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Victim Protection in Romania

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1. Romania – important dates

- December 1989: end of communism
- 1991: adoption of Constitution
- 1996: major modification of the criminal legislation
- 2003: major modification of Constitution
- 2004: Romania joined NATO
- January 1st, 2007: Romania became member of EU
- **February 1st, 2014: new Criminal Code and Criminal Procedure Code**



2. Evolution of Criminal Codes

First Criminal Code – 1865:

- inspired from the French and Prussian codes
- provided for the separation between crimes, delicts and misdemeanors



2. Evolution of Criminal Codes

Second Criminal Code – 1939:

- introduced safety measures, educational measures and additional penalties
- renounced in 1954 to misdemeanors (transferred into administrative law)



2. Evolution of Criminal Codes

Third Criminal Code – 1969:

- shows the Marxist inspiration
- waived the separation into crimes and delicts
- amended several times, especially after 1989



2. Evolution of Criminal Codes

„New Old” Criminal Code – 2004:

- adopted and published in the Official Journal in 2004
- reinstated the separation between crimes and delicts
- it never came into force



2. Evolution of Criminal Codes

Fourth Criminal Code – 2014:

- sources of inspiration: legislations from France, Germany, Portugal, Switzerland, Spain, Belgium, northern European countries, keeping however the particularities of the Romanian criminal law (according to the preamble of the code)
- does not provide for separation between crimes and misdemeanors
- divided into a General Part and a Special Part



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3. Romania's Criminal Justice System - overview

- Continental system
- Mixed system (Inquisitorial and accusatorial elements)
- Principle of officiality
- Some offences – victims' choice – prior criminal complaint as a condition



4. The implementation of the European Union's Directive 2012/29/EU in Romania

- GEO 18/2016 transposed some of its provisions
- infringement procedure (2016); last call – 2019
- GEO 24/2019 transposed other provisions
- Now, most part of this Directive is implemented in the Romanian legislation
 - Exceptions: training of practitioners
 - Right of the victim to be informed when the convicted person was released – *January 1st, 2024*



5. Who is a „victim” of a criminal offence?

- European Union’s Directive 2012/29/EU in Romania - definition of the victim: *a ‘victim’ is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*



Who is a „victim” of a criminal offence?

- Criminal law perspective: victim of the criminal offence - „passive subject” of the criminal offence (as opposed to the „active subject”)
- Criminal procedure law perspective: the victim („injured person”) is a person who suffered a loss, either material or moral, from the perpetration of a criminal offence and takes part in the criminal trial in this quality
 - if not - witness



Who is a „victim” of a criminal offence?

- Family members?
 - civil party: the victim who demands the reparation of the loss by the author of the criminal offence + **their successors**
 - family members of a victim enjoy similar protection measures to threatened witness (CPC art. 113 para. 1 referred to art. 125).
- Same sex couples?
 - family member – art. 177 CC



6. The victim's rights during the criminal investigation

• Inquisitorial system during the criminal investigation

Rights of victims – **art. 81 Criminal Procedure Code**

In criminal proceedings, a victim has the following rights:

a) to be informed of its rights;

*a1) right to informed rapidly about the release or the escape of the person remanded in custody, prosecuted or sentenced for criminal offences concerning them, as well as about any other relevant measures taken for its protection in case of release or escape of the **author** of the criminal offence;*

b) to propose production of evidence by the judicial bodies, to raise objections and to make submissions;

c) to file any other applications related to the settlement of the criminal part of the case;

d) to be informed, within a reasonable term, on the status of the criminal investigation, upon explicit request, provided that they indicate an address on the territory of Romania, an e-mail address or a electronic messaging address, to which such information can be communicated;

e) to consult the case file, under the law;

f) to be heard;

*g) to ask questions to the defendant, **witnesses and experts**;*

g1) the right to an interpreter free of charge when they do not understand, do not express themselves well or cannot communicate in Romanian. In urgent cases, technical means of communication may be used if it is deemed necessary and if it does not hinder the exercise of the rights of the injured person;

g2) the right to be provided with a translation into a language he understands of any decision not to prosecute, when he does not understand Romanian;

h) the right to be assisted by a lawyer or represented;

i) the right to appeal to a mediator, in cases allowed by law;

j) other rights provided by law.



7. The victim's situation during the preliminary chamber and the court trial

- Accusatorial system during the preliminary chamber and the court trial
 - The preliminary chamber is a filter of legality
 - Exclusion of procedural acts from the case files will always benefit the perpetrator more than the victim, so the victim might need to waive their rights so the trial is able to go on
 - The victim has mainly the same procedural rights as the defendant
 - The victim has the right to participate in court, to be assisted or represented by an attorney



8. The perceptions of professional of the victim's status in the criminal trial

- Rural vs. Urban
- Victims are not treated with responsibility by the investigation bodies
- The first contact of the victim with the authorities is usually difficult for them
- Lack of trained professionals to deal with the victims



The defendant and the victim – two very different actors in the criminal trial

- The victims are clearly not the focus of the criminal trial
- Everything is focused on protecting the defendant's rights
- The defendant speaks last
- Many times, the defendants victimize themselves and blame the victim
- Sometimes the victims are looked at as unreasonable



A different perspective – court hearings only with case files with victims

- In the same court hearing, now the judges (for example at the Court of Appeals) have a large variety of offences they judge: starting from murders to battery, going to tax evasion and money laundering, drug trafficking and driving under the influence and arriving to corruption or involuntary manslaughter, they are all mixed together
- Should the cases be split into victim cases and non-victim cases? State vs. defendant is one thing, but state vs. victim vs. defendant is another thing
- The defendant needs protection against the state, but the victim also needs protection against the defendant and the state



A different perspective – court hearings only with case files with victims

- In victim files, the empathy of the courts needs to be directed towards victims
- In victimless files, the empathy has to go to the defendant
- After empathizing with the defendant in 5 cases during a day, it is difficult to move away from that to empathizing to a victim in the 6th
- This might be a reason why the victims are not protected



9. Forms of settlements

The RCPP provides three forms of settlements between victim and offender [art. 16 para. 1 letter g)]:

- a) Withdrawal of the victim's prior complaint in the case of offenses for which such withdrawal vacates criminal liability;
- b) Reconciliation between the victim and the offender;
- c) Conclusion of a mediation agreement under the law.



10. Prevention of secondary victimization

Once the status of threatened or vulnerable witness has been granted (to a victim), the judicial body shall order application of one or more of specific measures (CPC art. 126 and 127).

In the case of victims for whom special protection has been established under the law, the judicial body may order one or more of the following measures wherever possible and when it considers that the proper conduct of the process or rights and interests of the parties are not affected (CPC art. 111 par. 6, 7, 9 and art. 113 par. 4-5:

- interviews of the victim by the judicial body with which a complaint has been filed, on the commission of an offense shall be immediately carried out and, if this is not possible, shall be made after the filing of the complaint without undue delay;
- repeated interviews of the injured person is only made if this is strictly necessary for the criminal proceedings;
- at the hearing, the victim may be accompanied, upon their request, by their legal representative and by another person designated by the victim, unless the judicial body decides otherwise;
- interview them on certain premises designed or adapted for that purpose;
- interview them through or in the presence of a psychologist or other specialist in counseling victims;
- their interview and possible re-examination shall be carried out by the same person if this is possible and the judicial authority considers that it does not prejudice the appropriate course of the trial or the rights and interests of the parties.
- the interview by the criminal investigating bodies of persons who have been victims of the offense of domestic violence, rape, sexual assault, sexual intercourse with a minor and sexual abuse of minors, of the offense of ill-treatment applied to the minor, harassment and sexual harassment, as well as in other cases in which, owing to the circumstances of the offense, this is deemed necessary, it is carried out only by a person of the same sex with the victim, at their request, except when the judicial body considers that this prejudices the proper conduct of the process or the rights and interests of the parties;
- Victims of human trafficking may be temporarily accommodated, upon request, in centers for the assistance and protection of victims of trafficking in human beings or in shelters protected for victims of trafficking (Human Trafficking Act art. 32 para. 1).



11. Financial compensation

Romania has established a compensation system with state financing through the Victims' Act for the following categories of victims:

- a) persons who have been the subjects of an attempted murder and murder, crime of bodily injury, rape, sexual intercourse with a minor (*now rape*) and sexual assault, crime of trafficking in human beings and trafficking in minors; terrorist offenses, and any other intentional offense committed with violence;
- b) the needy spouse, children and persons dependent on the deceased, as a result of the offenses referred to above.



12. Victims of sexual abuse

Until January 1st, 2024:

- rape:

(1) Sexual intercourse, oral or anal sexual intercourse with a person, committed by coercion, by making him/her unable to defend him/herself or to express his/her will, or by taking advantage of this state, shall be punishable by imprisonment for a term of 5 to 10 years and banning of certain rights.

(2) Any other acts of vaginal or anal penetration committed under the terms of paragraph 1 shall be punishable by the same penalty. (1).



12. Victims of sexual abuse

Until January 1st, 2024:

- sexual intercourse with a minor:

(1) Sexual intercourse, oral or anal intercourse and any other act of vaginal or anal penetration committed with a minor between 14 and 16 years of age shall be punishable by imprisonment from one to five years.

(2) The offence referred to in paragraph 1 shall be punishable by (1), committed against a minor who has not attained the age of 14 years, shall be punishable by imprisonment for a term of 2 to 9 years and banning of certain rights.

(3) The offence referred to in paragraph 1 shall be punishable by (1), committed by an adult with a minor between 16 and 18 years of age, shall be punishable by imprisonment for a term of 2 to 9 years and banning of certain rights if: (...)



12. Victims of sexual abuse

ECHR – M.G.C. c. Romania (2016)

- At the time of the events, the eleven-year-old applicant was living with her family in a small village and often used to go to play with two girls from a neighbouring family at their house. The girls, F.C.B. and M.S.B., were about the same age as the applicant. The neighbours' family (the B. family) had ten children and were also accommodating a relative of theirs, J.V., a fifty-two-year-old man who was unemployed and lived in the family's vacant cattle stable.
- According to the statement made by the applicant later to the police, in August 2008 and then again in December 2008, J.V. had dragged her by force while she was playing with her girlfriends at the neighbours' house, had taken her to an empty room in the house or into the barn and had raped her while holding her down and keeping his hand over her mouth in order to prevent her from screaming. The applicant also stated to the police that between August 2008 and February 2009 she had been raped in similar circumstances by four of the neighbours' sons and their friend G.I.
- On 10 March 2009 the applicant's mother noticed that the applicant did not get her monthly period and had a talk with her. She told her mother that she had been sexually abused by J.V. and the other boys. She said that she had been ashamed to talk about what happened and also afraid to tell her parents sooner because J.V. had threatened that he would beat her if she told anyone.
- As a result of the sexual abuse, the applicant became pregnant and, with her parents' approval, she later underwent a surgical termination of the pregnancy.



12. Victims of sexual abuse

ECHR – M.G.C. c. Romania (2016)

- On 10 March 2009 the applicant's parents lodged a complaint against the alleged perpetrators with the local police and an investigation was started against J.V. and the four brothers F.B., A.B., G.B. and P.B. No proceedings were opened with respect to G.I., who was under fourteen and hence not criminally liable.
- On the same day the five suspects were called into the police station for questioning. F.B. declared that on 22 December 2008, when the applicant was visiting her friends, he had asked her to have sex with him and she had accepted. P.B. declared that it had been J.V. who insistently told him to have sex with the applicant.
- On 11 March 2009 a forensic report found that no traces of violence had been detected on the applicant's body.
- During the investigation J.V. declared that the applicant had provoked him to have sex with her as she was always scantily dressed. He further stated that it was she who had come to him and had asked him to have sex with her the first time, in August or September 2008. He alleged that the applicant had told him that she had had sex before with the boys from the B. family.
- The applicant declared before the police that she had been forced by J.V. to have sex with him on several occasions, alleging that he had threatened that he would beat her if she told anyone. The other boys had also forced her to have sex with them, telling her that it was J.V. who had told them what to do.



12. Victims of sexual abuse

ECHR – M.G.C. c. Romania (2016)

On 10 December 2009 the Prosecutor's Office of the Hunedoara County Court issued an indictment decision with respect to J.V. for the crime of sexual intercourse with a minor on repeated occasions. F.B., A.B., G.B. and P.B. were given administrative fines for the same crime. From the statements of the perpetrators and the two sisters, the prosecutor held as proved the fact that the applicant had gone to the neighbours' house scantily dressed and had had a sexual relationship with J.V. The prosecutor therefore concluded that from the documents in the file it was not proved beyond doubt that the applicant had not given her consent to the sexual acts.



12. Victims of sexual abuse

ECHR – M.G.C. c. Romania (2016)

J.V. was convicted for sexual intercourse with a minor. The court of appeal explained as follows:

*“The court considers that the crime of rape is committed by constraint - physical or moral - or by taking advantage of the victim’s lack of capacity to express his/her will, more specifically rape is a sexual intercourse committed without consent. On the other hand, the crime of sexual intercourse with a minor, as provided by Article 198 of the Criminal Code, means engaging in a sexual intercourse with a minor under 15, **but with the minor’s consent.** ...*

“The presumption of lack of capacity applies only to minors who are under fourteen and have committed a crime, but with respect to the crime provided by Article 198 of the Criminal Code, the minor [the applicant] is the victim and not the perpetrator.”



12. Victims of sexual abuse

ECHR – M.G.C. c. Romania (2016)

The Court notes from the examples of case-law submitted by the parties in the present case that the Romanian courts were united in the opinion that a minor victim's consent to sexual intercourse must be determined on a case-by-case basis. However, the issue lies with the courts' practice in analysing the existence of consent and their difficulties to adopt a child-sensitive approach in the assessment of the facts of the cases before them. More specifically, the majority of the convictions for rape were adopted in cases involving violence (see paragraph 35 above).

In a significant number of cases, the victim's consent to the sexual acts was inferred from facts which were more akin to child-specific reactions to trauma, such as the fact that **the victims did not tell their parents or did not scream for help (...)**.

In less than half of the examples had the judges **ordered psychiatric or psychological examinations of the victims in order to verify the existence of their capacity to give valid consent to the sexual acts (...)**.

In very few of the cases submitted as examples – four, to be precise – did the courts consider that victims could not have expressed valid consent due to their very young age, ranging from six to twelve years old (...).

In view of the above, **it cannot be concluded that a settled and consistent practice had been developed by the national courts in order to clearly differentiate between cases of rape and those of sexual intercourse with a minor.**



Report of the Judicial Inspection on sexual abuse

Between 2014-2020 there were 18,549 complaints regarding sexual abuse against minors:

- 3,496 were finalised by indictments
- 138 by plea agreements
- 2,279 by decisions to drop prosecution
- 12,636 by the adoption of decisions to close the case



Report of the Judicial Inspection on sexual abuse

- In a 2015 case of the Baia de Aramă Public Prosecutor's Office, the 12-year-old victim who reported that she had been raped was initially interviewed in the presence of her mother, then re-audited 5 times in the presence of her mother and lawyer, the minor presenting different versions at each of the hearings.
- In a 2019 case of the Buftea Prosecutor's Office, in which the crime of rape was alleged, the victim was heard 4 times.



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Report of the Judicial Inspection on sexual abuse

- The most important issue that the Judicial Inspection report documents and records is the lack of a uniform judicial practice regarding the assessment and determination of the validity of consent of child victims in sexual offence cases.
- Cases of children aged 11-12 have been tried by some courts under the heading of sex with a minor, on the assumption that the victims consented. At the same time, other courts in the country have held that for the same age group, valid consent is impossible - so the only legal classification is rape.



Report of the Judicial Inspection on sexual abuse

- Roma girls are already giving birth at 13. That's how they come to the attention of the authorities.
- In one of the cases mentioned in the Judicial Inspectorate report, the "marriage" relationship dates back to when the girl was 10 years old; at 14 she gave birth to her first child.
- In these specific cases, the judicial inspectors note in the report:
 - No investigations were carried out in the case against the parents of the victim and the perpetrator.
 - No criminal investigation was carried out against the victim's parents, who were not even heard in the case.



Report of the Judicial Inspection on sexual abuse

Evaluation of consent of minors:

- In 2015, the magistrates of the Sibiu Court held that the consent was valid, given the statements of the victims who had respect for the defendant, being older, because they were at his home and he gave them food, conditions being better there than at the Centre (case file with underage victims in the care centres of the State);
- Similarly, magistrates from the Piatra Neamț Court concluded, also based on the victim's statement, that she decided to have sexual relations with the defendant only to be able to continue living in that family, the defendant inducing her fear that if she did not have these sexual relations, she would not be able to live with them and that she would have a hard life;
- The validity of the consent was also taken to the Făgăraș Court (in a 2013 case) where the 11-year-old victim stated that she had consented to the sexual act, the defendant being 32 years old;
- Dej Court (2017) - the victim was 13 years old and the defendant was 66. The defendant was the victim's grandfather. Despite the age difference, the court found that the sexual act was consensual;
- Piatra Neamț Court - magistrates considered as valid the consent given by an 11-year-old victim because the girl was not a virgin at the time she slept with the defendant;
- The Motru Court also did not take into account the young age of an 11-year-old victim, considering that there was a valid consent in her case since the defendant had a close relationship with the victim and they lived together and had frequent sexual relations. A child was born as a result of this relationship. The minor said that she had sexual relations of her own free will and with her mother's consent.



Report of the Judicial Inspection on sexual abuse

Evaluation of consent of minors:

- The Tecuci Court also assessed the validity of the consent of a 10-year-old victim. In the following terms:

If the defendant had had sexual intercourse with the victim only once, it was possible to consider that the victim was unable to express her will due to her young age of 10, but given that the sexual relations lasted for a long period of time, it was considered that the correct legal classification would be that of sexual intercourse with a minor.



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Report of the Judicial Inspection on sexual abuse

Evaluation of consent of minors:

- The report also notes situations where some courts have ruled that valid consent can be assessed simply because the victim looks older than she is. The victim's age was 12, but she had early somatic development, weighing 68 kg and standing 1.60 m tall at the time of the medical examination, a 2019 decision by Topoloveni Court said.



12. Victims of sexual abuse

After January 1st, 2024:

- rape – same wording
- rape against a minor – *new* criminal offence



12. Victims of sexual abuse

*(1) Sexual intercourse, oral or anal sexual intercourse and any other act of vaginal or anal penetration committed by an adult with a **minor under 16 years** shall be punishable by imprisonment for a term of 7 to 12 years and banning of certain rights.*

*(1¹) Sexual intercourse, oral or anal sexual intercourse, as well as any other acts of vaginal or anal penetration committed by a minor with another minor **under the age of 14** shall be punishable in accordance with the provisions of Article 114.*

(2) Sexual intercourse, oral or anal sexual intercourse, as well as any other act of vaginal or anal penetration committed by an adult with a minor by coercion, by making him/her unable to defend him/herself or to express his/her will or by taking advantage of this state shall be punishable by imprisonment for a term of 8 to 15 years and banning of certain rights.

(3) Sexual intercourse, oral or anal sexual intercourse, as well as any other act of vaginal or anal penetration committed by a minor with another minor by coercion, by making him/her unable to defend him/herself or to express his/her will or by taking advantage of this condition shall be punishable by imprisonment for a term of 3 to 10 years and banning of certain rights.



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Sexual assault





Sexual assault

The Bucharest Court of Appeal found that the act held against the defendant, consisting in the fact that, by coercion and taking advantage of the vulnerability of the injured person who was walking alone on the street, the defendant entered the staircase of the building after her, and in the elevator area sexually assaulted her by lifting her skirt and grabbing her ass with his hand, is not provided for by criminal law since, on the one hand, his action of grabbing the ass of the injured person does not constitute an act of sexual assault within the meaning of the provisions of Article 219 para. (1) of the Criminal Code, as the mere act of grabbing the victim's bottom cannot be characterised as an act of sexual assault, and, on the other hand, the coercion and vulnerability of the victim cannot be considered, given that the evidence does not show that the defendant exercised any act of coercion on the victim, he in fact took advantage of the fact that the injured party (a mature person) turned his back on him and, after his gesture, fled following the screams of the injured party.



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