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MINORITY. THE MINOR-VICTIM AND THE MINOR-OFFENDER

Diana GRUMEZA¹

Abstract

Research literature notes differently the time of the minority as compared to the time when the minor gives its assumed consent for sexual intercourse, in the latter case, the age in some jurisdictions being of 16 years old. (Taylor, Quayle, (2003), : 3).

At the international level, there was also the intention to change the biological age with the age that the minor seems to have, but the difficulties deriving from establishing an age that the minor has only apparently determined the maintenance of the chronological age as a criterion for establishing the minority, and implicitly, the existence of the crime.

Particular attention is paid to adolescents, who are minors between the ages of 13 and 17.

According to the UN Convention on the Rights of the Child (S.1), "child means any human being under the age of 18 (...)." However, the UN Convention leaves the states to determine alone the age of majority, which may be below or above the limit set by the Convention. That is why we find different ages worldwide for determining adulthood.

In common language, the concepts of "pornography" and "obscenity" are substantially equal. However, pornography involving minors does not necessarily mean obscene behaviour, it can represent explicit, lewd or suggestive sexual behaviour

Starting from the definition of the minor in the UN Convention on the Rights of the Child, we go beyond the multiple discussions in the research literature on the minority, the term "minor" being considered too imprecise, implying both the criminal and civil minority.

Criminologically speaking, the necessary distinction is made between child - adolescent - adult - elderly. So, both the child and adolescent are subsumed to the concept of minor.

We also note that the minority can be a characteristic of the victim, but also of the offender.

Keywords:

abuse, child pornography, minority, minor-victim, minor-offender, human rights.

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1. Social networks. Effects regarding the crimes committed on minors

The development of social networks, with reference to Facebook but not only, meant an increase in the risk of committing crimes against minors. The increase in the number of users of these networks is equivalent to an increase in the number of victims and aggressors.

Social networks have allowed adult or juvenile offenders to engage in private discussions with victims or among themselves, sharing material with pornographic content and premeditating their crimes (Read, (2013), : 77).

Thus, in 2017, Facebook reported 2 billion users who regularly use the applications. But we can also add the social networks: Twitter (with 328 million monthly active users) and / or Snapchat (with 166 million daily users), as well as the Chinese network WeChat (with 938 million monthly active users).

In principle, the minimum age to have a social account is 13 years. However, this limit is not a real obstacle for minors to have a user account, easily cheating regarding their age. Facebook representatives announce the daily deletion of 20,000 user accounts under 13 years old (Csanad, (2015), : 163).

There are also many fake Facebook accounts: in 2012, out of a billion Facebook accounts, 83 million were fake (Read, (2013), : 78). In fact, few pedophiles on the Internet create accounts by which they show their real identity; most of them create accounts with women's names, but they are men.

A study (Csanad, (2015), : 172).conducted on the awareness of the danger posed by child pornography spread through the Internet points out that a high number of people (87% of subjects) showed that they know what child pornography means, and 5.7% (in our opinion, also a high number of people) said they did not consider it would contribute in any way to sexual harassment.

What is also surprising is the conclusion of another study, at European level, this time, which shows that in the EU 12% of respondents showed that their own child was exposed to images with sexual content, while in Romania only 2% considered that their own child was exposed to sexual images or cyberbullying through social networks.

As for teenagers, 90% of them used social networks and 75% of them have an active online profile; Of course, Facebook is the most popular social networking platform they use, followed by Twitter, Google Plus and MySpace. Their profiles include information such as: real name (92% of cases), photos of themselves and selfies (91%), areas of interest (84%), dates of birth (82%), name of the school where they study (71 %), address where

they live (71%), whether or not they are in a relationship (62%), email address (53%), phone number (20%), videos with themselves (24%); (McShane, Cavanaugh, (2016), : 25).

Through social networks, criminals have access to a greater number of potential victims. Criminals thus turn their "friends" into their victims. They may even use child pornography material to convince potential victims of the "normal" nature of abuse.

Many criminals also use non-public communication networks, such as: Gnutella, eDonkey, Mule.

2. The minor-offender

The bio-psychic development inherent in the human being imposed the regulation of a minimum age to establish the beginning of criminal liability. Reaching a certain age, expressly provided by law, entails criminal liability, considering that from that age, the minor is aware of its actions, their result, being able to control its actions.

The Criminal Code of the Republic of Moldova regulates the criminal liability of minors from the age of 16 and, only in the case of certain crimes, starting with the age of 14, according to S.21.

The Criminal Code of Romania regulates the criminal liability of a minor from the age of 16 and, in the case of minors aged between 14 and 16, only if it is proved that they committed the act, with discernment (S.113)

In the Republic of Moldova, the Supreme Court of Justice ruled by Decision no. 39/22.11.2004 that "the court undertakes to ascertain exactly the age of the minor (day, month, year of birth). It is considered that the person reached that age not on the day of birth, but starting with the day following it." We believe that the fair approach of the Court could be considered by other states as well.

The study on the effects of new information technologies on child abuse and exploitation (Malby, Jesrani, Bañuelos, Holterhof, Hahnof, (2011)) the United Nations Office on Drugs and Crime highlights the fact that in the criminal activity of child abuse the criminals are represented by both males and females, aged between 25 and 40 years.

3. The minor-victim

Children easily become victims of online crime, with a natural tendency to easily trust those with whom they interact in the online environment, regardless of their age or gender. Criminals thus take advantage of the naivete of minors, whom they turn into victims. Criminals

take advantage of the juveniles' posts and their friend lists, having the opportunity to choose subsequent victim from these lists.

Directive 2011/93 /EU of the European Parliament and of the Council of December 13, 2011 on combating child sexual abuse, sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68 / JHA designates victims of the crime of child pornography "particularly vulnerable victims."

The degree of vulnerability is higher in the case of victims-girls, but lately the degree of risk has increased in the case of victims-boys.

In Romania, one of the telephone lines supported by the "Save the Children" Organization identified in 2016 a number of 1887 cases, of which over 50% claimed child pornographic content, existing on servers in Romania. 57% of the victims were female. In addition, 16% of the reports were aimed at children between 1 and 4 years old; 43% - children between 5 and 10 years old; 24% children between 11 and 15 years old; 17% of victims over the age of 16.

3.1. Causes of minors' victimization

The child victim comes mainly from broken families, in which the parents are separated or remarried, consume excessive alcohol, are violent towards children or are part of the category of institutionalized children. In most cases, parents or people who have children in care have a poor education, are elderly and / or have a poor standard of living from a material point of view.

Lack of material resources it is often the cause of the transformation of children into victims of sexual abuse in general. Gifts turn these children into safe victims.

Statistically, 51% of children in Romania live in poverty, and 38.1% of them live in extreme poverty.

In the Republic of Moldova, 33% of children are poor, and 30% of them are extremely poor.

On the other hand, children from families with above-average material possibilities actively participate in actions involving pornography, wanting to prove their maturity.

There are also children who, for various reasons - often influenced by adult movies or inappropriate entourage, end up filming themselves in indecent poses and posting those videos on the Internet.

Some children who are victims of such a crime externalize the traumatic experience, while another part tries to forget it, thus suppressing the complex of feelings generated inherently by such a crime.

The dysfunctions in the family the children come from, as well as their possible other experiences of sexual abuse can turn them into victims.

Another cause of child victimization is the growing phenomenon, characteristic of the contemporary period of migration, especially of parents, which affects minors left "alone" at home, who lack the material and / or emotional support necessary for a harmonious development.

The negative effects of the crime of child pornography are physical and / or mental, the very development of the minor being endangered. Child pornography can generate pathological learnings, which will change the personality structure of the future adult, altering the quality of human relationships, but also the conception of people and life or can lead to the transformation of the current child-victim into the later adult aggressor.

One of the characteristics of computer crimes having as a victim the minor is, almost always, a double victimization:

- Primary victimization, respectively the minor as a direct victim of the crime;
- Secondary victimization, represented by the indirect victim of the crime, which derives from an association with the primary victim, respectively a family member.

3.2. Aspects regarding the hearing of minors-victims

The hearing of minors is a procedure applicable in various cases: from civil proceedings (divorce) to criminal proceedings (offenses of child pornography).

In practical cases, multiple difficulties during the hearing of the minors occur, given the particularities of the minority (reduced ability to perceive, insufficiently developed language, the feeling of fear in relation to the aggressor, fear of the courtroom, high emotional state).

3.2.1. Preparing the hearing of the minors involves taking into account external and internal elements of the hearing.

Thus, the location where the hearing of the minor victim will take place is the first thing to be taken into account; the presence of certain persons is added at the time of the hearing of the minor; preparing the minor for the hearing, as well as the person who will proceed to the actual hearing of the child.

Regarding the location, it is recommended that the hearing of the minor take place in specially arranged rooms, so that the hearing of the minors is not interrupted by the entry of various people in those locations. In Romania, there are few rooms specially designed for hearing minors; this is the case of the General Directorate of Social Assistance and Child

Protection in Cluj, of the one in Cluj, as well as at the Prosecutor's Office attached to the Bucharest County Court.

It is important that the room where the minors are heard provides a safe and friendly space, which presupposes the existence of audio-video surveillance systems, the observation of what happens in the room is done through a one-way window. The unidirectional separating mirror window can also help the victim identify the aggressor, without the two coming into direct contact. (Pivniceru, Luca, (2009), : 189).

We believe that there should be more and more such rooms, both in Romania and in the Republic of Moldova, their purpose being to reduce as much as possible the number of hearings and implicitly to re-victimize minors.

The hearing of the children regarding the traumas they were subjected to is done in the presence of specialized psychologists. Recalling events is traumatic for minors, especially if they are victims of sexual abuse. Usually, the minor will report aspects of sexual abuse, using puppets. Also, it is easier for the child not to tell the story by using first person.

At the same time, their legal representatives will usually participate in the hearing of the minor victims. However, their presence is not recommended when the child victim has problems communicating with legal representatives or cannot speak openly in their presence, experiencing feelings of embarrassment. Also, the legal representatives of the minor will not participate in the hearing, if they themselves are guilty of crimes against the minor; In these cases, persons designated by the guardianship authority will participate in the hearing.

The hearing of the minor also requires its legal assistance.

The preparation of the minor-victim in order to be heard involves informing it about the actual hearing procedure, the means used for the hearing, the importance of the hearing for the discovery and /or sanctioning of the criminal.

Regarding the preparation of the person performing the hearing, he/she must have knowledge about the psychology of the child's development.

3.2.2. The hearing of the minor

Registration of the minor's statement through audio-video systems and keeping the statement in electronic form to the case file, allows the judicial bodies to observe not only a report captured on hard copy by a court clerk, but also gives the possibility to observe relevant elements of non-verbal language.

During the trial, depending on the particularities of each case, the judge may decide to declare the court hearing as secret.

Minors have a natural inclination to tell the truth, provided that the person conducting the hearing asks the appropriate questions and respect the child's age. However, there is no universally valid technique for hearing a minor. This depends exclusively on the skill of the person performing the hearing.

The judge conducting the hearing of the minor will follow the three steps regarding the questions he asks the minor-victim:

A. Stage of preliminary, general questions. This stage is meant to facilitate the psychological contact between the person performing the hearing and the minor-victim, in which the two know each other and the aim is to build a relationship of trust.

Questions in this category can be those related to school, health, hobbies, etc. The magistrate will ask the minor if it is aware of the reason for the discussion between them. Sometimes minors, although informed by the accompanying adults about the reason for the hearing, deny this; other, more open minors answer, "Shall I say about the bad things?" or "to say what my father did to me?" (Szamoskozi, (2001), : 75).

B. The free story stage, in which the minor-victim is allowed to state everything it knows about the deed, without interruption. At this stage, open-ended questions such as: "What happened when you were at...?" are asked.

C. Question stage, in which it is important for the magistrate to relate to the possibilities of understanding of the minor, using a simple, appropriate language. An attempt will be made to explain and fully understand one issue in relation to which clarifications are needed, and only after a full explanation and exhaustion of the subject they shall move on to another.

This stage is reached if the open-ended questions do not achieve their purpose. Thus, if minors do not answer, directed and centered questions are used, targeting people and/or their behaviour, the abuse in itself and body parts (Pivniceru, Luca, (2009), : 208); (for example: "why are you afraid to go to...?", "Does X do something you don't like?", "Did... hurt you?").

Now, "yes-no" questions can be used, although they are not the most recommended.

In all these stages, the magistrate's tone must be gentle, encouraging. It is also imperative to ensure that the child is not intimidated or subjected to pressure; not to give the impression of blaming the minor.

It will also be taken into account that often, especially in extrajudicial proceedings, the gender of the person making the hearing is identical to that of the person heard, as it can be easier to establish the truth, to obtain a free story of the minor.

In assessing the minor's statement, the magistrate will take into account:

- The way in which the minor perceived the trauma;
- The degree to which trauma is preserved in the minor's living memory;
- The way in which the minor can verbalize the traumatic event.

4. The aggressor's profile

The pedophile is an adult who, from a sexual point of view, is interested in having sex involving children; pedophilia is not just a sexual orientation, but a way of life (Taylor, Quayle, (2003), : 13). Studies show that, as a rule, the pedophile is male, is young (under 35 years old) and has an ordinary intelligence (80% of criminals). (Worswick, (2011), : 124).

Child pornography is used in different ways by those who are active subjects of this type of deed (Gillespie, (2011), : 50):

- as a sexual fantasy;
- as a way to avoid the real world, through the computer;
- as a collector's behavior;
- as a way to facilitate social relations

An example for the profile of the aggressor of a child pedophilia crime is the much publicized case in Romania, known as the "Treptow case": a graduate of the University of Arizona, he arrived in Romania in 1994 in Iasi, where he founded the "Centrul pentru Studii Romanesti" Foundation, which aimed to promote Romanian history and culture worldwide. Kurt Traptow taught for several years at the " Al. I. Cuza "University of Iasi. In 2002 he was accused, and in 2003 he was sentenced to 7 years in prison for sexual corruption, sexual perversion with minors and sexual acts with minors. The pedophile was released on parole 491 days before the end of the 7 years of detention, following the publication of the scientific paper "Viata si timpurile lui Vlad Dracul. Reverberatii asupra familiei" ("The life and times of Vlad Dracul. Reverberations on the family"). During the trial, films and photographs were presented as evidence in which the pedophile had sexual relations with three girls and two boys aged between 7 and 14, as well as with two girls aged 9 and 14, respectively.

In another case, solved by the Pitești District Court, by the criminal sentence no. 838/2013, the defendant was convicted of the crime of

infantile pornography through computer systems provided by S.51 of Law 161/2003 amended and supplemented, with the application of S.41 (2) Criminal Code to a punishment of 2 (two) years of imprisonment and 1 year prohibition of the rights provided by S.64 (a), (b), (d) and (e) Criminal Code (as a complementary punishment). In fact, it was noted that between July 2009 and November 2011, the defendant - owner of child pornography material - repeatedly distributed it to various users of forums for people with a penchant for child pornography. In this regard, the German authorities found him during such posts. Following the search of the defendants, several computer equipment was seized, which stored materials (images and audio-video recordings) containing child pornography. It was proved that the defendant carried out the criminal activity for several years, based on a single criminal resolution, during which time he created several accounts on profile sites, downloading material containing child pornography and posting such materials, as well as having discussions with other users in which he showed his inclinations to pedophilia, as well as the interest in meeting minors in order to have sex.

In another situation, the Bacău County Court, by the criminal sentence no. 87/2015 for committing the crime of pornography through computer systems provided by S.374 (1) and (2) of the Criminal Code. It was proved that during 2014, the defendant downloaded, owned and stored in the computer, pornographic material with minors, using computer systems, being discovered 345 materials with pornographic content, presenting minors of young ages - both girls and boys - having explicit sexual intercourse with adults or other minors. At the first trial hearing, the defendant admitted his facts, requesting the application of the simplified procedure, according to S.396 (10) Code of Criminal Procedure. Regarding the person and the conduct of the defendant, it is noted that he has 4 classes, has no criminal record, is a widower, has carried out a military service, has no profession, has no occupation, or job, and has no criminal record, he acknowledged and regretted the crime committed. The court applied S.91 of the Criminal Code, considering that the purpose of the sentence can be achieved without the enforcement of the sentence in prison, ordering the suspension of the enforcement of the sentence under supervision and establishes a term of supervision of 3 (three) years, according to S.92 of the Criminal Code, with the obligations provided based on S.93 of the Criminal Code, as well as the performance of unpaid work for the benefit of the community for a period of 60 days.

The practice often highlights, in the role of aggressor, people with respectable professions: teachers, doctors, priests, lawyers, businessmen or those who carry out philanthropic activities. Often, the criminals are male

adults, but there are also fewer situations in which the aggressors are women. Multiple cases of pedophilia have been discovered in placement centers. Many criminals in this field choose jobs that involve working directly with minors: nannies, teachers, coaches, caregivers in placement centers, educators.

Favouring factors for such deviant behavior are: sexual experiences during the minority, personal dissatisfaction, attraction for minors, all in conjunction with the possibility of using the Internet.

The anonymity they benefit from, given the fact that they are behind the computer, gives the aggressors the courage necessary to commit subsequent crimes.

A study conducted in the USA (Worswick, (2011), : 83) highlights the following statistics on pedophiles:

- 67% of victims of a crime against sexual life are minors; of these, 34% of the victims are under 12 years of age;
- One in seven victims of a crime against sexual life is under the age of six;
- Eight out of ten detainees convicted of a crime against sexual life had a person under the age of 18 as a victim;

Those who are guilty of committing sexual offenses against children are seen as part of a deviant subculture, blamed by society. In fact, even during the enforcement of the imprisonment sentence, they are persecuted by other detainees, in need of protection, being often the object of deeds committed violently against them or becoming victims of crimes of murder in prison.

If we compare the punishments received by Romanian criminals found guilty of child pornography crimes, we notice that they are too small compared to the punishments received by criminals who are guilty of the same crimes in the USA. A study (Erbschloe, (2017), : 128) conducted in the USA highlights that for the crime of child pornography, a criminal from the American state of Indiana was sentenced to 35 years in prison (for the production of materials containing child pornography), another American citizen from the state of Louisiana was sentenced to 20 years in prison (for the production of child pornography materials), another in Milwaukee was sentenced to 10 years in prison for receiving child pornography.

Conclusions

The dynamics of the realities of the contemporary world therefore presuppose new challenges for the science of law. Crimes committed

through the Internet, the online environment are a real challenge to the right to change, an adaptation of the law to new concepts and realities.

Globally, the criminalization of sexual abuse against a minor is based on political reasons, namely in that the minor must be protected, even against his or her will, from his or her involvement in sexual acts, given that his or her early age prevents him or her from a legally valid consent.

It is important to find a balance between the protection of human rights and the rights of the child in general, as well as between freedom of expression and the positive obligation of the state to ensure the security of its citizen (adult or minor). While child pornography is one of the clear limitations of freedom of expression, in terms of sexting not the same position has been adopted, etc.

According to FBI experts, at any given time, there are at least 50,000 pedophiles active online, virtually (Stolojescu, (2015), : 15). At the same time, worldwide, millions of children driven by curiosity, playful need, access the Internet from different locations (from home, school, a friend, a mall or any other public place) and can interact with the aggressors behind the supposedly desired connection. From this perspective, child pornography is an international threat.

Equally, in Romania and in the Republic of Moldova, poverty and economic difficulties of the population, with negative effects and from the perspective of parental education, the absence of effective legislation in this field for a long time, have been speculated by foreign citizens who come with professional or personal reasons in Romania and who have abused Romanian children, often being supported in their criminal activity by Romanian citizens (parents or relatives of children), lured by pecuniary gains.

Combating child pornography on the internet can be achieved by proactive methods:

- increasing the punishment limits for such crimes;
- media coverage of cases of child abuse;
- creating telephone lines to report such cases, in order to investigate them;
- better monitoring of travel agencies (through which people interested in sex tourism often travel);
- allocating material resources to combat violent crime involving children;
- increasing the living standard of the population as a whole, together with increasing the educational level;
- awareness of parents / legal guardians on the reality and danger of this problem;

- prevention - as a central element in combating child pornography by involving parents / guardians, who must supervise their children in their online activities;
- involvement of parents in keeping under control the sites accessed by children and blocking their access to various sites harmful to their development. Parents have the primary role of teaching their children: not to post information about personal life (name and address); identify provocative language or photographs; to understand that not all "friends" on social networks want their wellbeing, as some of whom may be malicious adults; not to meet strangers they know only from the online environment except with the prior consent of their parents. It is also recommended that parents monitor the online activities of minors, by installing a security filter software for Internet pages that the child can access; adopting a mature attitude if they discover pornographic material in the rooms or on minors, being prepared to have a rational discussion with children; consulting with other parents of children in the same class with their own child or with the teacher /head master in order to find solutions to these problems; to spend quality time with children (trips, sports and recreational activities) so that they can reduce their time spent in front of computers, tablets, phones, etc. (Taylor, Quayle, (2003), : 36).
- the creation of joint programmes, at international level, to combat crimes against minors;
- educational and psychosocial prevention measures;
- combating deviant behaviours, such as drug use, alcoholism, domestic violence;
- supporting collaborative efforts between judicial authorities and internet providers for the timely detection of criminals guilty of child pornography in the online environment;
- the creation of trap sites, which under the prerogative of material containing child pornography store information on those interested in accessing such sites;
- stepping up efforts to teach children, from an early age, how to recognize the dangers of the Internet and social networks;
- a more active involvement of the legal and political system;
- diminishing the phenomenon of family abandonment;
- pro-active involvement of civil society in the fight against child pornography, with non-governmental organizations being able to

campaign against sex tourism by disseminating the necessary information in airports, brochures and tourist guides.

It is also necessary to increase the awareness of the population in the Republic of Moldova, as well as in Romania regarding the danger posed by social networks in increasing the number of online crimes, in general, having as victims minors, in particular.

At the legislative level, we are in favour of a harsher criminal policy in terms of imprisonment, by increasing the limits of punishment.

As technological developments are inversely proportional to the need to respect the principle of legislative stability, it is important that the law be enacted in a non-technological manner so that it can keep up with the development of technologies without requiring continuous updates.

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