

Outcome of the violence against child and delivered to the judicial power*

Desfecho dos casos de violência contra crianças e adolescentes no poder judiciário

Resultados de los casos de violencia contra niños y adolescentes en el poder judicial

Christine Baccarat de Godoy Martins¹, Maria Helena Prado de Mello Jorge²

ABSTRACT

Objective: To reveal, after five years, the protection measures taken with respect to child or adolescent victims of violence in Londrina (PR). **Methods:** Descriptive study, using the inclusion criteria age until 15, resident in Londrina (PR), victims of violence, whose files were delivered to Juvenile Court, in 2002. **Results:** 230 files were studied, 40% of which had been dismissed; 3.9% had been dismissed whilst still under inquiry; in 1.7% of the lawsuits the offender had been convicted; 31.7% were still on. **Conclusion:** These results add to the knowledge of the protection measures adopted by Judiciary.

Keywords: Violence; Child abuse; Judicial power; Child; Child advocacy

RESUMO

Objetivos: Analisar, decorridos cinco anos da notificação, o desfecho dado pela Vara da Infância e da Juventude de Londrina (PR) aos casos de violência contra crianças e adolescentes; identificar os tipos de violência com maior taxa de encaminhamento à vara da Infância e Juventude. **Métodos:** Estudo descritivo, quantitativo, cuja população de estudo foram crianças e adolescentes de até 15 anos de idade, residentes em Londrina (PR), vítimas de violência notificada pelos Conselhos Tutelares à Vara da Infância e da Juventude, em 2002. **Resultados:** Dos 230 casos, dos quais 40,0% dos processos foram arquivados; 3,9% foram arquivados enquanto ainda inqueritos; em 1,7% houve condenação do réu; 31,7% dos processos encontravam-se em andamento. **Conclusão:** Os achados contribuem para ampliar o conhecimento das medidas de proteção adotadas pelo poder judiciário frente aos casos de violência contra crianças e adolescentes.

Descritores: Violência; Maus-tratos infantis; Poder Judiciário; Criança; Defesa da criança e do adolescente

RESUMEN

Objetivos: Analizar, después de transcurridos cinco años de la notificación, el resultado dado por el Tribunal de la Infancia y de la Juventud de Londrina (PR) a los casos de violencia contra niños y adolescentes. **Métodos:** Estudio descriptivo, cuantitativo, cuya población de estudio fueron niños y adolescentes de hasta 15 años de edad, residentes en Londrina (PR), víctimas de violencia notificada por los Consejos Tutelares al Tribunal de la Infancia y de la Juventud, en 2002. **Resultados:** De los 230 casos estudiados, 40% de los procesos fueron archivados; 3,9% fueron archivados en cuanto se encontraban en proceso de investigación; en 1,7% hubo condenación del reo; 31,7% de los procesos se encontraban en andamiento. **Conclusión:** Lo encontrado contribuye para ampliar el conocimiento de las medidas de protección adoptadas por el poder judicial frente a los casos de violencia contra niños y adolescentes.

Descriptores: Violencia; Maltrato a los niños; Poder Judicial; Niño; Defensa del niño

* Estudo desenvolvido junto à Vara da Infância e da Juventude de Londrina (PR), Brasil.

¹ Doutora em Saúde Pública, Professora do Departamento de Enfermagem, Área Saúde da Criança e do Adolescente da Universidade Federal de Mato Grosso – UFMT - Cuiabá (MT), Brasil.

² Livre-Docente da Faculdade de Saúde Pública da Universidade de São Paulo - USP – São Paulo (SP), Brasil.

INTRODUCTION

Defined as an act or omission capable of causing physical, sexual and/or psychological harm, violence in a strict sense is characterized by the use of power in the intent of exclusion, abuse and annihilation of the other and can be caused by an individual, a group, a social segment or by a country, manifesting itself in society as a relation of domination of the stronger over the weaker⁽¹⁾.

Violence, in its various expressions and forms, may be structural (arising from the social system and relating to life conditions, absence or precariousness of public policies, child labor, illiteracy, street or institutionalized children and adolescents), criminal or transgressional (involving individuals as victims and/or assaulters) and domestic violence (in its four main expressions: physical, sexual, psychological violence and neglect)⁽²⁻⁴⁾.

Children and adolescents find themselves in the latter context due to lack of self defense and dependency on adults, which turns them hierarchically less powerful and therefore more frequently subject to maltreatment⁽⁵⁻⁶⁾, resulting in harmful effects on their health, which may show on short, medium or long term^(1, 6-13).

Presently considered a severe public health problem⁽¹⁴⁾ worthy of studies and confrontation strategies⁽¹⁵⁻¹⁶⁾, violence against children and adolescents is seen as a recurring phenomenon almost always veiled in a mantle of silence and related to a variety of individual, group, cultural, social and political factors^(3, 17-18), which has drawn the attention and investments of researchers both for the magnitude and frequency of the event and the scientific acknowledgement of its effects on victims, aside from the costs for the health and justice systems^(5, 19-20).

Despite the political steps set about until now, authors still highlight the need for prioritizing, on the agenda of the various social segments, the confrontation of violence against children and adolescents^(5, 21-22), for the greatest challenge is prevention, early detection and proper treatment, once adequate identification and procedure of cases of violence may contribute significantly to interrupting its cycle⁽²³⁻²⁴⁾.

Therefore, apart from the importance of adequate diagnosis and attendance of victimized children and adolescents, the outcomes of the Juvenile Justice Court and Criminal Court proceedings also contribute to the reduction of violence once they set protection measures for the child and penalize the offender, thus preventing further aggressions against the victims.

The Juvenile Court applies the law by enforcement. Backing the procedures of the Judiciary there is the Child and Adolescent Statute, Law 8069 of June 13, 1990, which disposes of child and adolescent protection from whatever form of maltreatment and sets the punishments for those who commit the act and for those who do not

report it. The Brazilian Criminal Code, chapter III (Imperilment of Life and Health) also considers cruelty and child abuse, be it material, moral or psychological, to be crimes.

The intervention of the Juvenile Court in a situation of violence against children and adolescents is preemptory as it can stop the abuse through measures such as termination of paternal power, determination of treatment for the abusive family, interdict presence and contact with the child victim or even imprisonment of the abuser⁽¹⁸⁾. After receiving notification, the Juvenile Court starts the intake process and may decide to file the case (if the situation of offence ends) or to prosecute (when intervention is needed).

However, some studies^(5, 25) show throttles in the Judiciary, such as an excessive number of processes and the officials' performance (insufficient number of servants, accumulation of assignments, lack in qualification, lack of resources, among others), interfering with the proceduring, apart from low quality of reports and the need for prioritizing the child.

Notification of violence against children and adolescents generally reach the Judiciary through the Tutelary Boards, organized in the counties to guarantee the defense of children's and adolescents' fundamental rights at stake⁽⁶⁾. Tutelary Boards were created by federal law⁽²⁶⁾ and their attributions are determined in article 136 of the Child and Adolescent Statute. As a civil body, the Tutelary Board has the discretion to apply a series of measures in order to guarantee protection of the child and prevent recurrence of violence. Protection measures range from orientation, family support and temporary attendance rendered by the Board to shelter care (removal of the child from its home in situations that reveal severe risk for the child), which should be reported to the Juvenile Court within 24 hours⁽²⁷⁻³⁰⁾.

Thus, the Tutelary Board disposes of legal orientation measures based on the Child and Adolescent Statute⁽²⁶⁾ and referral to social protection, mental health or legal bodies, working as a propeller of the actions of aid services. However, being a civil body, it is not part of the Judiciary but relates, though not subordinates, to the county. Its source of public authority comes from the law of the Child and Adolescent Statute and the County Council for Child and Adolescent Rights is in charge of it⁽³¹⁾. One of the difficulties shown in studies however refers to the lack of interaction between the Tutelary Board and the Judiciary, more specifically to the lack of reporting on the pursuance of maltreatment cases by the Public Attorneys' office^(25, 28).

Hence, the importance of studying the cases notified to the Juvenile Court is considered by some authors fundamental for Tutelary Boards and akin services so that they know what is being done in the field of children's

rights and thus can plan and implement their actions⁽²⁵⁾.

The present study aims at analyzing, five years after notification, the dispositions of the Juvenile Court of Londrina (PR) with regard to cases of violence against children and adolescents under the age of 15 reported by the Tutelary Boards of the county in 2002. A second aim is to identify the most common kinds of violence reported.

METHODS

This is a descriptive quantitative study accomplished at the Juvenile Court of Londrina, Paraná, based on secondary data of violence against children and adolescents reported by the Tutelary Boards of the county in 2002. The year 2002 was defined based on the time necessary for prosecution to reach a verdict in 2007.

Sample selection criteria comprises children and adolescents under the age of 15, living in Londrina, victims of violence, whose cases were attended by the Tutelary Boards of the county in 2002 and notified to the Juvenile Court. The last demographic census counted a population of 119,867 children and adolescents under 15 in Londrina, which represents 26.0% of the total population; the percentage of females was 49.1% and males, 50.9%⁽³²⁾.

In order to identify the cases, all the attendance records and files of the three Tutelary Boards (Tutelary Board North, South and Centre) were manually verified as to violence against children under age 15 and notification in 2002. Then, all the cases referred to the Juvenile Court were listed, specifying the complete name of the child or adolescent, date of birth and names of parents, and kind of violence inflicted. This first stage of data collection was accomplished from January to July, 2007.

Such selection method turned out necessary once the only way to access processes at the Juvenile Court is by the victim's name and the process files do not contain identification of the origin of the complaint, that is, who referred it. Apart from this, as the Juvenile Court deals with many processes, the only viable way to search cases of violence inflicted on children and adolescents was resorting the Tutelary Boards notifications and referrals.

After the selection of the research population at the Tutelary Boards, the respective processes were located at the Juvenile Court and the analysis of each one was initiated with data transcription to a pretested form, recording the current situation of the case (inquiry in progress or filed, prosecution in progress or filed, process not found) and a summary of the case in order to understand what had motivated the actual state of affairs. This second step on data collection was accomplished between August and September 2007.

Some of the cases referred by the Tutelary Boards in

2002 were not found in the computerized records of the Juvenile Court, implying a loss of 22.6% of the sample population. What may have happened is that these processes have not been registered in the electronic system because they had already been discontinued before the implantation of the system. Manual search in the section of dead files turned out impossible because of the excessive number of processes and bad storage conditions (without date or whatever other identification criterion).

Data were collected by undergrads in Nursing at Londrina State University and the software EpiInfor 6.04d. was used for quantitative analysis; both absolute and relative frequency were analysed. Written consent to access the case records was requested from the Juvenile Court of Londrina and the three County Tutelary Boards and obtained in June 2006.

The research project was submitted to the Committee of Research Ethics of the Public Health Faculty of the University of São Paulo under protocol number 0017.0.207.000-06 and accepted in October 2006 (COEP 315 – 2006)

RESULTS

230 Cases of violence against children and adolescents under the age of 15 referred by the Tutelary Boards to the Juvenile Court in 2002 were studied, representing 37.9% of the cases attended by the Tutelary Boards in that year.

The analysis by kind of violence inflicted shows that the highest referral rate involved child labor and mendicancy (54.5%), followed by sexual abuse (51.2%) and neglect (46.3). (see table 1). The three cases of psychological violence notified to the Tutelary Boards were not referred to the Juvenile Court as the inflictors (mothers of children) had been referred to and accepted treatment.

Discontinuance (92 cases) was mainly due to interruption of the risk situation for the child as a result of measures such as treatment for the aggressors and their respective families (77.1%), foster family (10.9%), transfer of legal custody and guardianship to members of the child's family (8.7%), mother divorced from the aggressor (father or not of the victim) (2.2%) and in one case the aggressor had been killed by the community (1.1%).

It was observed that five years after notification 45.6% of the cases referred to the Judiciary had been accomplished or discontinued, of which 40% was due to filing of the process, 3.9% to filing of the inquiry, and 1.7% due to conviction of the defendant. As to the 230 cases referred in 2002, 31.7% were still ongoing and 22.6% could not be found, though we believe these have been filed, as described in the methodology.

Table 1 – Cases of violence against children and adolescents under the age of 15 notified to the Tutelary Board, by kind of violence inflicted and referral or non referral to the Juvenile Court. Londrina, 2002.

Kind of violence notified to the Tutelary Board	Referral to the Juvenile Court					
	Yes		No		Total	
	n	%	n	%	n	%
Violence by physical force	88	29.5	210	70.5	298	100.0
Neglect	69	46.3	80	53.7	149	100.0
Sexual abuse	62	54.5	59	48.8	121	100.0
Child labor and mendicancy	6	54.5	5	45.5	11	100.0
Psychological violence	-	-	3	100.0	3	100.0
Violence with instruments*	5	33.3	10	66.7	15	100.0
Total	230	37.9	377	62.1	607	100.0

* refers to the use of instruments during the act of violence, such as a wire, electric iron, hot pan.

Table 2 – Cases of violence against children and adolescents under the age of 15 in 2002 referred by the Tutelary Boards to the Juvenile Court, by state of affairs in 2007. Londrina, 2007.

State of affairs in 2007	n	%
Accomplished or discontinued	105	45.6
Inquiry filed	(9)	(3.9)
Process filed	(92)	(40.0)
Defendant convicted	(4)	(1.7)
Ongoing prosecution	73	31.7
Process not found	52	22.6
Total	230	100.0

Table 3 – distribution by state of affairs in 2007 of the 73 ongoing prosecutions of violence against children and adolescents under the age of 15, referred by the Tutelary Boards to the Juvenile Court. Londrina, 2007.

State of affairs of prosecution	n	%
Termination of parental power	1	1.4
Aggressor fled	2	2.7
Social attendance	28	38.4
Adoption in progress	1	1.4
Under guardianship of the father, and social attendance	3	4.1
Child in foster care and social attendance	19	26.0
Child with grandparents and parents under treatment	15	20.5
Child with foster family and monitored temporary guardianship	4	5.5
Total	73	100.0

As to the inquiries that were filed before prosecution⁽⁹⁾, three⁽³⁾ were dismissed as a result of the ceasing of the risk situation, considering that the aggressors (the parents) had accepted treatment and the visits of the social assistance revealed good conduct without regression. In the other six⁽⁶⁾ cases, the inquiry had been filed because in all of them the mother divorced the aggressor (the victim's stepfather), which, in the eye of the Judiciary, constitutes cession of the risk situation.

Separate analysis of the still ongoing prosecutions (73) shows that 38.4% received social attendance and in 26.0% of the cases the child was placed in foster care with social attendance. (see table 3). 20.5%, that is, 15 children were under guardianship of their grandparents while their parents received treatment and four children (5.5%) were

placed in foster families with temporary guardianship.

DISCUSSION

Similar outcomes have been found in research at the SOS Child of Curitiba⁽³³⁾, where 31.6% of the confirmed cases of violence against a child were referred to the Juvenile Court.

It is observed that only a part of the cases of violence against children and adolescents attended by Tutelary Boards is referred to the public attorney: those involving a state of affairs in which the life of the victim is at stake.

The highest referral rate among the cases of child labor, mendicancy and sexual abuse draw attention, as they constitute violence that involves complex social aspects

and demand various sectors in facing it⁽²⁾. Higher referral rate may be justified by the incapacity and impossibility of resolution of the Tutelary Boards. Especially with respect to mendicancy, exposure of the child to the risks, danger and adversities of being in the streets, such as the lack of healthy life conditions, induction to crime, maltreatments inflicted by the police and groups, drugs and alcoholism, for instance, should be highlighted⁽³⁴⁾.

As to sexual abuse, the risk of precocious pregnancy and sexually transmittable diseases should be emphasized, aside from significant sequels for the victims⁽³⁵⁻³⁸⁾. One should keep in mind that this kind of violence is not always referred to the Judiciary due to the absence of evidence (no submission to the body of evidence examination and other examinations that can lead to the identification of the perpetrator) or the absence of witnesses of the occurrence, so no proof is provided.⁽²⁵⁾

As to neglect, the evidence of which is even more difficult to provide as it does not produce physical harm, it is believed that only the most severe cases, in which the life of the child is at stake, are referred to the Public Attorney.

No studies were found that specified the cases of violence against children and adolescents referred to the Judiciary by the kind of maltreatment inflicted and thus could serve as a parameter for comparison with the outcomes of the present study.

With regard to the end results of the cases, similar outcomes were found in a study that, after analyzing the complaints of violence against children and adolescents received at the police stations in Rio de Janeiro, showed that five years later only 23,8% of notifications had become inquiries in order to investigate the responsible for the violent act inflicted on a child, 76,2% of these were being processed, 12,4% ongoing, 8,6% filed and only one was prosecuted and the defendant acquitted⁽³⁹⁾. The author of the study highlights that the absence of evidence contributes to the fact that violent acts are not prosecuted. Other authors⁽⁴⁰⁾ also consider this a decisive factor for the acquittal of the alleged perpetrator.

These outcomes make us think that very little is done to investigate the responsibilities of the one who inflicts violence against children and adolescents. Reminding the cases mentioned before, the processes of which were not found, this may suggest that there has not been inception of inquiry.

Thought the child is considered paramount priority by the Child and Adolescent Statute⁽²⁶⁾, this study shows that, after five years, a considerable part of the processes were still ongoing. Other studies show that there are processes that last five years without the family being able to reorganize and without any kind of assistance, which extends the scope of harm^(4, 41).

Some of the factors that hamper prosecution in the

Justice System, according to some authors, are the large number of accumulated processes, the slow pace of the prosecution process, difficulties as to human resources (in number and training)⁽⁵⁾. Even in countries where Justice is more agile, many cases of maltreatment never reach the stage of prosecution and even less result in conviction⁽⁴²⁻⁴³⁾.

Studies^(4,41) show that the Tutelary Board, body that receives most of the complaints of violence against children and adolescents, is not able to verify the compliance of its referrals, which suggests the necessity of enhancing communication between the services that comprise the protection network.

This situation, according to some authors⁽³⁹⁾, represents a violation of the rights of children and adolescents established by Law⁽²⁶⁾, an attitude of indifference and banalization of violence inflicted on children and adolescents. Some authors, however, argue that, dealing with violence within the family, punishment of the perpetrators is not necessarily the best solution⁽³³⁾. Therefore, the authors stress that the low conviction indices of parents or responsible for the child should not be taken as signs of impunity or inefficacy of the justice system.

The study based on confirmed cases of physical child abuse recorded at SOS Child of Curitiba shows that only 16,0% of the victims were withdrawn from their families as protection measure⁽⁴⁴⁾, a lower result than shown in the present study, in which 26,0% were sheltered. However, the above mentioned authors researched only physical aggression, while the present study comprehends all kinds of violence, which may have created the difference in outcomes, as severity or risk situation of certain kinds of violence under study may demand immediate withdrawal of the child from its family.

The question of removal of the child victim from his or her family, that is, shelter care, is discussed by many with divergent conclusions. In the point of view of researchers in this field, such a measure sets the child or adolescent in a passageway, where bonds are temporary and relationships unstable, which means the victim has to deal with abandonment and a lack of references⁽⁴⁵⁾. It is also highlighted that the child may consider the withdrawal from his or her family a punishment for his or her reactions towards the situation of maltreatment. From this point of view, one should consider that the child or adolescent wishes the abuse to stop, though not the punishment of the abuser nor to be removed from him/her⁽¹⁷⁾. This is a very complex situation in which society wants the perpetrator to be identified and punished while the child wishes to have its condition as a victim acknowledged. Everybody wants the abuse to cease, but removal and the aggressor's punishment may represent more affliction for the child, causing extra harm beside the harm caused

by the aggression itself. The authors consider the consequences of shelter care substantial, for the child loses its former parentage and does not receive a substitute that can serve as an anchor for its growth and development, condition classified as psychosocial "unfiliation"⁽⁴⁵⁾. For various authors, remove a child or adolescent from an environment where his or her rights are not respected and where physical and/or psychic integrity is threatened is a legal interdiction according to child and adolescent protection laws. However, rupture of family bonding should be taken into consideration, for violence often represents a request for help that the family, as a whole, sends to society⁽¹⁸⁾.

Therefore, it is understandable that the measure of removal of a child from its family aggressor, though necessary in many cases, should be carefully assessed and the shelter care institutions should be structured in such a way as to minimize the traumas for the sheltered child.

CONCLUSION

In face of the complexity and huge impact of violence on the growth and development of children and adolescents, prevention becomes crucial on all levels: the primary level (actions on the structural level as to health promotion and poverty and inequality reduction, development policies and bids on the job market, policies towards firearms, alcohol and drugs, among others); the secondary level (focusing on more vulnerable groups and including social actions as a stimulus to school permanency, orientation and stimulus for pacific conflict solution, and

so on); and tertiary level (working with victims of violence with sequel prevention and qualification of the attendance).

It is also emphasized that, in face of the complex context of violence and its cultural, social and economical aspects as well as the interpersonal relations involved, intervention in the families may bring about satisfactory results. In this sense, further studies are fundamental for assessing the impact and efficacy of the protection measures adopted by the Judiciary. Studies and programs with a broader view are necessary in order to encompass, apart from the victim, also the aggressor and the remaining part of the family. It is quite clear that working together with the families is an important form of treatment and prevention. Orientation measures in places such as schools, communities, groups and society in general are essential for debating the issue of violence, furthering prevention based on awareness raising and improvement of interpersonal relations, once homes are the first places indicated for interventions and changes.

In face of violence against children and adolescents that need legal intervention it becomes crucial that there be articulated actions between the health systems and the Judiciary, so that intervention becomes less bureaucratic, faster and more efficient for the families. Effective identification and intervention, together with better surveillance in the diverse social spaces are important steps towards adequate prevention and treatment.

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