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EUROPEAN SOCIAL CHARTER

Comments submitted
by the Romanian Institute for Human Rights
concerning the 22nd National Report on the
implementation of the European Social Charter

submitted by
THE GOVERNMENT OF ROMANIA
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Comments from the Romanian Institute for Human Rights on the 22nd National Report on the implementation of the European Social Charter

The Romanian Institute for Human Rights is one of the human rights institutions in Romania having as main mandate the promotion and protection of human rights. The Institute is also an associate member of the European Network of National Human Rights Institutions.

Romanian Institute for Human Rights has conducted a variety of activities and programmes in the field of research, education and training of trainers, of information and writing publications and scientific works in the field. These activities aim to deepen and disseminate knowledge on human rights in accordance with international norms and standards in the field; to promote existing international, regional and national human rights regulations and mechanisms; to develop educational strategies and actions in the field of human rights by establishing partnerships with public institutions and non-governmental organizations; to promote ways of approaching human rights issues in direct connection with the different real situations and challenges of social, economic, cultural and political nature.

At the moment, the Institute is facing an acute lack of specialised personnel¹, therefore its range of research activities is rather limited. In this context, the Institute will provide comments on a limited number of articles of the thematic group 4, mainly the ones referring to children and youth.

Article 7, paragraph 1, page 4 of the National Report

Regarding the cases of exploitation of children through work (hazardous work), the Romanian Institute for Human Rights notes that there was an increase of such cases in 2020, comparing to 2019. Considering that there were no reported cases in the following years, the Institute believes that the reporting activity should be carried out in an effective manner. At the same time, although the national authorities mention that there is no information regarding fines, it would be essential to know what were the measures taken, such as providing information on the rights of children to their parents or caregivers, or information regarding to the existing laws and potential penalties.

Referring to the cases of exploitation through work it can be seen that the numbers rose in 2020, comparing to 2019. On this issue it is important to know whether the increase is due to more cases or to more reporting, as no such data is publicly available.

Article 7, paragraph 3, pages 7-8 of the National Report

The Romanian Institute for Human Rights note that the measures implemented to reduce the school drop-out rate for Roma children and those from rural and disadvantaged areas are not enough for children to continue their education. We highlight that providing information to parents or caregivers on the benefits of education would also improve the situation. At the same time, although according to the legal framework primary education is free, in reality there are cases in which there are several costs implied, such as costs for school supplies, manuals, clothing. (e.g. during the „Scoala altfel” week, when children visit various places, they should have some money to carry out those activities).

¹ Please see EU 2023 Rule of Law Report - Country Chapter Romania

Article 7, paragraph 10, pages 14-38

On child pornography – at the moment, the Institute has not found evidence of child pornography cases that were brought to justice, according to the existing case-law (Referring to Article 374 of the Criminal Code). However, after analysing existing case-law referring to child prostitution², the Institute notes that the use of child prostitution „is punishable by imprisonment for a term of three months to two years or by fine, unless the offence is more serious” (Article 216¹Criminal Code). It is worth mentioning that there are cases in which the aggressor receives a more favourable punishment, which is an issue considering the various factors such as a low level of sexual education and a high number of teenage mothers in Romania.

In this context, it is worth mentioning that there were a number of amendments to the Criminal Code and Criminal Procedure Code which will enter into force in 2024 (they were adopted in 2023), which are presented in the annex to this document.

On the same note, official data show that the child care protection system is facing serious and persistent problems. Although the legislation in this regard is consolidated, its inefficient interpretation and implementation lead to devastating consequences for children, one of the most vulnerable groups. Data show that in the child protection system there were 158³ cases of abuse against children in 2021 which indicate a serious deficit, and the fact that such cases were committed by those who had the obligation to offer protection and safety to children highlights the need for urgent reform of the child care system.⁴ At the same time, 68 cases of child abuse was recorded for children living in the care of professional foster carer.⁵

The second aspect that stems from these statistical data is the lack of adequate protection against sexual exploitation, or other forms of exploitation, including issues in the use of IT and social media channels. Such circumstances not only place children in dangerous situations, but they sometime deprive children of opportunities and benefits of online services. At the same time, according to the above-mentioned organisation the fact that authorities do not undertake any responsibility is one of the main issues when it comes to a unitary implementation of existing legislation.

To solve this problem, a multi-directional approach is needed. Action is needed to ensure the accountability of institutions and their employees, to train them to handle complex situations correctly and empathetically, and to create a safe and positive environment for all children in state custody. There is also a need for better supervision and enforcement of current legislation, and perhaps even its revision to better adapt to contemporary realities.

The situation of child abuse in Romania is alarming, according to official data⁶ also provided in the National Report. In 2021 there were recorded 15925 cases of abuse, neglect and child exploitation, while 14170 such cases were recorded in 2020. Considering the figures, it can be

² Based on data existing in the database of the Superior Council of Magistracy, www.rejust.ro, search based on articles of the Criminal Code

³ Data transmitted by General Directorates for Social Assistance and Child Protection to the Organisation “Vocea copiilor abandonati”, <https://ziare.com/copii-abandonati/voci-pentru-copiii-abandonati-opriti-abuzurile-sexuale-in-institutiile-de-protectia-copilului-1806224>

⁴ In 2021, 158 cases of abuse were recorded in residential facilities for children

⁵ A professional foster carer is a certified natural person who provides the care and upbringing necessary for the harmonious development of the children in his or her care or custody through his or her work at home.

⁶ Copii.gov.ro

seen that cases of abuse, neglect and exploitation of children were either on the rise, or they were reported in a greater number, however it is unknown. In this sense, we can mention the establishment of the special line for cases of abuse, mentioned in the country report. “However, it should be noted that this service may be inaccessible to young people under special protection because of the complex perspectives and emotional and psychological difficulties faced by such children. In addition to the fact that these children may experience emotional and psychological difficulties, particularly in situations of abuse or neglect, they may be discouraged to call the number as the service is run by the General Directorates for Social Assistance and Child Protection, and their abuser might be part of the staff thereof”⁷

In this context, although it exceeds the reference period (2018-2021), it is worth mentioning that in the year 2022, more than 17,000 cases of abuse were recorded, a figure which, subject to any assessment, reflects a harsh reality and a deep problem of contemporary Romanian society. Physical abuse, such as beatings, intentional injury or any other form of physical violence inflicted on a child are on the rise. According to an expert in the rights of children, the main causes could be lack of adult education and excessive stress in the household, for example. Emotional abuse, involving humiliation, excessive criticism, manipulation or emotional ignoring of children, it is also on the rise, according to official data. Often this kind of abuse leaves invisible but deeply damaging marks. More worrying is the rising number of cases of sexual abuse. Child pornography, sexual exploitation and rape are just some of the forms of this appalling category of abuse.

Save the Children Romania has also conducted a comparative study in 2021 on violence against children⁸. According to their data, verbal and physical abuse in schools has dropped from 2013, however 22% of children were exposed to verbal abuse in schools (12% were exposed to verbal abuse in the family). Also, 76% of children mentioned that teachers scold them when they make mistakes which shows that there is a need to switch from a critical and punitive teaching method to one that allows for an active support of children during their learning process. The same study shows that 21% of parents agree to using a corporal punishment when children manifest certain unwanted behaviours, however children’s responses show that 46% of them have received corporal punishments.

Ref. page 24 of the national report

We highlight that currently the state has not yet adopted a Strategy for the protection and promotion of children’s rights. The last one is for the period 2014-2020. Such a strategy would help in designing and adopting legislation and standards that would improve the respect for the rights of children. The Institute also notes that such a strategy should be elaborated following the consultation of various stakeholders and rights holders at all levels.

⁷ Vişinel Balan, Răzvan Bădău, Consiliul Copiilor, Revista Drepturile Omului, nr. 1/2023

⁸ https://www.salvaticopiii.ro/sci-ro/media/Documente/Studiu-violenta-asupra-copilului-Salvati-Copiii-2021_1.pdf

Article 17

According to activists in the field of rights of children in the special protection system, Romania has adopted good legislation but it is not enforced. Lack of information campaigns on the rights children has led to social exclusion. In this respect, preventing child poverty requires a complex combination of measures, both monetary and non-monetary. Indeed, ensuring access to quality and affordable health, education and housing services is crucial. First, investment in education is essential for long-term poverty prevention. Access to quality education can help break the cycle of poverty by giving children opportunities to improve their material situation. Improving the quality of education, especially in rural areas, and ensuring access to education up to the age of 18 should be a priority.

Secondly, health is another key area. Access to basic health services, including mental health services and adequate nutrition, can help prevent long-term poverty. It is important that these services are accessible and affordable so that they do not contribute to exacerbating financial problems. The third issue relates to the provision of quality and affordable housing. This involves improving the quality of social housing and promoting housing policies that allow low-income families access to decent housing.

Romania faces various challenges when it comes to preventing child poverty. Currently, the Child Protection Strategy has not been adopted for more than 2 years. At the same time, more work needs to be done to inform and educate parents and caregivers about the existing legislation. The implementation of a sustained information campaign will certainly lead to positive results, including reducing parents' fears about separation from their children.

It is clear that preventing child poverty requires long-term commitment and concrete action in a number of areas, therefore any adopted measures should take into consideration various aspects. It is a problem that cannot be solved by a single intervention or a single sector, but requires an integrated and multi-sectoral approach.

Article 17 paragraph 1

The Social Assistance Act provides in Art. 59, para. (2) that in order to prevent and combat the risk of young people leaving the child protection system becoming homeless and to promote their social integration, local authorities may set up multi-purpose centres that provide housing and household conditions for a fixed period. In a survey on the perception of young people in residential centres, it was found that "out of a total of 627 respondents, 65% (N=407) answered that they did not know what preparation for leaving the centre for good consists of"⁹. The same study shows that "90% of the respondents know that they receive a subsidy from the state when they leave care, and almost two thirds of these 61% do not know how much they should receive when they leave care"¹⁰. It can be seen that there is a lack of clear preparation about leaving a care home, which may present a problem as not enough information is known.

⁹ Vişinel Costel Balan, "Analiza percepției cu privire la planurile tranzitorii la tinerii din centrele de plasament și rezidențiale la nivel național", in Drepturile Omului, 1/2021, IRDO, page 9, http://revista.irdo.ro/pdf/2021/revista_1_2021/05_Articol_Balan.pdf

¹⁰ Idem page 12

On child participation, referring to children living in care there are certain obstacles they encounter. According to the existing standards¹¹, children's opinion should be taken into consideration on various aspects such as: food, clothing, activities that can be carried in the free time, development, preparing for leaving care. However, following the evaluation of the Romanian Institute for Human Rights, their opinion is not always taken into consideration. At the same time, before the current standards were adopted, the previous ones mentioned the existence of the Council of Children, a structure which was meant to facilitate their implication and allowing them to voice up concerns. At the moment, the current context does not encourage genuine involvement of children. General Directorates for Social Assistance and Child Protection in 11 counties of the country have argued that this structure does not correspond to the family model and therefore its creation is not justified. Others, although they have such a structure, do not give any real importance to it. The creation of a Children's Council at the level of Child Protection Directorates would be an important step in promoting the rights and interests of children¹². Children need to know their rights, they need to be encouraged to communicate with their caregivers, to raise issues and needs they have and at the same time receive support from them.

Article 17 paragraph 2

Having in mind the questions asked by the Committee, we mention that the Save the Children Romania conducted several studies during the pandemic as well as afterwards regarding to the situation in schools. One such study refers to the students' opinion on online education and the effects of the isolation period during the Covid-19 pandemic¹³ (made in 2020). It is noted that approximately 27% of the respondents did not follow all classes, and most of the ones who participated in classes mostly used mobile phones. Some of the respondents found that homework was more complicated and a few mentioned that sometimes professors held classes with more than one classroom. At the same time, many respondents expressed the need to receive more support once they came back to school (physically). A survey on the impact of COVID-19 on the education of children carried out by the same organisation showed that less than 20%¹⁴ of respondents had access to a laptop, computer or tablet, meaning that they mostly connected with their mobile phones to follow online classes.

At the same time, the pandemic had other impacts on education. In March 2020, courses from all educational institutions have been suspended, as a primary measure to prevent the spread of the Covid-19 pandemic. After the of a state of emergency was declared, the suspension of classes continued. Ministerial Order no. 4135/21.04.2020 provided a new set of instructions for ensuring the continuity of the learning process in pre-university education established a series of measures that allowed online learning.

¹¹ Order 25 of 2019 on the approval of minimum quality standards for residential social services for children in the system of special protection

¹² According to data requested by an expert for a study on the existence of self-representation structures.

¹³ Save the Children Romania, Students' opinion on online education and effects of the isolation period, Bucharest, 2020, <https://www.salvaticopiii.ro/sci-ro/files/d3/d376f652-4ed3-43cc-8947-347265fe6e7e.pdf>

¹⁴ Save the Children Romania, Analysis of the impact of Covid-19 on the education of children, available in Romanian at <https://www.salvaticopiii.ro/sci-ro/files/6f/6fc2797e-a8bc-4ed8-a760-b806e71c264d.pdf>, page 8

Considering a series of issues that could arise as a result of conducting distance learning activities, the first hotline of psychological counselling on Covid-19 was launched for teachers, students, and parents.

School closures and online education mainly impacted teaching and the examination and evaluation of students.

The main barriers identified in a study conducted by UNICEF¹⁵ regarding access to education services during the Covid-19 pandemic were related to the socio-economic context of families.

The teaching activity was considered the most affected by the Covid-19 pandemic during the state of emergency. In the context of delayed reactions from authorities, who only implemented measures for managing distance education through online platforms in April (one month after the courses have been suspended), the issue of disparities in teaching between schools and teachers became even more visible.

The main barriers consistently reported during the state of emergency were related to the physical access of children to the necessary IT equipment (tablets and other devices) and the internet, which are necessary for facilitating technology-assisted education. While access to IT equipment increased during the Covid-19 pandemic, thanks to interventions by public authorities and various NGOs and companies, supporting the distribution of tablets and other equipment to children from vulnerable families, limited internet access remained a barrier. These two barriers were the main obstacles identified in providing education services.

To achieve the objectives of distance education, the support provided to children by parents/guardians/legal caregivers was crucial. Most likely, the pandemic's effect of burdening parents both with caregiving and domestic tasks made their absence in children's education more noticeable.

The reduced digital skills of teachers, parents, and children deepened inequalities in children's access to education. In a social context where the use of these skills primarily depends on access to technology and the internet, as well as available income to acquire them, this lack of multiple resources has turned into cumulative disadvantages in accessing quality education for children.

Another identified barrier was the uneven intervention in teaching activities, which includes the lack of commonly agreed strategies at the school level to manage online teaching.

Among the problems existing before the pandemic, but strongly affecting community members during that period, was the lack of services dedicated to children with special educational needs. This category faced an exacerbation of issues following the extension of the state of emergency as it needed a better identification of the needs of children and their families at the community level.

Regarding children with disabilities, the National Council for Disability in Romania emphasised that during the Covid-19 pandemic, access to online education for children with special educational needs was extremely low. Additionally, while children in rural areas couldn't connect to the internet due to weak internet signal or if public authorities and the Ministry of Education failed to provide the promised tablets, children with special needs who

¹⁵ Please see, UNICEF Romania, *Rapid assessment of the situation of children and families, focusing on vulnerable groups, in the context of the COVID-19 epidemic in Romania - round 4*, available in Romanian at: <https://www.unicef.org/romania/ro/documents/evaluare-rapid%C4%83-situa%C5%A3iei-copiilor-%C5%9Fi-familiilor-cu-accent-pe-categoriile-vulnerabile-2>

predominantly required face-to-face education were even more affected by this aspect. There were numerous situations in which parents had to invest in infrastructure and logistics, such as large-screen TVs and computers, for their children to participate in online education to at least some extent. These children needed to have a companion in the classroom, but unfortunately, very few children across the country receive such support.

A student with autism needs to learn face-to-face, not through a screen they don't understand. Online education, especially for kindergarten and elementary school children, is not suitable and represents only a checkbox in education. For the integration of a child with autism into mainstream education, it's important that they have a person alongside them who can translate information into terms they understand. Thus, an individually adapted curriculum is needed, developed by specialists who understand this issue.

For students with disabilities, online schooling should continue after the Covid-19 pandemic as an alternative form of education that ensures the continuity of the educational process in conditions of self-isolation, long-term hospitalization, adverse weather conditions, etc. Online learning opportunities and the use of open educational resources and other technologies can reduce the dropout rate among students with disabilities, particularly those in rural areas. However, a strategy is needed for combining online learning with face-to-face classes to adapt to students' diverse learning styles and allow them to study at their own pace.

Considering that the Committee requested more information on the measures adopted to prevent cases of abuse and negligence of children placed in care, both in institutions as well as other situations.

The Institute notes that the legislation adopted in the last years leads to a better protection in case of abuse. However, there are still many cases of abuse of children both in care and other situations.

In the context of increased violence against children and young people in residential centres, an essential tool for their protection has been created - a Guide on the prevention of violent situations. This guide was developed in 2022 by the Institute for Human Rights and should become a valuable resource, both for children and their caregivers, for the management and prevention of abuse in these institutions. However, a major problem arises: the effectiveness of this guide is dependent on the level of awareness and understanding of it among children and young people. It is essential that the direct beneficiaries, i.e. children and young people in residential centres, are informed about the existence, purpose and use of this tool.

Awareness and training initiatives are essential in these cases. These could include information sessions, workshops, information materials adapted to the age and level of understanding of children and young people. For greater impact, they should be implemented not only in residential centres, but also in schools, communities and other institutions working with children and young people. On the other hand, in parallel with these awareness-raising efforts, it is also important to monitor and verify the correct application of the Violence Prevention Guidelines in residential centres. This is where the role of the parliamentary committee comes in, which should oversee and investigate whether this protection tool is being implemented and respected effectively.

Observations on the full report

The Romanian Institute for Human Rights notes that legislation has improved in certain areas, which allows for a better protection of vulnerable groups. At the same time, it stresses the importance of implementing existing legislation and evaluating its impact.

The Romanian Institute for Human Rights is concerned by the lack of disaggregated data. These data allow for carrying out efficient impact assessments, that would provide important information on what additional measures need to be adopted in order to ensure the protection of vulnerable groups and individuals. At the same time, the development and analysis of specific indicators should be considered for a better overview of human rights compliance.

Annex 1

Amendments to the Criminal Code and Criminal Procedure Code (Law no. 217/2023¹⁶)

The law aims to provide a greater protection of minors, thus targeting criminal provisions on sexual life and criminal procedural provisions on victims' rights. The new rules will enter into force from 1 January 2024. However, there are certain provisions which have received critiques given that they may give rise to problematic situations.¹⁷

Main amendments to the Criminal Code

1. The penalty for using child prostitution has been increased: a person who engages in a sexual act with a minor who practices prostitution will be punished with 6 months to 3 years in prison;
2. The offence of rape still consists of a sexual act committed with penetration and non-consensual, but it concerns mainly adult victims¹⁸.

However, there are changes with regard to how it was committed:

- When the victim is an adult, the penalty was maintained to 5-10 years imprisonment;
 - When the victim is a minor aged 16-18, the penalty is 7-12 years of imprisonment. The same punishment is applied when the rape is committed by the one who uses the authority of the office;
 - The penalty will be 7-15 years of imprisonment when: the rape seriously injured the victim or endangered her life, the victim was pregnant, became pregnant, was drugged or got drunk without her will, was threatened with a weapon or if a weapon was used, or if she is old, sick, disabled or dependent.
3. The offence of sexual intercourse with a minor, which punished only consensual penetrative sexual acts, is deleted and the offence of "Rape of a minor" is introduced with two forms: consensual and coerced.

For consensual penetrative sexual intercourse committed by an adult against a minor under 16 years of age the penalty is 7-12 years imprisonment¹⁹. However, the law provides for a ground in which the punishment is not applied: the act is not a crime if the age difference between the perpetrator and the victim is up to 5 years²⁰;

For non-consensual penetrative sexual intercourse committed against a minor, regardless of the age of the latter, the penalty depends on the age of the perpetrator: if he is a major, the penalty is 8-15 years' imprisonment; if he is a minor, the penalty is less, 3-10 years' imprisonment;

¹⁶ The text of the Law is available in Romanian at <https://legislatie.just.ro/Public/DetaliuDocument/272051>

¹⁷ The new provisions were analysed in an article which also presents as „conclusions” certain situations that are problematic in practice. Source, Cristi Dănilă, LEGE NOUĂ: Modificări codurile penale (II), available at <https://vedemjust.ro/modificari-cp-cpp-ii/#legenoua>

¹⁸ The text mentions only minors aged 16-18 years old. For younger victims, the new law introduces a specific offence.

¹⁹ Today, if a minor commits a penetrative sexual act with the consent of another minor under the age of 16, the act does not constitute a crime if there is an age difference of up to three years between the two. From January 2024, consensual sexual relations between minors will no longer be an offence, no matter how great the age difference between the two, as the new law only criminalises intimate relations between two minors that take place under constraint.

²⁰ Prior to these amendments, the age difference was 3 years

The above penalties shall be increased by three years and the above-mentioned ground for non-punishment shall not apply if: the minor is part of the family or lives with the perpetrator; the perpetrator is a parent, au pair, teacher, pedagogue, sports instructor, educator, doctor, nurse, priest, guardian of the minor; the minor is sick, disabled or dependent; the minor has been seriously injured or his life has been endangered; if pornographic pictures or videos have been taken of him; the crime was committed by two or more perpetrators; the perpetrator has a history of sexual offences, trafficking in persons/minors, pimping, child pornography; the perpetrator threatened or used a weapon, got the victim drunk or drugged; the minor became pregnant; the minor was paid; the minor was forced to live with the perpetrator;

The penalty is 9-18 years in prison if the minor dies.

4. The offence of sexual assault, still refers to fondling, rubbing and non-consensual touching of intimate areas:

From now on, the offences only refer to victims over 16 years of age²¹;

The special minimum for each aggravated form has been increased by one year, and some modalities are new:

- 3-7 years of imprisonment for non-consensual acts committed against an adult:

- 4-10 years of prison: the victim is a minor aged 16-18; the perpetrator of such fondling and touching is a parent, au pair, teacher, pedagogue, sports instructor, doctor, nurse, priest, guard of the victim; the victim is a member of the family or lives with the perpetrator; the perpetrator uses the authority of the position;

- 6-12 years of prison when: the victim was seriously injured or her life was endangered, she was pregnant, she was drugged or drunk without her will, she was threatened with or a weapon was used, she was ill, disabled or dependent;

- the penalty is 8-15 years of prison if the victim dies.

5. The offence of "sexual assault of a minor" appears, for fondling, rubbing and touching of a minor under the age of 16, in two forms: with consent and by coercion.

- for consensual non-penetrative sexual intercourse committed by an adult/minor the punishment is 3-10 years of prison. The act is not a crime if the age difference between the perpetrator and the victim is up to 5 years;

- for non-consensual non-penetrative sexual intercourse committed by a minor on another minor, regardless of the latter's age: penalty is 2-7 years imprisonment;

- these penalties are increased by three years and the ground for non-punishment due to age difference does not apply if: the victim is a member of the family or lives with the perpetrator; the perpetrator is a parent, au pair, teacher, pedagogue, sports instructor, educator, doctor, nurse, priest, guardian of the minor; the victim is ill, disabled or dependent; the perpetrator has injured the victim or endangered his/her life; pornographic pictures or videos were taken of him/her; the act was committed by two or more perpetrators; the perpetrator has a history of sexual offences, child pornography or pimping; the perpetrator threatened or used a weapon, got drunk or drugged the victim;

- the penalty is 8-15 years of imprisonment if the victim dies.

²¹ There is a separate crime if it refers to minors

6. The offence of "Causing or facilitating the performance of sexual acts or acts of a sexual nature between minors" is introduced to punish adults who persuade or assist minors under 16 to perform intimate relations with each other, or to accept or perform them:

- penetrative sexual acts: the penalty will be 4 years and 8 months to 8 years of imprisonment (if the victim is willingly involved) or 6-10 years imprisonment (if the victim is forced);
- sexual acts without penetration: the penalty will be 2 years - 6 years and 8 months of imprisonment (if the victim is willingly involved), respectively 1 year 4 months - 4 years and 8 months of imprisonment (if the victim is forced).

7. The offence of sexual corruption of minors concerns only acts of the adult and is committed:

7.1. When sexual intercourse without penetration takes place consensually and only if: the minor is a family member of the adult; the adult is a teacher, teacher, au pair, sports instructor, priest, doctor, nurse, educator, security guard; if he/she has abused his/her trust or authority over the minor (neighbour, family friend); the minor is sick, disabled, dependent; the minor is economically or socially precarious; the act has endangered his/her life; if pornographic pictures or videos have been taken of him/her:

- the act is punishable by 1-5 years of imprisonment, when the minor is under 16. The act does not constitute an offence if the age difference does not exceed 5 years;
- the act is punishable by 6 months to 3 years of imprisonment when the minor is 16-18 years old. Two other situations are taken into account: the act caused serious injury to the minor; the victim lives with the perpetrator. Precariousness is not taken into account.

7.2. If aspects of sexual life are disclosed to a minor under 16, they are punishable by:

- imprisonment for 6 months to 3 years or a fine, when the perpetrator commits any kind of sexual acts in front of the minor;
- imprisonment from 3 months to 3 years or a fine, if the perpetrator persuades the minor to engage in exhibitionist acts, to watch pornographic chat transmissions, to look at pornographic pictures or films, or gives such pictures or films to the minor.
- with imprisonment from 6 months to 3 years or a fine, when the adult sends messages or asks the minor through social media to commit sexual acts alone, on or with someone, but only if the acts do not take place.

8. The offence of soliciting minors for sexual purposes has a modified content. It consists of the act of an adult sending messages to a minor under the age of 16 to meet for the purpose:

- to commit sexual acts of any kind;
- producing or distributing pornographic material involving minors;
- viewing pornographic pictures or films of minors.

9. An amendment is introduced to the offence of child pornography: a penalty of 6 months to 3 years of imprisonment is imposed on an adult who requests a minor, regardless of age, to record him/herself in sexually explicit poses, or to send to others or publish the pictures or films taken.

10. The offence of incest is more clearly defined: it is an offence not only when direct relatives or siblings have sexual intercourse with each other, but also when they have anal sex, use body parts or objects, or perform oral sex.

Conclusions²²:

The name for the new crimes is totally unfortunate - classically, rape and assault involve overcoming the will of the victim. From now on, however, we will have consensual rape and non-consensual rape, consensual sexual assault and non-consensual sexual assault.

Apparently, there is a ban on sexual acts committed with minors under the age of 16 consenting to intimate relations and thus a tightening of penalties for sexual abusers. In reality, acts that are today criminal offences will no longer be illegal from 1 January 2024. So, under the new changes:

- if the perpetrator is of age and the age difference is less than five years from the victim, the offence is no longer unlawful (today, the difference is three years). Thus, when the perpetrator is 20 years old and commits the crime with the consent of the 15-year-old victim, the crime will no longer be a criminal offence, although today this is criminalised. Interestingly, if the victim is 16 years old without one day and the perpetrator partner is 21 years old without two days, he will not be criminally liable for any crime; if the perpetrator is 21 years old, he will be directly liable for rape of a minor, risking a prison sentence of 7-12 years.

- if the victim and the perpetrator are minors, the act will no longer be a crime, regardless of their age.

Due to the discrepancy in the wording of some texts, absurd situations arise where less serious offences are considered criminal offences, while more serious offences are not even punishable:

- if a minor aged 17 and a half fondles a minor aged 12 who gives his consent, the perpetrator commits the offence of "sexual assault of a minor". However, if the two have penetrative sex with the consent of the victim, the offence is not a crime, as the new law no longer considers any kind of penetrative sex between minors to be unlawful;

- If a 19 and a half year old adult sends a message to a 15 year old minor to meet for sex, he or she is committing the offence of soliciting minors for sexual purposes. If he or she asks him or her by text to meet and he or she doesn't, it's statutory rape. If he or she receives and stores pornographic pictures of himself, it is the crime of child pornography. If he or she undresses with lewd movements and self-gratifies in front of the minor, it is sexual corruption of minors. But if that major makes that minor masturbate or masturbate him or her, or if they have penetrative sexual intercourse, the perpetrator does not commit an offence.

²² Cristi Dănilă, LEGE NOUĂ: Modificări codurile penale (II), available at <https://vedemjust.ro/modificari-cp-cpp-ii/#legenoua>