



The Recruitment of Minors for Sexual Purposes in the New Romanian Criminal Law

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Abstract: In this paper we have examined the constitutive elements of the offense of recruitment of minors for sexual purposes, having regard to the new depositions of the Romanian criminal law. Within the examination we have taken into consideration the constitutive content, forms, methods, penalties and some procedural aspects. The innovative elements of this paper consist in highlighting the importance and necessity of incriminating such act and to examine the new offenses introduced into the Romanian law with the adoption of the new Criminal Code. The paper can be useful to law students in Romania, the bodies with concrete responsibilities in judicial practice and to those who want to improve their knowledge in this field.

Keywords: pre-existing elements; constitutive content; legal procedures

1. Introduction

The illegal recruitment of minors for sexual purposes provided for in article 222 of the Criminal Code consists in the action of the adult to make a proposal to a minor under the age of 13 years to meet for the purpose of committing an act as mentioned in art. 220 or 221 of the Criminal Code, including when the proposal was made by means of distance communication.

By incriminating this act, the legislator sought on the one hand to protect minors from certain temptations regarding the sex life which could have negative effects in the process of its development and on the other hand to protect minors against possible solicitation thereof by a major to the commission of sexual intercourse, oral or anal sexual acts and any acts of vaginal or anal penetration or other acts of a sexual nature (other than those mentioned above).

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Also, “this indictment aims at preventing offenses of rape or sexual assault against a minor or offenses of sexual intercourse with a minor or sexual corruption of minors or even pimping, thus being incriminated autonomously certain preparatory acts that lead to such offenses”. (Udroiu, 2016, pp. 178-179).

The same author states that “according to art. 23 of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse (October 27, 2007): Each Party shall adopt such legislative or other measures necessary to incriminate the proposal made intentionally by an adult through communication technologies and information, to meet a child who has not reached the age set by art. 18, par. 2, its purpose of committing any of the offenses referred to in art. 18, par. 1, letter a) or art. 20, par. 1 letter a), if the proposal was followed by material acts leading to such a meeting” (Udroiu, 2016, pp. 178-179).

Regarding the maximum age of the child passive subject of the offense to which reference is made above, we mention that art. 18, par. 2 of the European legal instrument¹ provides that each party shall decide the age below which it is prohibited to engage in sexual activities with a child.

Given this provision, we find that child's age will vary from one Member State to another, in relation to national criminal law of each state.

In Romania the law incriminates the recruitment of minors for sexual purposes is a novelty, being required by the fulfillment of the obligation undertaken by signing the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, from Lanzarote (Spain) in 2007 and the adoption of the law ratifying this European legal instrument.²

2. Pre-Existent Elements

2.1. The Legal Object

The legal object consists in social relations concerning sexual and physical life and the normal psychological development of the minor who has not attained the age of

¹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote on October 25, 2007.

² Law no. 252 of December 14, 2010 on the ratification of Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote on 25 October 2007 and signed by Romania at Lanzarote on 25 October 2007, published in the Official Monitor of Romania, Part I, no 885 of December 29, 2010.

13 years, the relations defended by the legislator when they occur as recruitment, alluring them by whatever means to meet with a major in order to commit a sexual act or an act of a sexual nature.

In the recent doctrine it is sustained that the “special legal subject is represented by the social relations on the sex life, for which the minor must be prepared under the conditions of decency and morality. By incriminating this act it ensures a climate of normal development of the child, protected from incitement to early sexual practices, before their time”¹.

2.2. The Material Object

The examined offense does not have material object.

2.3. Subjects of the Offense

a) The active subject of the examined crime may be any person considered being adult (male or female) who meets the other requirements of the law to have this quality. In these conditions, we can estimate that the active subject is qualified (circumstantiated). If the incriminated offense is committed by another minor (criminally liable) against a minor under the age of 13 years, the act shall not constitute a crime.

The offense can be committed in all forms of participation (coauthor, incitement, complicity).

If for the retention of co-authorship it is necessary for both perpetrators to be adults, in the case of incitement and complicity it does not require to satisfy this condition.

b) The passive subject can be any minor of either sex who has not attained the age of 13 years. It is of no legal relevance if the minor victim had or not sexual intercourse before committing any crime.

3. The Constitutive Content of the Offense

3.1. The Objective Side

The objective side will be examined through the material element, the essential requirements, the immediate consequence and causation link (its components).

¹ Norel Neagu in (Dobrinoiu, et al., 2016, pp. 192, 193).

The material element of the objective side consists of the adult to propose a minor under the age of 13 years to meet with a view to reporting sexual intercourse oral, anal or acts of vaginal or anal penetration or any other act sexual (these measures are described in the contents of art. 220 and 221 of the Criminal Code).

The adult's proposal can be achieved in any possible way, through direct contact or indirectly, through distance communication (e-mail, phone, letters, or latest ways as sites of virtual games, or chat rooms on the Internet, or facebook, messenger, SMS, etc.).

In the doctrine it was held that the "the mere discussion and initiation directly or by means of distance transmission, but not sufficient to achieve the contents of this crime. It is necessary for the adult to propose to the minor to meet in order to maintain sexual acts among those referred to in art. 220 and art. 221 of the Criminal Code (Intercourse, oral or anal sexual act, any act of vaginal or anal penetration, as well as any act of a sexual nature). If, for example, the proposal to meet as participants to watching a pornographic movie or show, the act does not meet the constitutive elements of this crime"¹.

In our opinion it has no legal relevance if the minor victim accepted or not the proposal, or if he has understood or not the purpose of the perpetrator.

Also, for the existence of the offense it is not necessary for the perpetrator and the victim to meet or more to commit an act as referred to in art. 220 and art. 221 Criminal Code.

The act "is typical also in the case where the proposal took place, but after the meeting it did not occur any act of a sexual nature"².

We appreciate that in the event that the minor victim accepts the proposal and subsequently between the two occurs intercourse, oral or anal sexual intercourse or acts of vaginal or anal penetration or another act of a sexual nature in relation to the specific circumstances of committing acts examined in this offense it can enter into competition with one or more of the following offenses: rape, sexual assault, sexual intercourse with a minor or sexual corruption of minors.

The essential requirement of the material element is the proposal to be made by a major to a minor who has not attained the age of 13 years.

¹ Norel Neagu in (Dobrinoiu, et al., 2016, pp. 192, 193).

² Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote on October 25, 2007.

In this context, the major offender must have the representation that the child whom he made the proposal to meet in order to commit an act as those referred to in art. 220 and art. 221 of the Criminal Code, under the age of 13; if from the concrete circumstances of committing the act it results that the adult did not realize that the person to whom he made the proposal is under 13 years old, the act shall not constitute a crime as this is incident to the punishment provided for in article 30 of the Criminal Code (the error).

In the event that the minor at the date of the offense had 13 years of age (even in the same day), the act does not meet the elements of the examined offense.

The immediate result is endangering sexual, physical and mental development of the minor who has not attained the age of 13 years.

In another opinion it was stated that “the offense is one of danger and the immediate consequence is endangering social relations concerning the sexual life of the child who has not reached the age of 13”¹.

The Causation link results from the materiality of the act, which must not be proven by the judicial bodies.

3.2. The Subjective Aspect

The form of guilt with which the active subject of the crime interacts is the direct intent.

The essential requirement consists in the “aim of the offender by committing the act, namely to meet the minor to commit a sexual act or sexual intercourse. It is not relevant if the minor acted on the proposal to meet shown purpose. Also, it is not relevant if the child has met and committed or not the sexual intercourse or another sexual act”².

4. Forms, Ways, Sanctions

4.1. Forms

Preparation acts, although possible, but not incriminated, but they can be acts of earlier complicity when committed by another adult or minor (aged over 14 years

¹ Daniela Iulia Lămășanu in (Antoni, et al., 2013, p. 236).

² Daniela Iulia Lămășanu in (Antoni, et al., 2013, p. 236).

old, who acted with discernment) and they are used by the perpetrator to commit offense.

Although possible, the attempt is not punishable.

The consumption of the offense is instantaneous and it occurs at the time of the proposal, and if the proposal was made by means of distance transmission, the consumption occurs when the minor under the age of 13 years received it, visualized it, intercept it.

The examined crime can have a moment of exhaustion, in the event where he sends more proposals to the minor; this time it will identify with the moment when it has been performed the last act of enforcement, an act which will coincide with the time of ceasing the activity of the perpetrator.

4.2. Ways

The Examined crime has two simple normative ways covered by the provisions of art. 222 Criminal Code.

The first of the two simple legal ways (type) is that the adult offers to a minor under the age of 13 years the opportunity to meet in order to commit an act of those mentioned in art. 220 and art. 221 of the Criminal Code, and the second normative type way is the proposal made by means of distance communication in achieving the above mentioned purpose.

The examined offense has no aggravated normative ways and the normative ways are numerous, depending on the option of the offender (by direct recruitment, by the ways offered by the distance transmission or telephone or Internet, etc.).

4.3. Penalties

The penalty prescribed by the law is imprisonment from one month to one year or a fine.

5. Additional Explanations

5.1. The Connection to other Crimes

The examined crime has some connections with the offenses which fall under this category, namely, rape, sexual assault, sexual intercourse with a minor and sexual corruption of minors, showing also some differentiating elements.

In its essence, the crime of sexual recruitment of minors can be a preparatory act to the offenses mentioned above.

5.2. Some Procedural Aspects

In the case of this crime the prosecution is initiated *ex officio*.

Typically, the jurisdiction in the first instance of the court belongs to the court in whose jurisdiction the crime was committed, and the prosecution is conducted by the prosecutors of the territorial police under the supervision of the prosecutor.

If the prosecution was conducted by D.I.I.C.O.T. or D.N.A. the jurisdiction court of first instance belongs to the notified court.

Also, given the quality of the active subject at the time of the offense (the competence after the quality of the person), the jurisdiction of the court in the first instance can belong accordance with art. 38, letter c) g) Code of Criminal procedure, art. 39, letter c) and d) Code of Criminal procedure, and art. 40, par. (1) Code of Criminal procedure, the court of appeal in whose jurisdiction the crime was committed, the military court of appeal and High Court of Cassation and Justice.

6. Previous Legislation and Transitory Situations

6.1. Previous Legislation

The examined crime was not provided for in the Criminal Code of 1969, there are some elements of similarity in article 10 of Law no. 196/2003 on preventing and fighting pornography, as amended and supplemented, the text was repealed by the provisions of art. 132, pt. 2 of Law no. 187/2012.

6.2. Previous Legislation. Application of more Favorable Criminal Law

Given the fact that the crime of recruitment of minors for sexual purposes was not envisaged in the previous law, there can be no transitory situations requiring the application of more favorable criminal law.

7. Conclusion

The crime of recruitment of children for sexual purposes was not envisaged in the Criminal Code of 1969, some elements of similarity can be seen in article 10 of Law no. 196/2003 as mentioned above.

The inclusion of this crime in the new Criminal Code was required due to the need to respect the obligations undertaken by signing and subsequently ratifying the Council of Europe Convention on Lanzarote and because of the necessity for defending by criminal law rules the physical integrity of minors.

In conclusion it may be asserted that incriminating this act it will result in the protection in better conditions of the minors against sexual abuse by adults.

8. Bibliography

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