

# Justice system and secondary victimization of children and or adolescents victims of sexual violence in the family

## Sistemas de justiça e a vitimização secundária de crianças e ou adolescentes acometidas de violência sexual intrafamiliar

### **Eliana Mendes de Souza Teixeira Roque**

Post-Doctorate in Public Health. Professor at the University of Ribeirão Preto-SP, Brasil.

Address: Rua Tibiriça, 444, apto 1.101, Ribeirão Preto, CEP 14010-090, São Paulo, SP, Brasil.

E-mail: jkroque@uol.com.br

### **Maria das Graças Carvalho Ferriani**

Professor of Infant & Maternity Nursing & Public Health at the Escola de Enfermagem de Ribeirão Preto, Universidade de São Paulo.

Address: Av. Bandeirantes, 3.900, Campus Universitário, CEP 14040-902, Ribeirão Preto, SP, Brasil.

E-mail: caroline@eerp.usp.br

### **Romeu Gomes**

Doctor of Public Health. Research Professor at Fundação Osvaldo Cruz.

Address: Av. Rui Barbosa, 716, 4 andar, Flamengo, CEP 20550-011, Rio de Janeiro, RJ, Brasil.

E-mail: romeu@iff.fiocruz.br

### **Lygia Maria Pereira da Silva**

Post-Doctorate in Science. Professor at the University of Pernambuco.

Address: Rua Arnóbio Marques, 310, Santo Amaro, CEP 50100-130, Recife, PE, Brasil.

E-mail: lygiapera@yahoo.com.br

### **Diene Monique Carlos**

Doctoral Researcher at the Escola de Enfermagem de Ribeirão Preto, Universidade de São Paulo.

Address: Rua Ferdinando Panatoni, 400, Bloco I, Apto. 31, Pauliceia, CEP 14060-090, Campinas, SP, Brasil.

E-mail: diene\_enf@yahoo.com.br

### **Abstract**

The present paper addresses the results of research conducted in collaboration with judges into the interrogation of child and adolescent victims of sexual abuse. The theoretical framework used was based on the Ecological Systems Theory. Qualitative research methods were used, with a semi-structured survey and free observation in different jurisdictions. The data was examined using thematic content analysis, through which two categories stand out: “lack of training and limitations” and “secondary abuse”. In the former, an unprepared judge will, when interrogating, resort to a technique based on practice, life experience and instincts, without following the necessary structural procedures. The rationale used is based on common sense. “Secondary abuse” clearly shows that local judicial intervention methods can be seen to re-victimize children and adolescents, since they only hear the victim’s testimony, on successive occasions, in order to obtain evidence to incriminate the aggressor. Acting in this way may generate discord between the immediate priority and the absolute priority guaranteed by the Brazilian Constitution. The judicial system does not show itself to be organized towards prioritizing issues involving children and adolescents, whether in terms of handling the possible implications of a hearing or discussing new approaches to preventing secondary abuse towards victims of sexual abuse. The field of health can support the justice system on this issue. To do this the problem must be approached from an interdisciplinary perspective, although the justice system is ultimately responsible for the solution.

**Keywords:** Justice Systems; Domestic Sexual Abuse; Judges of Law; Children and Adolescents.

## Resumo

Este artigo aponta resultados de pesquisa realizada junto aos juízes de direito, sobre a inquirição de crianças e/ou adolescentes, vítimas de violência sexual, no sistema de justiça. Referencial teórico centrado na visão do contexto ecológico do desenvolvimento humano. O método foi de natureza qualitativa, com entrevista semiestruturada e observação livre, em Comarcas do Judiciário Brasileiro. O tratamento dos dados deu-se a partir da técnica de análise de conteúdo temática, que aponta “Impotências e Limites” e “Violência Secundária”. Na primeira, o juiz, desprovido de preparo, socorre-se à hora da inquirição da vítima, de modelo cujas bases estão na prática, experiência de vida, sem apropriar-se das estruturas necessárias ao procedimento. A didática utilizada é de senso comum. “Violência Secundária” evidencia que os modos de intervenção do lugar do judiciário podem ser vistos como aspectos de revitimização de crianças e adolescentes, quando apenas ouve tais pessoas em sucessivos momentos para obtenção de materialidade da prova para incriminação do agressor, em discordância entre a prioridade imediata e a absoluta assegurada legalmente pela Constituição Federal Brasileira. O Sistema Judicial não demonstra estar organizado para priorizar questões envolvendo crianças e adolescentes. Seja como suporte para lidar com as possíveis implicações da inquirição, seja na discussão para se formular abordagens que evitem a violência secundária de vítimas de violência sexual. O campo da saúde poderá trazer contribuições para a área judiciária desde que o problema seja visto a partir de uma dimensão interdisciplinar, ainda que caiba ao judiciário a palavra final para a sua solução.

**Palavras-chave:** Sistemas de Justiça; Violência Sexual Intrafamiliar; Juízes de Direito; Criança e Adolescente.

## Introduction

Given the many discrepancies and contradictions in the contemporary Brazilian context, the interrogation of victims of sexual abuse, principally relating to cases involving children and adolescents, has become one of the key topics of debate surrounding interventions by the justice system.

Interrogation is understood as “the act by a competent authority of asking the witness (who is particularly vulnerable and requires protection, including within the adversarial system) what they know about a determined event that they have witnessed or about which they have information” (De Paulo, 2005, p. 190).

There is wide-ranging legislation on the importance of hearing the testimonies of children and adolescents, namely the 2002 *Código Civil* (Civil Code), the principles of the United Nations Convention on the Rights of the Child, consolidated in Brazilian legislation, and finally, law nº 8.069/90, article 28, paragraph 1º (Brasil, 2009).

The aim of interrogating children and adolescents during criminal proceedings involving sexual abuse is to produce material criminal evidence, in the face of scarce procedural guidance, leading to the conviction or acquittal of the accused. This places an enormous responsibility upon these interrogated subjects, which they are not always prepared for.

Despite the mechanisms that advise and require this action as an essential part of the criminal process, related studies raise important criticisms of the interrogations conducted within the justice system, of both the traditional method employed by the judge and other methods involving the participation of other professionals. Although legal mechanisms promote the right of children and adolescents who suffer or witness crimes to give testimonies, studies show that this is only for the purpose of the investigation and conviction or acquittal of the accused, by building evidence against the author of the crime. Additionally, asking the child or adolescent to recount the trauma on various occasions and in different ways can cause further psychological damage (Brito and Pereira, 2012; Aleixo, 2008; Brito and Parente, 2012).

In conceptual terms, we consider a child to be under twelve years and an adolescent to be be-

tween twelve and eighteen years, according to Law 8.069/90 (Brasil, 1990). The possible definitions of sexual abuse include a wide spectrum of possibilities. The definition we use here is that of forcing or encouraging a child or adolescent to take part in sexual activities, whether they are conscious or not of what is happening. The activities can involve physical contact, including penetrative acts, (for example rape or sodomy, penetrating the anus or the rectal opening with the fingers) and non-penetrative acts. It can include non-contact activities, such as taking the child to view or produce pornographic material or view sexual activity, or encouraging them to behave in a sexually inappropriate way (Sanderson, 2005, p. 5).

Such situations occur predominantly in the domestic environment, especially during childhood. The main perpetrators of these crimes are the mothers' partners, followed by biological fathers, uncles, godfathers, as well as mothers, grandmothers, aunts and people who hold relationships of trust, dependence or affection with the child or adolescent (Brasil, 2010). These situations concern the involvement of a child who is not able to give mature consent, in sexual activities that violate social taboos and family roles (Furniss, 1993).

Focusing on the justice system and the interrogation of child and adolescent victims of sexual abuse, we raise the following question: Does the legal institution promote and protect children's rights when producing legal evidence through interrogation by judges?

Despite the complexity and importance of the topic in the debates surrounding fundamental child protection, studies within the healthcare field which address the interrogation of children and adolescents are only just beginning. In the LILACS (Literatura Latino-Americana e do Caribe em Ciências da Saúde) and SciELO (Scientific Electronic Library Online) databases, on Nov 28, 2012, using the search term *inquirição*, we found seven scientific articles from the last five years. After reading, we identified that three of these were on the subject of interrogation, all relating to children and adolescents. The question of interrogating the victim rarely considers their specific needs, so studies focusing on preventing rights violations in the interrogation of victims, through a review of related studies or criminal pro-

cesses, are of particular interest. (Brito and Pereira, 2012; Aleixo, 2008; Brito and Parente, 2012).

Starting from this premise, we intend to investigate and analyze the interrogation of child and adolescent victims of sexual abuse from the viewpoint of members of the justice system, contextualized in ceremonial processes and the forensic environment, with a specific focus on the traditional interrogation style used by the judge.

To deal with our investigation and evidence, we used a theoretical framework based on the Human Ecology Theory (Bronfembrenner, 1996), which considers the person in development, the environment and in particular the interaction between the two.

We felt that an analysis from the perspective of the justice system required a more relativist approach, considering the nature of the context, since the crucial argument is that development can only be understood within its historic, cultural and interpersonal context; references belonging to the subjective characteristics of the person alone are not sufficient.

[...] it involves the scientific study of the mutual progressive accommodation, between an active, growing human being and the changing properties of the immediate settings in which the developing person lives, as this process is affected by relations between these settings, and by the larger contexts in which the settings are embedded (Bronfenbrenner, 1996, p. 14).

The theory considers the complex relationships between the developing person and the contexts in which they are situated, described in four nuclei of the ecological system: *person* - biological, physical and psychological characteristics in interaction with the setting; *process* - interpretation of experiences, interactions and the setting in which they develop; *context* - contextual systems; *time* - the chronosystem relating to the person and their proximal processes which progress with time, and the passage of time in the historic context.

We believe this study to be relevant to the field of health, given the direct implication of the damage caused by sexual abuse on the physical and mental health of children and adolescents, as well as the importance of interventions and further legal initiatives for reducing abuse and protecting of

victims. Such understanding is urgently required to gain funding for care and support for victims. In this sense, health and legal actions work in tangent.

## Method

Regarding methodology, we adopted a qualitative approach that, among other objectives, sought to understand the cultural values and understandings of groups, institutions and individuals around their historic contexts and specific themes (Minayo, 2010).

The field of research was the São Paulo State Court of Justice, Brazil, in two districts of São Paulo state that do not have specialized procedures for hearing the testimonies of children and adolescents, using judges as research participants. The first district was selected as it had previously been a field of research for a related study (Roque, 2001, 2006) and the second as it is the regional headquarters to which the first belongs, located in a region of high economic and social development within the Brazilian context. We received written authorization for our research from the senior management of the two districts who provided us with a list of judges. From these, 15 judges were randomly selected for interview initially, a number which could later be increased if necessary. Of those selected, 12 agreed to participate in the research by signing an informed consent form. Based on the initial reading of the testimonies of those interviewed, we observed a repetition of information and considered that there was sufficient material to address the research questions.

All 12 judges have law degrees and passed public service exams to become members of the São Paulo State Court of Justice. Four are female and eight are male, aged between 35 and 40. They each have between 5 and 20 years' experience in the role within the Brazilian magistrate. Three of them have at least one post-graduate qualifications. Two perform a combination of coordination, management and electoral judge roles.

To collect the data we used semi-structured interviews and free observation. The interviews were conducted using a script, considering the following aspects: the research participant's attitude towards the interrogation of child and adolescent victims of

sexual abuse and the content addressed during the interrogation.

Each of the research participants was interviewed for between 40 and 50 minutes between February and May 2012. Audio and video recordings were taken in the participants' workplace.

Free observation was used as a complementary technique upon the arrival of the child or adolescent, their respective families, and their defense lawyer, during the interrogation performed by the judge in the forensic space, and during their exit from the environment. This space, the judge's courtroom, is an uncluttered, well-illuminated environment, with pastel colors and minimal decoration. It contains three tables, one on a raised platform above the ground belonging to the judge, with a chair, computer and a visible camera for filming; to the side of this is a smaller table with a chair and computer which belong to the clerk; and below this a table surrounded by eight chairs, plus one placed to the side. Records were kept in a field diary, which aided description and analysis. The interview reports and contents of the free observations were classified by the letter J, followed by ordinal and sequential numbering.

Our ethical practice complied with Resolution 196/96, proposed by the *Conselho Nacional de Saúde* (CNS- National Health Council). The research project was analyzed by the *Comitê de Ética em Pesquisa da Escola de Enfermagem de Ribeirão Preto da Universidade de São Paulo (EERP/USP- The Research Ethics Committee of Universidade de São Paulo's Ribeirão Preto Nursing School)* and approved under protocol nº 1.382/2011.

The data was analyzed using the thematic modality content analysis technique (Bardin, 1977). Using this technique, we followed the following analytic-interpretative process: (a) comprehensive reading of testimonies using interview transcripts; (b) identification of central ideas of the testimonies; (c) interpretation of the central underlying meanings behind these ideas; (d) comparison between these ideas and underlying meanings; (e) definition of themes that enable a discussion of the results. The reports in the field diary from the free observations were used to put the discussion in context for each theme, enabling the classification and general

understanding of the testimonies.

We categorized the data by classifying the elements of each set, through differentiation and then by regrouping according to genre, using the criteria previously defined. The resulting categories enabled us to establish rubrics that group together elements (registration units, in the case of content analysis) under generic headings, which we grouped according to common characteristics.

For each piece of material, code or content, we found a supplementary meaning that helped to clarify the “syntax” or “grammar” superposed on the code’s known syntax or grammar.

The analysis was not limited to vocabulary, lexis, semantic repertoire or theme. It also explored underlying organizational principles, relationship systems, management strategies, rules surrounding chain processes, exclusion, equality of organized members, and meaningful words or elements and figures of speech, finding relationships between these elements (symbols or meanings).

At this point, in accordance with Gomes (Gomes, 2007), we will draw conclusions from our research based on the sum of collected material, to fulfill the objectives of the project and its theoretical foundations.

## Results and discussion

The categories for analysis which emerged from our research highlighted that the technical preparation given to judges for interpreting the law is not sufficient, faced by the issues in the current social context, given that the judge must share the rationale behind their decision with other members of society before making a final decision. Our findings show symbolic structures which, if considered in the current context, raise the need to overcome the traditional technique currently used that operationalizes procedures in a coordinated way using a systematized and permanent regulatory structure.

Without attempting a detailed analysis of Brazilian legal culture, in this article we will describe the content of the judge’s statements that seems to influence their actions and suggest possible ideological links between these ideas and their features.

The legal model which that stands out is catego-

rized by the centralization of power at state level, formal rationality and legal thinking that abandons substantive justification and is based only on formal considerations and personal opinion.

In the interviews of the participating judges, questions emerge regarding legal practices with varied significance, in a wide range of circumstances, producing the results outlined below.

## Lack of training and limitations

The theme of ‘lack of training and limitations’ raises the issue that judges lack the necessary preparation for interrogating children and adolescents. Difficulties arise in a wide range of situations, relating to the decision to hear the subjects’ testimonies, methods of interrogation, and even to the sequence of interrogation.

The participants point out that there is not sufficient technical training for interpreting the law, faced by the issues in the current social context, given that before making the final decision they must share the rationale behind their decision with other members of society.

The identification of the interrogation techniques used with child and adolescent victims of sexual abuse and their respective concepts, classification and typification, shows a system with selective and inconsistent processes, and behaviors which are supported by juridical positivism.

The ideas of the judges in question are based on legal dogma which does not allow for structural changes to operations and processes, which when interrogating child victims of sexual abuse, can lead to their re-victimization.

Organizational structure, rules, regulations and processes are viewed as rational instruments (Morgan, 1996). Formal organization forms the structural expressions of the rational action (Selznick, 1967). Sometimes, rhetoric appears that gives rise to an emancipatory and critical rational model (Wolkmer, 2002).

This rationality does not reject the traditional dogma, encouraging the idea that the system is linked to reality and to the construction of a new theoretical-critical model. Thus, the judges align themselves with common sense and are reluctant

to accept criticisms of the decision-making institution, namely the Court of Justice. Changes to the procedures for interrogating child and adolescent victims of sexual abuse are necessary, as they are currently restricted to procedural documents and institutional limitations and do not respond appropriately to children's needs, expectations and rights. Content and quality standards do not meet the requirements of a regulatory institution which, serving society, must provide appropriate responses to its users.

It is therefore necessary to make use of theoretical research and material practice to legitimize the development of a more organic, logical and consistent critical discourse.

We should also consider different methodological focuses; dialectics, semiology, psychoanalysis and systemic analysis among others; for a discursive project of "legal criticism" which, without falling into new dogmas, can continue to perform both the pedagogical functions of denouncing and breaking away from the institutionalized truths and implement "practical theory", to socialize the law and support the emancipation of social formations of peripheral capitalism (Wolkmer, 2002).

A hierarchy of objectives can be observed, based on concerns about the need for correct adversarial procedure and a full legal defense. It is worth highlighting that the Brazilian Federal Constitution places these principles together in section LV, article 5<sup>o</sup> "the litigants, in the legal or administrative process, and the accused in general are assured adversarial procedure and legal defense; with inherent means and resources" (Brasil, 1988, p. 20). Therefore, the principle of equality of both parties exists in all democratic systems in which human rights include guarantees and legal defense. As the guiding principle in all jurisdictional functions, the right to an adversarial procedure joins the right to legal defense, forming part of the basic rights of the individual under the Democratic Rule of Law.

The participants state that the various processes that judges must follow, and the time available for them, sometimes make direct, frank, objective, coherent and even reliable dialogue with the victim unviable. In the court setting, they consider the importance of interrogating children and adolescents,

finding inherent difficulties in the act of interrogating during hearings, debates or trials, referring to the fact that they do not know what terminology to use during the proceedings. The judges report that they try to use vocabulary and terms that they remember from their childhoods, codified in specific vocabulary used in childhood to describe sexual organs and acts involving sexuality.

*I realize that it is very difficult to make myself understood by the victim, I have tried using vocabulary that I remember from my childhood, childlike even, I feel immensely uncomfortable (J2).*

*As judges, we sit an exam, but we do not receive specific training for testimonies, most importantly those involving children, so in one way or another we have to improvise, using life experience, less formally, but I feel ill-prepared (J3).*

*I find it very difficult when we have to refer to genital organs, vagina, penis, oral sex, anal sex. First there is the embarrassment about the sexual subject and secondly, due to the lack of training, you have to find terms that the child is familiar with - 'amiguinha', 'pipi', 'peteca', 'perereca' (to describe sexual organs) - to use in place of the formal terms (J7).*

The interviews show the need for new regulations in this area which recognize the interdisciplinary skills required by magistrates to perform their function more adequately, considering above all the need for a new approach to the topic which focuses on improving relevant legislation.

Borrowing from the theory of human development, and defining some methodological limitations regarding the ecological perspective given the difficulty of capturing and analyzing the issues raised by judges in the treatment of the child or adolescent victim of abuse, it is clear that these can simultaneously influence the relationship between the child/adolescent and their environment. We should emphasize that if the highest legal system works at its current minimum performance levels, it is responsible for any the damage that is done to children, until it establishes a comprehensive and specific legal structure.

An institutional environment tends to be more dangerous for the development of a child due to the

following combination of circumstances: it offers few possibilities for interaction and the physical setting restricts opportunities for movement (Bronfenbrenner, 1996, p. 112).

The ideas raised by the judges relating to the interrogation of victims around the theme of Lack of Skills and Limitations, show theoretical and practical evidence that the basic functioning and rhetoric of the techniques currently employed do not support the fundamental priority that the child and adolescent have specific requirements for development and have rights within the Brazilian constitution. For these purposes, a World Health Organization (WHO, 2002) document suggests an interview sequence for all professionals who deal with victimized children and adolescents and strongly recommends the adoption of protocols to this end, in which the interests of the child or adolescent should always have due priority, and the services provided by the health system, social services and the law should be structured to meet their specific needs.

It is worth mentioning that the Ecological Systems Theory is based on the questioning of what effectively determines development. Distancing itself from the genetic information and physiological maturity arguments, among others, it takes environmental and cultural factors into consideration. It identifies that for proximal processes to be effective for development, reciprocal interpersonal relationships are necessary and for reciprocal intervention to occur, the objects and symbols present in the immediate environment must stimulate the attention, exploration and imagination of the person in development, without which development does not occur.

The interrogation techniques used by the judges do not consider the developmental needs of child and adolescent victims. This, combined with the lack of appropriate skills and training and the absence of reciprocal interaction and specified interrogation style and content, means that the proximal processes necessary for the evolutionary needs of the child are not provided.

It is important to recognize the influence of the event in its setting, beyond objective considerations. Problems may arise in different areas of development, the impact of which will need to be clarified in further studies.

It is necessary to stress that children and/or adolescent victims of domestic sexual abuse often come from backgrounds with serious shortcomings, in the micro system, in terms of the functional and social activities necessary for their family life and development. When they are interrogated through improvised techniques within the context of the system, there are additional forces that may affect developmental processes at the micro system level, given that variations in the level of reciprocal, balanced and affectionate relationships available do not support, stimulate or encourage the child.

## Secondary victimization

The results identify issues relating to the secondary victimization of children and adolescents who are interrogated as victims of sexual abuse:

*There are several re-victimizing issues relating to the issue of interrogating child and adolescent victims of sexual abuse, forcing us to rethink the social role of the justice system, change our practices, treat the matter in a more delicate way and reflect on possible factors that could cause re-victimization (J5).*

*The judges do not use appropriate language [...] lack of information, the dynamic of the collection of evidence, imposing many interventions upon the victim, different interrogation about the same facts, in different departments, by their respective professionals, demonstrating inadequacies which damage constitutional principles (J7).*

In terms of legal wording, the Brazilian system, alongside the *Ministério Público* (MP- Public Prosecution Service), may be considered one of the most advanced institutions in Brazil when it comes to promoting citizen's rights. However, through its bureaucratic mechanisms which internally reproduce the power structures and values of society, it creates a form of oppression against young citizens, who should receive special attention (Roque et al., 2008).

*I believe that the legal interrogation of a child victim of abuse is a way to re-victimize him/her. The institution exercises power, and abuse is part of any institutionalized power... but it is still power and if it is power it involves abuse, it is the impos-*

*sibility of the individual to take action, therefore this institutionalized environment imposes the individual to act (J5).*

The Law, with its exclusive cultural and structural characteristics, plays a fundamental role in modern Brazilian society. Thus, our study confirms that the system lacks adequate conditions to handle cases involving the interrogation of children and adolescents, since they are not treated as a priority in accordance with the Federal Constitution.

Article 198 of the Estatuto da Criança e do Adolescente (ECA - Child and Adolescent Statute) states that priority must be given to issues involving children and adolescents, with the aim of streamlining proceedings. However, this principle is not supported by administrative measures, so former obstacles still exist relating to paperwork and legal infrastructure.

In the courts studied, the absence of specific guidelines relating to the interrogation of the victim of abuse exposes a scenario of institutional abuse, which can affect the development of the child by limiting their ability to integrate into society, leading to a wide range of problems in the areas of health, education, environment and the law itself.

The research participants reveal that some strategies are being considered and organized to improve the interrogation process for children and adolescents and avoid secondary victimization, though these are limited and still in the early stages:

*They have been discussing this in the São Paulo justice system for four or five years, they are developing some related projects, in a centralized and focused way, but I think there needs to be an ideological redesign relating to this area (J6).*

*The court of justice has tried to implement studies into hearings (J7).*

*It is an initiative which deserves a joint effort because it is important, I don't know if it will eventually be efficient (J2).*

Following this line of reasoning, protocol CIJ nº 00066030/11, with the support and approval of the *Coordenadoria da Infância e Juventude do Tribunal de Justiça de São Paulo* (CIJ/TJSP- Children and Youth Board of the São Paulo Court of Justice), has the objective of creating a service for child and ado-

lescent victims of abuse, focusing on sexual abuse, which avoids revictimization. Among these actions are the creation of an inter-institutional plan at state level and the implementation of a pilot project in five state courts, using dedicated funding, in accordance with Recommendation nº 33 from the *Conselho Nacional de Justiça* (CNJ- National Justice Council), which instructs the courts to create specialized services for hearing the testimonies of children and adolescent victims or witnesses of abuse.

We can also highlight actions developed by the Pernambuco State Court of Justice that, prior to the recommendation from the CNJ, created the *Central de Depoimento Acolhedor* (Testimony Support Center) in conjunction with three other Brazilian states (Acre, Rio Grande do Sul and Sergipe), through Regulatory Act 215/2009, later replaced by Ordinance 47/2010. This center acts as the auxiliary organ, linked in the respective jurisdiction to all the legal units in the state of Pernambuco; it offers a range of administrative and specific technical service for proceedings that involve the judgment of crimes against children and adolescents, during the legal stage or prior to collection of evidence. Silva and his collaborators highlight in their study (2013, p. 2.293) that in Pernambuco there is a positive perception of the supportive testimony interview, which is seen as a means of gathering evidence and thereby protects children and adolescents, in their condition of people in development. The state of Paraná implemented a project for special hearings in the city of São José dos Pinhais.

*In relation to damage, it is fundamental that we think of the effect of this damage on a person, in an environment, in a specific institution, especially because generally they don't have similar prior experience, prior legal or family psychological preparation, or follow up support (J11).*

*There is a new social order in the sense of establishing protocols for hearing children testify, this is already an innovation, an advance, but we are very late in these moves, because we're in 2012 (J12).*

Corroborating other studies in the area, the secondary victimization of children and adolescents still exists in the interrogation process during criminal cases due to various factors - lack of

training among legal professionals for dealing with these issues; repetition of the account of the crime, directly or indirectly by different professionals, in different settings; lack of ongoing, coordinated follow-up care in the various services and sectors (Ramos e Silva, 2011; Velloso et al., 2011; Nunes et al., 2009). Bittencourt (2007) asserts that children and adolescents who are victims of domestic abuse are treated with little understanding during their journey through the justice system; they are not informed about the proceedings they participate in, the judge is not qualified to deal with the dynamics of domestic sexual abuse, there is no dialogue in the interrogation, and the victim is not considered as a right-bearing citizen, which renders him/her powerless.

The search for the truth is translated into a series of speeches that are tied into a power structure maintained by the legal authorities to maintain the authority of the institution it represents, wielding power over the person who holds the supposed truth, or rather, in order to obtain their knowledge, it ends up judging and punishing; a process that causes intrinsic changes in the witness victim, causing new damage and leading to the process of secondary victimization (Bittencourt, 2007, p. 19).

Molina and Gomes (2012) also talk about secondary victimization, understanding this to mean damage caused by formal instances of social control, during the process of registration and processing of the crime.

According to the research participants, the efforts made in this field are still poor, with limited scope.

The status of the child and adolescent as the absolute priority, granted in article 227 of the Brazilian constitution, and as a right-bearing citizen, guaranteed by the ECA, is broached in the interviews. The issue is important not only in the legal field, but in all sectors responsible for the protection of children and adolescents:

*Greater discussion and disclosure on the topic, the subject of childhood is rarely discussed, even by the media and field of communications (J5).*

*We must remember that the constitution says that the child is the absolute priority, and this priority*

*does not exist, neither in education, health or care (J6).*

The health sector needs to respond to these demands, with regard to ongoing follow-up care and co-responsibility for these child and adolescent victims of sexual abuse and their families, and the fulfillment of its role in the child protection network. Related studies show that there is a disconnection between services, and professionals from different sectors do not work together in an organized and connected way (Ramos e Silva, 2011; Velloso et al., 2011; Nunes et al., 2009).

Health professionals do not have a thorough understanding of the criminal process and so are unaware of the secondary damage from sexual abuse suffered by children or adolescents. Contrary to the concept of comprehensive protection, the care of these children is fragmented. This exposes them to new vulnerabilities, including those which affect human development, since their health is not comprehensively protected. This is a two-way street, as the healthcare sector should provide follow-up support for children and adolescents and the justice system should demand this support.

## Final considerations

Responding to our objectives, this study has confirmed that the attitude of the judges toward the techniques and concepts that determine the classification, typification, and description of sexual abuse towards child, shows legal dogma with regards to the theoretical foundations, contextualized in a wide range of knowledge, with content that evokes the formal techno-rational model, at times disconnected from the rhetoric of the critical model. The findings and analysis show an inadequate quality standard in services for child victims of sexual abuse during the entire development process. In the hearings, although the process follows specific logical procedures, judges use techniques based on common sense, a wide range of terms relating to sexuality based on their childhood experiences and different, personal and complex strategies for each interview. The system does not encourage the multi-disciplinary approach necessary to totally guarantee the rights of the child, preventing adequate social

and health services. Behavioral change is clearly necessary, considering both the effectiveness of the 1988 Federal Constitution, and the development of the child- be it physical, cognitive, or psychosocial- in their condition as a person in development.

Lacking appropriate training, the judge resorts to a technique based on practice, life experience, instinct, ability and sensitivity when interrogating the victim, leaving the adoption of necessary pedagogical structures and methodologies as an afterthought, or even ignoring them, since they are not addressed during legal training. The rationale used is based on common sense, following existing legislation in a repetitive, non-critical and sometimes even decontextualized way, ignoring new social needs and aspirations, and giving the false impression that the system is static and absolute, beyond being strictly formalist.

The existing formal rigor in the justice system and the unprepared legal intervention concerning victims of sexual abuse leads to a subsystem within the criminal process's interrogative evidence, in which the interrogation of the victim, in terms of the decision-making structure in relation to the child and/or adolescent victim, their family, and the interdisciplinary service network itself. The rhetoric used in the Brazilian criminal justice system leads to secondary victimization as the existing interrogation process and the approach of the judges to the criminal investigation reduce the voice of young citizens, who should have their right to a fair hearing respected. In this respect, the child or adolescent victim becomes a mere collaborator in the criminal investigation, as their rights granted in the Federal Brazilian Constitution are not respected.

In addition, the ignorance shown by judges surrounding the specific details of sexual abuse underpins their disregard for the best interests, rights, protection and guardianship of the child, in a legal scenario which is inadequate for the child's development.

As children and adolescents are considered people in development from an ecological perspective, it is not possible for us to affirm and generalize on whether their natural development is affected, with psychological and social consequences, in the

immediate environment. However, we can affirm that considering the interaction between the person and the situation, the general approach of the justice system affects behavior as it does not address the priorities and specific needs of children.

The health field can support the legal field on this issue, in dealing with the possible implications of interrogation or formulating new approaches which avoid the re-victimization of child and adolescent victims of sexual abuse. For this to be possible, the problem must be viewed from an interdisciplinary perspective, although the law is ultimately responsible for the solution.

## Authors' collaboration

Roque was responsible for writing up the results of the post-doctorate. Ferriani was the post-doctorate supervisor. Gomes assessed the methodology. Pereira da Silva collaborated in the discussion. Carlos revised the references.

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