

THE CHILD - A CHALLENGE FOR FORENSIC MEDICINE

Bianca-Loredana Chereji*

Coordinator of the Smart Justice Department, Federation of Non-Governmental Organizations for Children (FONPC), Bucharest, Romania

Abstract: The main objective of this material is to highlight the important aspects of the forensic expert procedure in cases of child abuse, both within the Romanian system and in other EU Member States. The focus is on the challenges faced by practitioners in this field in Romania, but at the same time it explores the prospects for improving this process, with the aim of guaranteeing respect for and protection of children's rights.

Keywords: forensic medicine, children's rights, children, child protection.

INTRODUCTION

In general terms, forensic medicine is a sensitive branch of medicine whose main objective is the effective application of methodologies and principles specific to the medical sciences to the legal field. It lies at the academic boundary between law and medicine, managing to quantify biological veracity in binary or discrete variables.

From the point of view of legal procedurality, forensic medicine is the science whose understanding is procedurally imperative in any legal case with medical implications, as well as in any medical case with legal insertions for the accomplishment of the act of justice. From an expert point of view, forensic medicine aims, for the needs of the legal process, to objectivise and assess the medical aspects of a legal case in an evidential, expert manner.

From the perspective of its general value in justice and society, forensic medicine is concerned with the application of medical knowledge in order to ascertain the truth and to meet the needs of the legal process.

The importance of forensic medicine is apparent from the impact of the law on medical activity in general or on suspicious events that lead to the

impairment of a person's bodily integrity or physical or mental health.

The broad field of forensic medicine includes forensic science, an essential tool in this academic sector.

Forensic science focuses its attention on providing concrete medical opinions and expertise in legal cases. This work is the exclusive remit of the specialist forensic doctors who carry out the expertise themselves and are in collaboration with the justice system to provide reliable medical details that contribute to the speedy investigation and resolution of cases.

This material aims to highlight aspects of forensic expertise in situations of child abuse both in the Romanian system and in other EU countries, highlighting the challenges faced by practitioners, but also offering a perspective for improving this procedure in order to ensure respect and protection of children's rights.

Forensic examination of child victims - Romania

a. Child abuse in Romania

In recent years, countless cases of child abuse have been exposed in Romania, and it has been found to be a real social problem. It is stated that the

*Correspondence to: Bianca-Loredana Chereji, Legal adviser - specialised in children's rights, Coordinator of the Smart Justice Department within the project "Help to Help Ukraine" - Federation of Non-Governmental Organizations for Children (FONPC), E-mail: bianca.chereji@fonpc.ro

number of abused children has increased considerably, and this problem is also considered a particularity of contemporary society. Studies of contemporary society indicate a world full of internal and external conflicts in which abuse is the protagonist.

Child abuse encompasses a complex phenomenon that hinders the harmonious development of the child, developing feelings of inferiority, traumas that contribute to abnormal behaviour in everyday life. The English sociologist Anthony Giddens describes child abuse as the “invisible face of the family” and abuse of young children leads to more severe existential changes.

According to statistics, as of 30 September 2020, there were 10,656 cases of abused, neglected and exploited children, with the number increasing considerably over the next two years, so that as of 30 September 2021 there were 11,903 cases (11.70% higher) and as of 30 September 2022 the official figures indicate 12,761 cases, resulting in a 19.75% increase compared to 30 September 2020.

In cases involving sexual abuse, statistics indicate that in 2022 there were 1,143 cases, 38.55% more than in 2020 when there were 825 cases. This form of abuse is the most underreported negative social phenomenon in our country. Despite the 2004 regulation prohibiting abuse in any form and neglect, these continue to be present in the lives of children.

In Romania, the medical specialty dealing with the assessment and treatment of minor victims of sexual abuse is forensic medicine with competences in the forensic field. Doctors specialising in this field investigate and assess cases of child sexual abuse using standardised procedures and protocols issued by the Ministry of Health and the Ministry of Justice.

According to the provisions of the Code of Criminal Procedure (CCP), forensic medical expertise is ordered by the prosecutor or the court in a criminal case in which child sexual abuse is being investigated. This procedure starts with the referral of the case to the specialised authorities. The CPP also sets out the general rules on court proceedings in criminal cases, including those related to forensic expertise, regulating the process of appointing experts, evaluation and reporting procedures, and the manner of presenting the expert's findings in court.

Before the actual assessment, doctors will collect important information for the process. Family members or carers may be interviewed to obtain a brief medical history of the child. Once this stage has been completed, the focus will be entirely on the child. The doctor, trying to establish a rapport with the child, will interview the child in a way that will obtain essential information about the events.

Once these details have been established, a complete, thorough and detailed physical examination of the child (including genital examination) will be conducted to identify potential signs of sexual assault, including lesions, swelling or bleeding in the genital area. Biological samples of blood and urine will be taken, which may provide information or details including the identity of the perpetrator.

A psychological examination is also carried out to assess the child's mental and emotional state and the possibility of signs of psychological trauma. This assessment should be carried out as soon as possible after the incident of abuse, but should take into account the minor's condition and the time at which it is reported. It is advisable to avoid examining the minor at night on the grounds that evidence may be lost. It is advisable that this examination is carried out in a friendly, appropriate setting and in a less invasive and traumatic manner for the child, and the results should be recorded in a written report. This report should be objective and detailed, and the findings of the examination, any conclusions and information about the child's condition should be accurately reported so that it can be used in the criminal process, in court to support the case against the alleged abuser.

After completing this procedure, doctors will liaise with prosecutors and law enforcement throughout the process to ensure evidence is gathered and to support the legal case.

b. Need

Forensic expertise in cases of sexual abuse of minors is essential to identify and document the physical and psychological harm suffered by the child, as well as to provide relevant information for criminal proceedings.

The forensic expert can also provide information about when the sexual abuse took place, the degree of violence involved and whether the minor

Annex 1.

		Percentage increase from year 2020	Percentage increase from year 2021
Total abuses 2020	10.656	-	-
Total abuses 2021	11.903	11,70 %	-
Total abuses 2022	12.761	19.75 %	7.21%

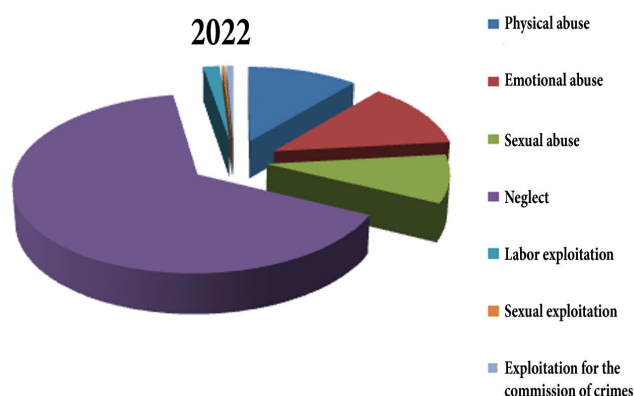
was exposed to sexually transmitted diseases or other health risks.

In general, forensic expertise in cases of sexual abuse of minors is a delicate and sensitive process that requires careful consideration of the child's needs and emotions. It is important that the forensic expert is experienced in working with children and is able to communicate with them in a way that does not aggravate their trauma.

c. Can children be a challenge for forensic medicine in Romania?

The answer is affirmative for several reasons. In Romania, every day a child becomes a victim of sexual assault, and every three days another child is caught in the traps of human trafficking. 85% of complaints of child sexual abuse are dismissed due to lack of evidence.

A first challenge Romania faces in this respect is the lack of forensic specialists who are trained in the examination of children. This can lead to inaccurate or incomplete assessments of children's injuries, re-traumatisation and even loss of some key evidence. This can also be an impediment to communication with the child victim, as they may be overcome by strong emotions, becoming unable to communicate with an outsider about what really happened because of age or trauma, which can destabilise the criminal process.



Annex 2. Child abuse statistics. Source ANPDCA

Year	2020	2021	Percentage increase compared to 2020	2022	Percentage increase compared to 2020	Percentage increase compared to 2021
Physical abuse	1000	1152	15.20	1414	41.40	22.74
Emotional abuse	1449	1659	14.49	1552	7.11	-6.45
Sexual abuse	825	1019	23.52	1143	38.55	12.17
Neglect	7116	7727	8.59	8312	16.81	7.57
Labor exploitation	170	199	17.06	212	24.71	6.53
Sexual exploitation	22	40	81.82	34	54.55	-15.00
Exploitation for the commission of crimes	74	107	44.59	94	27.03	-12.15
Total	10656	11903		12761		

The expert must also be able to conduct careful, sensitive examinations and take into account the child's level of discomfort, as the sensitivity of young children is much greater.

Other challenges identified are: lack of equipment (appropriate kits, child-friendly spaces in a safe and appropriate environment, gender-appropriate gynaecological chairs, child-friendly recovery spaces), lack of adequate resources to perform a complex examination, and lack of a specific interview protocol to ensure age- and developmentally appropriate interviewing.

These issues have also been raised by specialists in the field who state the following: "...children who have been sexually assaulted are already affected by deep trauma, they often find themselves under additional stress during forensic examinations. They are subjected to procedures in surgeries that do not provide a friendly atmosphere, equipped with gynaecological chairs that are over 50 years old, and medical investigations are carried out with instruments that can cause anxiety for both children and adults. In addition, it is worrying that only a small number of cases that go through forensic examination receive genetic expertise, a much more efficient method. However, there is reluctance on the part of police and prosecutors to request this procedure;... they demand similar examinations to those required 50-60 years ago, such as microscopic examination in the serology laboratory and various other investigations with no probative value. These requests are based on an unverified concept, namely that DNA is only relevant in different contexts, despite the existence of laboratories within the Institute in Bucharest and the Romanian Police, which have a national system of genetic databases, including a forensic profile."

Situations were noted where parents were reluctant to take their children to that specific examination site or in some cases children flatly refused to go in. In addition, it is worth noting that these

children, already affected by trauma, face a new form of stress by being brought into examination spaces that do not seem friendly at all, but rather intimidating, generating fear instead of trust. Often, both children and carers avoid choosing a doctor's surgery that exudes a sad atmosphere to carry out necessary examinations.

The overwhelming importance of the evidence to be presented in court can be seen. This is yet another good reason to direct resources towards developing these facilities, bearing in mind that victims of assault may become perpetrators in the future.

Another challenge facing Romania is the lack of collaboration in the multidisciplinary team. For example, in other EU Member States multidisciplinary collaboration is very important. Often, in cases of child sexual abuse, there is also an emphasis on this collaboration between the main characters in GD 49/2011. This ensures a comprehensive assessment and an integrated approach to the case.

Forensic examination of child victims – Germany

In the German procedural system, this expertise is a very rigorous process and is considered important in protecting and respecting the best interests of the child. Unlike in our country, there is an obligation for both auxiliary medical staff and the doctors themselves to be specialised in paediatric medicine, as well as in the interpretation of signs of abuse or injuries. The involvement of specialist clinical psychologists to conduct interviews and trauma impact assessment tests is also encouraged.

In this state, the functionality of the multidisciplinary team is strictly regulated, with forensic experts being in close contact with prosecutors and authorities in charge of the efficient resolution of such cases. The forensic examinations are carried out with equipment specially adapted for children, in centres and premises specially designed for children, offering them a calm, comfortable and safe environment. In certain situations, there is the possibility of involving a psychologist for support. As in Romania, a detailed report is drawn up after completion of the physical examination, stating observations and conclusions. On the basis of this report the prosecutors decide whether or not to open the case.

Special attention is also paid to the confidentiality of the minor's data in order to reduce the social impact on the victim.

Regulations

Regulations on this sensitive subject are

contained in several national regulations and guidelines which are constantly updated to maintain quality standards. The main piece of legislation is the Strafgesetzbuch - StGB (Criminal Code, hereinafter referred to as StGB), which regulates the offenses of sexual abuse of minors, the related penalties and the protection due to victims. In this connection, mention may also be made of the Jugendschutzgesetz - JuSchG or Youth Protection Act, and the Kinder- und Jugendhilfegesetz - SGB VIII or Children's Rights Act, both of which regulate the protection of young people and children in the Länder (states) of Germany. The first law contains provisions on stopping the distribution of pornographic material to minors or involving minors in sexual activities. Among the regulations of the second Act are child protection services and the procedure related to the placement/custody of abused children.

The ultimate aim of these regulations is to involve the authorities, social care professionals, forensic doctors and psychologists in providing children with the necessary protection.

Forensic examination of child victims - Spain

Forensic expertise in cases of child sexual abuse in Spain is regulated by a complex series of protocols and laws.

The Protocol for the Assessment of Victims of Sexual Abuse (Protocolo Común de Actuación Médico-Forense en Casos de Agresiones Sexuales) is created by the competent authorities outlining general procedures for the medical and forensic assessment of victims of sexual abuse, including children. This protocol is based on current medical practice and ensures the appropriate treatment of victims. In addition to this protocol one can mention the Penal Code and the Law on Child and Adolescent Protection (Ley Orgánica 8/2015, de 22 de julio, de modificación del sistema de protección a la infancia y a la adolescencia). These legal acts regulate the rights of children and young people, contain specific provisions on sexual abuse, establish offences, prevention methods and protection services.

This process is a well-defined one, involving specialised staff trained to respect ethical standards and procedures inserted in the evaluation protocol. Being somewhat similar to the system in Germany, the intervention of psychologists and social workers is encouraged to provide the necessary support to minors, who can benefit from legal protection by a lawyer specialized in children's rights.

The same steps are followed for the expert

procedure, but the child must be accompanied by a specialized lawyer, legal representative or social worker to ensure that his or her rights are not violated.

Forensic examination of child victims - France

In France, forensic expertise in cases of sexual abuse of minors is an extensive process in the investigation and prosecution of these serious crimes. In the course of this forensic examination, the victim, but in some cases also the alleged perpetrator, is carefully examined in order to collect relevant medical and legal evidence to determine whether sexual abuse took place and to assess the possible physical and psychological consequences on the victims. The forensic medical expert is specialized in forensic medicine and acts as an assessor of possible signs associated with sexual abuse (bruising, traumatic marks, etc.). He or she can also assess the emotional state of the minor, evaluate evidence and the child's testimony.

Most of the time, the expertise is accompanied by strict protective measures for the minor, e.g. instead of direct confrontations with the alleged offenders, video hearings are used.

Recommendations

From the above we can draw a rich list of issues that need to be modified, adapted or even replaced entirely.

First of all, there is a need for more complex and up-to-date protocols for the assessment of cases of sexual abuse of minors. This can help to ensure a complex and speedy resolution process in relation to the best interests of the child. This should include details of evidence collection, assessment of physical and mental harm, and communication with children in a sensitive way.

The need for a multidisciplinary team guideline for dealing with cases of sexual abuse of minors was also identified and expressed. Through this guide different perspectives can be offered, contributing to minimize the trauma of the minor victim as well as to manage the cases fairly.

As noted in point c, a need for training/specialization/overspecialization of medical staff and forensic doctors is identified. At the same time, the institutions in charge of carrying out forensic examinations should be equipped with up-to-date physical and genetic examination equipment suitable for the forensic examination of child abuse, as well as with friendly premises specifically designed for the early part of the interview, examination and collection, all of which

should contribute to minimizing the trauma of minors.

Review and update certain legislation governing this area in the best interests of the child, for example ensuring that minors are adequately protected when abusers are brought to justice.

Support partnerships between NGOs and the state to launch awareness-raising and public education campaigns to raise awareness of the seriousness of child sexual abuse, its classification as abuse, identification of signs and reporting. Support legal education in schools so that children know their rights, procedures, signs of abuse and how to report to the authorities. State support for NGOs working to protect victims of sexual assault by providing support programs to help them overcome trauma.

All of the above issues require the active involvement of the authorities through the allocation of adequate resources and funding.

These recommendations for change should be developed and implemented in collaboration with experts in the field, non-governmental organizations and relevant government agencies to ensure a comprehensive and effective approach to child sexual abuse issues in Romania.

In conclusion, the child who becomes a victim of sexual assault is definitely a great challenge for forensic medicine in Romania for several reasons listed and detailed in the content of this material.

The event of abuse is more often than not accompanied by a strong sense of psychological and emotional trauma, and the limited ability of children to communicate the details of the events can make the process of litigation more difficult.

At the same time, the social and cultural context can influence the responsiveness of the community and the justice system to these cases. Stigma, lack of awareness and social pressures can contribute to under-reporting of child sexual abuse or delay in intervention. This places on forensic practitioners not only a medical assessment task, but also the environment in which the examination takes place, the manner and responsibility for managing the emotional and social aspects of such cases.

A lack of certain resources, including staff requiring appropriate specialisation and facilities for the assessment of children, were also noted, which may create a barrier to less traumatic qualitative examination. The training of forensic specialists in dealing with the delicate and sensitive approach to child victims is essential, and ensuring a collaborative framework between professionals in the multidisciplinary team is

paramount to a complex investigation.

With these issues in mind, we conclude by noting the complex and powerful challenge that child victims of sexual assault pose to the field of forensic medicine in Romania.

Careful coordination of the entities empowered with the necessary skills can facilitate the improvement of the investigation process and ensure fair justice for these vulnerable victims, respecting the best interests of the child.

Conflict of interest

The authors declare that they have no conflict of interest.

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