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The Psychologist's Role in the Process of Listening to Children Victims of Sexual Violence in Legal Proceedings

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Abstract— This work presents a set of interpretations made by the psychologist regarding the procedure for listening to children who are victims of sexual violence in legal proceedings based on the Doctrine of Integral Protection of the child. Documental surveys were carried out on the procedures for taking special statements from children in legal proceedings. Under the light of Winnicott's theory of emotional development, based on academic experience and extension activities, a personalized and dynamic qualitative method of investigation, essentially constructive-interpretative, was used to interpret the listening procedures. The result demonstrates that the discussion of the theme is recent in the world and that the biggest obstacle to a consensus regarding a procedure that proposes the non-revictimization of child victims of sexual violence in legal proceedings is to understand and study the limits of psychological science and legal science with a view to the Doctrine of Integral Protection.

I. INTRODUCTION

The recognition of human rights as participants in the political world with regard to children began in the 19th century, the scientific discoveries reduced the infant mortality rate [1]. Listening to a child involved in a legal process based on conceptual and legal advances consists in considering them as a subject of law, as a desiring social subject whose capacity to desire is often devastated by the actions of adults [2].

Human Rights principles guarantee fundamental freedoms and equality; the child, in this context, has three basic foundations in the Doctrine of Integral Protection in force in Brazil, namely: they are subjects of rights, people in a peculiar condition of development and they have an absolute priority. As subjects of rights, opportunities to be heard in legal proceedings and freedom of expression are ensure.

In accordance with the Convention on the Rights of the Child (1989) in Articles 12 and 13, regarding the Doctrine of integral protection, it is considered the phase of childhood a peculiar developmental condition and absolute priority in the service policy. Those three fundamentals cited before are dynamic and, in terms of sexual abuse against children, reach high levels of complexity, considering the historical-structural, cultural, psychosocial, legal, ethical and political dimensions.

This article consists of a set of interpretations regarding the procedure for listening to child victims of sexual violence in court proceedings in order to carry out documentary surveys of the testimonies of children in legal proceedings around the world. The way of intervention in taking the testimony of child victims of sexual abuse in legal proceedings that is discussed in this work. The nonrevictimization is the guarantee that the child will not go through moments of psychological stress in the constitution of evidence during the justice procedures.

II. THE RECOGNITION OF CHILDREN VICTIMS OF SEXUAL VIOLENCE AS SUBJECTS OF SPECIFIC RIGHTS

The international normative basis is based on Human Rights, which historically take the form of a set of events,

dated between May 5, 1789 and November 9, 1799, that changed the political and social framework of France, called the French Revolution. This revolution ranks among the greatest in human history and proclaimed the universal principles of liberty, equality and fraternity. In the struggle to consider fundamental human rights, in the dignity and worth of the human person, on December 10, 1948, the Universal Declaration of Human Rights was promulgated as a guide to common ideals to be achieved by all nations in effecting universal respect for human rights and fundamental freedoms. The recognition of human rights as participants in the political world with regard to children began in the 19th century, with scientific discoveries that reduced the infant mortality rate:

> Because of the abundance of cheap labor, there was less need for children to work. Laws that protected them from long workdays allowed them to spend more time studying, and parents and teachers were more concerned with identifying meeting and children's developmental needs. The new science of psychology taught that people could understand themselves by learning what had influenced them during their childhood. (PAPALIA, 2006, p. 47).

The Children and Adolescents Statute (CAS) materialized the Doctrine of Integral Protection and the principle of absolute priority for children in its Articles 1 and 4:

Art. 1st This law provides for the full protection of children and adolescents.

Art. 4th It is the duty of the family, the community, society in general and the public authorities to ensure, with absolute priority, the realization of the Rights relating to life, health, food, education, sport, leisure, professionalization, culture, dignity, respect, freedom and family and community coexistence.

The priority guarantee comprises;

a) Priority to receive protection and help in any circumstances;

b) Priority of attendance in public services or services of public relevance;

c) Preference in the formulation and execution of public social policies;

d) Privileged allocation of public resources in areas related to the protection of children and youth. [3].

In guaranteeing the rights of children, based on the Doctrine of Integral Protection, the right to healthy sexual development is a fundamental right. But when this is violated, it is the family's, society's, and state's duty to guarantee specific rights to protect the child.

III. WINNICOTT'S CONTRIBUTIONS TO THE UNDERSTANDING OF CHILD DEVELOPMENT

Reflecting on Winnicott's concepts allows us to understand the child sexuality that safe and pleasant relationships will provide, as external factors, healthy aspects for emotional development. The family plays an essential role in the emotional development of the child.

In the family, the roles that parents play are fundamental for child development. Winnicott describes the "good enough mother" as the one who

> feeds the omnipotence of the infant and to some extent sees sense in it. And it does it repeatedly. A true self begins to come to life through the strength given to the infant's weak ego by the mother's complementation of the infant's expressions of omnipotence.

> The mother who is not good enough is not able to supplement the infant's omnipotence, and so repeatedly fails to satisfy the infant's gesture; instead, she replaces it with her own gesture, which must be validated by the infant's submission. This submission on the part of the infant is the initial stage of the false self, and results from the mother's inability to sense the infant's needs [4].

The father, in Winnicott's theory, in very early stages of development is not mentioned, however, he is present and presents himself as a process of differentiation of interaction and interdependence in the early development of the child. The father has the main role at this time to support the mother. But this presence will only be possible according to their emotional maturity, however, according to the mother's emotional maturity and history. The family constitution presents new configurations in the historical context with the entry of women into the labor market and often paternal care in the child's first relationship. It is the caregivers, the family that make the child experience changes that happen due to family expansion and tribulations. Winnicott (2005) in his text Factors of Integration and Disintegration in Family Life (1957) states that "The existence of the family and the preservation of a family atmosphere result from the relationship between parents within the framework of the social context in which they live" [4]. However, it is necessary to consider parents as individuals who had a history of family creation and conservation of their parents' relationship and update these experiences in their relationship with their children.

In the individual field, for the parents according to Winnicott (2005), there are forces linked to the complex sexual fantasy, not only considering sex in its physical satisfaction, but also as an achievement of emotional growth that happens throughout life from pleasant relationships for the person and society in order to move towards mental health.

IV. PROCEDURES FOR LISTENING TO CHILDREN VICTIMS OF SEXUAL VIOLENCE IN LEGAL PROCEEDINGS

In the legal context of multidisciplinary work, the psychologist is designated by the judge to carry out the procedure of "interrogation" of the child in judicial proceedings. However, inquiring is different from listening for psychological science, in the legislation, which establishes the professional performance of the psychologist, there is no questioning as a practice of psychology.

The obstacle between the boundaries of the legal and psychological sciences consists in: while the Justice System seeks the objective truth of the facts, the psychology seeks the subjective truth. The listening process in psychology consists of a construction that requires special rules of the interpretation method that involves linking the meaning of symbolic objects, in order to understand the subjective truth of language. Listening to a child involved in a legal process based on conceptual and legal advances consists of considering them a subject of law, as a desiring social subject whose capacity to desire is often devastated by the actions of adults [2].

The obligation of the child's testimony at a certain chronological moment in legal proceedings can extinguish the child's desiring capacity in the face of freedom of expression and make more difficult the psychic preparation to expose a traumatic fact. The child's right to be heard guarantees justice the possibility of arriving at the objective truth of the facts, but it does not guarantee the limit between the use of authority, by imposing the child to take a statement, and the use of freedom by respecting time psychic elaboration of a traumatic moment that will be a constituent part of the child's personality in his emotional development. [5].

Listening to children who are victims of violence in legal proceedings has become the focus of intense debates for the category of psychologists after a consultation received by the Federal Council of Psychology in April 2006. The Regional Council of the 7th Region, in Rio Grande do Sul, requested clarification regarding the technology used Children's and Youth Court in Porto Alegre, known as the 'Deposition without Damage' Project.

This project offered subsidies to the Legislative Power for the elaboration of the Complementary Bill 35/2007, which is being discussed in the National Congress and proposes to add Section VII to Chapter II - On Procedures - of Title VI - On Access to Justice - of the Special Part of ECA and provides for other measures, announces in item III of Art. 197-B of Subsection I - Questioning of Witnesses of Section VII - Special Provisions Relating to the Questioning of Witnesses and Early Production of Evidence in Crimes Against Sexual Dignity with Child or Adolescent Victim or Witness, that the questioning will be mediated by a duly professional designated by the judicial authority, who will transmit the questions of the judge and the parties to the deponent. In the manner that takes place in Rio Grande do Sul, the professional designated by the judicial authority is the psychologist or social worker.

V. REFLECTIONS ON THE SYSTEM OF GUARANTEE OF RIGHTS IN THE COMPLETE PROTECTION OF CHILDREN DURING THE LISTENING PROCEDURE IN JUDICIAL PROCEEDINGS

A conclusion section must be included and should indicate clearly the advantages The Deposition without Damage Project is an advance in the face of authoritarian legal practices where the child in an instruction hearing made the statement through questions prepared by the judge, prosecutor, defense attorney of the defendant who had no care and concern for the internal conditions, psychic, of the child in relation to the trauma. The judge of law from Campo Grande-MS, in a survey carried out during one of the university's extension actions, reported that the procedure as it was carried out worried him, as it did not guarantee the protection of the child and explained that the technology and method used by Rio Grande do Sul when performing the same procedure were innovative.

> The prediction of the methodology of testimonials with children as a legal and political advance that guarantees the legitimacy of the method no longer depending on the interpretation of the

Justice System managers according to Complementary Law Project 35/2007 is justified:

I – to safeguard the physical, psychological and emotional integrity of the deponent, considering his/her peculiar condition as a person in development;

II – due to the age of the deponent, so that the loss of memory of the facts does not come to the detriment of the verification of the real truth;

III – to avoid revictimization of the deponent, with successive inquiries about the same fact, in the criminal, civil and administrative spheres.

Among these guidelines there are principles that consider the integral protection and absolute priority of the child. However, in our academic experience linked to a Child Protection Network service, obtaining the objective truth of the facts, required by law, of a complex phenomenon such as sexual violence against children in order to safeguard the physical, mental and emotional integrity, in addition to avoiding revictimization of the child, it is a complex task.

Discussing the physical, psychic and emotional integrity of the child victim of sexual violence is to consider, according to the basis of Winnicott's psychoanalytic theory, the fundamental role of the environmental holding, of welcoming adults who will have a direct or indirect relationship in the construction of justice for these cases, what the psychologist from Lithuania called rapport. Considering the best interest of the child is to allow the child to be heard, considering him/her as a person in a peculiar condition of development and building, according to Winnicott, a trajectory for the constitution of the true self and, later integration of the ego in the child, that is, the elaboration of the trauma without secondary damage. It is not by imposing in space and time the opportunity for the child to be heard and concentrating power in justice through practices that produce abuse of the common good, doing in excess with damage, according to Sêda (2001), that full protection will be guaranteed and the peculiar developmental condition of the child will be considered

VI. QUESTIONS ABOUT THE PSYCHOLOGIST'S ROLE IN THE PROCESS OF LISTENING TO CHILDREN VICTIMS OF SEXUAL VIOLENCE IN JUDICIAL PROCEEDINGS

Psychology can contribute to multidisciplinary, multiinstitutional and multi-professional work, given the provocation in the debate on the guiding principles of listening to child victims of sexual violence in legal proceedings. A starting point is consider the uniqueness of each case and, mainly enabling a holding that facilitates the child to talk about trauma (sexual abuse), from a place of specialized listening and forms of ethical intervention that are integrated with public policies, respecting the Human Rights of Children in favor of Protection Integral.

According to Santos and Gonçalves (2009) survey of the experiences of taking special testimonies of children and adolescents, six countries use psychologists as trained technicians to carry out interviews with children in the judicial process. In Brazil, the 'Testimony without Damage' Project emphasizes the importance of specialized listening for conducting the interview and indicates psychologists and social workers as technicians.

Based on scientific studies of each training, psychology and social service, the provocation in responding about the guarantee of integral protection of the child in the process of listening to child victims and witnesses of sexual violence in the judicial process is necessary in the multidisciplinary work based on the vision holistic-systemic approach to the process.

The performance of the psychologist in the process of listening to children in the judicial process is a recent discussion, in Brazil it began in 2003 with the implementation of the Project 'Testimony without Damage' in Rio Grande do Sul. The actors of the Child Rights Guarantee System, the Child Protection Network and the Federal Council of Psychology pointed out some questions as a way of reflection and ethical improvement of techniques to regulate the psychologist's performance.

VII. LISTENING TO CHILDREN VICTIMS OF VIOLENCE IN LEGAL PROCEEDINGS: A SERVICE POLICY TO GUARANTEE THE COMPLETE PROTECTION OF CHILDREN

A scientific study is needed that aims to understand and interpret the meanings of a psychological nature that child victims of violence have to the fact before, during and after the listening procedure in judicial proceedings. Consider psychological aspects such as the health-disease phenomenon in the constitution of the personality and comply with the principles of the Code of Ethics as a professional and researcher with a clinical attitude, namely:

It is the posture of acceptance of the emotional existential suffering of the subject of the researcher's studies, assumed by this professional, who thus inclines his listening posture, his gaze and his multiple and interconnected sensibilities, which interacts with his theoretical knowledge of the research methodology in towards that person whom he wants to better know and understand scientifically, systematically undertaking a research of the phenomena as perceived by this individual, and being primitively moved by the desire to help those who suffer. (TURATO, 2010, p. 240)

According to the CFP Resolution No. 010/05 the psychologist has the following duties:

Art. 1 - The fundamental duties of the psychologist are:

[...]

c) Provide quality psychological services, in dignified working conditions appropriate to the nature of these services, using principles, knowledge and techniques recognized as grounded in psychological science, ethics and professional legislation.

[...]

Art. 8 - In order to provide noncontinuous care for a child, adolescent or disabled person, the psychologist must obtain authorization from at least one of their guardians, subject to the provisions of current legislation:

[...]

§2 - The psychologist will be responsible for the referrals that are necessary to guarantee the integral protection of the person assisted.

[...]

Art. 14 - The use of any means of recording and observation of psychological practice will comply with the rules of this code and the professional legislation in force, and the usurer or beneficiary must be informed from the beginning."

Inquiry is not part of the knowledge and techniques based on psychological science, ethics and professional legislation. Providing services in dignified working conditions is not subjecting oneself to the imposition of attitudes that are not consistent with professional practice regulations. When listening to child victims of violence in legal proceedings, the psychologist becomes a facilitator, a professional role that does not match his practice.

In a multidisciplinary attitude, the psychologist provides services to other professionals governed by the Resolution No. 007/2003 of the CFP a Manual for the Elaboration of Written Documents produced by the psychologist, resulting from psychological evaluation. Psychological assessment is a technical-scientific process of data collection, studies and interpretation of information regarding psychological phenomena, which result from the individual's relationship with society, using methods, techniques and instruments validated by the Federal Council of Psychology and the System Assessment of Psychological Tests.

The elaboration of written documents is the psychologist's instrument of interlocution with other professionals and recognized in Resolution 013/2007 of the CFP, making the professional who uses it with bad conduct liable to inspection and responsibility for the professional acts performed. In this regard, there has been progress in the practice of listening to children in legal proceedings carried out in Spain, even though video recording technology is still being used, as a guarantee of reliability and effectiveness that the questions asked by the actors of the Rights Guarantee System were in the right place. sense indicated by each author, without causing double interpretation.

The production of the psychological theoretical framework, which aims at the subjective truth, understands how the child experienced the situation of violence, is compromised when the professional needs to consider a temporal bureaucratic procedure in legal proceedings. The psychological time to understand a given situation differs from the chronological time of legal proceedings. But it is in this area of activity that psychology, in view of its work methodology and scientific knowledge, contributes to the web of institutional relationships to assist legal operators in the integral protection of children.

The psychic time to understand the situation of violence and, fundamentally, the elaboration of the psychic trauma is demonstrated when, in professional practice, the child is not verified as a communicator of violence, since it involves psychological phenomena such as guilt and insecurity that are part of the development process emotional, but who has been brutally offended when sexual abuse occurs.

Therefore, it is not allowed open a psychic wound and not provide the holding for the healing of this wound. The child's silence is a defense that is involved in this web of internal feelings that are providential for their psychic sanity with regard to the health-disease phenomenon. By observing our attitudes, we remain silent when we don't trust the people around us, when we don't believe that individuals can collaborate to heal psychic wounds.

Why force a child to talk about a trauma - which is similar to the organic part, a wound that most of the time is much greater psychically than physically - without guaranteeing the integral attention of the service, without informing that the report will be presenting will be assisted by several other professionals, including the defendant and that this report is the key, main evidence for the conviction of a person who has intense emotional ties?

What Rights are we guaranteeing when we submit children to talk about a fact that causes them suffering? It cannot be disregarded that the recording of the testimony is an advance on how the testimony was provided. But, according to Nogueira Neto:

> The strict procedures for questioning children and adolescents in the procedural judicial sphere cannot, therefore, be placed as the only ones responsible for proving the materiality of the crimes and the authorship of the indicted/accused/defendant. The search for the truth of the case file and the real truth must be done primarily by other means of proof, such as expert, documentary, testimonial and indicia. The declarations of children and adolescents as victims or witnesses should not be recognized as judicial elements evidence, but as of collaboration. Thus, the ideal is not just to reduce damage in court testimony, replacing them with hybrid forms of social/psychological listening and court testimony (the so-called "deposition without damage", for example). It is rather to avoid as much as possible that they are held responsible for the production, almost exclusively, of the evidence of materiality and authorship of the crime, taking into account, for example, the legal principle of the prevalence of the "superior interest of the child and the adolescent" [6].

Shouldn't the Child Protection Network be articulated in such a way that the sectors involved in Basic Protection Policies and Basic Social Protection Policy have information about the child and the family? To reach the Rights Guarantee System and to attend the Special Social Protection Policy, the child had the support and guarantee of comprehensive care in the provision of basic services that are gateways for complaints of violation of Rights, therefore, they are indicators, witnesses and can provide, through documentary means, subsidies that indicate facts of sexual violence against the child.

Psychology has the responsibility of discussing, together with the actors of the Rights Guarantee System, the multidisciplinary work methodology in the integral protection of children in cases of sexual violence in judicial proceedings, since it is the sole responsibility of this professional to improve the scientific field of knowledge and practice, but it has as regulation of internal interest of the category resolutions that guide its practice such as the definition of the field of action of the specialist in Legal Psychology, according to Resolution CFP 013/2007, which presents prevention as a practice of the psychologist; assessment; preparation of documents, guidance to children and adolescents, detainees and their families, among others; psychological care and research production.

An assistence policy for child victims of violence in legal proceedings must have materialized in the integral protection of the child, establishing in all institutional care sectors favorable environmental conditions for the elaboration of the trauma, environmental holding, and guaranteeing healthy emotional development. The psychologist in this context needs to have a proactive personal and professional attitude that problematizes, evaluates, debates before acting, but above all, that develops a qualified listening that is only possible from the ability to put oneself in the place of the subject of Law in a peculiar situation of development and being the trusted technician, secure bond and genuine embracement, that is, seeing the child and not the procedure [7].

A conclusion section must be included and should indicate clearly the advantages, limitations, and possible applications of the paper. Although a conclusion may review the main points of the paper, do not replicate the abstract as the conclusion. A conclusion might elaborate on the importance of the work or suggest applications and extensions.

VIII. CONCLUSIONS

This work sought to offer a reflection on the process of listening to children who are victims of sexual violence in legal proceedings, in order to highlight the importance of studying the emotional development of children in the integral protection of the child, based on the specific right to be heard and freedom of expression. guaranteed by the 1989 Convention on the Rights of the Child.

We demonstrate that there are advances in reflection on the theme of child sexuality with regard to non-revictimizing practices of child victims of sexual violence in legal proceedings around the world. The child is no longer subjected to multiple inquiries, a sensitive mode of intervention on the part of adults is sought, adapting the language to the child's age and an impact on the intervention that values the child's word effectively as evidence in legal proceedings.

In the field of Psychology as a professional practice in the intervention model proposed by the 'Depoimento sem Dano' Project in Rio Grande do Sul, the discussion is recent. Psychology is involved in the multidisciplinary team and, therefore, needs to position itself in relation to its praxis in the legal field.

Winnicott's theory of emotional development emphasizes the importance of the environment in the child's emotional development for the constitution of the personality by having environmental failures as the main etiology of the different psychopathological conditions as a fundamental element. Therefore, if the focus is on the understanding that we want to protect and guarantee the rights of children, psychological science allows us to consider all aspects of child development, guide and correct environmental failures that enable the healthy development of the child.

The process of listening to child victims of sexual violence in court proceedings has quantitative data that prove the guarantee that the child's word is valid as evidence in holding the offender accountable. But there is a limitation in what is discussed as the problem involved for psychology. It is questioned which role the psychologist plays in this context and the guarantee of child protection in the face of revictimization of the same in this procedure.

It is understood that the statements of children in legal proceedings should not be considered as judicial evidence, but as collaboration, since it is possible to prove the materiality of the crime and the authorship of the offender in the records by other means of proof, such as expertise, documents, testimonials.

The child's testimony, as it is being discussed, becomes almost the exclusive instrument for proving the materiality of the authorship of the crime and makes the child responsible for this judicial decision; and, in the case of intrafamilial sexual abuse, this involves great damage since the child becomes responsible for condemning a person with whom he or she had emotional ties.

In Psychology, the discussion of the subject is recent, it is in its infancy phase and involves only external factors such as the number of interviews, the chronological time in judicial proceedings and the intervention model of the public agents involved. But it is necessary to invest in scientific studies that aim to understand and interpret the meanings of a psychological nature that child victims of The normative and institutional mechanisms for doing so must improve the principles of human rights and not base professional practice exclusively on legal principles, in the search for the objective truth of law and in respect for the chronological time of judicial proceedings.

The difficulty in organizing ideas about the subject is found in this barrier between the limits of psychological and legal sciences. There is no consensus either among professionals of the two sciences or among professionals of science itself about a procedure that guarantees reduction of damage in the method of listening to child victims of violence in legal proceedings.

There is unquestionable progress in studying the subject, especially in the implementation of the Doctrine of Integral Protection in the relationship between citizens-citizens and citizens-actors of the child protection network and guarantee system. But it is necessary to encourage research on the child's subjectivity in the face of the listening procedure in judicial proceedings; this is one of the ways for Psychology to subsidize its work and build guiding parameters of its praxis based on theories of human development. And, above all, to guarantee means so that the child does not have to have his or her testimony representing him or her as being fully responsible for the decision of professionals in legal proceedings.

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