed of and able to exercise their rights within the criminal justice process and their needs respected. Additionally, where a child is a victim of CSEA in the home, when considering measures to protect the victim, the Court/criminal investigation body shall take action to ensure that the victim has a legal aid lawyer.<sup>43</sup>

Prior to this amendment, legal aid was available to child victims of CSEA<sup>44</sup>, however, to obtain it child victims (or their legal representative) had to make an application. However, this procedure was poorly applied due to insufficient information regarding this right and the procedure for requesting a lawyer. Where an application was granted a lawyer/free legal aid could be provided three days after the application registered with the Territorial Office of the National Council of State Guaranteed Legal Aid. In practice, many children and family

35. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp 39–40.

36. The Council of Europe Baseline Study found that checks and restrictions on employment of persons with criminal records exist in some sectors (judiciary, prosecution, police, teaching), but no such obligations exist in the health and social sectors or in relation to voluntary activities. See J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp 35–36; see also Explanatory Report at pp. 27–28.

37. Art 206 CC.

38. Arts. 41–45, 77 CC.

39. Art 90 CC.

40. Arts. 16 & 90(4) CC, see also, in respect of partially suspended sentences Art 90/1 (4) CC. In relation to punishment for recidivism, where an offender has previously been sentenced to a conditionally suspended sentence and has not reoffended during the period of suspension, it appears that that punishment will not be taken into account – see Art 34(5)(b/1) CC.

41. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at p. 24.

42. On 9 July 2020, the Parliament of the Republic of Moldova adopted amendments to the Law on Preventing and Combating Domestic Violence and the Law on Free Legal Aid Guaranteed by the State (free assistance from a lawyer). See the Romanian version at [https://www.legis.md/cautare/getResults?doc\\_id=122517&lang=ro](https://www.legis.md/cautare/getResults?doc_id=122517&lang=ro). As a result of the amendments, when a complaint of domestic violence, sexual abuse or child trafficking is registered, it will be mandatory for the criminal investigation body (or prosecutor's office or judge) to urgently request free legal assistance (a lawyer from the state) to represent the child victim (and her/his legal representative). A criminal investigation will commence only after the child has consulted with the lawyer.

43. Art 26(3/1) Law on state-guaranteed legal aid no. 198-XVI of 26.07.2007. Where the child is a victim of domestic violence, the law provides that upon examining the implementation of measures to protect victims of domestic violence, the court/criminal investigation body shall within a maximum of 3 working days request the coordinator of the territorial office of the National Council for State Guaranteed Legal Aid to immediately appoint a lawyer for the victim.

44. Art 19 para. (1) of Law no. 198 of 26.07.2007 on State Guaranteed Legal Aid, O.G. no. 157–160 of 05.10.2017.



members were unaware of the child's right to the assistance of a state-paid lawyer regardless of family income. However, where the child, his/her legal representative had financial means; he/she could be represented by a privately paid lawyer based on a private contract.<sup>45</sup>

Ensuring that child victims have legal representation is not in itself a guarantee that child victim's rights will be fully protected. The law must also enable victim's lawyers to effectively perform their role. In this respect, for example, consideration should be given to ensuring that victim's lawyers may apply for the hearing of the child victim under special conditions under Art 110/1 CPC. The impact and effectiveness of the new rights to legal aid for child victim's should be monitored and attention paid to any legal or other impediments to child lawyers' ability to effectively represent their clients.

In relation to the requirement to treat cases of CSEA as a priority and act without delay under Art 30(3) LC, Moldova's law provides that the investigation and hearing of criminal cases involving persons children, "shall be performed in an urgent and preferential manner".<sup>46</sup>

While there are positive aspects to Moldova's legal framework, the procedures are still not fully child-friendly or protective of children and may subject child victims to retraumatisation. One concern is the "confrontation" procedure in which victim and alleged perpetrator are brought "face to face" to support or refute their previous statements where there are discrepancies.<sup>47</sup> Where there are several suspects/defendants, confrontation may take place with each suspect/defendant.<sup>48</sup> While the law provides that no minor shall be forced to participate in a confrontation accused of a crime against his/her physical and/or moral integrity<sup>49</sup>, this puts the onus on a child victim to object rather than on the criminal investigation agencies to protect. Countries which use the confrontation procedure during investigations have taken action to limit its use in relation to child victims. For example, its use has been banned for children in Croatia, at the same time it has been banned for children under the age of 14 in Montenegro.<sup>50</sup> Bringing a victim of sexual offences face to face with her/his abuser is widely acknowledged to potentially traumatising – especially for a child.<sup>51</sup> Preventing such direct contact between a child victim and the suspect is precisely a reason that countries take steps to prevent face to face contact between victim and suspect in court. For example, through use of video-recorded/video link evidence, use of screens<sup>52</sup>, many countries provide for child victims to give evidence without the physical presence of the suspect.<sup>53</sup>

Consideration should be given to barring the use of the confrontation procedure for child victims, or as a minimum, allowing for its use only where requested by a child victim or in the most exceptional circumstances where strictly necessary for the investigation. Account should be taken that fear of being subject to traumatising procedures (such as being brought face to face with their abuser) may dissuade child victims from reporting to or collaborating with the criminal justice process.<sup>54</sup>

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45. Prior to the July 2020 amendment, minor victims and their legal representatives (e.g. parents) were not aware of their rights to free state guaranteed legal aid. Generally, children's legal representatives associated legal assistance with the need to employ a private lawyer (who charge significant fees for advice and assistance) with many victims and their families unable to afford to pay such legal fees.

46. Art 20. Para. (3) CPC. See also Council of Europe Baseline Study, Op. Cit. at p. 20.

47. Further concerns are raised by International Centre "La Strada". See International Centre "La Strada", Ensuring the rights of the victims of sexual crimes. Analysis of the judicial practice of the Republic of Moldova, Summary, Chisinau 2017.

48. Art. 113 CPC.

49. Art. 113 para. (6) CPC.

50. Lanzarote Committee, Protection of Children Against Sexual Abuse within the Circle of Trust: The Framework, 1st Implementation Report, 4 December 2015 at pp. 38–39.

51. See, for example UNICEF & UNODC, Handbook for Professionals and Policymakers on Justice Involving Child Victims and Witnesses of Crimes, United Nations, 2009 at pp. 67, 81; ECHR Judgement in *S.N. v. Sweden* (Application no. 34209/96) at para 47, *Y.V. Slovenia* (Application no. 41107/10) at para. 103.

52. S. Fairclough, "Special Measures, Literature Review", Victims Commissioner, July 2020, available online at <https://victimscommissioner.org.uk/published-reviews/special-measures-literature-review/> (last accessed 13 August 2020). See also sections 16–30 Youth Justice and Criminal Evidence Act 1999 available online at <https://www.legislation.gov.uk/ukpga/1999/23/part/II/chapter/I> (last accessed 6 September 2020).

53. Lanzarote Committee, "First Implementation Report", Op. Cit. at pp. 38–39.

54. See, among others, ECHR Admissibility Decision *Jan C.R.R. Scheper v the Netherlands* Application no. 39209/02. Available online at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Jan%20C.R.R.%20Scheper%20the%20Netherlands%22%22%22%7D%22%22001-68825%22%22%7D%22%22> (last accessed 3 September 2020).

"In this respect, the Court also takes into account the special features of criminal proceedings concerning rape and other sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular as they entail being confronted again with the defendant. It is not uncommon for such victims to seek ways to avoid such distressing confrontations by refusing to give oral evidence in court, as was the case of Ms A. in the proceedings complained of. It becomes even more difficult for the national authorities to secure the attendance of such victims before a trial court when the victims' whereabouts are unknown, which was the situation in respect of Ms B. and Ms C."

The Republic of Moldova has special procedures for the interviewing and hearing the evidence of child victims of CSEA via audio/video forensic interview under Art. 110/1 CPC. The law provides for use of the video recorded interviews as evidence at trial where the child victim is under the age of 14 and also specifically states that repeated examinations of a juvenile must be avoided to the extent possible.<sup>55</sup>

The prosecutor must request the use of the special interviewing procedure where the victim is under 14 “as well as in other cases where the interests of justice or the minor so require” the prosecutor is obliged to request that these special interviewing provisions be applied to the examination of a witness.<sup>56</sup> Art. 110/1 CPC requires the interview to be performed by an investigative judge through an interviewer. Questions for the victim are transmitted to the interviewer by the judge, and the interviewer may reformulate the questions to prevent retraumatisation of the victim. The interview is to be held in specially designed rooms, with only the interviewer and victim in the “hearing room”, separate from the “monitoring room” where the investigative judge and other persons who may present in the hearing sit.<sup>57</sup> Internal guidelines drafted by the prosecutors and approved as well by the Superior Council of Magistrates (“Methodological Guide for the Investigation of Cases with Child Victims”) recommend that interviews of child victims take place within 2 weeks from the reporting of a crime and in the case of younger children (4–5 years) within one week.<sup>58</sup>

The Council of Europe Baseline Study remarks that the introduction of the special interviewing procedure was expected to limit the interaction of the child with the criminal justice system to avoid retraumatisation.<sup>59</sup> Concerns have been raised in relation to the special interviewing procedure.

Firstly, that it is mandatory only for children below 14. In this respect, amendments to the law have been proposed and are expected to be considered in Autumn 2020, if adopted these would apply the special interviewing procedure to all child victims of CSEA bringing the provision into conformity with the LC. Secondly that, despite the legal provisions, investigating judges prefer to conduct the interviews in rooms in the courts assigned for hearing children rather than in more “child-friendly” interview rooms offered by NGOs which comply with international standards, but are located outside of the courts.<sup>60</sup> Thirdly, that while the special interviewing procedure was hoped to prevent multiple interviewing of child victims of CSEA, in practice, child victims (even those under the age of 14) continue to be subject to multiple informal interviews by investigators during the investigative stage. The Council of Europe Baseline Study remarked that this is because the special interviewing procedure is not conducted shortly after the crime is reported (but only after the criminal investigation has been initiated).<sup>61</sup>

Finally, while the special interviewing procedure requires “interviewers”, at the time of the drafting of the Council of Europe Baseline Study there was no legal regulation of who can be an interviewer, their qualifications, remuneration or required training,<sup>62</sup> but this aspect has recently changed. A new Government Decision for Approval of the Framework Regulation on the Organisation and Functionality of the Regional Centre for Integrated Assistance of Children Victims/Witnesses of Crimes and Minimum Standards of Quality (no 708 of 27 Dec 2019) (Barnahus type) (the “new Government Decision”) was launched officially in May 2020. This Regulation provides the Regional Centre for Integrated Assistance, will be responsible for engaging (including developing job descriptions), paying and training interviewers. However, in practice the regulation is not yet applied. It is understood that the Ministry of Health, Labour and Social Protection in cooperation with NGOs are currently developing the implementation mechanism.

Child victims of CSEA may currently be examined by psychiatric-psychological experts to obtain evidence (i.e. psychiatric-psychological legal expertise reports). However, there is currently no legal framework regulating the profession of psychology.

This means that the court can take their evidence about the victim’s suffering and state of mind as a specialist, but not as a psychologist. Thus, in having a psychological examination, the victim may be retraumatised or suffer as a result of having to further recount the crime, without the resulting psychological report carrying full evidential weight for the prosecution.<sup>63</sup> In most CSEA cases there is a need for a psychological assessment

55. Art 371(1/1) CPC.

56. Art 109(5) CPC.

57. Art 110/1 CPC.

58. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at p. 20.

59. For more details see J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp. 20–21.

60. J.C. Legrand Council of Europe Baseline Study, Op. Cit. at pp. 20–21.

61. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp. 20–21.

62. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp. 17 & 21.

63. See also “Ensuring Access for the Victims of Sexual Violence to Adequate Legal and Social Protection”, Centre for Investigations and Consultation, at p. 32.

of the child victim including to clarify the circumstances and impact on the victim. Point 17 of the new Government Decision approving the framework regulation for a Regional Centre for Regional Assistance (the “new Government Decision”) provides the possibility to receive psychological evaluation at the Centre, by psychologists engaged by the Centre who are required to have specialised training and experience in working with children. However, it remains the situation that the profession of psychology is not recognised. If this impacts on the evidential weight of psychologists’ reports, consideration should be given to legal recognition of the profession of psychology.

Concerns have also been raised about the lack of established systems for providing psychological support prior to or after criminal proceedings<sup>64</sup>. The Law on Rehabilitation of Victims of Crime<sup>65</sup> provides that victims of sexual offences who make complaints may request psychological counselling to assist with their rehabilitation, in practice there is no mechanism to implement this law. Preparing child victims for participation in legal proceedings and supporting him/her throughout and after is generally conducted by the child’s persons of trust (parents, legal representatives appointed by the Court) and has not been considered a responsibility of the justice system; although the court may appoint a legal representative for the child where the parent/other legal representative may be prejudicial to the child’s interest.<sup>66</sup> To the extent that child victims receive support services, these are provided by NGOs.<sup>67</sup> However, point 16 of the new Government Decision provides for “crisis psychological assistance to be provided (for a maximum of five sessions) where needed to child victims of CSEA by the Centre prior to and during criminal investigation as well as to their legal representative/trusted person. This assistance will be provided by psychological professionals hired by the Centre and is intended to ensure the child’s emotional stabilisation and able them to participate in the criminal justice procedures including the medical/medico-legal examinations, psychological evaluation and the hearing.

The new Government Decision thus provides a gateway to support for child victims as well as the conduct of Art 110/1 CPC hearings. Especially in view of the findings in Chap. 5 of this report, it will be important to monitor that child victims are promptly transferred to the Regional Centres.

The Council of Europe Baseline Study states that professionals interviewed for the report considered that in many cases investigations of CSEA are not effectively investigated, particularly in rural areas where child victims have less access to lawyers.<sup>68</sup> Additionally a study carried out by the International Centre “La Strada” of 240 cases of sexual offences (adults and children) investigated during 2011–2016 found a range of issues including that forensic medical reports were formulaic, and that victims were asked intrusive questions about their private life not strictly relevant to the offence by investigators and prosecutors.<sup>69</sup>

A range of special investigative activities may be used to investigate most CSEA offences<sup>70</sup> (and pictures, video recordings and information gathered by technical and electronic media are sources of evidence<sup>71</sup>). However, some investigative activities cannot be used in relation to offences of child pornography which, at present are punishable only by imprisonment of 1–3 years and is therefore not classified as a “serious crime”.<sup>72</sup> As an exception, wiretapping and the recording of communications (Art 132/8 CPC) may be used in relation to all CSEA offences except Art 174 CC.

The effectiveness of investigations is also impacted by the willingness of victims, not only to report crimes, but to continue to participate in the criminal investigation and procedures. In compliance with Art 32 LC, the initiation of investigation into child sexual abuse/exploitation is not dependant on a complaint being made

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64. According to a report published in 2013, 67.3% of the criminal investigation officers, 61.2% of the judges and 52% of the prosecutors certified the lack of specialised psychological support services. See: National Centre for Child Abuse Prevention, Study Report. Children Victims of Crime and the Legal Proceedings: the Case of the Republic of Moldova, Chişinău, 2013, p. 45. Available in Romanian at address [http://amicel.cnpac.org.md/files/studiu\\_audierealegala.pdf](http://amicel.cnpac.org.md/files/studiu_audierealegala.pdf)

65. Law no 137 of 29 July 2016 on the Rehabilitation of Victims of Crime.

66. The Court may appoint a legal representative to stand in place of the child victim’s parent – Arts. 480–481 CPC.

67. The Action Plan for the implementation of the National Strategy for children’s rights protection – 2014–2020 (action 2.2.12) provides the setting of unified services (Barnahus type). Officially, in May 2020 the Barnahus service was launched by the Ministry of Health, Labour and Social Protection in North of the country, but it is not functional yet.

68. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at p. 23; See also International Centre “La Strada”, “Ensuring the rights of the victims of sexual crimes, Analysis of the judicial practice in the Republic of Moldova”, Summary, Chisinau 2017.

69. International Centre “La Strada”, “Ensuring the rights of the victims of sexual crimes, Analysis of the judicial practice in the Republic of Moldova” Summary, Chisinau 2017.

70. Arts. 132/1–138 CPC.

71. Art 164 CPC.

72. Arts. 16 & 208/1 CC.



by a victim.<sup>73</sup> The reconciliation procedure (under which the suspect and victim may reconcile) is not available in cases of CSEA.<sup>74</sup> However, once a criminal investigation is initiated, victims and their families may be pressured by the offender or his/her relatives to withdraw their statements or change them, and many do.<sup>75</sup> As a result the criminal case may have weak evidence.<sup>76</sup> Currently, there appears to be no investigation by the criminal investigation body of why the victim or family member has withdrawn or changed their statement. In particular, there appears to be no investigation as to whether the child victim or his/her family has been intimidated, deceived or coerced either directly by the offender or others. Where the victim or family wish to withdraw or change their statements, or otherwise are reluctant to participate in the criminal process<sup>77</sup>, effective steps should be taken to ascertain whether there is a need to protect or provide support to the victim. The assistance of a psychological professional may assist to ensure that the child or family members can speak freely and be assessed for the need for support or victim protection measures.

### **Right to information (Arts 31.1(a) & (b), 31.2 & 31.6 LC)**

Under Art. 277 CPC the criminal investigative body is required to explain to the victim and her/his legal representatives their rights and obligations under the CPC (including, but not limited to, rights to receive information throughout the proceedings<sup>78</sup>, to apply for witness protection, to be compensated for expenses incurred in the criminal case and to claim compensation<sup>79</sup>) and provide them with written information. However, the Research found that victims and legal representatives (i.e. family members/legal guardian) are formally informed, without these rights being explained in an accessible way. Further, the national legislation does not oblige the Republic of Moldova authorities to inform the victim that the defendant is released temporarily or definitively, even in cases where victims and their families might be in danger, as required by Art. 31.1(b) LC.

Concerns have been raised that it is unclear whether the criminal justice authorities are required to explain the child victim's rights, the proceedings and their role directly to the child victim or only to their legal representative.<sup>80</sup> Arts. 58(10) and 60(4) CPC states that where the victim/injured party is a juvenile<sup>81</sup> "his/her rights shall be exercised by his/her legal representatives". Where a child witness is aged 16–18 s/he has a right to be informed about all requests made by his/her representative and to object to them.<sup>82</sup> For a wide variety of reasons child victims may be unwilling to speak about their experiences in the presence of their legal representative.<sup>83</sup>

The purpose of Art 31 LC is to require states to ensure that criminal procedures are child friendly, emphasised by Art 31.6 LC, which requires information to be provided in an age appropriate manner and in a language they understand.<sup>84</sup> It is to be hoped that new amendments to legal aid provisions requiring a child to consult with a lawyer prior to the commencement of criminal investigations will ensure child victims are adequately informed. The obligation will be on the lawyer, since it cannot be assumed that child victims or their legal representatives would always understand the role of a lawyer or what they can expect from him/her (or other

73. Art 274 CPC allows a criminal investigation to be initiated either following a complaint, denunciation, self-denunciation, direct detection of crime (Art 262 CPC), notification from an official examiner (Art 273 CPC) or by the prosecution or criminal investigative body on its own initiative. Also, see Art 276 CPC lists the crimes whose investigation can only be commenced following a complaint from a victim.

74. Art 109 CPC.

75. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp. 22–23.

76. ECPAT International states that the prosecution has the discretion to "drop" a case as weak; the report also refers to child victims "disappearing" from criminal proceedings. See, R. Rittenhouse, Barriers to Access to Justice for Child Victims of Sexual Exploitation: Legal Framework and Insights from Professionals in the Criminal Justice System in Moldova, ECPAT International, April 2017 at pp. 49 and 58–59 available at [https://www.ecpat.org/wp-content/uploads/2017/04/Access-to-Justice\\_LF-and-Insights-from-Professionals-in-the-Criminal-Justice-System\\_Moldova.pdf](https://www.ecpat.org/wp-content/uploads/2017/04/Access-to-Justice_LF-and-Insights-from-Professionals-in-the-Criminal-Justice-System_Moldova.pdf)

77. For example, avoidance of participation in legal proceedings, withdrawal of material claims, registration of a marriage with the alleged offender, or even potentially making further allegations against the alleged offender.

78. A study of 240 cases of sexual offences including against children aged 14–18, found that in practice victims were frequently not informed by the criminal investigation bodies about important procedural actions taken – see International Centre "La Strada", Ensuring The Rights of the Victims of Sexual Crimes; Analysis of the Judicial Practice In The Republic of Moldova, Summary, 2017 at pp. 7–8.

79. Arts 58 and 60 CPC set out the core rights of victims/injured parties.

80. R. Rittenhouse, Barriers to Access to Justice for Child Victims of Sexual Exploitation: Legal Framework and Insights from Professionals in the Criminal Justice System in Moldova, ECPAT International, April 2017 at pp. 51–52.

81. "juvenile" is defined as a person under the age of 18, see Art. 6. 47) CPC.

82. Art 481/1 CPC.

83. See R. Rittenhouse, Op. Cit. at pp. 49–50.

84. In respect of online child sexual abuse and exploitation, lawyers report that not all child victims speak Romanian – see P. Chiosac, Report, Review of training materials, courses, programmes and strategies on online child sexual exploitation and abuse for judges and prosecutors in the Republic of Moldova, Council of Europe, 28 March 2020, Ref: 1841/LP/2020/8 at p. 8.

actors in the criminal process).<sup>85</sup> If child-friendly and age appropriate information materials are insufficient for child victims in Moldova, consideration should be considered to developing written and/or video/online materials. Providing such child-friendly material may assist in ensuring the cooperation of children and their parents with the legal authorities.<sup>86</sup> As an example, the UK's Victim Support Service offer a range of materials for child victims and parents including an online interactive court room to enable children to understand what happens at court.<sup>87</sup>

The requirement in Art 277 CPC to provide information to victims/their legal representatives appears to be limited to their rights and obligations under the CPC. In contrast, the obligation under Art. 31 LC is a broader obligation to inform victims of their rights, available services, progress in the case and their role within the proceedings. However, under the Law on Preventing and Combatting Trafficking in Human Beings child victims of trafficking are to be informed about their situation and rights, protection, assistance and other services available to them although the law does not appear to place a clear responsibility on a particular authority to provide the information.<sup>88</sup> As a positive development proposed amendments to Arts 58 and 60 CPC, if adopted, will require victims of sexual and domestic violence offences to be informed of medical, medico-legal and counselling/psychological assistance.

### **Protection of Privacy, Safety from Intimidation, Retaliation & Repeat Victimisation (Arts 31.1(e), (f), (g) LC)**

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The LC requirement to protect the child's safety, privacy and identity applies at all stages of a criminal investigation and proceedings. Ensuring the victim's privacy can be vital to ensuring her/his safety and protection from intimidation. Lack of privacy may cause the victim shame, emotional distress, stigmatisation in the community and dissuade victims from reporting or cooperating with the criminal justice process.<sup>89</sup>

Moldova's law currently provides that child victims are eligible for protection measure in two circumstances. They will be eligible for protection measures where the sexual offence has occurred within the family<sup>90</sup> and the victim is in danger of violence or "other illegal actions"<sup>91</sup>. At least in theory, child victims (and their family members) of most, but not all sexual offences may be eligible for protection under the Law on the Protection of Witnesses<sup>92</sup>. This Research found only one instance of protection being provided to a child victim under the Law no. 45 of 01.03.2007 on preventing and combating domestic violence and no instances of protection being provided under the Law on Protection of Witnesses (see Chap. 5). There are no legal requirements to protect child victims of CSEA from intimidation, retaliation or repeat victimisation if they do not fall into one of the two categories above. If adopted proposed amendments to Art 215/1 CPC may improve the situation by extending it to cover victims of sexual offences. Art 191 CPC allows restrictions to be placed on an accused/defendant released on bail ("provisional release under judicial control") not to contact the victim.

Identifying protection needs of the victim and ensuring her/his privacy must be undertaken from the very first stage of the process. Criminal investigation authorities should have a duty to ensure the safety and privacy of the child from the initial notification of the case and immediately consider the application of protective measures. In this respect it should be taken into consideration that child victims may be unwilling to speak about the crime or their safety needs in the presence of their parent/legal representative. With the proposed extension of Art 215/1 CPC to all child victims of sexual offences, effective procedures to ensure that protection

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85. Victims and their family members do not always understand the tasks and role of the lawyer. Intuitively, they understand that the lawyer is the person who has to defend their legitimate interests. However, some victims and their legal representatives get an idea of the lawyer's duties only from movies or TV shows and rarely understand what his/her powers, duties or obligations are.

86. ECPAT International, Op. Cit. at pp. 49 and 58 refer to lack of parental support for prosecutions and to children running away from the criminal proceedings.

87. The interactive courtroom may be seen at <https://www.victimsupport.org.uk/courtroom/index.php?page=home>.

88. Art 26 d) Law on Preventing and Combating Trafficking in Human Beings No 241-XVI of 20 October 2005.

89. UNODC & UNICEF, Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime, United Nations New York, 2009 at pp 59.

90. Family is defined in Article 133/1 CC.

91. Art 215/1 CPC and Law on Preventing and Combating Domestic Violence No. 45-XVI of 1 March 2007. Protection measures available to child victims under the domestic violence provisions may include (among other things) an order for the suspect/defendant to temporarily leave or stay away from the home, to stay away from the victim, a prohibition on contacting the victim, an order for the suspect/defendant to complete treatment or counselling to reduce/eliminate violence.

92. Art 215 CPC and Law no 105 of 16.05.2008 on the Protection of Witnesses and Other Participants in the Criminal Proceedings available in Romanian at [https://www.unodc.org/res/cld/document/mda/law-no-105-of-16-05-2008-on-the-protection-of-witnesses-and-other-participants-in-criminal-proceedings.html/Lege\\_cu\\_privire\\_la\\_protectia\\_martorilor\\_si\\_altor\\_participanti\\_la\\_procesul\\_penal.pdf](https://www.unodc.org/res/cld/document/mda/law-no-105-of-16-05-2008-on-the-protection-of-witnesses-and-other-participants-in-criminal-proceedings.html/Lege_cu_privire_la_protectia_martorilor_si_altor_participanti_la_procesul_penal.pdf)

is ensured should be developed (in law, regulations or internal instructions as appropriate) and their implementation monitored – for example a “check-list” of protective actions and steps to be immediately taken might be developed by the Police, Prosecution, new Referral Centre and NGOs.

Within the court room, Moldova’s law provides for the protection of child’s privacy through empowering Judges to order that hearings are closed to the press and public when the interests of juveniles or the protection of the private lives of the parties in the proceeding so require.<sup>93</sup> The evidence of child victims and witnesses must be heard in a “closed hearing”.<sup>94</sup> A proposed amendment to the CPC, if adopted, will provide that victims of sexual offences/domestic violence will give evidence in the absence of the defendant. In this respect, UK law enables vulnerable victims (including child victims of CSEA) to give evidence by live video with the video image screened so that the image of the victim can only be seen by limited number of persons (e.g. excluding the defendant).<sup>95</sup>

No legal provisions or internal regulations exist to ensure that contact does not occur between victims (their family members) and defendants (or their associates) within court and criminal investigation body premises. Victims attending court are not provided with a private waiting area and there are reports that victims are intimidated by defendants/their family/friends in court premises while waiting for hearings and that security is not provided to victims within court premises.<sup>96</sup> In contrast, States within the European Union are required to ensure that contact between victims and their family members within court premises or other premises where criminal proceedings are conducted does not occur.<sup>97</sup> The Superior Council of Magistracy (“SCM”), General Prosecutor’s Office and General Inspectorate of Police should take steps to ensure that victim’s privacy is ensured and that they and their families are safe within court premises.

It is to be hoped that, with the implementation of the new Government Regulation (and the proposed extension of the special hearing provisions to cover all child victims up to the age of 18), child victims in the courts and criminal justice premises will be limited. However, where victims are required to attend court or other criminal justice sector premises their privacy, safety and security must be ensured.

In relation to the privacy of victims following trial, a Regulation of the SCM requires the redaction of names and identifying details of juveniles before court judgements are published on the internet. In practice courts frequently publish judgements in violation of the Regulation.<sup>98</sup> In many countries there are strict restrictions on the publication of information that reveals the identity of a child victim of CSEA.<sup>99</sup>

In this context, concerns have been raised that personal information about a child victim of a CSEA offence is made available or can be accessed including by persons who are not directly involved in those criminal proceedings. Art. 293 paragraph (5) CPC<sup>100</sup> allows an investigative judge (on the request of the prosecutor) to limit access of accused persons, defence counsel and others to criminal investigative materials where necessary to secure the protection of the life, corporal integrity or freedom of a witness and other persons. This provision is rarely applied in CSEA cases to ensure the safety of child victims. Steps should be taken to ensure the safety and privacy of child victims. For example personal information of child victims could be included in the file in a separate envelope, accessible only when necessary and procedural documents which identify child victims reviewed, so that sensitive data regarding him/her are annexed to the procedural documents and can be accessed only where necessary and consideration given to whether the child victim’s lawyer can/ should be able to make an application under Art. 293(5) CPC.

Concerns have also been raised that the electronic information storage systems of criminal investigation bodies and prosecution do not ensure that personal data of child victims is kept adequately securely and that there are risks that it can be accessed improperly. In particular, that the system does not ensure the identification of

93. Art 18 CPC.

94. Art. 18 CPC.

95. S. Fairclough, “Special Measures, Literature Review”, Victims Commissioner, July 2020, available online at <https://victimscommissioner.org.uk/published-reviews/special-measures-literature-review/> (last accessed 13 August 2020).

96. R. Rittenhouse, ECPAT International Op. Cit. at p. 69.

97. 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 at Art 19.

98. I. Chirtoacă & Others, “Transparency of the Judiciary versus Data Protection”; An Analysis of the Publication of Court Decisions in the Republic of Moldova, Legal Resources Centre from Moldova, January 2020 especially at pp. 34–37.

99. For examples see Lanzarote Committee of the Parties to the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, “1st Implementation Report”, Op. Cit. at p. 39. In England and Wales a lifetime ban on the reporting of identifying details of victims of sexual offences is imposed by Sexual Offences (Amendment) Act 1992.

100. For the purpose of ensuring (...) the protection of the life, bodily integrity and liberty of the witness and other persons, the investigating judge, according to the prosecutor’s request, may limit the right of the persons mentioned in paragraph (1) to become aware of the materials or data on their identity.

persons who have performed data access operations (and are obliged to justify the purpose and legal basis for accessing the data).<sup>101</sup>

### Statute of limitation (Art 33 LC)

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The legislation of the Republic of Moldova provides for different statute of limitation periods depending upon the punishments applicable to the offence.<sup>102</sup> Bearing in mind that for multiple reasons many child victims delay disclosure of sexual offences until after adulthood, concerns have been raised that the limitation periods restrict access to justice.<sup>103</sup> The provisions should be reviewed to ensure that as required by Art 33 LC, sufficient time is provided to facilitate victims of all offences of CSEA filing a complaint after they have reached the age of majority and that the different limitation periods for different crimes do not have undesirable effects.<sup>104</sup> Consideration could be given, for example, to providing that the period of statutory limitation in CSEA cases is suspended or does not start to run until the child victim reaches the age of 18, or, until the date when he/she reaches the age of majority or the day of his/her death if applicable.

### Training of Criminal Justice Actors (Arts. 34.1, 35.1c, 36 LC)

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The training (and specialisation) of law enforcement officials, prosecutors and judges, social workers, doctors and teachers has been recently reported on by the Council of Europe.<sup>105</sup> Those reports do not appear to identify any specific training on sentencing in CSEA cases. In relation to interviewing of child victims, some training appeared to be provided to judges and prosecutors<sup>106</sup> and some for law enforcement.<sup>107</sup> However, in Moldova the key actor responsible for interviewing of child victims under the age of 14 (and under the proposed amendments in relation to all child victims) is the “interviewer”. The new Government Decision will now regulate their qualifications and training. Save to the extent provided by the new Decision, the Republic of Moldova’s legislation does not require or give responsibility to any organisation for capacity building or training in relation to CSEA for professions such as psychologists.<sup>108</sup>

Ensuring child-friendly and effective criminal proceedings relies also on a broad range of support staff – for example to ensure security, protection and privacy of victims in court and efficiently process cases. In light of concerns raised in this chapter it would be beneficial to identify what training is provided to other criminal justice sector staff including security personnel – Art. 36 LC requires that training is available to all involved in proceedings.<sup>109</sup>

In respect of lawyers, the law provides for induction and continuous training of legal aid lawyers,<sup>110</sup> the National State Legal Aid Council has developed a curriculum for the continuous training of legal aid lawyers who provide free legal assistance and represent child victims of CSEA, as well as quality standards for legal lawyers involved.<sup>111</sup> These quality standards and training courses are not mandatory for lawyers representing child victims on a privately paid contract basis. All legal aid lawyers representing child victims of CSEA are required to have undergone 40 hours of specialist training. As noted, to date many child victims have been represented by private lawyers (rather than legal aid lawyers). The Council of the Union of Lawyers is empowered by law to take decisions and regulate initial and continuing training of lawyers.<sup>112</sup> However, to date no training program on preventing and combatting sexual exploitation or abuse of children has been approved.

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101. See Activity Report for 2019 of the National Center for Personal Data Protection available online at [https://datepersonale.md/wp-content/uploads/2020/03/raport\\_de\\_activitate\\_2019\\_web\\_cop.pdf](https://datepersonale.md/wp-content/uploads/2020/03/raport_de_activitate_2019_web_cop.pdf)

102. Arts. 16 and 60 CC.

103. R. Rittenhouse, Barriers to Access to Justice for Child Victims of Sexual Exploitation: Legal Framework and Insights from Professionals in the Criminal Justice System in Moldova, ECPAT International, 2017 at pp. 47–48 & 82–83.

104. Explanatory Report at p. 34.

105. J.C. Legrand, Council of Europe Baseline Study, Op. Cit., A. Bradley Op. Cit., P. Chiosac, Op. Cit.

106. P. Chiosac, Op. Cit. at pp. 31 & 34–35.

107. A. Bradley, Op. Cit. at pp. 22–23.

108. J.C. Legrand, Council of Europe Baseline Study Op. Cit. at pp 17 and 21.

109. The National Institute of Justice is also responsible for training of legal assistants, registrars, heads of court secretariats, prosecutor’s advisors, probation officers, state-guaranteed legal aid lawyers as well as the initial and continuous training of other persons working within the justice sector. See Art. 2 para (1) of Law no. 152 of 08.06.2006 on the National Institute of Justice.

110. Art 6 para (1) of Law no. 198 of 26.07.2007 on State Guaranteed Legal Aid.

111. J. C. Legrand, Council of Europe Baseline Study Op. Cit. at p. 22.

112. Art. 39 (d) Law no. 1260 of 19.07.2002 on Advocacy.

## Recommendations

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For ease of reference, the recommendations are listed below, details of the relevant legal provisions and further details of the recommendations are within the text above.

- ▶ The law should be reviewed to ensure that:
  - the online solicitation of children for the purpose of child pornography is effectively criminalized,
  - online child pornography is fully criminalized and that legal entities convicted of child pornography can be liquidated,
  - all child sexual abuse materials are confiscated and cannot be further circulated.
- ▶ The Republic of Moldova should consider allocating confiscated items and monies to a special fund to finance prevention of CSEA and/or assist victims.
- ▶ The law (and processes) should be reviewed to ensure that measures are taken to limit the risk of CSEA offenders reoffending including through the use of court orders to prevent convicted offenders exercising professional or voluntary activities, which bring them into contact with children.
- ▶ The use of the confrontation procedure should be barred for child victims, or as a minimum, limited to circumstances where strictly required for the investigation (e.g. where critical evidence could not otherwise be obtained).
- ▶ It should be considered whether the non-availability of special investigative activities to investigate the offence of child pornography (Art 208/1 CC) impedes effective prosecution of those involved in online pornography.
- ▶ Information about the criminal justice process and the victim's rights, protections and support available should be provided directly to child victims in a manner that they can understand including use of video and other means (including where the child is under the age of 16).
- ▶ Legal provisions and internal procedures should require the protection of the safety and privacy of child victims throughout the criminal justice process (including in the home, community, places of criminal investigation and court premises and in relation to the storage of and access to personal data) from the moment of notification of a crime. This includes an obligation to investigate and apply for protective measures at an initial stage and the development of appropriate and fast procedures to enable children to disclose protection concerns and, as necessary, training for all persons involved in the criminal justice process on security, privacy and protection of child victims of CSEA. Where child victims or family members withdraw cooperation from criminal proceedings, inquiries should be made as to whether there are protection or support needs.
- ▶ The legal representation of child victims of CSEA should be monitored in light of changes to legal aid including whether legal amendments are required to ensure child victims' lawyers can effectively represent their clients.
- ▶ The statute of limitation should be reviewed with consideration being given to providing that the limitation period does not begin to run until the child victim reaches 18, the age of legal majority.
- ▶ The law shall be amended as required to ensure that the evidence of qualified child psychological professionals has full evidential weight.

Training will be required in respect of the large number of amendments already introduced to the law in 2020 and the proposed amendments if adopted. Training should be further considered on sentencing in CSEA and, in relation to privacy, protection and security issues, also for security and support staff within the criminal justice system.

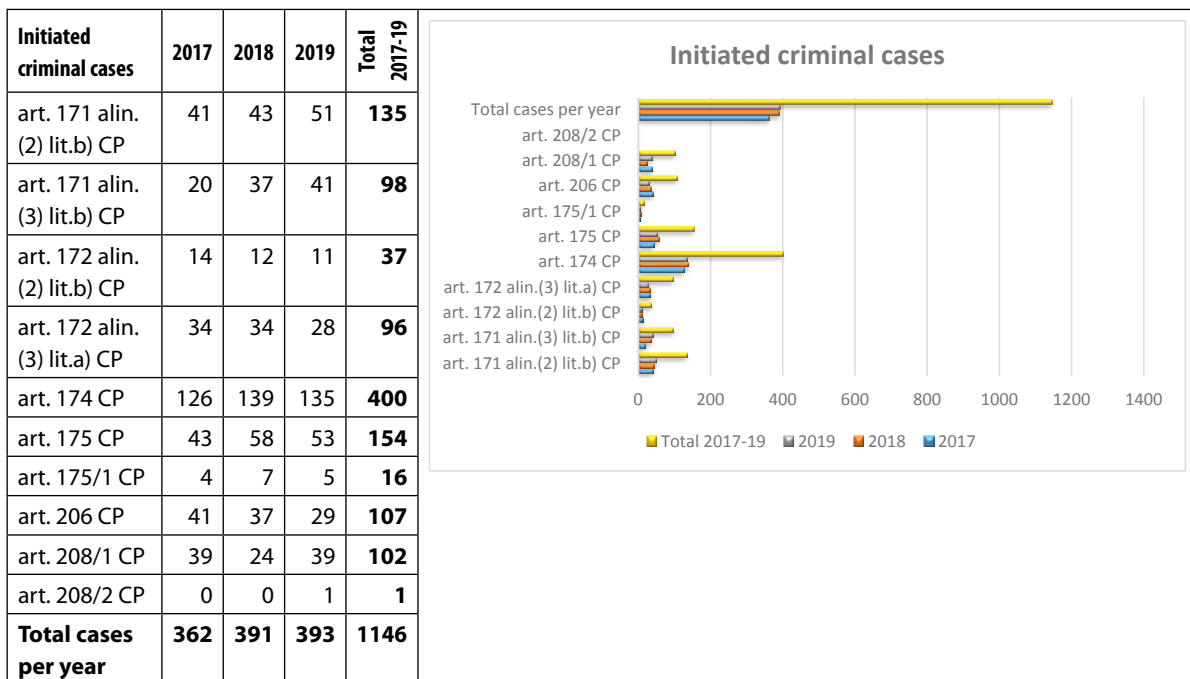
## Chap. 4 Data from Criminal Justice Actors

The purpose of this chapter is to examine data provided by the police and prosecution in order to identify any trends in relation to the way in which the CSEA offences covered by this Research<sup>113</sup> are handled by the authorities.

### Data from the Police

The data provided by the police covers numbers of cases initiated, number of cases, which are closed or suspended and the number of cases sent by prosecutors to the courts.

Chart A: Police data on cases initiated



113. The offences covered by this study are set out in the introduction. They include the criminal offences of a sexual nature, which can *only* be committed against children. There may be other cases of CSEA, which are not covered by this Research. For example, a child might be victim of rape/violent sexual action against a person under the charge, guardianship, protection, education, or treatment of the perpetrator (Arts. 171(3)(a) or 172(3)(a1) CC). These offences were not analysed within this Research.



**Chart B: Police Data on Cases closed (Art 285–286 CPC)**

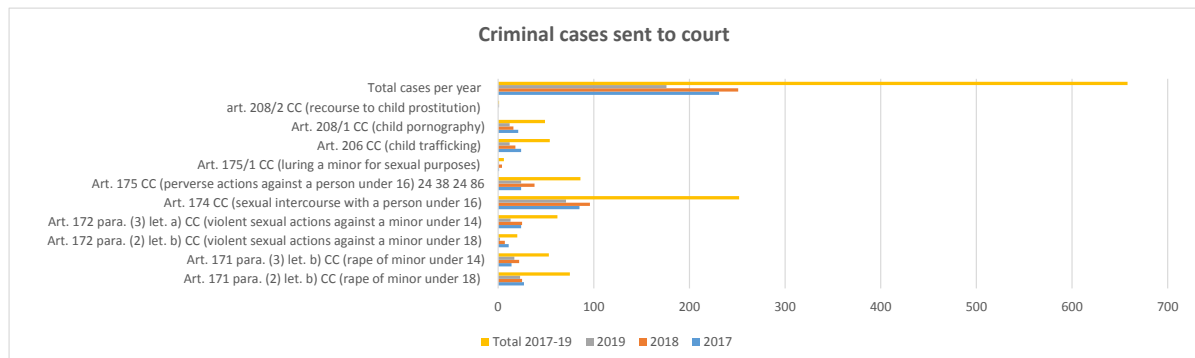
Criminal cases have been closed for legal reasons that do not allow the investigation to continue art. 285 and 286 CPC	2017	2018	2019	Total 2017–19
art. 171 para. (2) let. b) CC	13	14	11	<b>38</b>
art. 171 para. (3) let. b) CC	3	7	0	<b>10</b>
art. 172 para. (2) let. b) CC	2	4	3	<b>9</b>
art. 172 para. (3) let. a) CC	5	4	2	<b>11</b>
art. 174 CC	31	27	22	<b>80</b>
art. 175 CC	15	9	6	<b>30</b>
art. 175/1 CC	1	1	2	<b>4</b>
art. 206 CC	2	4	0	<b>6</b>
art. 208/1 CC	12	2	3	<b>17</b>
art. 208/2 CC	0	0	0	<b>0</b>
<b>Total cases per year</b>	<b>84</b>	<b>72</b>	<b>49</b>	<b>205</b>

**Chart C: Police Data on Cases in which investigation was suspended (Art 287/1 CPC)**

Criminal cases in which the criminal investigation was suspended art. 287/1 al. 1 p. 1 CPC	2017	2018	2019	Total 2017–19
art. 171 para. (2) let. b) CC	0	1	1	<b>2</b>
art. 171 para. (3) let. b) CC	1	2	2	<b>5</b>
art. 172 para. (2) let. b) CC	1	1	0	<b>2</b>
art. 172 para. (3) let. a) CC	1	1	1	<b>3</b>
art. 174 CC	2	2	13	<b>17</b>
art. 175 CC	0	2	1	<b>3</b>
art. 175/1 CC	0	1	0	<b>1</b>
art. 206 CC	2	1	0	<b>3</b>
art. 208/1 CC	0	2	1	<b>3</b>
art. 208/2 CC	0	0	0	<b>0</b>
<b>Total cases per year</b>	<b>7</b>	<b>13</b>	<b>19</b>	<b>39</b>

**Chart D: Police Data on Cases sent to the Courts**

Statistical data provided by the police 2017–2019				
Criminal cases sent to court	2017	2018	2019	Total 2017–19
Art. 171 para. (2) let. b) CC (rape of minor under 18)	27	25	23	<b>75</b>
Art. 171 para. (3) let. b) CC (rape of minor under 14)	14	22	17	<b>53</b>
Art. 172 para. (2) let. b) CC (violent sexual actions against a minor under 18)	11	7	2	<b>20</b>
Art. 172 para. (3) let. a) CC (violent sexual actions against a minor under 14)	24	25	13	<b>62</b>
Art. 174 CC (sexual intercourse with a person under 16)	85	96	71	<b>252</b>
Art. 175 CC (perverse actions against a person under 16)	24	38	24	<b>86</b>
Art. 175/1 CC (luring a minor for sexual purposes)	1	4	1	<b>6</b>
Art. 206 CC (child trafficking)	24	18	12	<b>54</b>
Art. 208/1 CC (child pornography)	21	16	12	<b>49</b>
art. 208/2 CC (recourse to child prostitution)	0	0	1	<b>1</b>
<b>Total cases per year</b>	<b>231</b>	<b>251</b>	<b>176</b>	<b>658</b>



## Analysis of Police data

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### *Initiation:*

The data provided by the police shows that, for most offences, the number of cases initiated by the police was relatively static with a slight increase over the three years covered by this Research. As an exception, there was a noticeable increase (doubling) in the number of cases initiated by the police for offences under Art 171(3)(b) CC (rape of a minor female under 14 years old). There were smaller increases in the number of cases initiated for a number of other offences.<sup>114</sup> In contrast there was a noticeable decrease in the number of cases initiated under Art 206 CC (child trafficking) over the period.

### *Closure<sup>115</sup> and Suspension of Cases*

Chart B shows a decreasing tendency to “close”<sup>116</sup> criminal investigations of CSEA (i.e. close without trial). This tendency was particularly marked in 2019 and particularly marked in relation to cases under Art 174 (sexual activity with a child under 16) and 175 (perverse actions) as well as Art 208/1 (child pornography) CC. More information would be necessary to identify why the changes took place.

Chart C by contrast shows a marked increase (more than doubling) in the suspension<sup>117</sup> of investigations during the period 2017 to 2019. This was particularly striking in relation to alleged crimes under Art 174 CC (sexual activity with a child under 16) which made up the bulk of suspended cases in 2019. To improve the effectiveness of investigations, consideration should be given to the reasons for the increased number of suspensions, whether the trend is continuing and, if so, what is needed to reverse it.

### *Cases sent to court*

Despite the slight increase in the number of cases of CSEA offences initiated over the period considered by this Research, this was not consistently matched by an increase in the number of cases sent to court for trial. For some offences a broadly similar number of cases were sent to court across all three years, for others the figures show a consistent decrease in the numbers of cases sent to court (violent action against a minor under 18, child trafficking and child prostitution). In 2019 there was a significant decrease in the number of all CSEA cases sent to court in comparison to 2017–2018.

During 2017–2019 a total of 1146 cases were initiated, however only 658 cases were sent to court. In other words the number of cases sent to court during this period amounted to around 57% of the number of cases initiated during this period (this includes all crimes considered across all three years, the figures differ for each crime and each year). In 2019, the situation was particularly marked with the number of cases sent to court being only 45% of the number of cases initiated (393 cases initiated, 176 cases sent to court).

## Prosecution Data (progress of cases within the prosecution and courts)

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Different data is kept by the prosecution and police.<sup>118</sup> The data obtained for this Research from the prosecution is set out in Annex II.

The data obtained from prosecution gives an insight into the progress of cases within the first instance courts. As a result of restrictions on movement during the Covid-19 pandemic, it was only possible to gather and analyse data in respect of 2019.

The prosecution data shows that during 2019 the first level courts examined 366 cases of the offences examined by this Research. However, out of these 366 cases the first level courts only “solved” – i.e. issued a final decision

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114. Offences under Art. 171(2)(b) CC (rape of a minor female under 18 years old), Art 174 CC (sexual activity with a child under 16), Art 175 CC (perverse actions) and in 2019 a case was initiated under Art 208/2 CC (child prostitution).

115. Includes termination of criminal investigations (Art 285 CPC) and dismissal of criminal case (Art 286 CPC).

116. Under Arts 285 (2) CPC criminal investigations may be “closed” for a number of reasons including, among other things, that there has been no criminal event, that the statutory limitation period has expired or (in cases where permissible) that the victim and suspect have reconciled. Art 109 CPC provides that the reconciliation procedure cannot be used in cases involving child victims. In their study of sexual offences during 2011–2016, International Centre “La Strada” Moldova found that cases involving child victims were terminated on the basis of reconciliation. See International Centre “La Strada” Moldova, “Ensuring the rights of the victims of sexual crimes, Analysis of the judicial practice in the Republic of Moldova, Chisinau 2017, Summary at p. 14.

117. Under Art 287/1 CPC investigations may be suspended for a number of reasons related to the accused (that the accused evades investigation/trial, cannot be found or identified, is outside Moldova and not extradited or develops a serious mental/physical disease which prevents him/her from participating in criminal proceedings).

118. The Republic of Moldova does have an electronic case management system. Data is additionally kept in word or paper-based systems. The keeping of statistical data is not harmonised across the criminal justice actors and there is no unique or harmonised electronic data system.



in 200 cases. Thus, the remaining 166 cases were passed to be further considered by the courts in 2020. A final decision may be a conviction or acquittal of the accused or termination of the case.

Each “case” may include several offences charged against the suspect(s). Data from prosecutors’ files indicates that during 2019 the first instance courts examined 433 offences (which are the subject of this Research). According to this data, the overwhelming bulk of the offences examined by the first instance courts in 2019 were sent to them in 2019; however the first instance courts were still considering offences submitted to them in 2016 or before (i.e. cases had been with the courts for over three years). In total of the 433 offences considered by the first instance courts in 2019, 234 were submitted in 2019, 123 in 2018, 37 in 2017 and 38 were submitted prior to 2017.

Thus, while the law provides that the investigation and hearing of criminal cases involving children “shall be performed in an urgent and preferential manner”<sup>119</sup> it appears that some cases stay in the first instance courts for many years. As a snapshot of the situation, the highest number of offences in the first instance courts in 2019 having been submitted to the courts before 2017 were violent sexual actions against a minor<sup>120</sup> (7 cases), child trafficking<sup>121</sup> (7 cases), rape of a minor<sup>122</sup> (6 cases), violent sexual actions against a minor under 14<sup>123</sup> (6 cases) and sexual activity with a person under 16<sup>124</sup> (5 cases). Where cases of CSEA stay in the courts for a long time this negatively impacts the child victim involved and may discourage other victims to report as well as impacting the quality of testimony (especially if the victim’s testimony has not been taken in special conditions under Art 110/1 CPC at an earlier time).<sup>125</sup>

### **Analysis with regard to offences/cases sent to the courts**

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Some additional points emerge from the data in relation to particular offences. For example, in respect of child trafficking (Art 206 CC), child pornography (Art 208/2 CC) and violent sexual actions against a minor under age 18 (Art 172(2)(b) CC) the police data shows a continuous downward trend in the number of cases sent to the court over the period. In relation to child trafficking, the figures also show a decrease (although less marked) in the number of cases initiated by the police. In relation to child pornography and violent sexual actions against a minor under the age of 18 the number of cases initiated over the period did not show a continuous decrease.

Both police and prosecution data show vastly more cases of the offence of sexual intercourse with under 16-year olds (Art. 174 CC) than any other CSEA offence. The International Centre “La Strada” states that, criminal investigation authorities charge this offence instead of crimes under Art 171 or Art 172 CC where, for example, there are no visible signs of physical injury and consider that the offence is also used (rather than Art 171 or Art 172) because of lack of understanding of what would constitute voluntary consent to sexual activities.<sup>126</sup> Art 174 CC has a lower sentencing tariff.<sup>127</sup>

In respect of luring a minor for sexual purposes (Art 175/1 CC) the police data on number of cases sent to the courts over the period and number of cases initiated shows that a particularly low percentage of overall cases were sent to the courts (16 cases were initiated and 6 sent to the court). The number of cases sent to the courts for this crime was around 37% of the number of cases initiated (in comparison to the overall average of 57% for CSEA offences). However, while the police data indicates only 1 case under Art 175/1 CC having been sent to the court in 2019, the prosecution data seems to show 3 cases.

Despite the fact that the law criminalises use of the services of child prostitutes (Art 208/2 CC), the data from police and prosecution indicates that, in practice, criminal investigations have not been initiated for this crime. The data shows that only one case was initiated over the three years studied (the case was initiated and was sent to court in 2019). Reports refer to the existence of child prostitution in Moldova, to concerns of child sex

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119. Art 20 para. (3) CPC.

120. Art 172 (2)(b) CC.

121. Art 206 CC.

122. Art 171(2)(b) CC.

123. Art 172(3)(a) CC.

124. Art 174 CC.

125. See R. Rittenhouse, ECPAT International Op. Cit. at pp 71–72.

126. International Centre “La Strada”, “Ensuring the rights of the victims of sexual crimes, Analysis of the judicial practice in the Republic of Moldova, Summary”, Chisinau 2017 at pp. 5 & 7.

127. The sentencing tariff for Art 174 CC is 3–7 years imprisonment, for Arts 171 and 172 CC the sentencing tariff is 5 years to life.

tourism and to police interaction with child prostitutes.<sup>128</sup> The United Nations Special Rapporteur on the sale of children, child prostitution and child pornography has stated that “we will never end the child sex trade if we do not address more rigorously the issue of demand for exploitative commercial sexual services”<sup>129</sup>.

## Collection, Storage & Use of Data

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This Research was able to obtain consolidated data from the police in relation to CSEA cases during 2017–19 inclusive. However, it was only possible (within the time frame of this Research) to analyse data from the prosecution for 2019. While data is kept by the prosecution, the format of this data was challenging to analyse.<sup>130</sup> It was not possible to obtain gender desegregated data.

The LC requires states to set up mechanisms for the collection of accurate and reliable data<sup>131</sup> and stressed the need for gender desegregated data since gender of victims, perpetrators and those in the criminal justice system may have “strong implications in the way policies and measures are framed, adjusted and evaluated.”<sup>132</sup>

Accurate data can be a powerful tool for the criminal justice authorities (police, prosecution, courts) to identify weaknesses in the investigation, prosecution and adjudication of crimes. Accurate and appropriate data enables those managing the authorities to devise, plan and deliver policies and measures, which address weaknesses. Such data enables effective management and oversight of the police, prosecution and courts to ensure procedures are complied with. Establishing effective cross-institution data collection can be challenging. The Lanzarote Committee identified the minimum set of variables and data collection procedures developed by the European Union Daphne III programme as a promising practice.<sup>133</sup> Currently each criminal justice actor has its own system of collecting and storing statistical data on CSEA cases and its own indicators (i.e. data collection categories). It would be beneficial to review the types of data collected, the systems for collecting it and the sharing of data by the criminal justice system actors.<sup>134</sup> A single, coordinated data system with agreed data collection categories and shared by relevant bodies would be welcomed.

## Recommendations

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For ease of reference, the recommendations are listed below:

- ▶ Consideration should be given to the reasons for the increase in number of cases suspended and steps taken to ensure this is not a trend;
- ▶ Consideration should be given to whether the proportion of cases of CSEA being sent to the courts is low in comparison to other crimes (including giving attention to Art 175/1 CC offences),
- ▶ Steps should be taken to expedite CSEA cases which have been in the courts since before 2017 and to ensure that CSEA cases are dealt with promptly within the courts (in this respect for example the courts might set a performance target),
- ▶ Reasons for the downward trend in sending certain cases to the courts (Art 206, 208/2 and 172(2)(b) CC) should be identified and addressed;

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128. ECPAT International report that according “to Moldova’s criminal statistics, a total of 458 cases of persons engaged in prostitution were registered between 2005 and 2007, of which 178 involved minors (16–17 years old)” – ECPAT International, “The Commercial Sexual Exploitation Of Children In The Commonwealth Of Independent States, Developments, Progress, Challenges and Recommended Strategies for Civil Society”, November 2014 at p. 13 available online at [https://www.ecpat.org/wp-content/uploads/2016/04/Regional%20CSEC%20Overview\\_CIS%20\(English\).pdf](https://www.ecpat.org/wp-content/uploads/2016/04/Regional%20CSEC%20Overview_CIS%20(English).pdf) (last accessed 20 August 2020). Also see: ECPAT International, *ibid*, at p. 18; R. Rittenhouse, *Barriers to Access to Justice for Child Victims of Sexual Exploitation: Legal Framework and Insights from Professionals in the Criminal Justice System in Moldova*, ECPAT International, 2017 at pp. 44–47; United States Department of State, “2020 Trafficking in Persons Report: Moldova”, available online at <https://www.state.gov/reports/2020-trafficking-%20in-persons-report/moldova/> (last accessed 20 August 2020).

129. United Nations Economic and Social Council, Commission on Human Rights, “Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit”, 12 January 2006, E/CN.4/2006/67 at para. 20 available online at <https://www.refworld.org/publisher/UNCHR,THEMREPORT,441181ff0,0.html> (last accessed 20 August 2020).

130. While the prosecution has an electronic-case system, it is unknown whether this system is used to produce electronic data either at the regional or national level.

131. Art 10(2)(b) LC.

132. Lanzarote Committee, “1st Implementation Report, Protection of Children Against Sexual Abuse in the Circle of Trust: The Framework”, Council of Europe, December 2015 at pp. 19–23, quote at p. 22.

133. Lanzarote Committee, “1st Implementation Report”, *Op. Cit.* at p. 21.

134. Additionally, International Centre “La Strada” Moldova remark that there are two different mechanisms of cooperation and data collection between local public authorities and NGOs, that there is no single data collection mechanism at this level and that data collected are not analysed to identify risk factors or emerging trends in the CSEA in Moldova. See International Centre “La Strada” Moldova, “Sexual Exploitation and Sexual Abuse against Children”, November 2017, Executive Summary at p. 12.

- ▶ Consideration should be given to the very low number of cases under Art 208/2 CC crimes and appropriate action taken,
- ▶ The current systems of obtaining and storing data related to CSEA cases within the criminal justice system should be reviewed with a view to developing a unified electronic system including category of the crime committed, gender desegregated data for the accused and victim etc.

## Chap. 5 – Analysis of Court Files

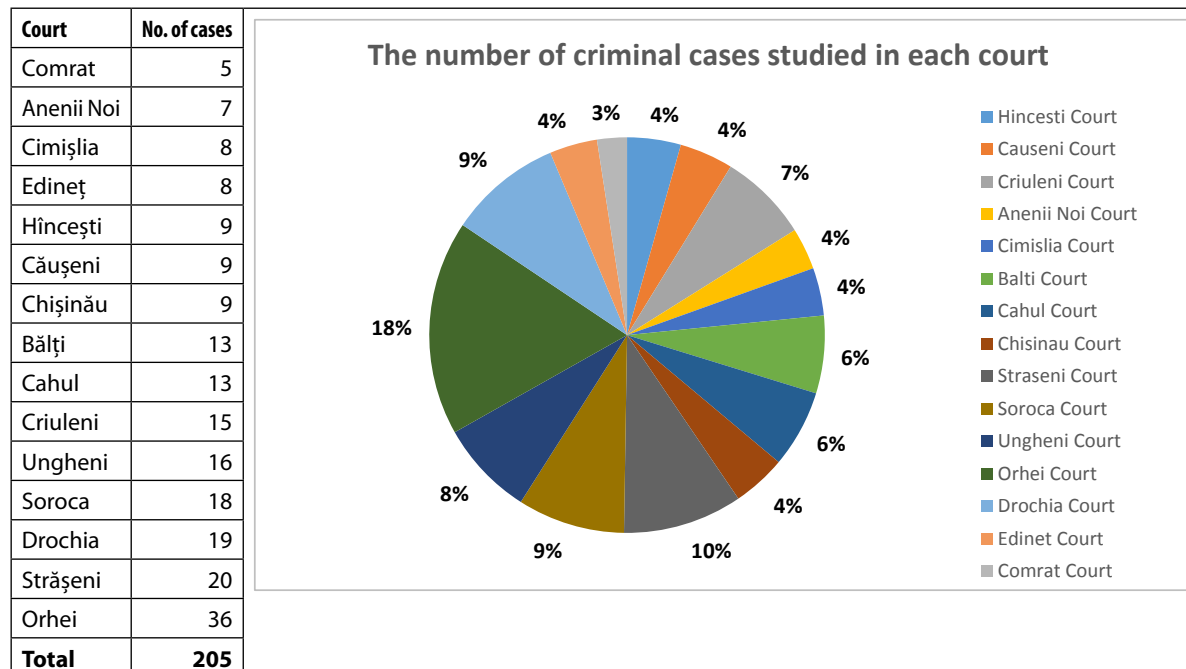
### 5.1 INTRODUCTION

The purpose of this Research was, as outlined in Chapter 1, to identify how cases of CSEA are dealt with in practice by the criminal justice system of Moldova. The data set out in this chapter comes from Council of Europe national consultants examination of 205 court files from all [District] courts of Moldova cases concluded by the courts during the period 2017–2019 inclusive in respect of the criminal offences examined by this Research.<sup>135</sup> Through examination of the court files, the Research obtained and consolidated the data concerning:

- ▶ the legal representation of child victims of CSEA,
- ▶ length of time to request and implement the special hearing procedure for child victims in Art 110/1 CPC,
- ▶ the use of potentially re-traumatising procedural actions by criminal justice system actors,
- ▶ the involvement of psychological professionals,
- ▶ the hearing of cases by courts & publication of judgements, and
- ▶ convictions and sentencing of offenders.

### 5.2 WHICH COURTS DID THE CASES EXAMINED BY THE RESEARCH COME FROM?

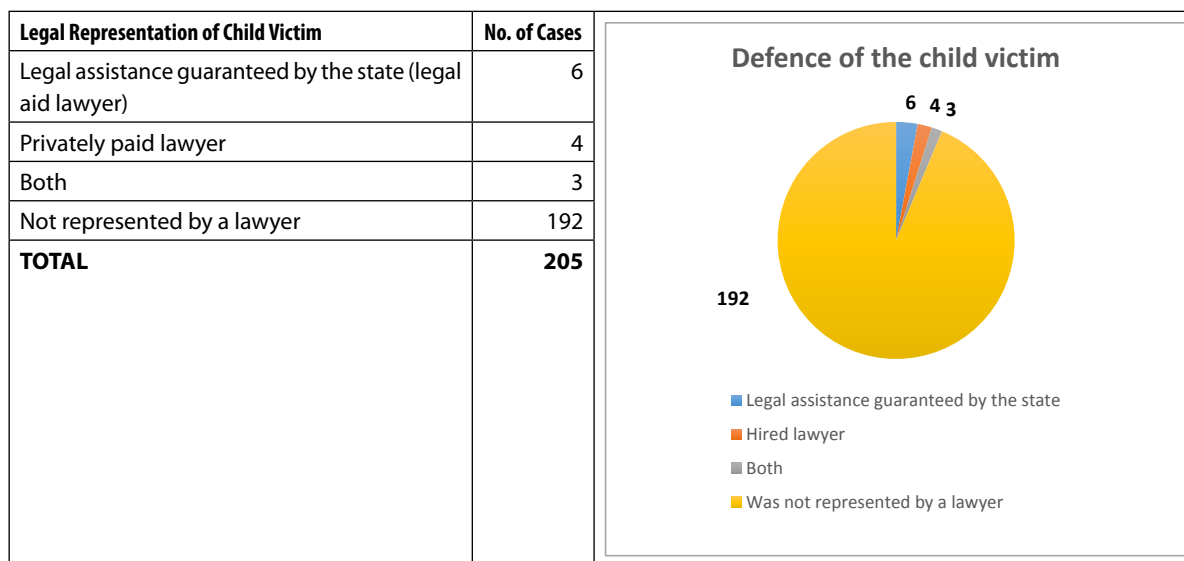
The Research examined cases from courts located throughout the Republic of Moldova.



135. During the period 2017–2019 inclusive (the period covered by this study) in respect of the criminal offences examined, a total of 658 cases were sent to the courts of the Republic of Moldova; however a final court decision was not necessarily issued in all 658 cases during the time period. 205 cases in which a final court decision had been issued were provided to the Council of Europe Moldova experts for analysis.

### 5.3 LEGAL REPRESENTATION

The Research identified that, in the overwhelming majority of cases examined, child victims of CSEA were not represented either by a legal aid lawyer (paid by the State) or by a privately paid lawyer.



As observed in Chap. 3, child victims of CSEA are entitled to legal aid, regardless of their income.<sup>136</sup> However, the Research showed that in the overwhelming number of cases child victims were not legally represented either by a privately paid or a State paid legal aid lawyer. The recent legal amendments to legal aid described in Chap. 3, should radically change this situation. Consideration should be given to monitoring implementation of the amendments – it remains to be seen how police, prosecutors and judges will respond to any case, which comes before them in which a child victim is not legally represented.

### 5.4 THE “SPECIAL” INTERVIEW PROCEDURE FOR CHILD VICTIMS UNDER ART 110/1 CPC

As outlined in Chap. 3 Moldova’s law provides that all child victims of CSEA under the age of 14 must be interviewed by way of a special interview procedure set out in Art 110/1 CPC and this video/audio recorded interview then used in court. The procedure is also available to children 14 years and older where the interests of justice or the minor require.<sup>137</sup> Time limits are not set out in law, but prosecutorial guidance (Methodological Guide for the Investigation of Cases with Child Victims) recommends that interviews of child victims take place within two weeks from the reporting of a crime and, in the case of younger children (4–5 years), within one week.<sup>138</sup>

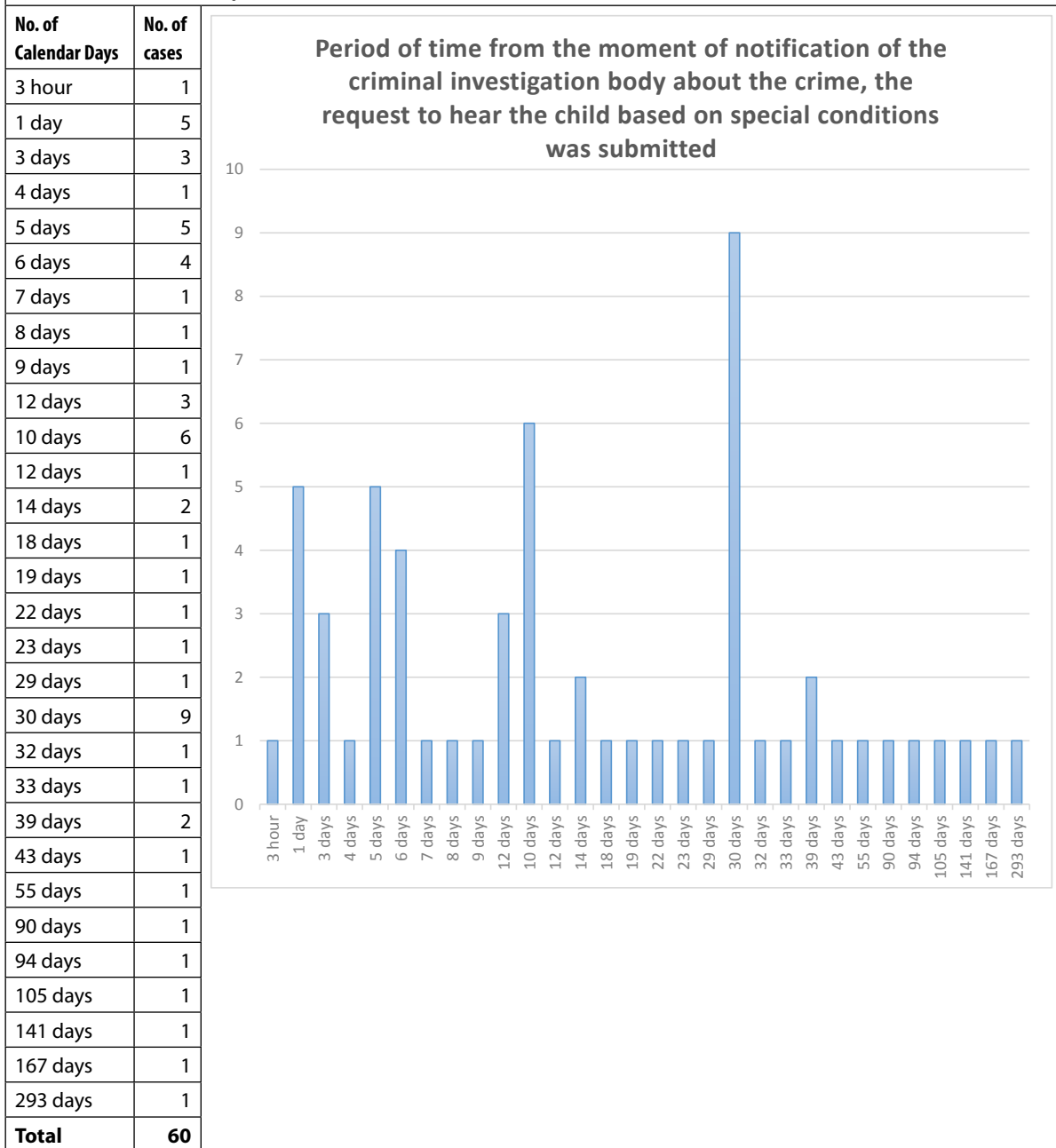
Having examined 205 court files, the Research found evidence that the special interview procedure was used in only 60 cases. The Research examined the time period taken a) to request the interview and b) from the time of the request to hold the interview. The findings are set out in the charts below.

136. Art 19 para. (1) Law no. 198 of 26 July 2007 on State Guaranteed Legal Aid.

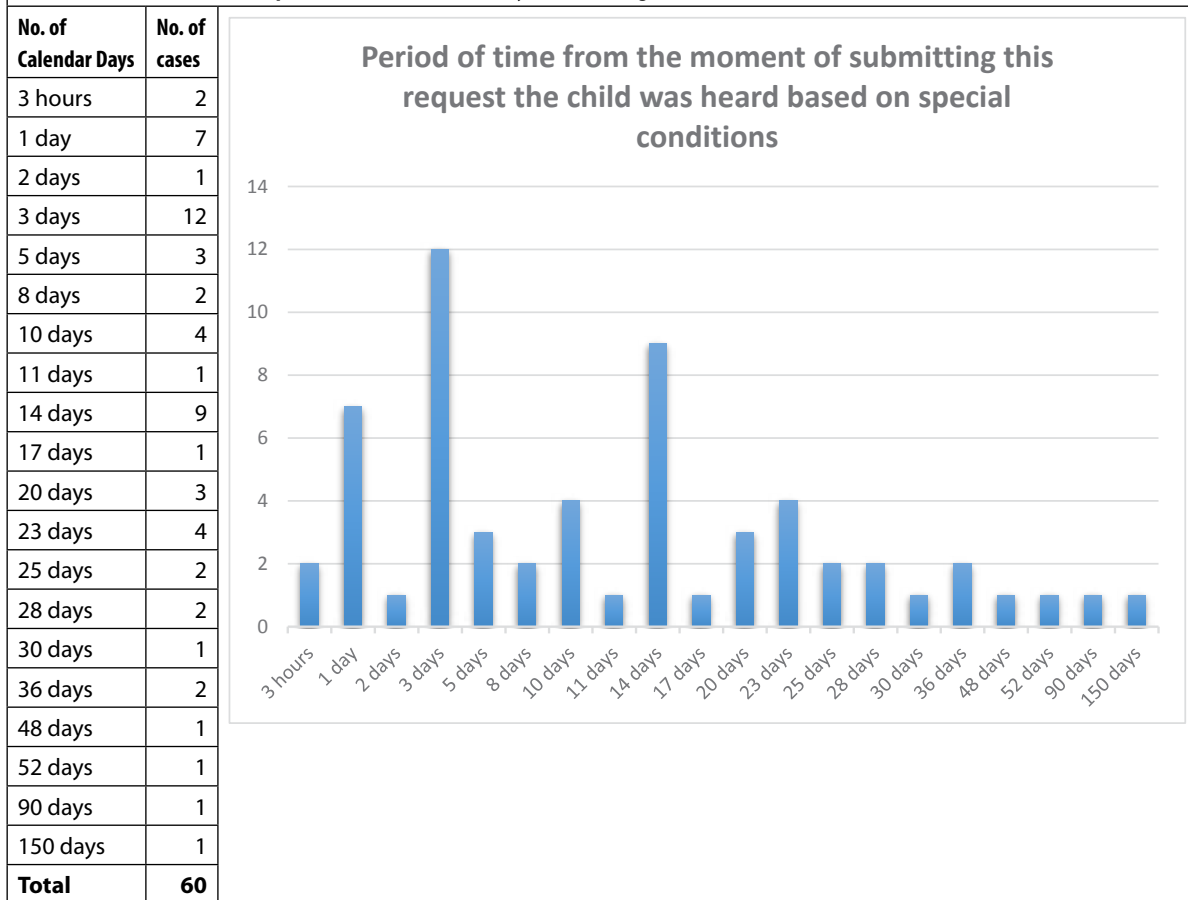
137. Art 109 para (5) CPC.

138. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at p. 20.

**Charts showing number of calendar days from the day the criminal investigation body was notified of the crime to the making of the request to interview the child under special conditions of Art 110/1 CPC.**



**Charts showing the number of calendar days from the submission of the request for the hearing/interview of the child victim under special conditions until the day of the hearing/interview.**



The data indicates that, the current prosecution guidance on time period for hearing child victims based on special conditions was not adhered to in many cases. The data shows that, almost 50% of cases where a child victim was heard under special conditions, the request for the hearing was not made until after 14 days after the criminal investigation body had been notified of a crime<sup>139</sup>. In some cases there was delay of many months before the request was made. The age of the victims in the data is not known, but at least where a victim is under 14, the request should be automatic. Data from the Research shows, that once the request was made, the hearing took place within 14 days in around 2/3rds of cases, but in others there was a wait of months.

Delay in correctly interviewing the child victim may impact the entire procedure. It may, for example, result in repeated interviewing of the child in the first and or appeal court (potentially traumatic), result in poorer quality of testimony as facts are forgotten and contribute to loss of trust or interest by victims in cooperating with the criminal justice procedure.

The Council of Europe Baseline Study outlines that there are difficulties in securing trained professionals to conduct interviews in the special hearing procedure. This does not seem to explain the delays found by the Research in making a request to hear a child under special procedure. There is a clear need to review the existing procedures to ensure that requests are made (and hearings conducted) promptly including, as necessary, procedures for ensuring appropriate managerial oversight.<sup>140</sup> The adoption of the proposed amendments to extend the use of the special hearing procedure to all child victims of CSEA should be taken into consideration.

139. It is noticeable that a number of requests were made 30 days after notification of the crime. Art 274 CPC provides that a decision on whether to initiate a criminal investigation should be made within 30 days of the notification of a crime.

140. This might also include disciplinary or other performance related action in cases of negligent or deliberate delay.

## 5.5 POTENTIALLY TRAUMATISING PROCEDURAL ACTIONS

Action	No. of cases
a) Preliminary hearing/trial (i.e. before the beginning of the hearing/trial in accordance with the art. 110 of Criminal Law)	21
b) Repeated hearings	70
c) Additional hearings	30
d) Confrontation with accused	23
e) Confrontation with witness	3
f) Checking of the statements on the ground	10
g) Identification parade	8

**Provide information whether the child victim was unjustly prosecuted**

Action	No. of cases
Identification parade	8
Checking of the statements on the ground	10
Confrontation with witness	3
Confrontation with accused	23
Additional hearings	30
Repeated hearings	70
Preliminary hearing/trial before the beginning of the hearing/trial in accordance with the art. 110 of Criminal Law	21

As mentioned in chapter 3 and in the Council of Europe Baseline Study, the introduction of the special procedure for taking evidence from children set out in Art 110/1 CPC was expected to limit repeated contacts of children (at least those under the age of 14) with the criminal justice system.<sup>141</sup>

The Research clearly found that, in practice, child victims of CSEA are interviewed on multiple occasions by criminal justice sector actors (this may be by different persons). The Research found 21 occurrences in which child victims were informally interviewed by police prior to the commencement of criminal proceedings and the formal taking of the child victim's evidence (shown at a) in the chart above). The Research found 70 occurrences in which the child victim was interviewed on more than one occasion (shown at b) in the chart above) and 30 occurrences in which the child was again interviewed where new information had come to light.<sup>142</sup> It should be noted that the same child victim may have been subjected to more than one type of multiple interviewing (i.e. under a, b, or c). The research did not specifically record the number of child victims who were interviewed on multiple occasions. The Research did not specifically examine whether there was a relationship between the numbers of interviews of a child victim and whether the special hearing procedure under Art 110/1 CPC was used or was used but delayed. The Republic of Moldova should (as required by Art 35.1.e LC) ensure that the number of interviews of child victims is as limited as possible and that the child is interviewed only as strictly necessary for the purpose of criminal proceedings.<sup>143</sup>

In respect of other potentially retraumatising procedures, the Research found that the confrontation procedure was used in relation to child victims despite the legal requirement that no minor should be forced to participate in a confrontation with a person who is accused for a crime against his/her physical and/or moral integrity<sup>144</sup> (see d) and e) in the chart above). The Research also found that the procedure of checking statements on the ground was used in ten cases. In a previous study published in 2017, International Centre "La Strada" documented cases in which during the checking of statements on the ground the criminal investigation authorities required child victims to re-enact elements of their abuse.<sup>145</sup>

The Research also found that in relation to the obtaining of forensic medical examination, after a victim files a complaint, s/he is given a referral/certificate to a doctor for a forensic medical examination (and forensic medical report). Despite the importance of this forensic evidence, the Research found that child victims (and their families) were required to arrange for the forensic medical examination themselves without assistance. The Research found that transportation for the victim to the forensic medical examination was not arranged by the criminal investigation body unless specifically requested. ECPAT International also found that some professionals considered that transportation for child victims for the purposes of the criminal process were a

141. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp. 20–21.

142. A study by the International Centre "La Strada" found that it was common for victims of sexual offences to be re-interviewed two or three times. See International Centre "La Strada", "Ensuring the rights of victims of sexual crimes, Analysis of the judicial practice in the Republic of Moldova", Chisinau 2017, Summary at pp. 8–9.

143. See in this respect and for promising practices, Lanzarote Committee, "1st Implementation Report", Op. Cit. at pp. 35–38.

144. Art 113(6) CPC.

145. International Centre "La Strada", "Ensuring the rights of victims of sexual crimes, Analysis of the judicial practice in the Republic of Moldova", Chisinau 2017, Summary at pp. 9–10.



problem. They reported in 2017 that some professionals said that some child victims did not have money to travel and that some professionals provided victims with money from their own pockets for travel expenses.<sup>146</sup>

### **Involvement of Psychological Professionals/Psychological Support for Child Victims**

The Research showed limited involvement of psychological professionals in cases of CSEA (shown below in the table). Psychological professionals are involved in three main different ways: 1) conducting psychological evaluations of child victims during the criminal investigation (i.e. providing psychological evidence), 2) playing a role in supervising the taking of a child victim's testimony whether under general or "special" conditions and 3) providing therapy or counselling to the child victim.

In some cases (out of a total of 205 cases studied) it was possible to identify that a report of the psychological evaluation concerning the victim was obtained as part of the criminal investigation (primary or complex psychological evaluation). The primary psychological evaluation consists of a psychologist speaking with the alleged victim in order to identify any signs of abuse. Following the evaluation, the psychologist will produce a report providing his/her conclusions, which will be attached to the criminal file as evidence. If signs of abuse are identified by the psychologist then a further "complex evaluation" is carried out and a detailed report written and becomes part of the evidence. In most cases these psychological evaluations are conducted by NGOs (rather than by a dedicated state institution) and there is no standardised national methodology for conducting such evaluations although NGOs may have their own.<sup>147</sup>

It was only possible to identify three cases in which psychological assistance was provided during a court hearing under general conditions. Art 110/1(3) CPC makes the participation of a teacher or a psychologist mandatory in a court hearing of evidence from a juvenile suspect/accused/defendant. The Research identified 37 cases in which a psychologist was involved in relation to the hearing of a child's evidence under special conditions (i.e. the Art 110/1 CPC procedure). However, the key role of the psychologist is not to provide support to the child, but to supervise the hearing of the child's evidence<sup>148</sup> (the interviewer, who directly asks a child victim questions in an Art 110/1 CPC procedure, may also have psychological or pedagogical training, but has a separate function from the teacher/psychologist; again her/his role is not explicitly to support the child).

The Research found 67 cases in which the child victim gave evidence through the Art 110/1 CPC procedure (see graphs later) and the data below shows that a psychologist was present in 37 Art 110/1 CPC cases. It appears that during the period studied, despite the legal requirement to have a psychologist present during Art 110/1 CPC hearings, in practice this did not occur in all cases. In respect of hearings of child victims under general conditions (138 cases, see graphs later) a psychologist was present during only a very small number of cases (3 cases) in other cases, a teacher participated in the hearing.

The Research was able to identify only 28 cases (14% of 205 cases) in which the child victim received psychological counselling or a therapy programme of some type. Psychological counselling, where provided, is normally provided by NGOs. In two cases, the child victim attended a therapy program. Thus, despite the existence of the Law on Rehabilitation of Victims of Crime, in practice, the Research found that few victims received psychological support.

<sup>146</sup> R, Rittenhouse, ECPAT International, Op. Cit. at pp 64–65.

<sup>147</sup> Information provided by NGO National Centre for Child Abuse Prevention.

<sup>148</sup> Art 479 CPC which applies only to juvenile defendants' states that the teacher/psychologist is may also ask the child questions to ensure that the court transcript of his/her evidence is complete and correct.

Psychological Professionals Involvement/Support	
Type of Intervention	No. of cases
Primary psychological evaluation	39
Complex psychological evaluation	26
Psychological assistance during the hearing under general conditions	3
Psychological assistance during the child's hearing under special conditions	37
Psychological counselling for victim	26
Therapy program for victim	2

**Psychological assistance for the child victim**

Intervention	No. of cases
Primary psychological evaluation	39
Psychological assistance during the child's hearing under special conditions	37
Psychological counselling for victim	26
Complex psychological evaluation	26
Psychological assistance during the hearing under general conditions	3
Therapy program for victim	2

The new Government Decision (described in Chap. 3) introduces significant changes in respect of the involvement of psychological professionals in cases of CSEA. If the proposed legislative amendment requiring the use of the special interviewing procedure under Art 110/1 CPC for all child victims is adopted, this is likely to also have a significant impact. The Moldovan authorities should consider monitoring the impact of the changes (including through keeping data) in order to assess whether they achieve the intended aims. The Lanzarote Committee has stressed that the obligations of the LC are to achieve results – i.e. that the child is protected from retraumatisation.

## Trial/Hearing of Evidence, Privacy of Victims and Publication of Judgments

### Closed and Open Hearings

As noted in Chap. 3 Moldova's law requires that the evidence of child victims must be heard in a closed hearing and allows for the closing of hearings when the interests of justice or the private lives of the parties in the proceedings so require.<sup>149</sup> The findings of the Research are shown below. They appear to show that, in around 25% of the CSEA cases examined, the court heard the case in open, public session. It appears that the legal requirement that CSEA cases be heard in closed hearings is not always complied with.

	No. of cases
Public session	53
Closed session	152
<b>TOTAL</b>	<b>205</b>

Protecting the privacy of child victims is an important means of preventing ongoing trauma, distress and ongoing negative consequences to the child as well as protecting their safety. Lack of such protections may make child victims or their families unwilling to participate in the criminal justice process. As highlighted by Lanzarote Commission CSEA is often a very intimate and secretive act and children may be frightened or ashamed to disclose what has happened. Child victim's willingness to disclose what has happened is "the most valuable source of information and it is on this that the whole case may rest."<sup>150</sup> Protection of the child's privacy can thus be critical for effective prosecution.

In practice, the Research found that the identity of child victims of sexual offences participating in trials may be easily established or even made public, in real time. Concerns are expressed that the organisation of trials does not protect victims against intimidation by other participants in the trial. Victims of CSEA are required to wait in the hallways of the courtroom for trials to begin and are often verbally assaulted by defendants, their defenders, relatives, or supporters.

<sup>149</sup>. Art 18 CPC.

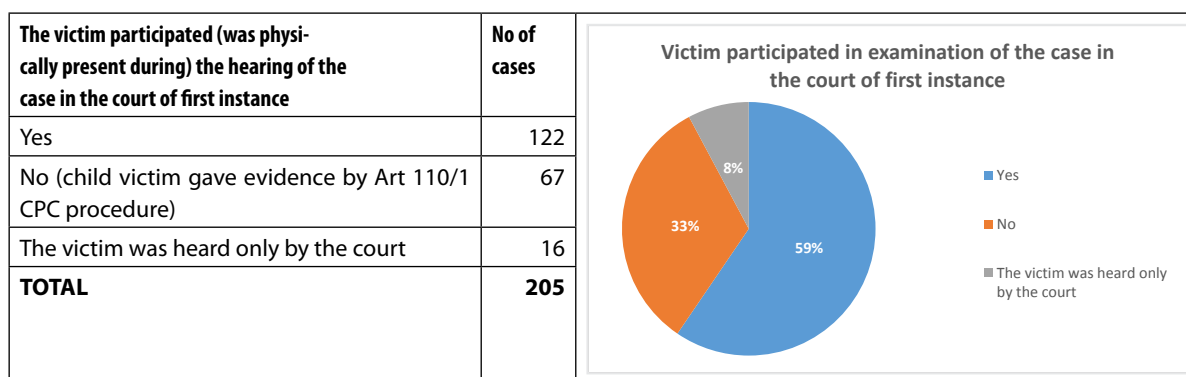
<sup>150</sup>. Lanzarote Commission, "1st Implementation Report" Op. Cit. at pp 25 & 39.

As outlined in Chap. 3, the law does allow for the application of protective measures for child victims. However, in the cases examined by this Research, protective measures were only imposed in one case; this was a case where the offender was family member and the protection was granted under the Law on Preventing and Combatting Domestic Violence, which is a more accessible procedure for victims.<sup>151</sup>

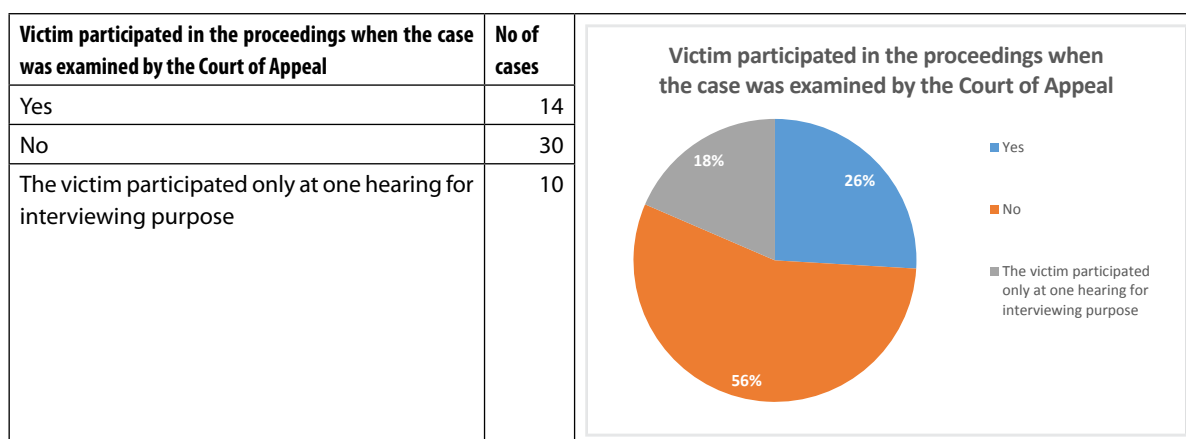
In this context, steps should be taken to ensure the privacy and safety of child victims during and after criminal proceedings including within the court.

#### *Participation of Child Victim in the Hearing*

In the 205 cases examined by this Research, the child victim participated in the examination of the case in the majority of cases. In only 8% of cases was the child victim heard only by the court.



At Court of Appeal level, the child victim did not participate in most cases and, where s/he participated, it was often only at one hearing to take testimony.



As noted in Chap. 3, a reason for the introduction of the Art 110/1 CPC procedure was to limit the need for the child victim to be present during the trial. However, in the first instance courts, in the overwhelming number of cases seen by this Research (138 cases, 67% of the total number of cases) the child victim was present in the first instance court either all or part of the time. In 16 cases the child attended court only for the purpose of giving evidence (waiting outside the court room prior to this). In 122 cases the child was present in the court room during the entire hearing (although this is not a legal obligation). Only in 67 cases did the child give evidence via the Art 110/1 CPC procedure (i.e. by video/audio recording of interview performed at another location). It was not possible to identify whether the procedure was used for all child victims under the age of 14 or the reasons that the procedure is currently used in so few cases (including whether prosecutors do not consider that the procedure is required in the interest of the minor and thus do not apply for its use). If the proposed amendment to extend the mandatory use of the Art 110/1 CPC procedure to all child victims under 18 is adopted, this will change.

The data suggests that there may be a need for training to ensure that all criminal justice actors understand the benefit of using Art 110/1 CPC. Steps should be taken to identify why the procedure is used in so few cases

151. In addition to measures available in criminal procedures, the Code of Civil Procedure (Arts 278/4–278/7) allows an application for protective measures in domestic violence cases at the request of the victim, her/his legal representative or child guardianship authorities. An application may be also submitted by social assistance bodies or by the police.

and ensure that procedures facilitate its use. Consideration should be given to amending the law to enable the lawyer of a child victim of CSAE to request an Art 110/1 CPC hearing.

## Publication of Judgements

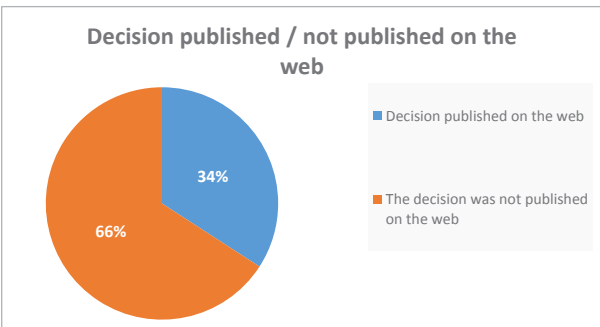
The Regulation of the SCM on the publication method of the judgments on the national portal of the courts and on the website of the Supreme Court of Justice<sup>152</sup> requires that judgements are published on the web pages of the courts with a view to ensuring public and transparent justice. As outlined in Chapter 3, in relation to cases of CSEA the SCM Regulation requires that details of judgements are redacted before publication in order to protect child victims.<sup>153</sup>

This Research found that, in the majority (66%) of cases examined, the judgement was not published by the court. This limits the extent to which members of the public are informed about the outcome of CSEA cases.

Additionally, the National Agency for the Protection of Personal Data has received complaints from citizens that where judgements of CSEA cases have been published, the personal or identifying details of child victims have not been redacted prior to publication. This means identifying details of the child have been released by the court into the public domain. According to the Agency, administrative proceedings have been instituted in respect of the publication of such information.<sup>154</sup>

The courts must take action to ensure that judgements are published and appropriately redacted and published in order to comply with the SCM Regulation and to ensure that the privacy of child victims is protected.

Decision published/not published on the court webpage	No. of cases
Decision published on the court webpage	70
The decision was not published on the court webpage	135
<b>TOTAL</b>	<b>205</b>



## Sentencing

Criminal Offence in CC	Prison	90 CC	Criminal fine	Total con-victions	Sentence to terminate the criminal trial	Sentence for the application of medical coercive measures	Total number of decisions
Art. 27, 171(2) let. b)		1		1			1
Art. 171(2) let. b	8	11		19			19
Art. 27, 171 (3) let. b				0	1		1
Art. 171(3) let. b)	6			6			6
Art. 172(2) let b)	5	7		12			12
Art. 27, 172(3) let. a)	1			1			1
Art. 172(3) let. A)	13			13		1	14
Art. 173		1		1			1

152. Approved by the SCM by Decision no. 658/30 of 10 October 2017.

153. Chirtoaca I & Others, "Transparency of the Judiciary versus Data Protection, an Analysis of the Publication of Court Decisions in the Republic of Moldova", Legal Resources Centre from Moldova, Chisinau, 2020.

154. The Council of Europe addressed an official request for information to the National Agency for the Protection of Personal Data, which provided a general response that such complaints are received and solved by the Agency. No statistical data was provided.

Criminal Offence in CC	Prison	90 CC	Criminal fine	Total con-victions	Sentence to terminate the criminal trial	Sentence for the application of medical coercive measures	Total number of decisions
Art. 174(1)	6	110	3	119	2		121
Art. 175 CP	7	14		21		1	22
Art. 175/1	1			1			1
Art. 206	2			2			2
Art. 208/1 CP		4		4			4
	<b>49</b>	<b>148</b>	<b>3</b>	<b>200</b>	<b>3</b>	<b>2</b>	<b>205</b>

Cases under Art 174 CC (sexual intercourse with a person under 16) made up the majority of cases. In contrast there were no cases under Art 208/2 CC (recourse to child prostitution), only two cases under Art 206 CC (child trafficking) and four under Art 208/1 CC (child pornography).

The data appears to indicate a very high conviction rate in the cases examined by this Research. Of the 205 decisions made, 200 were convictions. There were no acquittals. Three cases were terminated (in two of these cases there was a termination because the defendant died). In general terms, there may be many reasons for such a high conviction rate including that only cases where the evidence is overwhelmingly strong or where the defendant has pleaded guilty are brought to court.

In respect of the punishments imposed, of the 200 convictions, three resulted in a fine, 49 cases resulted in prison sentences and 148 cases resulted in suspended sentences under Art 90 CC.<sup>155</sup> Suspended sentences provided a punishment in 74% of cases examined by this Research.<sup>156</sup> In the majority of the cases examined in this Research, the offender requested the trial of the case to be held in simplified procedure (based on the evidence accumulated during the criminal investigation art. 364 / 1 CPC); was him/herself a child or under 21; there had been a relationship between the victim and offender, or the offender had no previous convictions.

A suspended sentence may be imposed by a judge under Art 90 CC for intentional offences if, having established imprisonment for a maximum of five years, s/he concludes it is *not reasonable* for the convicted person to serve the sentence of imprisonment taking into account the circumstances of the case and his/her personality. As previously noted, Art 90 CC is not available in respect of particularly serious or exceptionally serious offences. Most CSEA crimes are not classified as particularly or exceptionally serious<sup>157</sup> (it should also be noted that partially suspended sentences under Art 90/1 CC are not available in relation to CSEA offences). In three cases under Art 174(1) CC the offender was sentenced to a fine although this sentencing option is not provided in the punishment under that offence. Moldova's law does allow for milder punishments than provided by law, but only in exceptional circumstances including as well child offender or the offender under the age of 21.<sup>158</sup> In the three cases in which fines were imposed, the offender was a child or under the age of 21. Another factor contributing to the high number of suspended sentences was the use of the Art 364/1 CPC simplified procedure. This procedure can be used where the defendant pleads guilty and requests that the case be examined on the basis of the evidence gathered in the criminal investigation and allows for the reduction by one third of the imprisonment tariff set by law.

Thus, the fact that the defendants requested that the case be examined in a simplified procedure explains why most of the persons convicted of CSEA offences were not punished by the imprisonment set out in the tariffs in the CSEA offences under the CC.

Especially in light of the high use of suspended sentences, it is also important to note that the Council of Europe Baseline Study found an "almost total lack" of support or education for those convicted of CSEA to prevent reoffending and made recommendations for improvement.<sup>159</sup> Similarly, the Council of Europe Baseline Study observed a lack of consistent measures to ensure that convicted CSEA offenders are not able to work or volunteer with children and made recommendations.<sup>160</sup> While outside the scope of this Research, the data

155. Art 90/1 CC additionally provides for partially suspended sentences. However, Art 90(4) CC states that Art 90 does not apply to the CSEA offences provided in Art 171–175/1, 201/1, 206, 208, 208/1 and 208/2.

156. An early study in respect of sexual offences against adult and minors found that Art 90 was applied in 68% of the cases studied – see International Centre "La Strada", "Ensuring the rights of victims of sexual crimes, Analysis of the judicial practice in the Republic of Moldova", Chisinau 2017, Summary at p. 14.

157. The crimes classified as particularly serious appear to be limited to Art 171(3) rape of a child under 14, Art 172(3) violent sexual actions against a child under 14, Art 206(2) & (3) aggravated trafficking and trafficking of a child under 14.

158. Art 79 CC.

159. J. C. Legrand, Council of Europe Baseline Study, Op. Cit. at p. 39 and 40.

160. J.C. Legrand, Council of Europe Baseline Study, Op. Cit. at pp. 35–36 and 40.

from this Research indicates that this issue should be addressed including the particular issues of juvenile and young offenders.<sup>161</sup>

The data from this Research in respect of sentencing suggests that there may be a need for further research, training and/or sentencing guidance in this field. The wording of Art 90 CC appears to give a high degree of discretion to a judge to determine what is “reasonable”. In order to strike a balance between the need for judicial independence and flexibility in sentencing, and the need for certainty and public confidence in sentencing, some countries have developed sentencing guidelines. For example, England and Wales have detailed sentencing guidelines in respect of sexual offences and in respect of sentencing children and young people developed by the Sentencing Council.<sup>162</sup>

## Recommendations

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For ease of reference, the recommendations are listed below. Fuller details are in the text above:

- ▶ The application of the new legal provisions requiring child victims of CSEA to have the assistance of a lawyer (legally aided) from the initial stages of the criminal procedures should be monitored to identify whether this results in effective legal representation for child victims; training may be required to ensure that police, prosecutors and judges are informed of the provisions and act to ensure that child victims are represented.
- ▶ There is a need to address the delays in respect of Art 110/1 CC hearings, in particular delays in requesting hearings should be addressed; existing procedures should be reviewed in order to ensure that requests are made and hearings conducted promptly.
- ▶ The repeated interviewing of child victims should be limited (this may be affected by the proposed extension of the mandatory use of the Art 110/1 CPC procedure to all child victims under age 18) and the use of the confrontation procedure (and other traumatic procedures) ended.
- ▶ Both for the purposes of taking a protective approach towards child victims and for the purposes of effective investigation, assistance should be provided for victims to attend forensic examinations and court hearings.
- ▶ The impact of the new Government Decision on psychological assistance and support for child victims should be monitored including in respect of the number, ages and sex of child victims supported and the impact.
- ▶ Action must be taken to ensure the privacy and safety of children throughout and following criminal proceedings. This includes ensuring that where children attend court that they wait in a protected space, that they are shielded from public view and that judgments are anonymized. In light of the findings on protection measures used to protect child victims, it would be beneficial to identify whether the protection mechanisms and procedures adequately address child victims needs.
- ▶ In light of finding that most child victims currently attend court to give evidence, there may be a need for training on the benefits of the Art 110/1 CPC procedure. Consideration could be given to enabling the lawyer of a child victim of CSAE to request an Art 110/1 hearing. If the proposed amendment to the law to extend the mandatory use of the procedure for all child victims is adopted, consideration should be given as to whether internal rules increasing the special conditions for conducting hearings (rooms) and training are necessary to ensure that the system works effectively.
- ▶ Further research and/or discussion could be conducted in order to identify the reasons for the high conviction rate.
- ▶ Judgements should be published and appropriately redacted to ensure the privacy of child victims of CSEA.
- ▶ In view of the high use of suspended sentences in CSEA cases and the broad wording of Art 90 CC consideration should be given to whether sentencing guidelines would be helpful taking into account also rehabilitation for offenders and orders to prevent offenders from working or volunteering with children.

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161. ECPAT International report that older children who commit CSEA may themselves have been abused as children – see R. Rittenhouse, ECPAT International Op. Cit. at p. 47. For practices in other countries see, Lanzarote Committee “2nd Implementation Report, Protection of Children Against Sexual Abuse in the Circle of Trust: The Strategies”, Council of Europe, 31 January 2018 at pp. 47–52.

162. Available online at <https://www.sentencingcouncil.org.uk/>



## Chap. 6 – Conclusions and Recommendations

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The main purpose of this Research was to identify current judicial practice related to child sexual exploitation and abuse in the Republic of Moldova through careful examination of court files from District Courts throughout the country. To facilitate that process the relevant legal frameworks were also reviewed. This Research aims to complement other research conducted by Council of Europe in the Republic of Moldova, in particular the Council of Europe Baseline Study and the findings and recommendations of this report supplement that Study.

As noted, great efforts have been made within the Republic of Moldova to strengthen its response to CSEA. That effort is ongoing with amendments to the legal aid provisions very recently adopted and further amendments to the CC and CPC proposed and due to be considered in the Autumn of 2020. The recommendations given in this report have assumed that those proposed amendments will be adopted. Effective legal reform requires not only good laws, it also requires that those laws be implementable and implemented, and respond to the particular needs of the country. Among the findings of this Research is that most cases studied were offences under Art 174 CC, the overwhelming majority resulted in convictions and most of the offenders of those crimes received suspended sentences. It is not known whether such cases are representative of CSEA in the Republic of Moldova.

Laws do not implement themselves; they require people, procedures and ongoing management and monitoring to ensure that they are functioning well. This is especially the case when human rights of children are involved as here. In this respect this Research has identified a number of areas where more needs to be done in order to achieve the aims of the LC of effectively combatting CSEA and protecting the rights of victims. As the Lanzarote Committee makes clear, these two aims are linked since child victim's willingness to cooperate with the criminal justice process is a most valuable source of information and effective investigation and prosecution may rest on it.<sup>163</sup>

Recommendations have been set out in each chapter. A full list of recommendations is also attached in Annex III to this report. A few of the key recommendations are set out below.

*Safety and Privacy of Child Victims:* Legal provisions should require the protection of the safety and privacy of child victims throughout the criminal justice process (including in the home, community, places of criminal investigation and court premises) from the moment of notification of a crime. This includes an obligation to investigate and apply for appropriate protective measures at an initial stage and the development of appropriate and fast procedures to enable children to disclose protection concerns. Safety and privacy of children must be protected in criminal investigation offices and at court such as ensuring private waiting spaces, ensuring that they are shielded from public view and that identifying details of child victims are redacted from court judgements. Personal data of child victims of CSEA should be kept securely and access to information limited save to the extent required for fair trial of the accused.

*Art 110/1 CPC Hearings:* There is a need to address the delay; delay in requesting an Art 110/1 CPC hearing should be eliminated, procedures for requesting the hearing should be reviewed to ensure that requests are made and hearings conducted promptly (including taking account of the mandatory extension of the procedure to all CSEA victims under 18 if the proposed amendments are adopted).

*New Government Decision:* The introduction of the New Government Decision may have a significant effect, it's implementation should be monitored. In respect of the two previous bullet points, consideration should be given to developing a check-list and/or memorandum of agreement between the relevant investigative bodies and the referral centres (and other relevant organisations) as to steps to be taken by the investigative bodies on receipt of a complaint (this might for example include immediate referral for the Art 110/1 CPC hearing and

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<sup>163</sup>. Lanzarote Committee, "1st Implementation Report", Op. Cit. at p. 25.

assessment of protection needs). Consideration could be given to the development of similar documents for other stages of criminal proceedings as appropriate to ensure that measures are taken to protect child victims.

*Court Delay:* steps should be taken to expedited CSEA cases, which have been in the courts since before 2017 and to ensure that CSEA cases are dealt with promptly in the courts (consideration could be given to setting a performance target).

*Online and Other Offences under Chap VII CC:* The law should be reviewed to ensure that the online solicitation of children for the purpose of child pornography is effectively criminalized, online child pornography is fully criminalized and that legal entities convicted of child pornography can be liquidated. It should be considered whether the non-availability of special investigative activities permitted to investigate child pornography (Art 208/1 CC) impedes effective prosecution of online offences. Consideration should be given to why no cases of recourse to child prostitutes has been investigated or prosecuted over a three-year period.

*Information to Child Victims:* Information on the criminal process and support that they will be given should be provided directly to child victims (as well as their legal representatives) in a manner that they understand and suitable to their age. Consideration could be given not just to written materials, but also videos and online resources.

*Representation of child victims:* the amendments to legal aid should result in a far greater number of child victims of CSEA receiving legal representation; the impact should be monitored including whether there are legislative or other impediments to child victims' lawyers ability to effectively represent the child.

*Statute of Limitation:* The statute of limitation should be reviewed with consideration being given to providing that the limitation period does not begin to run until the child victim reaches 18, the age of majority.

*Confiscation:* The Republic of Moldova should consider allocating confiscated items and monies to a special fund to finance prevention of CSEA and/or assist victims. Where child sexual abuse materials (for example stored on compact discs or data storage) are confiscated, measures should be taken to ensure these cannot be restored.

*Data Collection:* Consideration should be given to the development or adaptation of a unified electronic system including gender desegregated data and concrete qualifications of offenses, including data on the parties to the criminal proceedings, their age, etc. Regard should be had to recommendations of the National Centre for Personal Data.



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## Annex – Methodology

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### **Methodology for research of judicial practice in cases related to child sexual abuse and exploitation in the Republic of Moldova (period from 01 January 2017 till 31 December 2019)**

February 2020

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# 1. GENERAL PART

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## 1.1. OVERALL OBJECTIVE

The project envisages carrying out a research of judicial practice in criminal cases of child sexual abuse and exploitation<sup>164</sup> in the Republic of Moldova. This project activity will complement the *Mapping study on systemic issues affecting the child protection's system response to child sexual exploitation and abuse and the effective implementation of the Lanzarote Convention* which was carried out by the Council of Europe.

The analysis of judicial practice aims to facilitate assessment of the application and effectiveness of the present legal norms in practice, the uniformity of case law and consistency of judicial practice and, to the extent possible, allow reflection on the problems observed in practice and any potential capacity or training gaps.

The **specific objectives** of the research are:

- ▶ To provide holistic and objective generalised information on and analysis of criminal proceedings in criminal cases of child sexual abuse/exploitation;
- ▶ To identify the factors most commonly taken into account by the courts when sentencing offenders convicted of offences of child sexual abuse/exploitation and identify whether additional guidance for professionals is required in sentencing for child sexual offences.
- ▶ To identify whether additional guidance for professionals is required to increase awareness of the importance of respect for the rights of the child in criminal proceedings and child-friendly justice.

## 1.2. SCOPE OF THE RESEARCH

The Research will focus on judicial practice in respect of criminal offences of sexual/exploitation character during the period from **01 January 2017 till 31 December 2019**, where the victim (or alleged victim) was a child<sup>165</sup> (including the offences committed in the online environment). In particular, the Research will analyse criminal cases which involve offences under the CC Articles 171 (2) b, (3) b, 172 (2) b, (3) a, 174, 175, 1751, 206, 2081, 2082. The Research will endeavour to take into account the findings of earlier studies conducted on Moldovan judicial practice in this area, to the extent that those are relevant to substantiate the findings of the current Research.

Considering the confidentiality of criminal investigations and proceedings and the principle of respect for the child rights to freedom and dignity (Art. 10 para. 6 of CPC secret of correspondence (Art. 14 of CPC), inviolability of privacy (Art. 15 CPC), publicity of the court hearing (Art. 18 of the CPC), the Research will analyse only criminal cases for which a final decision has been issued by the court.

In line with the above mentioned, the research **aims** to study the following aspects of the Moldovan judicial practice on offences with sexual abuse / exploitation character against children:

- ▶ Compliance of the relevant legal norms of the Council of Europe and other international standards, particularly the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention).
- ▶ Protection of the rights of the child victim of sexual abuse or exploitation crimes from the stage of submission of the complaint until the criminal proceedings are terminated and a final judgment is issued, including:

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164. As defined by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) 2007.

165. The current study interprets the term "child" according to Article 3 of the Lanzarote Convention, namely the child is considered any person under the age of 18. The same interpretation is provided by the Art. 6 point 47 of the Criminal Procedure Code of the Republic of Moldova.

- Provision of adequate information on the procedural rights and the services at the child's disposal (as well as those provided by NGOs), including at the stage of filling the complaint;
  - Provision of free legal assistance and to the extent possible, the quality of assistance provided;
  - Appointment of a special representative when there is a conflict of interests between the victim and the legal representative;
  - Protective measures undertaken by the criminal investigation body;
  - Protection of the safety and privacy of the child victim and, as appropriate and to the extent possible, that of his/her family;
  - Whether the criminal investigation is dependant on the complaint of the child victim, or is carried out regardless of the victim's complaint;
  - Access to information on criminal investigation and trial proceedings;
  - The initiation, execution of the criminal investigation and judicial trial are carried out in the strictest terms;
  - Guarantee of the child's right to be heard and any special conditions to be applied (i.e. place of hearing, duration, number of hearings, relevance of the questions addressed, role of each party in addressing questions, the status of the interviewer, presence of relevant parties during the hearing, registration of the hearing);
  - Guarantee of an adequate evidence-gathering process which does not re-victimize the child (i.e. legality of collecting evidence, sufficiency and relevance of the evidence);
  - Anonymisation practices are used in judgments relating to child victims to ensure, so far as possible, that children who have suffered significant harm are not caused further harm in the ensuing court process by the publication of material either that may lead to possible identification of them or that may cause them harm due to the nature of material that is published<sup>166</sup>.
- ▶ Sentencing and Judgment analysis: including sentencing outcomes, considerations of the proportionality of the sentence to the material and physical damage suffered by the victim and to the extent possible, comparison of sentencing outcomes for sexual offences committed against an adult;
  - ▶ Criminal justice outcomes in cases of child sexual abuse and exploitation, taking into account also the overall duration of such proceedings;
  - ▶ Possible impact of legislative reforms on sentencing outcomes during the reference period;
  - ▶ Collection of data and monitoring of proceedings.

### 1.3. PRINCIPLES OF THE RESEARCH

The research should be performed based on the following principles, as follows:

- ▶ objectivity and impartiality;
- ▶ professionalism;
- ▶ confidentiality;
- ▶ accuracy and precision;
- ▶ no conflict of interest.

### 1.4. CONTRIBUTING PARTIES

**The Council of Europe Project team** will be responsible for:

- ▶ the overall coordination and supervision of the process of the implementation of the research;
- ▶ negotiating the commitment on the performance of the research concerned with the relevant national authorities;
- ▶ selecting a group of international and local experts responsible for the implementation of the research in compliance with their roles, as described below;
- ▶ approving the timeframe/schedule of the research in close cooperation with the selected experts;
- ▶ providing support for developing the methodology and the check list forms;

<sup>166</sup>. Based on the Regulation on the publication of judgments on the national portal of courts and on the website of the Supreme Court, approved by the Supreme Council of Magistracy decision no. 2068 of 24.11.2017.

- ▶ being in close cooperation with the interested authorities and the group of local experts during the implementation period and providing support in overcoming any encountered challenges;
- ▶ finalising/revising/approving and disseminating the final report.

**The Council of Europe international expert(s)** with the support of the local experts will be responsible for:

- ▶ developing the methodology and check list forms for conducting the research;
- ▶ analysing the generalised data compiled by the group of local experts;
- ▶ performing desk research of the national and international standards, statistical data, information provided by national authorities;
- ▶ drafting in cooperation with local experts the overall research report and drawing up recommendations;
- ▶ participating in relevant expert discussions throughout the research implementation process.

**The local experts** will be responsible for:

- ▶ defining the research schedule in coordination with the Council of Europe team and Superior Council of Magistracy;
- ▶ analysing the audio recordings of the child hearings and the finalized criminal case files;
- ▶ filling in the prepared check list forms, generalising the data of the respective analyses and sending it to the Council of Europe project team;
- ▶ liaising with the Council of Europe project team in overcoming challenges if/when they emerge;
- ▶ drafting in cooperation with the international expert the overall research report and drawing up recommendations;
- ▶ participating in relevant expert discussions throughout the research implementation process.

**Superior Council of Magistracy (SCM)** will cooperate in this process by:

- ▶ informing all relevant courts on the research programme;
- ▶ defining the access (research) schedule to the courts/archives for the analysis of the audio recordings of the child hearings and the relevant criminal case files in close cooperation with the Council of Europe project team;
- ▶ providing access to relevant judicial guidance documents, summaries of court practice, reports, statistical data, etc. that will be used during the desk-based analysis/research;
- ▶ providing relevant authorizations as/if required and support to the Council of Europe project team, in overcoming challenges encountered with regard to the analysis of the audio recordings of the court hearings and the finalised criminal case files;
- ▶ participating in relevant expert discussions throughout the research implementation process.



## 2. SPECIAL PART

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The research will be implemented by a team of 3 Council of Europe experts. They will ensure the elaboration of a full-fledged methodology and coordinate and supervise the elaboration of the analytical research in close cooperation with the Council of Europe Project team.

The research will be a multi-dimensional one and a full range of data/information will be analysed. It will be implemented through the following methods/data analysis and generalization:

### 2.1. ANALYSIS OF LEGAL AND INTRA-INSTITUTIONAL REGULATORY FRAMEWORKS, NAMELY:

- ▶ Moldova's criminal legislation concerning the investigation/prosecution and examination of offences of sexual/exploitation character against children;
- ▶ Moldovan secondary legislation including regulations, internal instructions, existing judicial guides, summaries of court practice, reports and other relevant materials concerning the investigation of such crimes in the Republic of Moldova and application of the national criminal legislation etc.
- ▶ the relevant practice of the Moldova Constitutional Court on the implementation of the criminal provisions that are the object of the Research.
- ▶ the relevant European Court of Human Rights case-law.

### 2.2 ANALYSIS OF THE STATISTICAL DATA CONCERNING THIS TYPE OF OFFENCES, FOR THE PERIOD FROM 2017 TILL 2019 INCLUSIVELY, GENERATED BY THE DOMESTIC STAKEHOLDERS

The project team will request all available statistical data concerning this type of criminal offences including data from the courts, prosecution service, police and lawyers/bar. The statistical data will cover the period from 2017 till 2019, inclusively, and will be analysed comparatively.

In particular, the experts will carry out the analysis of:

- ▶ format of systematization and verification of statistical data on the criminal cases by the courts;
- ▶ statistical data on criminal cases in which the victim was represented by an elected lawyer (with paid contract) or by a lawyer designated by the National Legal Aid Council who provides free legal assistance guaranteed by the state;
- ▶ data held on the criminal cases sent to courts for examination or on which were issued orders for the initiation of the criminal investigation, removal from the criminal investigation and/or termination, classification of the criminal investigation, which were solved by the judges or monitored by the General Prosecutor's Office (the information will be requested from the General Prosecutor's Office and Ministry of Internal Affairs);
- ▶ the number of relevant criminal cases in which international legal assistance in criminal matters was provided, including police cooperation and under the Convention on Cybercrime<sup>167</sup> (the information will be requested from General Prosecutor's Office and Ministry of Internal Affairs).

### 2.3 RESEARCH OF THE FINALISED CRIMINAL CASE FILES FROM 2017–2019 INCLUSIVELY

- ▶ The local experts will analyse all relevant criminal cases for which a final decision was issued by the court and accompanying audio recordings of child hearings; on the basis of, which the check list forms will be

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<sup>167</sup>. Through the contact points 24/7.

filled in. The local experts will analyse criminal case files located in courts from all regions of Moldova (depending on the registered files on the relevant offences). The courts will be selected in cooperation with the Superior Council of Magistracy, based on the registered relevant files.

The contact person of each court selected will be provided with the contact details of the Council of Europe local experts who will visit the courts for research purposes.

In addition, the analysis will refer to the protection of the personal data of the child victims following the publication of the court decisions (which will be verified on the court portal and information will be request from the National Center for the Protection of Personal Data).

## **2.4 THE CHECKLIST FORM FOR THE RESEARCH OF THE FINALIZED CRIMINAL FILES**

The checklist form used for analysing finalised criminal files will include the most important information about the actions and decisions adopted from the referral stage until the final decision on the criminal case is issued. This information will be obtained by the local experts thorough analysis of the finalized criminal files and statements of child victim.

The checklist form will be completed by the local experts based on the stage of the criminal investigation of the specific criminal case which will be analysed, in order to establish the efficiency and quality of the criminal process in relation to the rights and freedoms of the child victims.

The basic criteria according to which the check list form will be drafted are:

- ▶ respect for the legality of the criminal case;
- ▶ respect of the reasonable term of the criminal case;
- ▶ opportunity and reasoning of the criminal investigation activities carried out or refusal to perform them;
- ▶ the quality of assistance and protection necessary for the child victim provided;
- ▶ representation of the interests of the child victim;
- ▶ compensation of the child victim;
- ▶ the outcome on the case and the level of special prevention carried out;
- ▶ solutions/actions undertaken on procedural violations identified in the process;
- ▶ national and international cooperation of law enforcement bodies in examining this category of criminal cases;
- ▶ protection of the personal data of the child victim.

The team of local experts will be responsible for the generalization of the data of the completed check list forms. The generalized data will be provided to the Council of Europe project team for their further transmission to Council of Europe international expert responsible for the overall analysis and systematization of the data in the general research report.


## **2.5 CONSOLIDATION OF DATA OBTAINED AND FINDINGS MADE BY MEANS OF THE RESEARCH ELEMENTS, THEIR ANALYSIS AND DEVELOPMENT OF A FINAL COMPREHENSIVE REPORT ON THE RESEARCH**

The final report of the research will have a clear structure, according to the basic compartments of the research, with conclusions, recommendations and will include annexes.

The numerical/statistical data in the report will be systematized, analysed and presented in comparative form according to several criteria, being rendered in visual forms of quantitative and qualitative exposure in graphical forms that will be included in the report or attached to it.

# Annex I: Check-list

## Analysis of criminal cases on the sexual abuse of children

Comments, explanations and reference to national legislation			Check-in
<p><b>INSTRUCTIONS.</b>            The present Check-List is to be considered as a separate file with a view of research.            This research includes analysis of the criminal cases on the sexual abuse of children.            Fill in the Check-List for every case separately.            Introduce only verified data accordingly to each cell.            Introduce a dash in the cells for which there are no data.            For other questions and inquiries contact the Project Team.            Do not copy the decisions or documents from the files examined. Do not enter your own unverified data, use only the data provided by the Court.</p>			
RESEARCH DATA on the analysis of judicial practice in cases related to child sexual abuse and exploitation in the Republic of Moldova			
1.	<b>Check List No.</b>	Introduce a case ordinal number in the Research papers. DO NOT confuse with the domestic case-file number.	No. _____
2.	<b>IDENTIFICATION DETAILS OF CHILD VICTIM</b>	Introduce Surname and Name of the child victim of the case examined. It will be used for the search purposes in the Research data solely.	
3.	<b>DETAILS OF THE AGE OF THE CHILD VICTIM</b>	Introduce details on the age of the child victim at the date of the offence(s) in the case examined. It will be used for the search purposes in the Research data solely.	
4.	<b>IDENTIFICATION DETAILS OF THE ACCUSED</b>	Introduce Family Name and Name of the accused of the case examined. It will be used for the search purposes in the Research data solely.	
5.	<b>DETAILS ON THE RELATIONSHIP BETWEEN THE VICTIM AND THE ACCUSED.</b>	Provide details if the accused person is a family member of the victim, or if the victim is in any dependent position to the accused.	
6.	<b>OTHER IMPORTANT DETAILS</b>	Provide any further details referring to the child victim (e.g. belonging to an ethnic group, state of disability, vulnerable situation of the family, etc.). <hr/>	
SPECIFIC DATA ON THE CRIMINAL CASE			
7.	<b>COURT of FIRST INSTANCE</b>	Indicate the jurisdiction of the court and judge(s) who issued the decision.	
8.	<b>COURT of APPEAL</b>	Indicate the jurisdiction area of the Court of Appeal.	
9.	<b>DATE and No. of the COURT RULING/decision</b>	The date of the court ruling and its No. It will be used for the search purposes in the Research data solely.	
10.	<b>TERMS OF THE CRIMINAL INVESTIGATION</b>		
9.a	<b>PRELIMINARY INVESTIGATION</b>	Indicate the period of time from the moment of initiating the criminal proceedings to the moment the case is sent to the Court	

9.b	<b>EXAMINATION OF THE CASE IN THE COURT OF FIRST INSTANCE</b>	Indicate the time period in which the court of first instance examined the case	
9.c	<b>EXAMINATION OF THE CASE IN THE COURT OF APPEAL</b>	Indicate the time period in which the court of appeal examined the case	
9.d.	<b>EXAMINATION OF THE CASE IN CASSATION</b>	Indicate the time period in which the court of appeal examined the case	
11.	<b>THE ARTICLE FROM THE CRIMINAL CODE IN ACCORDANCE TO WHICH THE CRIME WAS QUALIFIED</b>	Indicate Article, paragraph and letter of the Criminal Code _____ _____	
12.	<b>THE PLACE WHERE THE CRIME WAS COMMITTED</b>	Underline the place where the crime was committed: 1. Village 2. City	
13.	<b>DEFENSE OF THE CHILD VICTIM (hired lawyer / free legal aid or both)</b> <i>For Research purposes it is relevant to distinguish whether the defence had been provided by the state or the child's representative had chosen the lawyer.</i>		
12a	<b>Legal assistance guaranteed by the state</b>	Tick the box if "Yes"	
12b	<b>Hired lawyer</b>	Only HIRED LAWYER was employed. Tick the box if "Yes"	
12c	<b>Both</b>	Legal aid was provided during the first stages of the proceedings and then the lawyer was hired. Tick the box if "Yes"	
12d	<b>Was not represented by a lawyer</b>	Tick the box if "Yes"	
12e	<b>Information on the quality of legal assistance provided to the child</b>	Specify the quality of procedural documents 1) Legal provisions were applied correctly. 2) Evidences were effectively used etc. 3) Specify other comments: _____ _____  Specify when possible to identify, if the defence strategy was proactively prepared: 1) The position was developed in defence. 2) The procedural documents were obtained and studied promptly. 3) The collected information to the cause was relevant. 4) The circumstances to be examined were established.	

		<p><i>Specify, when possible to identify, the quality of participation during the criminal investigation / trial:</i></p> <p>1) Participation during examination of the evidences was active (e.g. questions, objections, clarifications, complaints, requests were addressed by the lawyer).</p> <p>2) Actions were taken to prepare for the examination of the case (e.g. requests regarding the examination in closed session or in other meeting room, actions for the prompt examination of the case).</p> <p>3) Reference to the indictment was submitted.</p> <p>4) Reference to the indictment was comprehensive and referred to the most important aspects of the case.</p> <p>5) Plea was comprehensive and referred to the most important aspects of the case.</p> <p>6) Appeals / appeal in cassation was submitted.</p> <p>7) Request of appeal / appeal in cassation was comprehensive and reasoned.</p> <p>8) Reference submitted to the requests submitted by other participants.</p> <p><i>Specify any other comments:</i></p>	
<b>14.</b>	<b>LEGAL REPRESENTATIVE OF THE CHILD VICTIM.</b>		
<b>14.a</b>	<b>The child victim was assisted by one of the parents</b>	<i>Tick the box if "Yes"</i>	
<b>14.b</b>	<b>The child victim was assisted by the guardian</b>	<i>Tick the box if "Yes"</i>	
<b>14.c</b>	<b>The child victim was assisted by the representative of the guardianship authority</b>	<i>Tick the box if "Yes"</i>	
<b>14.d</b>	<b>The legal representative of the child had been replaced by the representative of the guardianship authority</b>	<p><i>Indicate below the reason why the legal representative of the child had been replaced by the representative of the guardianship authority</i></p> <p>_____</p>	
<b>SERVICES PROVIDED TO THE CHILD VICTIM DURING CRIMINAL INVESTIGATION/TRIAL.</b>			
<b>15.</b>	<b>Information on the initiation of the criminal investigation</b>	<p><i>Specify if:</i></p> <p>1) The victim (his/her representative) was informed about the initiation of the criminal investigation.</p> <p>2) An official status was offered to the victim.</p> <p><i>Specify which statute was offered to the victim:</i></p> <p>_____</p>	

	<b>Information of the child and his/her family</b>	<p>Specify when possible to identify, if the following actions were taken by the criminal investigation body:</p> <ol style="list-style-type: none"> <li>1) The victims' (his/her representative) rights and obligations were explained.</li> <li>2) The procedure and the role of the participants in the process were explained.</li> <li>3) The process flow was explained.</li> <li>4) The defence position was discussed and established.</li> <li>5) The information necessary for the child and his family to fulfil the procedural obligations (e.g. address of the judicial body, etc.) was provided.</li> <li>6) The information on the main actions undertaken on the case (e.g. the suspect has been charged) was provided.</li> <li>7) The final decision taken on the case was sent.</li> </ol> <p>Afişați mai mult Afişați mai puțin</p>
16.	<b>Health care services that the child victim had benefited from</b>	<p>Underline the healthcare services the child victim had benefited from:</p> <ol style="list-style-type: none"> <li>1. Primary medical examination</li> <li>2. Outpatient medical treatment</li> <li>3. Medical treatment in the hospital</li> <li>4. Medical recovery program</li> </ol>
17.	<b>Institution/Organization which provided the health care services to the child victim</b>	<p>Indicate below the name of the institution/organisation</p> <hr/>
18.	<b>Psychological assistance for the child victim</b>	<p>Underline the psychological assistance services the child victim had benefited from:</p> <ol style="list-style-type: none"> <li>1. Primary psychological evaluation</li> <li>2. Complex psychological evaluation</li> <li>3. Psychological assistance during the hearing under general conditions</li> <li>4. Psychological assistance during the child's hearing under special conditions</li> <li>5. Psychological assistance within the forensic expertise</li> <li>6. Psychological counselling</li> <li>7. Therapy program</li> </ol>
	<b>Institution/Organization which provided the psychological assistance for to child victim</b>	<p>Indicate below the name of the institution/organisation</p> <hr/>
19.	<b>Social assistance services provided to the child victim</b>	<p>Underline the social assistance services the child victim had benefited from:</p> <ol style="list-style-type: none"> <li>1. Emergency placement</li> <li>2. Planned placement in the immediate family</li> <li>3. Placement in the placement centre for victims</li> <li>4. Placement in the professional parental care.</li> <li>5. Others</li> </ol> <p>Specify below from what point/moment these services were provided:</p> <hr/>

	<b>Institution/Organization which provided the social assistance services to child victim</b>	Indicate below the name of the institution/organization _____
<b>PROTECTION MEASURES FOR THE CHILD VICTIM</b>		
20.	<b>The decision on the protection was issued according to the Law 45 on the prevention and protection of victims of domestic violence.</b>	Was a decision on protection issued under Law 45? a) yes b) no  Indicate below the status of the person who requested the protection measures. _____  Please specify the time period for which the protection measure was established. _____
21.	<b>The decision on protection was issued according to the art. 215/1 CPC</b>	Was a decision on protection issued according to Art. 215/1 CPC? a) yes b) no  Indicate the status of the person who requested the protection measures.  Please specify the time period for which the protection measure was established. _____
<b>CIVIL CLAIM WITHIN THE FRAMEWORK OF THE CRIMINAL CASE</b>		
22.	<b>Details concerning the recognition of the child as part of the civil claim.</b>	Indicate below the date and the no. of the decision, in which the child was recognized as a part of the civil claim. The no. of the decision will be used for the search purposes in the Research data solely. _____
23.	<b>Data and status of the person who initiated the civil claim.</b>	Specify below the date, status and the name of the person who initiated the civil claim. _____
24.	<b>Data on the extent of the compensation for losses</b>	Material loss Moral damage Legal expenses
25.	<b>Data on the extent of the compensation provided by the state on the losses caused by this crime.</b>	Indicate below if the child victim received the compensation provided by the state on the losses of this crime. _____
<b>CRIMINAL INVESTIGATION</b>		
26.	<b>Indicate the grounds for starting the criminal investigation</b>	Underline the basis for initiating the criminal investigation: 1. Complaint 2. Denunciation 3. Other  Indicate below the other reason: _____



27.	<b>Who had given the information to the criminal investigation body:</b>	<p>1) Directly from the child victim;</p> <p>2) Mother of the child victim;</p> <p>3) Father of the child victim;</p> <p>4) Brother/sister;</p> <p>5) Grandfather/grandmother;</p> <p>6) Girlfriend/boyfriend of the parent;</p> <p>7) Friend of the victim;</p> <p>8) Other relative (indicate below the status)</p> <hr/> <p>9) Neighbour;</p> <p>10) Educator, Teacher or other school staff;</p> <p>11) Classmate;</p> <p>12) NGOs;</p> <p>13) Priest;</p> <p>14) Abuser;</p> <p>15) Mayor / social worker;</p> <p>16) Local police officer;</p> <p>17) Family physician;</p> <p>18) Medical institution;</p> <p>19) Pharmacist;</p> <p>20) Self-notification according to the information contained in another criminal file;</p> <p>21) Stranger to the child victim</p> <p>22) Other</p>
28.	<b>Data referring to the time period from the moment the crime was committed to the moment of notifying the criminal investigation body</b>	<p>Provide below the time period that passed from the moment the crime was committed, to the moment the criminal investigation body was notified about the crime.</p> <hr/>
<b>EVIDENCE GATHERING</b>		
29.	<b>Data on the prompt actions carried out by the criminal investigation body in order to collect evidences before the decision to initiate the criminal investigation was issued</b>	<p>The Criminal investigation body carried out prompt actions on collecting evidences before the decision to initiate the criminal investigation was issued. <u>Underline if the prompt actions on collecting evidences were carried out within:</u></p> <p>1. 3 hours</p> <p>2. 1 day</p> <p>3. 3 days</p> <p>4. 10 days</p> <p>5. 30 days</p> <p>Specify below the starting point:</p> <hr/>

30.	<b>Detailed information on the forensic examination of the child victim</b>	<p><i>Underline the forensic examination which was carried out:</i></p> <ol style="list-style-type: none"> <li>1. Forensic examination of severity grade of injuries</li> <li>2. Biological forensic examination</li> <li>3. Toxicological forensic examination</li> <li>4. Histological examination</li> <li>5. Forensic genetics</li> <li>6. Psychiatric analysis in the out-patient setting</li> <li>7. Psychiatric analysis in the in-patient setting</li> <li>8. Clinico-Psychological evaluation in the out-patient setting</li> </ol> <hr/> <p><i>Underline within what period of time from the moment of notification of the criminal investigation body about the crime the forensic examination was presented?</i></p> <ol style="list-style-type: none"> <li>1. 3 hours</li> <li>2. 1 day</li> <li>3. 3 days</li> <li>4. 10 days</li> <li>5. 30 days</li> <li>6. Other _____</li> </ol> <hr/> <p><i>Underline what kind of examination was assigned:</i></p> <ol style="list-style-type: none"> <li>1. Preliminary forensic examination</li> <li>2. Repeated forensic examination</li> <li>3. Additional forensic examination</li> </ol> <p><i>Please, provide the reasons for repeated and additional forensic examinations</i></p> <hr/> <p><i>If the age of the victim could not be determined (in case of online child sexual abuse), specify if the expertise of the photo was assigned</i></p> <ol style="list-style-type: none"> <li>1) Yes</li> <li>2) No</li> </ol> <p><i>If yes, specify who expertise the photo:</i></p> <p>_____</p>
31.	<b>Provide information if any abuse of process took place while organising and carrying out the forensics</b>	
32.	<b>Hearing the child based on special conditions</b>	<p><i>Underline within what period of time from the moment of notification of the criminal investigation body about the crime, the request to hear the child based on special conditions was submitted?</i></p> <ol style="list-style-type: none"> <li>1. 3 hours</li> <li>2. 1 day</li> <li>3. 3 days</li> <li>4. 10 days</li> <li>5. 30 days</li> <li>6. Other</li> </ol> <hr/> <p><i>What was the reason in delays to submit the request to hear the child based on special conditions?</i></p>

		<p><i>Underline within what period of time from the moment of submitting this request the child was heard based on special conditions?</i></p> <p>1. 3 hours</p> <p>2. 1 day</p> <p>3. 3 days</p> <p>4. 10 days</p> <p>5. 30 days</p> <p>6. Other _____</p>
<b>33.</b>	<b>Data regarding the process of hearing the child on special conditions</b>	<p><i>Specify the persons present at the hearing:</i></p> <p>1) Judge.</p> <p>2) Prosecutor.</p> <p>3) Lawyer of the suspect/defendant.</p> <p>4) Suspect/defendant.</p> <p>5) Lawyer of the child victim.</p> <p>6) Legal representative of the child victim.</p> <p>7) Interviewer.</p> <p>8) Psychologist.</p> <p>9) Translator/interpreter.</p> <hr/> <p><i>Indicate whether the criminal file contains documents confirming the interviewer's qualification:</i></p> <p>1) Yes</p> <p>2) No</p> <hr/> <p><i>Indicate whether the criminal file contains documents confirming the psychologist's qualification:</i></p> <p>1) Yes</p> <p>2) No</p> <hr/> <p><i>Specify any comments referring to the quality and relevance of the questions asked by the participants during the hearing (prosecutor, victim's lawyer, legal representative, etc.):</i></p> <hr/> <p><i>Specify if the audio recording of the hearing was qualitative:</i></p> <p>1) Yes</p> <p>2) No</p>
<b>34.</b>	<b>Provide information whether the abuse of process took place during the process of hearing based on special conditions</b>	
<b>35.</b>	<b>Provide reasons for carrying out the hearing based on general conditions</b>	
<b>36.</b>	<b>Provide information whether the abuse of process took place during the hearing based on general conditions</b>	

37.	<b>Re-victimization of children in Criminal Proceedings</b>	<p>Provide information whether the child victim was unjustly prosecuted:</p> <ol style="list-style-type: none"> <li>1. Preliminary hearing/trial before the beginning of the hearing/trial in accordance with the art. 110 of Criminal Procedural Law;</li> <li>2. Repeated hearings,</li> <li>3. Additional hearings;</li> <li>4. Confrontation with accused;</li> <li>5. Confrontation with witness;</li> <li>6. Checking of the statements on the ground;</li> <li>7. Identification parade</li> <li>8. Other _____</li> </ol>
38.	<b>Specify, if any measures have been undertaken to protect personal data of child victim during providing personal information to the criminal case (e.g. data on his/her place of living, and etc.)</b>	
39.	<b>Specify if international assistance on the criminal case was provided</b>	<p>Indicate below the country(ies) and authority(ies) which provided international legal assistance on the case.</p> <p>_____</p>
40.	<p><b>Specify if international police cooperation took place (INTERPOL, EUROPOL, FBI, or other private institution).</b></p> <p><b>Also, specify if personal data was used within the framework of cooperation</b></p>	
41.	<b>Specify if any preventive measures were applied to the suspect/defendant/accused</b>	<p>Specify what kind of preventive measures were applied to the suspect/defendant/accused:</p> <ol style="list-style-type: none"> <li>1) Restricted residence with a travel ban (is not allowed to leave the city)</li> <li>2) Restricted residence with a travel ban (is not allowed to leave the country)</li> <li>3) Personal guarantee</li> <li>4) Guarantee by a public organisation</li> <li>5) Temporary deprivation of parental rights</li> <li>6) Placement of a military staff under surveillance</li> <li>7) Placement of a child under surveillance</li> <li>8) Provisional release under judicial control</li> <li>9) Provisional release on bail</li> <li>10) House arrest</li> <li>11) Preventive arrest</li> </ol> <p>Specify the grounds for the preventive measure</p>

42.	<b>Specify whether the request to accelerating the criminal proceedings was filed</b>	<p>Indicate whether the request to accelerate the criminal proceedings was submitted?</p> <p>a) yes</p> <p>b) no</p> <p>Specify below the grounds for rejection/approval of the request to accelerating the criminal proceedings</p> <hr/>
39.	<b>Specify if a decision was issued to not initiate the criminal investigation</b>	<p>Was a decision issued not to initiate a criminal investigation?</p> <p>a) yes</p> <p>b) no</p> <p>Specify below the reasons for rejection to initiate the criminal investigation</p> <hr/> <p>Specify below:</p> <p>a) the body which cancelled the issued decision to not initiate the criminal investigation; and</p> <p>b) which were the reasons for cancelling</p> <hr/>
40.	<b>Specify if a decision was issued to exempt the defendant from criminal investigation or to discontinue the criminal investigation</b>	<p>Was there a decision to exempt the defendant from criminal investigation or discontinue the investigation?</p> <p>a) yes</p> <p>b) no</p> <p>Specify below the reasons to exempt the defendant from criminal investigation or to discontinue the criminal investigation</p> <hr/>
		<p>Specify below the reasons for cancelling the decision to exempt the defendant from criminal investigation</p> <hr/>
<b>JUDICIAL PROCESS IN THE COURT OF FIRST INSTANCE</b>		
41.	<b>Number of judges appointed on the case</b>	<p>The number of judges included in the court's formation:</p> <p>1. 1 judge</p> <p>2. 3 judges</p> <hr/> <p>Specify the sex of the judge(s) in the Court's composition (F/M):</p> <hr/> <p>1.</p> <hr/> <p>Specialization of the judges in the Court's formation:</p> <p>1. Specialised on criminal cases</p> <p>2. Specialised on civil cases</p> <p>3. Specialised on cases involving children</p> <p>4. Does not have any particular specialization / examines all types of cases.</p> <p>5. Other _____</p>

42.	<b>Data on the appointment of the preliminary hearing</b>	<p>Provide information on how much time/how many days did it take to schedule the first hearing after the case had been referred to the relevant court:</p> <ol style="list-style-type: none"> <li>1. 1 day</li> <li>2. 3 days</li> <li>3. 10 days</li> <li>4. 30 days</li> </ol> <p>Other _____</p>
43.	<b>Provide the information whether the court had issued a decision to examine the case in a closed hearing</b>	<p>Did the court issue a decision to examine the case in closed hearing?</p> <ol style="list-style-type: none"> <li>a) yes</li> <li>b) no</li> </ol> <p><i>Underline who requested/decided the case to be examined in the closed hearing:</i></p> <ol style="list-style-type: none"> <li>1. No one asked to examine the case in the closed hearing;</li> <li>2. At the request of the prosecutor</li> <li>3. At the request of the lawyer of the victim</li> <li>4. On the initiative of the court</li> </ol>
44.	<b>Specify the procedure in which the criminal case was examined</b>	<p>Indicate the procedure in which the criminal case was examined:</p> <ol style="list-style-type: none"> <li>1. Simplified procedure (art. 364/1 CPC)</li> <li>2. Standard Procedure</li> <li>3. Other _____</li> </ol>
45.	<b>Participation of the victim in examination of the case on the merits</b>	<p>Indicate whether the victim participated in examination of the case in the court of first instance:</p> <ol style="list-style-type: none"> <li>1. Yes</li> <li>2. No</li> <li>3. The victim was heard only by the court</li> </ol> <p>How many times did the victim give evidence to the court of first instance:</p> <p>_____</p> <p>Indicate below the reasons of repeated/additional hearing of the victim in the court of first instance</p> <p>_____</p>
46.	<b>Data concerning the evidence gathering by the court of the first instance</b>	<p>Indicate below whether new evidence was presented in the court hearing. In addition, indicate whether the court denied to admit any pieces of evidence</p> <p>_____</p>

<p><b>47.</b></p>	<p><b>Information on the court's of the first instance decision (including sentencing)</b></p>	<p><i>What was the verdict of the court of first instance?</i></p> <p>a) guilty b) not guilty c) other</p> <p><i>If the accused person/defendant was found guilty, provide details on the court of the first instance decision on sentence:</i></p> <p>1. Prison term of ____ to ____; 2. Stay of execution of the judgment 3. Conviction with partial release from serving the punishment of deprivation of liberty 4. Other _____</p> <p><i>Specify if the court of first instance considered mitigating/aggravating factors in sentencing and list them</i></p> <p>_____</p> <p><i>Specify if confiscation of instrumentalities and/or proceeds of crime were decided by the Court of the first instance:</i></p> <p><i>Specify the decision of the court on the storage/destruction of material evidences after the finalization of the criminal file (including the data carriers):</i></p> <p>_____</p> <p><i>Underline the grounds of the court of the first instance decision if the defendant was acquitted:</i></p> <p>1) the existence of the crime was not determined; 2) the defendant did not commit the crime; 3) the actions of the defendant do not include the elements of the crime; 4) offence is not provided by the criminal law; 5) there is a reason which excludes the criminal character of the offence/ action</p> <p><i>Underline the grounds of the court of the first instance decision referred to close of the case:</i></p> <p>1) the victim's complaint is absent; the complaint is withdrawn or the parties have reconciled; 2) in case of the accused/defendant's death; 3) the accused person/defendant is under the age of criminal responsibility; 4) there exists a final decision of a court concerning the same accused person and the same crime; 5) there exists a decision of a criminal investigation body to close the case concerning the same accused person and the same crime; or to cancel the criminal investigation, or to close the criminal case; 6) there exist other circumstances which justify or exclude the possibility to initiate the criminal investigation. It also refers to cases covered by the articles 54–56 of the Criminal Code.</p> <p><i>Indicate the decision of the court of first instance in civil proceedings/claim:</i></p> <p>1. Civil claim/case was upheld by the court; 2. Civil claim/case was rejected; 3. Civil claim/case was not filed; 4. Civil claim/case was upheld by the court with the decision to collect (indicate the amount) _____ of property damage and (indicate the amount) _____ of moral damage/injury</p> <p><i>Indicate below in brief the reasons presented in the decision/judgment of the court</i></p> <p>_____</p>
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<b>JUDICIAL PROCESS IN THE COURT OF APPEAL</b>		
<b>48.</b>	<b>Data on the person who filed the appeal</b>	<p><i>Was an appeal filed against the decision of the court of first instance?</i></p> <p>a) <i>yes</i></p> <p>b) <i>no</i></p> <p><i>Specify the person who filed the appeal:</i></p> <p>1) <i>Prosecutor – concerning the criminal case in general or referring the civil claim/case</i></p> <p>2) <i>Defendant – concerning the criminal case in general, and referring to the civil claim/case</i></p> <p>3) <i>Victim – concerning the criminal case in general</i></p> <p>4) <i>Civil party and the party who has the civil responsibility – in the part concerning the civil claim</i></p> <p>5) <i>The witness, expert, interpreter/translator and the lawyer concerning legal costs owed to them</i></p> <p>6) <i>Any person whose interests were violated by any action or act of the Court</i></p>
<b>49.</b>	<b>Participation of the victim in the examination/consideration of the appeal</b>	<p><i>Specify if the victim participated in the proceedings when the case was examined by the Court of Appeal:</i></p> <p>1. <i>Yes</i></p> <p>2. <i>No</i></p> <p>3. <i>The victim participated only at one hearing for interviewing purpose</i></p> <p><i>Specify below the reasons for the repeated/additional hearing of the victim at the stage of examination of the case in appeal. _____</i></p>
<b>50.</b>	<b>Data concerning new evidence gathering in the appeal court</b>	<p><i>Specify below whether the appeal court had gathered new evidence</i></p> <p>a) <i>yes</i></p> <p>b) <i>no</i></p> <p><i>Specify the new evidences gathered</i></p> <p>_____</p> <p>_____</p>
<b>51.</b>	<b>Specify what was the decision of the appeal court</b>	<p><i>What was the decision of the appeal court?</i></p> <p><i>Underline the specific circumstance why the appeal was rejected and the contested decision left without changes:</i></p> <p>a) <i>the appeal was not filed in due course, in accordance to the art. 402 of the Criminal procedure code;</i></p> <p>b) <i>the appeal is unacceptable</i></p> <p>c) <i>the appeal is groundless</i></p> <p><i>Specify below the grounds for the Court of Appeal decision</i></p> <p>_____</p>

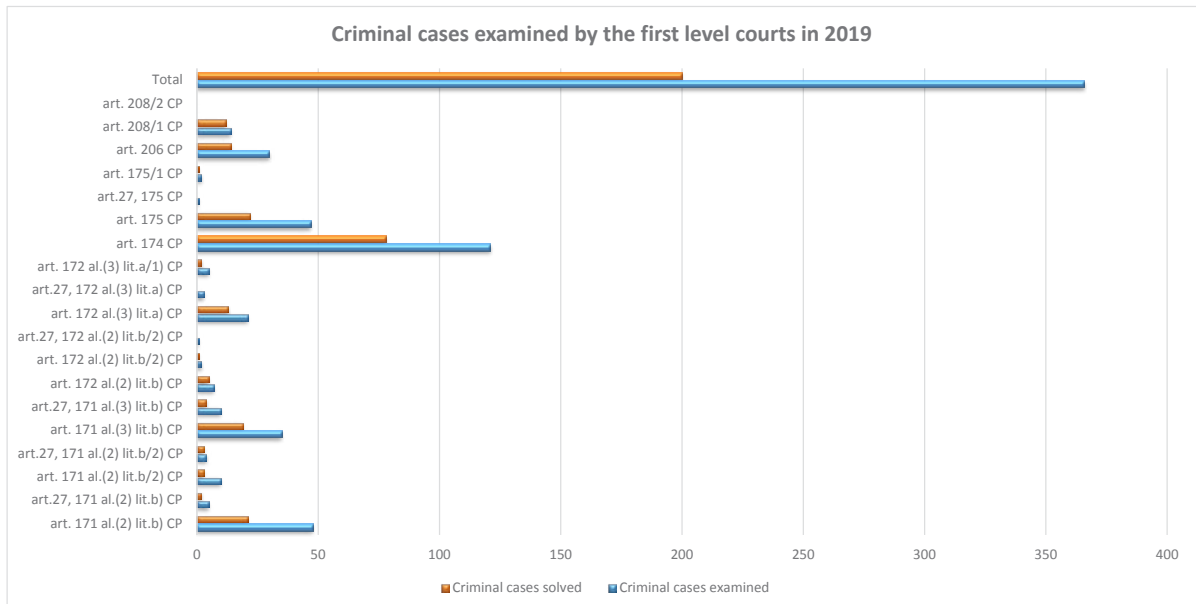
<p><b>52.</b></p>	<p><b>Data on the person who filed the appeal to the Supreme Court of justice</b></p>	<p><i>Was there an appeal to the Supreme Court of Justice in cassation?</i></p> <p><i>a) yes</i></p> <p><i>b) no</i></p> <p><i>Underline the person who filed the appeal in cassation:</i></p> <p><i>1. Prosecutor – concerning the criminal case in general or referring to the civil claim/case;</i></p> <p><i>2. Defendant – concerning the criminal case in general and referring to the civil claim/case;</i></p> <p><i>3. Victim – concerning the criminal case in general</i></p> <p><i>4. Civil party and the party which has the civil responsibility – in the part concerning the civil case</i></p> <p><i>7) The witness, expert, interpreter/translator and the lawyer concerning legal costs owed to them</i></p> <p><i>8) Any person, whose interests were violated by any action or act of the court</i></p>
<p><b>53.</b></p>	<p><b>Decisions of the of the Supreme Court of Justice</b></p>	<p><i>Underline the decision of the Supreme Court of justice:</i></p> <p><i>1) Rejected the appeal in cassation as unacceptable, leaving the appealed decision without changes;</i></p> <p><i>2) The appeal in cassation was upheld; the sentences were partially or fully overturned</i></p> <p><i>a) Leaves the court of first instance decision without changes – in case of mistaken upheld of appeal in cassation;</i></p> <p><i>b) Makes the decision of acquittal of a convicted person and closes the case – in cases where the law provides so;</i></p> <p><i>c) Re-evaluates the case and hands down a new decision without worsening of the convict's situation or, as the case may require, makes a decision to retry the case in the court of appeal, if a judicial error cannot be corrected in cassation instance.</i></p> <p><i>Indicate below the grounds on which the Supreme Court of Justice cancelled the decision of the appeal court or left it unchanged.</i></p> <hr/>

# Annex II Prosecution Data

## A. CASES EXAMINED AND CASES "SOLVED" BY THE FIRST INSTANCE COURTS IN 2019

Criminal cases examined by the first level courts in 2019	Criminal cases examined	Criminal cases solved
art. 171 al. (2) lit. b) CP	48	21
art. 27, 171 al. (2) lit. b) CP	5	2
art. 171 al. (2) lit. b/2) CP	10	3
art. 27, 171 al. (2) lit. b/2) CP	4	3
art. 171 al. (3) lit. b) CP	35	19
art. 27, 171 al. (3) lit. b) CP	10	4
art. 172 al. (2) lit. b) CP	7	5
art. 172 al. (2) lit. b/2) CP	2	1
art. 27, 172 al. (2) lit. b/2) CP	1	0
art. 172 al. (3) lit. a) CP	21	13
art. 27, 172 al. (3) lit. a) CP	3	0
art. 172 al. (3) lit. a/1) CP	5	2
art. 174 CP	121	78
art. 175 CP	47	22
art. 27, 175 CP	1	0
art. 175/1 CP	2	1
art. 206 CP	30	14
art. 208/1 CP	14	12
art. 208/2 CP	0	0
<b>Total</b>	<b>366</b>	<b>200</b>

The remaining 166 (366 – 200 = 166) cases remain for 2020

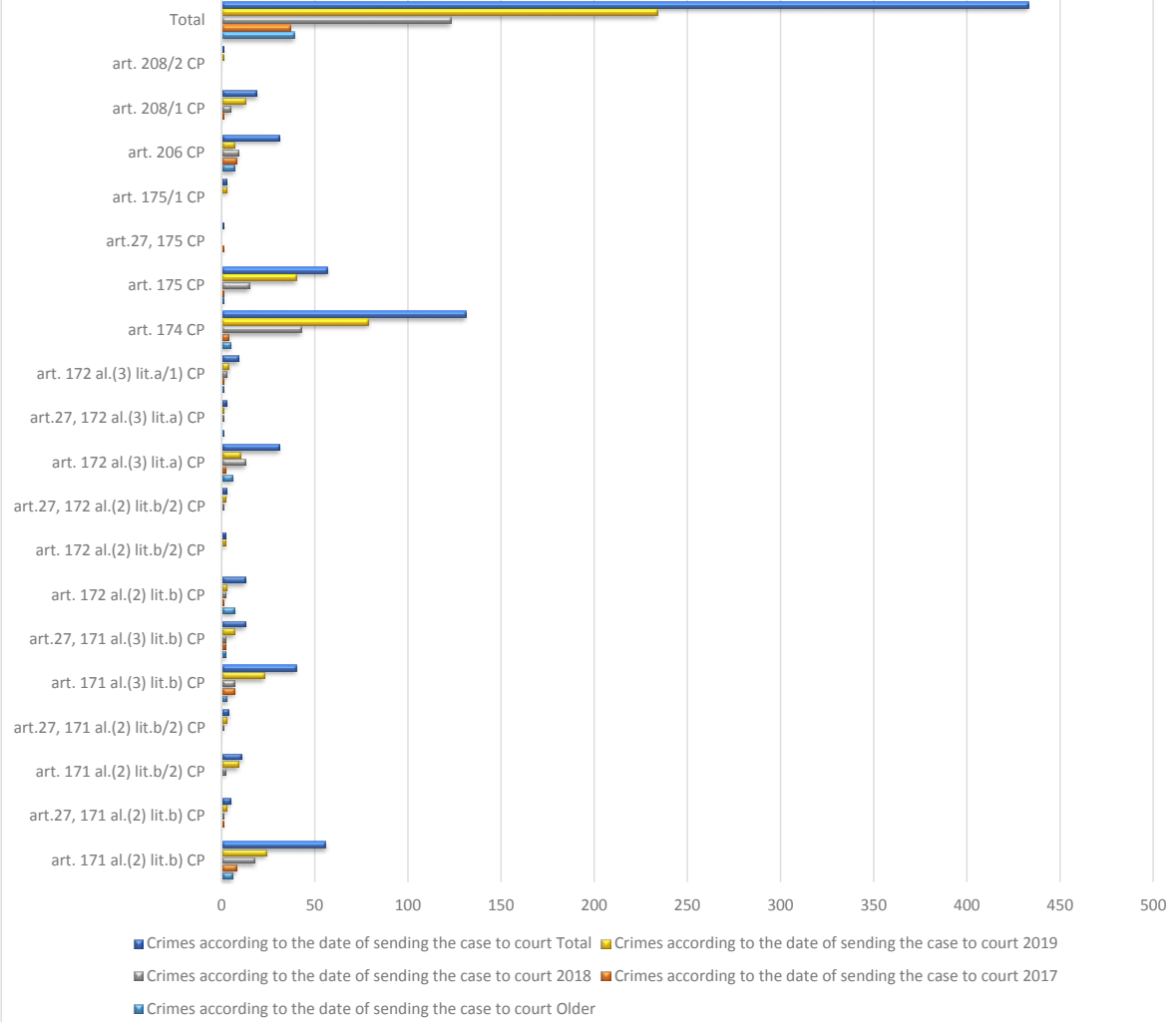


## B. PROSECUTION DATA ON CASES WITH THE FIRST INSTANCE COURTS IN 2019 (INCLUDING DATA ON THE YEAR SUBMITTED TO COURT)

A case can refer to several crimes and often when it is statistically recorded, only one of the crimes is indicated, so the other crimes may not be recorded in the data. Thus looking at case statistics does not necessarily indicate how many real crimes have been examined. In order to address this, researchers made a selection of the crimes included in the files mentioned in the table and chart at A. above (the number of crimes examined is higher than the number of cases). This is shown in the figure and chart below.

Crimes examined by level one courts in 2019	Crimes according to the date of sending the case to court				Total
	Older	2017	2018	2019	
art. 171 al. (2) lit. b) CP	6	8	18	24	<b>56</b>
art. 27, 171 al. (2) lit. b) CP		1	1	3	<b>5</b>
art. 171 al. (2) lit. b/2) CP			2	9	<b>11</b>
art. 27, 171 al. (2) lit. b/2) CP			1	3	<b>4</b>
art. 171 al. (3) lit. b) CP	3	7	7	23	<b>40</b>
art. 27, 171 al. (3) lit. b) CP	2	2	2	7	<b>13</b>
art. 172 al. (2) lit. b) CP	7	1	2	3	<b>13</b>
art. 172 al. (2) lit. b/2) CP				2	<b>2</b>
art. 27, 172 al. (2) lit. b/2) CP			1	2	<b>3</b>
art. 172 al. (3) lit. a) CP	6	2	13	10	<b>31</b>
art. 27, 172 al. (3) lit. a) CP	1		1	1	<b>3</b>
art. 172 al. (3) lit. a/1) CP	1	1	3	4	<b>9</b>
art. 174 CP	5	4	43	79	<b>131</b>
art. 175 CP	1	1	15	40	<b>57</b>
art. 27, 175 CP		1			<b>1</b>
art. 175/1 CP				3	<b>3</b>
art. 206 CP	7	8	9	7	<b>31</b>
art. 208/1 CP		1	5	13	<b>19</b>
art. 208/2 CP				1	<b>1</b>
<b>Total</b>	<b>39</b>	<b>37</b>	<b>123</b>	<b>234</b>	<b>433</b>

### Crimes examined by level one courts in 2019



# Annex III

## List of Recommendations

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For ease of reference, all recommendations are listed below, further details are in the relevant chapters.

### CHAP. 3 – RECOMMENDATIONS

- ▶ The law should be reviewed to ensure that:
  - the online solicitation of children for the purpose of child sexual abuse material is effectively criminalised,
  - the production of online child sexual abuse materials are fully criminalised and that legal entities convicted of the offence of child pornography can be liquidated,
  - all child sexual abuse materials are confiscated and cannot be further circulated.
- ▶ The Republic of Moldova should consider allocating confiscated items and monies to a special fund to finance prevention of CSEA and/or assist victims.
- ▶ The law (and processes) should be reviewed to ensure that measures are taken to limit the risk of CSEA offenders reoffending including through the use of court orders to prevent convicted offenders exercising professional or voluntary activities which bring them into contact with children.
- ▶ The use of the confrontation procedure should be barred for child victims, or as a minimum, limited to circumstances where strictly required for the investigation (e.g. where critical evidence could not otherwise be obtained).
- ▶ It should be considered whether the non-availability of special investigative activities to investigate the offence of child pornography (Art 208 CC) impedes effective prosecution of those involved.
- ▶ Information about the criminal justice process and the victim's rights, protections and support available should be provided directly to child victims in a manner that they can understand including use of video and other means (including where the child is under the age of 16).
- ▶ Legal provisions and internal procedures should ensure the safety and privacy of child victims throughout the criminal justice process (including in the home, community, places of criminal investigation and court premises) and in relation to the storage of and access to the child's personal data from the moment of notification of a crime. This includes an obligation to investigate and apply for protective measures at an initial stage and the development of appropriate and fast procedures to enable children to disclose protection concerns. All persons involved in the criminal justice process should be trained on the need for security, privacy and protection of child victims of CSEA. Where child victims or their family members withdraw cooperation from the criminal proceedings, inquiries should be made as to whether they have protection or support needs.
- ▶ The legal representation of child victims of CSEA should be monitored in light of the recent changes to legal aid, including whether legislative amendments are required to ensure child victims' lawyers can effectively represent their clients.
- ▶ The statute of limitation should be reviewed with consideration being given to providing that the limitation period does not begin to run until the child victim reaches 18.
- ▶ The law shall be amended as required to ensure that the evidence of qualified child psychological professionals has full evidential weight.

Training will be required in respect of the large number of amendments already introduced to the law in 2020 (e.g. police, judges and prosecutors must be informed of the changes to legal aid for child victims of CSEA) and the proposed amendments if adopted. Training should be further considered on sentencing in CSEA and, in relation to privacy, protection and security issues, also for security and support staff within the criminal justice system.

### CHAP. 4 RECOMMENDATIONS

- ▶ Consideration should be given to the reasons for the increase in number of cases suspended and steps taken to ensure this is not a trend.

- ▶ Consideration should be given to whether the proportion of cases of CSEA being sent to the courts is low in comparison to other crimes (including giving attention to Art 175/1 CC offences).
- ▶ Steps should be taken to expedite CSEA cases which have been in the courts since before 2017 and to ensure that CSEA cases are dealt with promptly within the courts (in this respect for example the courts might set a performance target).
- ▶ Reasons for the downward trend in sending certain cases to the courts (Art 206, 208/2 and 172(2)(b) CC) should be identified and addressed.
- ▶ Consideration should be given to the very low number of cases under Art 208/2 CC crimes and appropriate action taken.
- ▶ The current systems of obtaining and storing data related to CSEA cases within the criminal justice system should be reviewed with a view to developing a unified electronic system including gender desegregated data.

## CHAP. 5 RECOMMENDATIONS

- ▶ The application of the new legal provisions requiring child victims of CSEA to have the assistance of a lawyer (legally aided) from the initial stages of the criminal procedures should be monitored to identify whether this results in effective legal representation for child victims; training may be required to ensure that police, prosecutors and judges are informed of the provisions and act to ensure that child victims are represented.
- ▶ There is a need to address the delays in respect of Art 110/1 CPC hearings, in particular delays in requesting hearings should be addressed; existing procedures should be reviewed in order to ensure that requests are made and hearings conducted promptly.
- ▶ The repeated interviewing of child victims should be limited (this may be affected by the proposed extension of the mandatory use of the Art 110/1 CPC procedure to all child victims under age 18) and the use of the confrontation procedure (and other traumatic procedures) ended.
- ▶ Both for the purposes of taking a protective approach towards child victims and for the purposes of effective investigation, assistance should be provided for victims to attend forensic examinations and court hearings.
- ▶ The impact of the new Government Decision on psychological assistance and support for child victims should be monitored including in respect of the number, age and sex of child victims supported.
- ▶ Action must be taken to ensure the privacy and safety of children throughout and following criminal proceedings, this includes ensuring that where children attend court that they wait in a protected space, that they are shielded from public view and that judgments are anonymised. In light of the findings that protection measures were very used to protect child victims, it would be beneficial to identify why and whether the protection mechanisms and procedures adequately address child victims' needs.
- ▶ In light of findings that most child victims currently attend court to give evidence, there may be a need for training on the benefits of the Art 110/1 CPC procedure for police, prosecutors and the judiciary. Consideration could be given to enabling the child victim's lawyer to request an Art. 110/1 CPC hearing. If the proposed amendment to the law to extend the mandatory use of the procedure for all child victims is adopted, consideration should be given as to whether internal procedures should be adapted and training provided to ensure that the system works effectively.
- ▶ Further research and/or discussion could be conducted in order to identify the reasons for the high conviction rate.
- ▶ Judgements should be published and appropriately redacted to ensure the privacy of child victims of CSEA.
- ▶ In view of the high use of suspended sentences in CSEA cases and the broad wording of Art 90 CC consideration should be given to whether sentencing guidelines would be helpful taking into account also rehabilitation for offenders and orders to prevent offenders from working or volunteering with children.



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