



Preventing Offenses of Sexual Abuse, Sexual Exploitation of Children and Child Pornography in the European Union

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Abstract: The objectives pursued within this paper aimed at the general examination of the European legislative act, and preventing child victimization by the enforcement of national and European law. Preventing victimization of children was approached on three main ways, namely the information, during the criminal proceedings, and at the end of these procedures. The conducted research is a novelty in the field, generally targeting the European normative act, the establishment and enforcement between Member States of complex of preventive measures, that needed to be taken internally first legislatively and then logistically by each Member State. Since internally the Romanian legislation does not provide many of the examined provisions, we believe that the work can be useful to the internal or European institutions working in the field, academic environment as a starting point in achieving other analysis and to the Romanian legislator. The essential contribution to the work, the originality, consists of the examined novelty items that will contribute to the improvement of future Romanian legislation in this particularly sensitive area.

Keywords: assistance; victim; protection of child victims

1. Introduction

The concerning presence and proliferation of international crime has caused a solidarity response from the states, making them aware of the need to intensify cooperation in specific activities to identify, catch, arrest and convict the guilty ones. (Boroi & Rusu, 2008, p. 5) In the recent years, due to favoring causes and conditions, the sexual abuse crimes against children (minors) have experienced unprecedented growth, in the European Union, Europe or any other part of the world.

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Prevention and at the same time cross-border crime represented a constant preoccupation of states with democratic regimes recognized worldwide, the business itself, rather complex, constantly being improved. (Balan-Rusu & Rusu, 2011, p. 190)

At EU level, this very serious phenomenon, sometimes with unimaginable consequences for child victims, with particular reference to their mental and physical development has caused much discussion and position roles, which ended with the adoption of normative acts that require both preventive measures and criminal sanctions.

As known, the European Union, the facilities granted to their citizens regarding the freedom of movement of people and goods in all Member States has determined implicitly some easiness in the movement of criminal elements, especially in terms of organization and action of some organized crime groups. (Balan-Rusu, 2012, p. 211)

We believe that at this level the crime in the area must be approached in two ways, inextricably linked, that is fighting against by criminal measures and preventing other such measures, specific to the domain.

These two directions need to be coordinated, both at national and EU level, by the approximation of the laws of member states and intensifying specific activities of legal cooperation in criminal matters.

In this very dynamic and complex context, in order to prevent and combat more effectively the phenomenon in its complexity, it was adopted 2011/92/UE Directive of the European Parliament and the Council of 13 December 2011 on combating the sexual abuse, sexual exploitation of children, child pornography and it should replace the Framework Decision 2004/68/JHA.

The examination of the mentioned European legislative act leads to the finding that it is designed by the European legislator in two components, namely combating and preventing the phenomenon by criminal law sanctions and other measures specific to the field.

Because the examination of criminal law sanctions provided for in this legislative act represented the subject of previous work, in the current one we will deal exclusively with the examination of preventive measures.

Under the examined legislative act, with a purely preventive purpose, each Member State will have to, through information and awareness campaigns and research and education programs, establish and / or strengthen policies to prevent sexual exploitation of children, including adopting measures for discouraging and reducing the demand that favor all forms of sexual abuse and sexual exploitation of children, and the measures to reduce child victimization risk.

Also, in order to prevent sexual abuse and sexual exploitation of children, there should be proposed programs or measures that would aim the people who commit such crimes. The intervention programs or measures should follow a comprehensive and flexible approach, focusing on medical and psychosocial aspects, having a non-binding feature as well.

Meanwhile, the professionals that are likely to come into contact with child victims of abuse or sexual exploitation should be properly trained. Such training should be promoted by socio-professional members of the following categories: police, prosecutors, lawyers, magistrates and judicial staff, staff in the social services and child care and other social groups.

In order to ensure a unitary concept of preventive activities in the European Union, these action priorities must be pursued by the authorities of each Member State, by adopting firstly the national legislation to ensure the necessary legal framework, continued with the insurance of the overall framework that regards in general the training of specialized staff and providing the necessary logistics.

2. Assistance and Support to Victims

Assistance and support to the victims of such categories of offenses have developed in each Member State on three levels, namely: assistance and support before, during and after the criminal proceedings. A particular problem is the one that refers to such category of assistance in the case of child abuse that occur in their families, a situation that needed to be treated each time in relation to specific features of each case.

This action includes ensuring an adequate legal framework, enabling the authorities of each Member State to identify such risks and the possibility for intervention needs to be achieved in due time.

At the same time, the Member States must take internal measures, especially legal and executorial ones, in order to ensure that the assistance and support for child victims are conditioned by the victim's will to cooperate during the criminal investigation, prosecution or trial. Also, the Member States should take measures to ensure that the specific actions are taken to assist and support the child victims, to enjoy the rights provided in the European legislative act are carried out under an individual evaluation of each specific situation of a child victim, taking into account the views, needs and concerns of the child.

3. Protecting Child Victims within Criminal Investigations and Criminal Proceedings

Under the European legislative act, the Member States shall adopt appropriate internal legislation that would ensure that within criminal investigations and criminal proceedings in relation to the role of victims in their justice system, the competent authorities appoint a special representative for the child victim, as under the national law the holders of parental responsibility cannot represent the child due to a conflict of interests between them and the child victim or where the child is unaccompanied or separated from his family.

In these conditions, it is very important the legal assistance of victims, in which case they must have immediate access to the legal advice and, depending on the role of victims in the justice system relevant to legal representation, including the request for compensation. The legal counseling and legal representation will be free in case where the victim does not have sufficient financial resources.

As mentioned above, the measures to protect child victims should be performed according to the stage of conducting the criminal proceedings, which are specific to each phase. Thus, during the criminal investigation, without bringing any prejudice to the defense, there will be taken the following measures:

- the hearing of the child victim will be done urgently, without undue delay after being notified the authorities;
- when required, the hearing of the child victim will be conducted in specially designed or adapted places for this purpose;
- the hearings will be conducted by or with the help of specialists who have received training for this purpose;

- to the possible extent and where appropriate, all interviews with the child victim will be conducted by the same person;
- the number of interviews should be as limited as possible and they will take place only when strictly necessary for carrying out criminal investigations and criminal proceedings;
- the child victim will be accompanied by his legal representative or, where appropriate, an adult named by the child, unless it was decided otherwise.

Also, there will be taken measures for all hearings of a child victim or witness to be recorded by broadcasting means and they can be accepted as evidence within criminal proceedings in court, according to the national rules of law of the State in question.

Protecting child victims within criminal proceedings taking place in court, will be achieved through the following ways:

- the hearing will not be published;
- the child victim will be heard in court without being physically present, particularly by using appropriate communication technologies.

Also, the judicial authorities of each Member State shall take all measures, if they are in the interests of child victims and taking into account other fundamental interests, in order to protect privacy, their identity and image, as well as to prevent the public dissemination of any information that could lead to the identification of the child victim.

4. Preventing this Type of Crime

The Member States shall take measures for educating and training, to deter and reduce the demand that favors all forms of sexual exploitation of children.

Also, all Member States will conduct a series of actions, including through the Internet, such as information and awareness campaigns, research and education programs (where appropriate in cooperation with specialized civil organizations and other interested parties), aimed at raising public awareness and to reduce the risk of victimizing the child.

At the same time, each Member State shall promote regular training activities for civil servants who are likely to come into contact with children who are victims of sexual abuse or sexual exploitation, including front-line police officers, so as to

enable them to identify and deal with the children who are victims of this type of crime.

Also as a deterrent, the Member States shall take measures to identify the individuals likely to commit such crimes and there will be ensured their access to effective intervention programs or measures designed to assess risk and prevent such offenses.

In order to avoid relapse, the people convicted of such offenses will be deprived of certain rights, taking a series of measures, namely:

- temporary or permanent forbidden, carrying out professional activities involving direct and regular contact with children;
- employers, when recruiting a person for professional activities or organized voluntary activities involving direct and regular contact with children, are entitled to request information in accordance with the national legislation, by any suitable means, and access to the application or by the concerned person, on the existence of a conviction for committing such offenses, or of any disqualifications in the exercise of activities involving direct and regular contact with children.
- the above information will be transmitted in accordance with procedures laid down in Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records between the Member States.

In addition to the measures imposed by the European legislative act, we consider that a particular role can have the local police, the place of residence of such persons, which will have to monitor its attitudes and conduct, intervening always in time to prevent the victimization of the children.

5. Programs of Intervention Measures on a Voluntary Basis during or after the Completion of Criminal Proceedings

Under the European legislative act, without bringing prejudice to the intervention programs or measures imposed by the judicial authorities under the national law, the Member States shall take appropriate measures to ensure the availability of effective intervention programs or measures to prevent and to limit the risk of relapse in terms of sexual offenses against minors. These programs and measures

will be accessible at any time during the criminal proceedings in or outside the prison environment, according to the national legislation.

Regarding the intervention programs and measures, the Member States shall take appropriate measures to ensure access to the following categories:

- persons subject to criminal proceedings for any offense of sexual nature, given that neither are in the detrimental nor contrary to the rights of defense or requests for a fair and impartial trial, in particular the compliance of the principle of presumption of innocence, and
- persons convicted of any offenses of this kind.

The Member States shall take appropriate measures to ensure that the mentioned above persons, to which there have been proposed intervention programs or measures that:

- are fully informed on the reasons for the proposal;
- agree to participate in programs or measures in the full knowledge;
- may refuse and, in the case of sentenced persons, they are made aware of the potential consequences of such refusal.

6. Measures against the Dissemination via the Internet

Under the European legislative act, the Member States shall take measures to ensure prompt removal of the Internet pages containing or disseminating child pornography hosted on their territory and to eliminate such pages hosted outside their territory.

In carrying out these measures, each Member State can block access to Internet users on their territories to websites containing or disseminating child pornography. These measures should be established through transparent procedures and provide appropriate guarantees, in particular to ensure that the restriction is limited to what is necessary and proportionate and that the users are informed on the reasons for restriction. These guarantees also include the possibility of using a remedy into court.

7. Conclusions

In the recent years the cross-border crime of all kinds has seen an unprecedented growth, both in Europe and across the world. As expected, this phenomenon has included a series of crimes against children, the worst being the sexual abuse and sexual exploitation.

Against this background, the adoption of Directive 2011/92/UE European Parliament and the Council of 13 December 2011 was an objective necessity, designed to prevent and combat more effectively the phenomenon as a whole.

The European legislative act in question is intended to provide a threefold utility respectively bringing closer the legislation of the Member States, to ensure a general framework of cooperation between the Member States at the level of the European Union and thus to provide a general legal framework to prevent the victimization of children.

As well as combating the phenomenon, which amounts to the imposition of criminal sanctions and, implicitly, bringing closer the Member States' laws, the prevention activity of victimization of children represents an extremely important objective, an objective to which achievement all Member States have to bring a major contribution.

Due to the existing legal differences between Member States, the European legislature used the term "child", a term that defines a person under the age of 18 years. In this context, we note that in the case of Romanian legislation, the term child is identical to the minor.

Preventing victimization of children, in the context of European legislative act provisions by each Member State, the measures referred to may contribute to their better defense, by the information and anti-criminal education.

An important role should be granted to the children's families as well, who must be directly involved in the prevention activities, when appropriate.

We appreciate also that a very important role must be granted to the school, especially to the education institutions, which must adopt a series of concrete programs of education for minors, the main purpose being to inform and prevent victimization.

8. References

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