



The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote)

adopted on the 25th of October, 2007,

approved by the Republic of Moldova on the 19th of December, 2011.

Article 23

“Solicitation of children for sexual purposes”

Each Party shall take the necessary legislative or other measures to **criminalize** the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2 *[in the case of the Republic of Moldova – age of 16]*, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.



Legal base national legislation



The Criminal Code of the Republic of Moldova

No. 985-XV dated 18.04.2002:

- art. 171 (Rape) part (2) letter b), part (3) letter b)
- art. 172 (Violent Actions of a Sexual Character) part (2) letter b), part (3) letter a)
- art. 174 (Sexual Intercourse with a Person under the Age of 16) part (1)
- art. 175 (Perverted Actions, in the aspect of obscene discussions with the child)
- art. 175/1 (Berthing children for sexual purposes) - “grooming”
- art. 206 part (1) letter a) (Trafficking in children, for the purpose of commercial or non-commercial sexual exploitation in prostitution or a pornographic industry)
- art. 208/1 (Child pornography)
- art. 208/2 (Resorting to prostitution practiced by a child)



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 171 (Rape) part (2) letter b), part (3) letter b)

Rape, i.e. sexual intercourse committed by the physical or mental coercion of the person, or by taking advantage of the victim's incapacity to defend himself/herself or to express his/her will

paragraph (2), b): committed knowingly against a juvenile shall be punished by imprisonment **for 5 to 12 years**.

paragraph (3), b): of a juvenile under the age of 14 shall be punished by imprisonment **for 10 to 20 years**).



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 172 (Violent Actions of a Sexual Character)
part (2) letter b), part (3) letter a)

Violent Actions of a Sexual Character, i.e. homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself or to express his/her will

paragraph (2), b): committed knowingly against a juvenile shall be punished by imprisonment **for 5 to 12 years**.

paragraph (3), a): committed against a person certainly known to be under the age of 14 shall be punished by imprisonment **for 10 to 20 years**).



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 174 (Sexual Intercourse with a Person under the Age of 16) part (1)

In version of Law No. 277 dated 18.12.2008, in force as of 24.05.2009:

Sexual intercourse other than rape as well as any other acts of vaginal or anal penetration committed with a person certainly known to be under the age of 16

shall be punished by imprisonment for up to 5 years.

In version of Law No. 73 dated 12.04.12, in force as of 25.05.2012:

Sexual intercourse other than rape as well as any other acts of vaginal, anal, oral or other penetration committed with a person certainly known to be under the age of 16

shall be punished by imprisonment **for 3 to 7 years**).



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 174 (Sexual Intercourse with a Person under the Age of 16) part (1)

The Court of Justice of the Republic of Moldova, established in the Plenary Session Resolution No 17 of 07.11.2005 about court practice in the cases of sexual crimes, that having sexual intercourse, homosexuality or lesbianism with a child of tender age (under 14), **whose consent does not have a legal value, because he does not understand the meaning of what is going on**, shall not be qualified in accordance with Art. 174 of the Criminal Code of the Republic of Moldova (“Sexual Intercourse with a Person under the Age of 16”), but according to Art. 171 (“**Rape**”), paragraph (3), b) or Art. 172 (“**Violent Actions of a Sexual Character**”), paragraph (3), a) of the Criminal Code.



Legal base national legislation



The Criminal Code of the Republic of Moldova - art. 175 (Perverted Actions)

In version of Law No. 277 dated 18.12.2008, in force as of 24.05.2009:

The commission of perverted actions against a person certainly known to be under the age of 16 shall be punished by imprisonment for up to 5 years.

In version of Law No. 73 dated 12.04.12, in force as of 25.05.2012:

The commission of perverted actions against a person certainly known to be under the age of 16, consisting in exhibition, indecent touches, **discussions of obscene or cynical nature worn with the victim regarding sexual relations**, determining the victim to participate or to attend pornography shows, offering or making available to the victim pornographic materials, as well as **other actions of sexual nature** shall be punished by imprisonment **for 3 to 7 years**).



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 175/1 (Berthing children for sexual purposes) - “grooming”

Introduced in the Criminal Code on 12.04.2012, in force as of 25.05.2012:

The proposal, including through information and communication technologies, of a meeting with a child for the purpose of committing against him any offense of a sexual nature, whether the proposal has been followed by material acts leading to such a meeting

shall be punished by imprisonment **for 1 to 5 years.**



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 206 (Trafficking in Children) paragraph (1), a), paragraph (2), paragraph (3)

The recruitment [...] of a child for the purpose of:

paragraph (1), a): commercial or non-commercial sexual exploitation in [...] pornographic industry

shall be punished by imprisonment **for 10 to 12 years.**

paragraph (2): the same actions involving physical or mental violence, sexual abuse and violence or the abuse of the child's vulnerability, the threat of disclosure of confidential information to the child's family or to other persons

shall be punished by imprisonment **for 10 to 15 years.**

paragraph (3): the actions set forth in par. (1) or (2) committed against a child aged under 14, or against two or more children

shall be punished by imprisonment **for 15 to 20 years.**



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 208/1 (Child Pornography)

In version of Law No. 235 dated 08.11.2007, in force as of 07.12.2007:

The production, distribution, broadcasting, import, export, offering, sale, exchange, use, or holding of pictures or of other images of one or more children involved in explicit, real, or simulated sexual activities or pictures or other images of genital organs of a child represented in a lustful or indecent manner including in electronic form

shall be punished by imprisonment **for 1 to 3 years.**

In version of Law No. 73 dated 12.04.12, in force as of 25.05.2012:

The production, distribution, broadcasting, import, export, offering, sale, purchase, exchange, use, or holding of pictures or of other images of one or more children involved in explicit, real, or simulated sexual activities or pictures or other images of genital organs of a child represented in a lustful or indecent manner including in electronic form

shall be punished by imprisonment **for 1 to 3 years.**



Legal base national legislation



The Criminal Code of the Republic of Moldova

- art. 208/2 (Resorting to prostitution practiced by a child)

Introduced in the Criminal Code on 12.04.2012, in force as of 25.05.2012:

Taking advantage against any material benefits of sexual services provided by a person who was known with certainty that has not reached the age of 18 shall be punished by imprisonment **for 3 to 7 years.**



Comparison

Article 23 of the Convention “Solicitation of children for sexual purposes”

Intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.

(Article 18, paragraph 1.a: engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities; Article 20, paragraph 1.a : producing child pornography.)

Article 175/1 of the Criminal Code of the Republic of Moldova “Berthing children for sexual purposes”

The proposal, including through information and communication technologies, of a meeting with a child for the purpose of committing against him any offense of a sexual nature, whether the proposal has been followed by material acts leading to such a meeting shall be punished by imprisonment **for 1 to 5 years**.



Comparison



The elements of the crime	Art. 175. Perverted actions	Art. 175 ¹ . Berthing children for sexual purposes
The object of the offence		
Legal object	The social relationship regarding sexual inviolability	
Direct object	A person who did not reach the age of 16	A person who did not reach the age of 18
The objective part		
The Fact	Exhibition, indecent touches, discussions of obscene or cynical nature worn with the victim regarding sexual relations , determining the victim to participate or to attend pornography shows, offering or making available to the victim pornographic materials, as well as other actions of sexual nature	Proposal of a meeting with a child for the purpose of committing against him any offense of a sexual nature
The Consequences	Concrete consequences are not provided	The proposal has been followed by material acts leading to such a meeting
The Link between the Fact and the Consequences		Respectively the link between the fact and the consequences
The Modus Operandi	The modus operandi does not have importance	Including through information and communication technologies (an optional element)
The subjective part		
The Guilt	Direct intention	
The Scope	Concrete scope is not provided	Committing against the child any offense of a sexual nature
The subject of the offence		
The Age of the Subject	A person who reached the age of 14	A person who reached the age of 16



Thoughts...

Article 175/1 of the Criminal Code of the Republic of Moldova “Berthing children for sexual purposes”

“...for the purpose of committing against him any offense of a sexual nature,...”
and

“...whether the proposal has been followed by material acts leading to such a meeting...”

Article 26 paragraph (1) of the Criminal code of the Republic of Moldova:

“The preparation for a crime shall be considered the preliminary agreement to commit the crime, the purchase, manufacture, or adjustment of devices or tools, or the intentional creation by other means of conditions for its commission, provided that due to reasons independent of the perpetrator’s will, the crime failed to produce the expected effect.”





Comparison (continuation)



The further material acts, self-represent preparing another sexual crime.

This way, we are speaking of preparing one of the following above described criminal offences:

- Art. 171. Rape (imprisonment for **5 to 12 years/ 10 to 20 years**);
- Art. 172. Violent Actions of a Sexual Character (imprisonment for **5 to 12 years/ 10 to 20 years**);
- Art. 174. Sexual Intercourse with a Person under the Age of 16 (imprisonment for **3 to 7 years**);
- Art. 175. Perverted Actions (imprisonment for **3 to 7 years**);
- Art. 206. Trafficking in Children (imprisonment for **10 to 12 years/ 10 to 15 years/ 15 to 20 years**);
- Art. 208. Child Pornography (imprisonment for **1 to 3 years**);
- Art. 208/2. Resorting to prostitution practiced by a child (imprisonment for **3 to 7 years**).

As a result, we have to deal with a **cumulation of crimes** (Art. 175 + Art. 171/ 172/ 174/ 206/ 208¹ , 208²) and the sentence is calculated by **summing up the punishments** for those crimes provided in certain articles of the Criminal Code.



Conclusions



The legal provisions that intersect partially, “overlap” each-other, lead to doubling criminal law provisions, and consequently, to the appearance of situations where qualification of facts becomes difficult. Such situations always make favors to the abusers and even make it easy to avoid criminal liability.

Thus, there is an urgent need for the separation of particular criminal acts from a circle of criminal activities, as criminal policy requires special social and legal assessment of the facts, which can be determined only in a particular legal regulation.

In general, the rules governing competition gives criminal justice system redundancy, as generators of confusion in the case law.



Basing on the above and on the purpose of the Lanzarote Convention of protecting children against sexual exploitation and sexual abuse, we express our position on the desirability of excluding from the Article 23 of the Convention of the text: “where this proposal has been followed by material acts leading to such a meeting”, in order to criminalize the discussions for the purpose of committing sexual abuse and eliminate the phase of preparing another offence from the constitutive elements of the crime.



Thank you for attention!