



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-ES(2017)ICT-RO

LANZAROTE CONVENTION

Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

Replies to the thematic questionnaire

ROMANIA

2nd thematic monitoring round

“The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)”

Replies registered by the Secretariat on 20 October 2017

Prevention

Question 1 Awareness-raising or educational activities/tools/materials/measures

- 1.1. Are there awareness-raising or educational activities/tools/materials/measures addressed to children, about the risks they face when they produce and/or share:
- self-generated sexually explicit images and/or videos?
 - self-generated sexual content?

Answer:

There is a growing access to the Internet for children of all ages, the communication medium they use for the purpose of their knowledge and development, but also with risk and danger valences by exposing children to inappropriate interactions, information, images and films for their age. Expanding the use of the Internet from email and chat transmission to social networks, facilitating access to the online environment through various electronic devices and smartphones, and integrating the Internet into all life environments (family, school, entertainment) generates permanent challenges both for children and adults.

Thus, with the intense use of social networks and video and video submissions by teenagers, in which they express the need to belong to peer groups, there is a risk of producing and disseminating written content, their own images or sexually explicit sex videos made by adolescents.

Awareness raising and educational activities have been set in place through the "Ora de Net" (the net hour) (Safer Internet project), mainly by the online campaign and website www.oradenet.ro. The focus has been, however, on self-generated sexual content, rather than self-generated explicit images or video.

In January 2017, Save the Children Romania organized a large event with 64 youth panellists and 14 teacher panellists from 14 cities attended a 4 day Children Rights Winter School organized following the tendency promoted worldwide through No Hate Speech movement. The main objective of the event was to train the participants in order to promote in their community a more loving, kind and tolerant way of relating to each other, using non-formal education methods. After 4 days of interactive training that tackle also the Children's Rights and empowered them to develop their own strategies for developing creative offline activities and events.

Links: http://www.oradenet.salvaticopiii.ro/docs/brosura_smartphone2.pdf

"We browse the internet" - <http://oradenet.salvaticopiii.ro/docs/ne-jucam-si-invatam-navigarea-pe-internet.pdf>

"Your Online Image" - <http://oradenet.salvaticopiii.ro/resurse/sala-de-clasa>

- 1.2. Are there awareness-raising or educational activities/tools/materials/measures specifically targeting children as bystanders/observers of other children producing and/or sharing:
- self-generated sexually explicit images and/or videos?
 - self-generated sexual content?

Answer:

We do not have knowledge about such specific awareness-raising or educational activities/tools/materials/measures. The subject is handled along with the general themes mentioned in the answer to Q 1.1., 1.3.

- 1.3. Are there awareness-raising activities/tools/materials/measures addressed to parents and persons who have regular contact with children (teachers, psychologists, health care professionals, etc.) about the risks children face when they produce and/or share:
- self-generated sexually explicit images and/or videos?
 - self-generated sexual content?

→ Please specify which entities carry out the above-mentioned awareness raising or educational activities (questions 1.1, 1.2 and 1.3) and how they coordinate their action.

→ Please share links to awareness-raising or educational materials (e.g. booklet, video, smartphone application, manual on non-formal education, tool-kit, internet tools) produced for the above mentioned activities (questions 1.1, 1.2 and 1.3).

Answer:

Yes, there are awareness raising activities and tools addressed to parents and child carers, on regard to the risks children face when they produce or share self-generated sexually explicit images or content. We are referring to the training activities aimed at experts from three state authorities: the general directions of social assistance and child protection, the local prevention police and counselling centers from all counties of Romania, organized by Save the Children through the Safer Internet project. In this regard, Save the Children Romania trained 130 specialists during a training organized at Sinaia between 28th March - 10th of April 2016.

Links: <http://www.oradenet.salvaticopiii.ro/resurse/cancelaria>
http://www.oradenet.salvaticopiii.ro/docs/flyer_sc_ora_de_net.pdf

Answer (1.1, 1.2, 1.3)

Activity of the Romanian Ministry of Internal Affairs (Romanian Police):

Preventing juvenile delinquency and victimization of minors is also a constant and priority concern of the Romanian Police. In this context, at both central level (IGPR) and within each County Police Inspectorate, Crime Analysis and Crime Prevention structures initiate and carry out targeted information campaigns, campaigns and actions aimed at students, parents and teachers. Such steps aim at reducing the risk of victimization of children and their involvement in committing antisocial acts. An important chapter of the topic addressed in the activities devoted to this target group is represented by the safety in the online environment, as this is a matter of maximum actuality and with a special incidence on young people.

During October 2016, an EU-wide cyber security campaign initiated by the European Union Agency for Network and Information Security was launched at EU level. The purpose of the event was to promote the importance of this area among citizens and to change their perception of cyber threats in everyday life when using the Internet at work or at home. On this occasion, the Romanian Police organized at national level a series of preventive activities consisting mainly of information sessions for pupils in general schools and lyceums. Thus, 518 preventive information actions were organized at national level. There were 418 school units (204 schools and 214 high schools), with beneficiaries being 24,961 students, 1,293 teachers and 423 parents. Partners were 44 public institutions, 26 non-governmental organizations and other entities, and the activities and good media coverage, with 277 articles in the print and online press, 65 radio shows, 29 TV shows.

At Bucharest level, the activities were organized and carried out by representatives of the Institute for Research and Crime Prevention. In collaboration with the Prevention Service - D.G.P.M.B. and the Criminal Intelligence Service within the Directorate for Combating Organized Crime. There were 7 preventive activities, attended by 536 secondary and high school students and 18 teachers. The actions were supported by two foreign experts from the "Secret Service" and the FBI - US Embassy in Bucharest.

During the meetings, issues of interest were disseminated on: social networking safety, child pornography prevention, copyright compliance, and risk reduction for on-line purchases.

During the school year 2015 - 2016, I.C.P.C. in collaboration with the Road Directorate, Directorate for Combating Organized Crime and subordinated structures, the "SAFETY EDUCATION" Project initiated.

The project aimed to provide information in order to avoid victimization and delinquency for primary and secondary school pupils in Bucharest and six other counties: Braşov, Cluj, Constanţa, Gorj, Iaşi and Timis. The project's activities consisted in supporting information sessions on the basis of preventive kits for primary and secondary school pupils. The themes for the primary cycle covered a wide range of preventive information on: child safety, prevention of disappearances, prevention of violence and bullying in schools, child and family protection, internet safety, the importance of law enforcement, calling the emergency number 112 etc.

Education in schools:

In Romania, education is a guaranteed by the Constitution, for all children and young people, regardless of their social or ethnic origin, gender or religious affiliation. The Law on National Education reiterates the right to education of all children, without any discrimination, including sex. It also provides free public education at all levels, which exceeds the formal dimension of equality of access to education, a dimension reflected in the mentioned documents. In addition to the legal framework stipulating the right to education, there is a system of provisions aimed at protecting children. These include those contained in the Romanian Constitution.

Curricular and extracurricular activities as well as materials used in pre-university education provide information on the risk of sexual abuse, the risks of Internet challenges, or the viewing of sexually suggestive videos.

According to the Framework Regulation for the organization and functioning of the pre-university education units, approved by OMENCS no. 5079/2016, teachers (teachers for preschool education, teachers for primary education, teachers on disciplines), teacher, school counsellor have attributions in identifying, reporting and collaborating with the family / legal representatives or other institutions specialized in the protection of children's rights, if they are aware of forms of sexual abuse. In such situations meetings with parents, school counselling activities for pupils and parents, prevention activities and risk information are carried out.

Question 2. Civil society involvement

2.1. How do State authorities encourage the implementation of prevention projects and programmes carried out by civil society with regard to:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexual content?

Answer: State authorities offer support in dissemination and planning of activities carried out by civil society, with important contributions from the National Authority for the Protection of the Rights of the Child and Adoption, The General Inspectorate of Police and the Ministry of Education.

2.2. Please provide information on prevention activities (including awareness-raising and educational activities, research etc.) implemented by civil society (including those carried out by civil society at their own initiative) with regard to:

- a. self-generated sexually explicit images and/or videos;
- b. self-generated sexual content?

Answer:

Among the most important public events is Safer Internet Day 2017: a public press event was held in Bucharest, where the impact of child sexual abuse images online was discussed. The event gathered representatives of the General Inspectorate of the Romanian Police, the National Authority for the Protection of the Rights of the Child and Adoption, Department of investigating Organized Crime and Terrorism, Europol, Interpol, but also representatives of companies (Bitdefender, ECDL), psychologists, teachers, school counsellors and other specialists. The event also gathered a lot of media attention. During the event, the results of the Safer Internet Project in Romania were presented with focus on Hotline statistics and findings, but also procedural details, workflow and intervention measures in cases of child sexual abuse images.

Also, at national and local level, there are partnerships between governmental and non-governmental institutions on the risks of sexual exploitation (e.g. the National Health Education Program, the partnership with Save the Children Romania - the Singur Info program and the "Hour of the Net" program, the collaboration with the " Child's phone ").

Question 3. National curriculum

Does national curriculum (primary and secondary schools, and vocational education) include awareness-raising about the risks of:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexual content?

Answer:

New framework plans and secondary school curricula bring a new perspective on gender equality, prevention of sexual exploitation and sexual abuse (e.g. discipline of counselling and personal development, social education, physical education, etc.) both through content and through methods / didactic strategies used by teachers to achieve general competencies.

Curricular staffing for new programs becomes a way of understanding and awareness of the role of gender equality, including the prevention of sexual exploitation and sexual abuse in student self-knowledge and personal development as well as career guidance / student training. An important role in understanding the values and respecting gender equality, prevention of sexual exploitation and sexual abuse legislation is also given by national curriculum offerings at school decision (e.g. health education, education for democracy, civic culture, civic education for high school, intercultural education, development education) as well as extracurricular and extracurricular activities carried out in partnership with governmental, non-governmental and international institutions. Within the National Health Education Program (which includes 9 domains, in the chapter "Reproductive Health and Family" including aspects that perceive abuse and sexual exploitation) there were formed about 8,700 teaching staff.

In period 2007-2014, within the framework of the ESF project "Educational offer including extracurricular and extra-curricular training for the formation of healthy lifestyle and active citizenship for children from disadvantaged communities, especially rural ones in pre-university education in Romania" and the project "EDSANO - Education for Health - Development of the Modular Optional Curriculum for Pre-university Education ", 4,000 professionals were trained (staff with guidance and control, decision-makers in pre-university education).

Question 4. Higher education curriculum and continuous training

Do higher education curriculum and continuous training for those who will or already work with children include the issues raised by:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexual content?

Answer:

In accordance with national legislation, including the Romanian Constitution and the Law on National Education no. 1/2011, the Romanian higher education institutions are governed by the principle of university autonomy. This principle allows higher education institutions to decide on their own institutional strategy, structure, activities, organization and functioning, material and human resources management and any other aspect related to academic life, strictly observing the legislation in force but without external interventions. Thus, Romanian higher education institutions choose to include or not in their study programs content related to the protection of children from sexual images and videos.

Considering continuous training, we can refer to the series of training projects for specialists who work with children and youth, developed by Save the Children Romania: school inspectors, social workers, school counsellors and representative of police department of prevention. The challenge after this training was to form core resource persons, experts from Child Protection Services, CJRAE (state school counselling services) and IGPR (National Police) for Internet safety issues in each of the 47 counties.

Question 5. Research

- 5.1. Have public authorities or other bodies initiated/supported research on the issues raised by:
- self-generated sexually explicit images and/or videos?
 - self-generated sexual content?

Answer:

In 2012 Save the Children Romania carried out a national survey which repeated in 2014 - entitled "Study on the use of the Internet in the family". One of the components analyzed was sexting - sending messages with sexual content - words, photos and videos.

- 4% of children said they did so in the last year, the percentage being the same in both studies

- 2.1% of parents say they knew that their children sent sexting in the last year, a lower percentage than in 2012 3.6%

The 2012 study (published in 2013) is available in Romanian on the link

<https://oradenet.salvaticopiii.ro/docs/Studiu.pdf>

The 2014 survey (published in 2015) is available in Romanian on the link

https://oradenet.salvaticopiii.ro/docs/raport_cercetare_safer_internet_2015_web.pdf.

- 5.2. Have public authorities or other bodies conducted or supported research in particular on the psychological effects on those persons whose:
- self-generated sexually explicit images and/or videos as children have been shared online?
 - self-generated sexual content as children has been shared online?

→ Please specify whether the public authorities or other bodies having initiated/supported the research above (questions 5.1 and 5.2) are aware of their outcomes.

Answer:

We do not have knowledge about any existing studies on this topic.

Protection

Question 6. Assistance to victims

- 6.1. What specific reporting mechanisms, including helplines, are in place to ensure that child victims of exposure online of:
- self-generated sexually explicit images and/or videos are provided with the necessary support, assistance and psychological help?
 - self-generated sexual content are provided with the necessary support, assistance and psychological help?

Answer:

According to art. 89 of Law no. 272/2004, the child has the right to be protected against internet pornography. Thus, any person, including the child, can request the general direction of social assistance and child protection in the county / home sector to take appropriate measures to protect against any form of violence, including exploitation.

Also, employees of public or private institutions who, by their nature, come into contact with the child and have suspicions of a possible abuse, have the obligation to immediately notify the general direction of social assistance and child protection. The general reporting mechanism is provided in GD no. 49/2011, Annex 1. The specific reporting mechanism for sexting - message sending is provided in the protocol concluded between National Authority for the Protection of the Rights of the Child and Adoption and Save the Children Romania.

Reporting: the **Hotline**. National Reports of illegal material can be made through the online form available at <http://www.oradenet.salvaticopiii.ro/esc-abuz>. With a total of 1194 cases, out of which 745 valid Child Sexual Abuse Materials. One particularity of reports received is that a significant part of the victims of child sexual abuse depicted are under 10 years old.

Counselling: the **Helpline** has been taking on cases referring to Internet related issues, from children, parents, teachers and adults through various means: telephone, email, chat and written forms collected in schools from children. The total number of cases has been 974 and a large proportion of callers (84%) were adolescents and children. The cases have mostly been related to technical abilities (356), cyber bullying (104), e-crime (116), and issues related to privacy (98). Besides this, a large number of callers wanted to receive information about ways in which to be safe online (108).

There has been a strong increase in helpline calls and cases following the online campaign from the previous project, a trend which has maintained even in months the campaign was not active.

Equally, according to art. 90 par. (1) of that law, the parents of the child or other legal representative of the child, public authorities and private bodies are required to take all appropriate measures to facilitate the physical and psychological rehabilitation and social reintegration of any child who has been the victim of any forms of abuse¹.

¹ Article 89 of Law 272/2004 on the protection and promotion of the rights of the child

(1) The child has the right to be protected from abuse, neglect, exploitation, trafficking, illegal migration, abduction, violence, internet pornography and any form of violence, regardless of the environment in which it is: family, institutions education, medical, protection, crime and rehabilitation / detention facilities, the Internet, media, jobs, sports, community, etc.

(2) Any natural or legal person, as well as the child, may request the general direction of social assistance and child protection in the county / home sector to take appropriate measures to protect them against all forms of violence, including sexual violence, harm or physical abuse or mentally, of ill-treatment or exploitation, abandonment or neglect.

(3) Employees of public or private institutions who, by the nature of the profession, come into contact with the child and have suspicion of a possible abuse, neglect or ill-treatment, have the obligation to immediately notify the general direction of social assistance and child protection.

- 6.2. What legislative or other measures have been taken to ensure that child victims of online exposure of:
- a. self-generated sexually explicit images and/or videos are provided with the necessary support, assistance and psychological help?
 - b. self-generated sexual content are provided with the necessary support, assistance and psychological help?

→ Please provide, if any, information on the number of victims who received support, assistance and psychological help in the above mentioned specific contexts (questions 6.1 and 6.2).

Answer: According to art. 98 lit. b) of Law no. 272/2004, all child victims of violence should receive, according to identified needs, specialized services provided or facilitated by the General Directorates for Social Assistance and Child Protection (GDSACP).

See also answer to 6.1.

Question 7. Cooperation with civil society

Please describe cooperation with non-governmental organisations, other relevant organisations and other representatives of civil society engaged in assistance to victims of the offences covered by the present questionnaire (see questions 9-11) through e.g. child helplines, victim support organisations.

Answer:

Most of the specialized services for child victims of violence are provided by the General Directorates for Social Assistance and Child Protection organized at county and Bucharest level (47 in number): child phone service for child violence reporting (statutory), emergency reception centers for children who cannot remain in the family and counselling centers for child victims.

Cooperation takes place at the county level between GDSACP and NGOs active in the field of preventing and combating child violence.

The Child Telephone Association, which operates the European Single European Children's Number Line - 116.111 - reports cases of child violence (helped by the helpline) to GDSACP to provide detailed assessment and needs-based intervention. More information in Romanian on the association's website: <http://www.telefonulcopilului.ro/acasa?martie=1>

The Federation of the NGOs working within child protection field (FONPC) has run a project by which they set up three hearing rooms for children victims of violence, equipped according to the standards in this field (unidirectional mirror, audio-video recording system): two within GDSACP Dolj and Cluj and one in the Prosecutor's Office attached to the Bucharest Tribunal. More information in Romanian on the link <http://fonpc.ro/fonpc/programs/audis-amb-fr/>

The International Child and Family International Foundation (FICF) has a counselling center for child victims of violence and provides services on a direct or referral basis from the GDSACP in Bucharest. FICF also runs weekly art-therapy workshops for child victims of violence.

Save the Children Romania (Save the Children Romania is a non-profit organization that, since 2008, develops the European project "Sigur.info" in Romania, by pursuing awareness-raising activities, by organizing a civil reporting point, achieving the objective of increasing the safety of young people in the use of the Internet) cooperate with state authorities in regard to reporting and resolving issues related to child rights protection online.

The main institutional partners are the National Authority for the Protection of the Rights of the Child and Adoption, The General Inspectorate of Police and the Ministry of Education. In the timeframe of the project, there were several cases in which the helpline established under the Safer Internet (Ora de net) project, has worked with the school counsellor and local child protection services in situations in which a child seemed in danger. At the same time, requests from Police in counselling victims of situations in which self-generated sexually explicit content

have been taken on by Save the Children Romania counselling services, in Bucharest. Yet, the situations undergoing in rural and local communities, where alternative services are scarce, still remain a problem at national level.

Also, in 2016, representatives of the Institute for Research and Crime Prevention within the General Inspectorate of the Police and the corresponding territorial structures along with several categories of child protection specialists (social workers, teachers, school counsellors) participated in an Internet safety training course organized by the Save the Children Romania Organization. The information and materials received at the course were used by prevention officers between April and June 2016 to carry out activities in schools, social assistance centers, children's clubs, with 4,539 children between 5-11 years, 8,886 teenagers aged 12-18, 956 teachers and 756 parents.

Prosecution

Question 8. Legislation

8.1. Does national law contain any reference to:

- a. self-generated sexually explicit images and/or videos in the context of offences covered by the Lanzarote Convention (Art. 18-23)?

Answer:

**Mention: Our national legislation (Law no 286/2009 – the Criminal code), was recently amended by Emergency Ordinance no 18/2016, which ensured the fully transposition in national legislation of the Directive 2011/93 of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JAI and also ensured the complete alignment to the Convention.*

Therefore, a number of legal provisions regarding the incriminations of art. 18-23 of the Convention² were amended and updated to the standards of the convention and those of the directive.

2

Article 182

Exploitation of a person

By exploiting a person is meant:

- a) Obligation to perform a job or to perform services;
- b) keeping in slavery or other similar procedures of deprivation of liberty or servitude;
- c) Forcing porn to be pornographic or pornographic or other forms of sexual exploitation;
- d) the obligation to practice begging;
- e) the procurement of organs, tissues or cells of human origin, unlawfully.

Article 210

Trafficking in human beings

(1) The recruitment, transportation, transfer, housing or reception of a person for the purpose of its exploitation, committed:

- a) by constraint, kidnapping, misleading or abusive authority;
- b) taking advantage of the impossibility of defending or expressing the will or the apparent vulnerability of that person;
- c) by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person having authority over that person,

shall be punished by imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.

(2) Trafficking in persons by a civil servant in the performance of his duties shall be punished by imprisonment from 5 to 12 years.

(3) The consent of the victim of trafficking is not a justifiable cause.

Article 211

Trafficking of minors

(1) The recruitment, transportation, transfer, housing or reception of a minor for the purpose of exploitation shall be punished by imprisonment of 3 to 10 years and the prohibition of the exercise of certain rights.

(2) The punishment shall be imprisonment from 5 to 12 years and the prohibition of the exercise of rights when:

- a) the deed was committed under the conditions of art. 210 para. (1);
 - b) the offense was committed by a civil servant in the performance of his / her duties;
 - c) the deed threatened the minor's life;
 - d) the deed was committed by a minor's family member;
 - e) the offense was committed by a person in whose care, protection, education, guard or treatment the minors are or a person who has abused his or her position of trust or authority over the minor.
- (3) The consent of the trafficked person is not a justifiable cause.

Article 213 Pimping

(1) Determining or facilitating the practice of prostitution or gaining patrimonial benefits from the practice of prostitution by one or more persons shall be punished by imprisonment from 2 to 7 years and a ban on the exercise of certain rights.

(2) If the determination to start or continue practicing prostitution is made by coercion, the punishment shall be imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.

(3) If the deeds are committed against a minor, the special limits of the punishment shall be increased by half.

(4) The practice of prostitution means the maintenance of sexual acts with different persons in order to obtain property benefits for oneself or for another.

Article 216

Using the services of an exploited person

The act of using the services provided in art. 182, provided by a person about whom the beneficiary knows that he / she is a victim of trafficking in human beings or of the trafficking of minors, shall be punished by imprisonment from 6 months to 3 years or by a fine if the deed is not a more serious offense.

Article 216 ^ 1

Use of child prostitution

The practice of any act of a sexual nature with a minor practicing prostitution shall be punished by imprisonment from 3 months to 2 years or by a fine if the act does not constitute a more serious crime.

Article 217

Penalizing the attempt

Attempts to the offenses provided in art. 209-211, art. 213 par. (2), art. 216 and 216 ^ 1 shall be punished.

CHAPTER VIII

Crimes against sexual freedom and integrity

Article 218 Rape

(1) Sexual intercourse, oral or anal intercourse with a person, committed through coercion, impossibility to defend himself or to express his or her will or benefit from this state shall be punished by imprisonment from 3 to 10 years, and prohibiting the exercise of certain rights.

(2) The same punishment shall be sanctioned by any other acts of vaginal or anal penetration committed under para. (1).

(3) The punishment shall be imprisonment from 5 to 12 years and the prohibition of the exercise of rights when:

- a) the victim is in the care, protection, education, guard or treatment of the perpetrator;
- b) the victim is a direct relative, brother or sister;
- c) the victim is a minor;
- d) the act was committed for the purpose of producing pornographic material;
- e) the deed has resulted in bodily injury;
- f) The act was committed by two or more people together.

(4) If the deed has resulted in the death of the victim, the punishment shall be imprisonment from 7 to 18 years and the prohibition of the exercise of certain rights.

(5) The criminal action for the deed stipulated in par. (1) and par. (2) moves to the prior complaint of the injured party.

(6) The attempt to the offenses provided in paragraph (1) - (3) shall be punished.

Article 219

Sexual aggression

(1) The act of sexual nature, other than those stipulated in art. 218, with a person, committed through coercion, impossibility to defend himself or to express his will or to take advantage of this state, shall be punished by imprisonment from 2 to 7 years and the prohibition of exercising certain rights.

(2) The punishment shall be imprisonment of 3 to 10 years and the prohibition of the exercise of rights when:

a) the victim is in the care, protection, education, guard or treatment of the perpetrator;

b) the victim is a direct relative, brother or sister;

c) the victim is a minor;

d) the act was committed for the purpose of producing pornographic material;

e) the deed has resulted in bodily injury;

f) The act was committed by two or more people together.

(3) If the deed has resulted in the death of the victim, the punishment shall be imprisonment from 7 to 15 years and the prohibition of the exercise of certain rights.

(4) If acts of sexual assault were preceded or followed by the sexual acts referred to in art. 218 par. (1) and par. (2), deed constitutes rape.

(5) The criminal action for the deed stipulated in par. (1) moves to the prior complaint of the injured person.

(6) The attempt to the offenses provided in paragraph (1) and par. (2) is punishable.

Article 220

Sexual act with a minor

(1) Sexual intercourse, oral or anal intercourse and any other vaginal or anal penalty committed with a minor between the ages of 13 and 15 shall be punishable by imprisonment from one to five years.

(2) The offense referred to in paragraph (1) committed against a minor who has not reached the age of 13 shall be punished by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights.

(3) The act provided for in paragraph (1) committed by a major with a minor between the ages of 15 and 18 shall be punished by imprisonment from 2 to 7 years and the prohibition of the exercise of rights if:

a) the minor is a family member of the major;

b) the minor is in the care, protection, education, guard or treatment of the perpetrator, or has abused his or her recognized trust or authority position on the minor or his particularly vulnerable situation as a result of psychological or physical disability, or due to a situation of addiction;

c) the deed threatened the minor's life;

d) was committed for the purpose of producing pornographic material.

(4) The offense referred to in paragraph (1) and (2) shall be punished by imprisonment from 3 to 10 years and the prohibition of the exercise of rights when:

a) the minor is a family member;

b) the minor is in the care, protection, education, guard or treatment of the perpetrator or has abused his or her position of trust or authority over the minor;

c) the deed threatened the minor's life;

d) was committed for the purpose of producing pornographic material.

(5) The facts provided in paragraph (1) and par. (2) shall not be sanctioned if the age difference does not exceed 3 years.

(6) The attempt to the offenses provided in paragraph (1) - (4) shall be punished.

Article 221

Sexual abuse of minors

(1) The commission of an act of a sexual nature, other than that stipulated in art. 220 against a minor who has not reached the age of 13 and the determination of the minor to bear or to perform such an act shall be punished by imprisonment from one to five years.

(2) The punishment shall be imprisonment from 2 to 7 years and the prohibition of the exercise of rights when:

-
- a) the minor is a relative in a direct line, brother or sister;
 - b) the minor is in the care, protection, education, guard or treatment of the perpetrator;
 - c) the act was committed for the purpose of producing pornographic material;
 - d) the deed threatened the life of the minor.

(3) The sexual act of any kind committed by a major in the presence of a minor who has not reached the age of 13 shall be punished by imprisonment from 6 months to 2 years or by fine.

(4) The determination by a major of a minor who has not reached the age of thirteen is to assist in the commission of acts of exhibitionism or performances or performances in which sexual acts of any nature are committed and made available to him of pornographic material shall be punished by imprisonment from 3 months to one year or a fine.

(5) The facts provided in paragraph (1) shall not be sanctioned if the age difference does not exceed 3 years.

(6) The attempt to the offenses provided in paragraph (1) and (2) shall be punished.

Article 222

Conjugation of minors for sexual purposes

The deed of the major person to propose to a minor who has not reached the age of 13 to meet with the purpose of committing an act outlined in art. 220 or art. 221, including when the proposal was made by means of distance transmission, shall be punished by imprisonment from one month to one year or by a fine.

Article 223

Sexual harassment

(1) Reproving sexual favors repeatedly in a working relationship or similar relationship, if the victim has been intimidated or in a humiliating condition, is punished by imprisonment from 3 months to one year or with a fine.

(2) The criminal proceedings shall be initiated upon the preliminary complaint of the injured party.

(...)

Art. 374 Child pornography

(1) Producing, owning, procuring, storing, displaying, promoting, distributing, and making available in any manner pornographic material with children shall be punishable by imprisonment from one to five years.

(1 ^ 1) With the punishment stipulated in par. (1) the punishment or recruitment of a minor is also punished for the purpose of his participation in a pornographic performance, the use of such a performance in which minors participate or the exploitation of a minor in any other way for the purpose of performing pornographic performances.

(1 ^ 2) Watching pornographic performances involving juveniles are punishable by imprisonment from 3 months to 3 years or by fine.

(2) If the facts provided in paragraph (1) have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

(3) The right to access pornographic material with minors through computer systems or other means of electronic communication shall be punished by imprisonment from 3 months to 3 years or by fine.

(3 ^ 1) If the facts provided in paragraph (1), (1), (1) and (2) have been committed in the following circumstances:

a) by a family member;

(b) by a person in whose care, protection, education, guard or treatment the minor is or a person who has abused his or her position of trust or authority over the minor;

c) the deed threatens the minor's life, the special limits of the punishments increase by one third.

(4) Pornographic materials with minors means any material that presents a juvenile or a major person as a juvenile, having sexually explicit behavior or who, while not presenting a real person, credibly simulates a minor having such a behavior, as well as any representation of the genital organs of a child for sexual purposes.

(4 ^ 1) Pornographic performance is the direct exposure to a public, including information and communication technology, of a child engaged in sexually explicit sexual behavior or of a sexual organ of a child.

The national provisions that provide the offences covered by Lanzarote Convention (art. 18-23) criminalise the illegal use of sexually explicit images or videos of children, with no distinction if they were self-produced or not.

For example, according to art. 374 of the Criminal code, child pornography is the act of producing, owning, procuring, storing, displaying, promoting, distributing or making available in any manner of pornographic material with children and is punishable by imprisonment from one to five years. If the acts mentioned above have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

- b. self-generated sexual content in the context of offences covered by the Lanzarote Convention (Art. 18-23)?

Answer:

The national provisions that provide the offences covered by Lanzarote Convention (art. 18-23) criminalise the illegal use of sexually explicit content with children, with no distinction if it was self-produced or not.

For example, according to art. 374 of the Criminal code, child pornography is the act of producing, owning, procuring, storing, displaying, promoting, distributing or making available in any manner of pornographic material with children and is punishable by imprisonment from one to five years. If the acts mentioned above have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

- c. non-pictorial self-generated sexual content produced by children (e.g. sound, text) in the context of offences covered by the Lanzarote Convention (Art. 18-23)?

Answer:

The national provisions that provide the offences covered by Lanzarote Convention (art. 18-23) criminalise the illegal use of non-pictorial self-generated sexual content with children, with no distinction if it was self-produced or not.

For example, according to art. 374 of the Criminal code, child pornography is the act of producing, owning, procuring, storing, displaying, promoting, distributing or making available in any manner of pornographic material with children and is punishable by imprisonment from one to five years. If the acts mentioned above have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

- 8.2. Does national law tackle the involvement of more than one child (i.e. consensual posing) in generating the:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexual content?

Answer:

There are no special provisions for these specific crimes in what regards multiple victims.

So, in case there are more one child victim of the offences mentioned above, the general rules of multiple offenses may become incident, resulting in a more severe punishment for the perpetrator.

- 8.3. Are there specificities related to the fact that more children appear on the:

- a. self-generated sexually explicit images and/or videos when these children accept that their image and/or video are produced and shared through ICTs?
- b. self-generated sexual content when these children accept that their image and/or video are produced and shared through ICTs?

Answer:

There are no special provisions for these specific crimes in what regards multiple victims. So, in case there are more one child victim of the offences mentioned above, the general rules of multiple offenses may become incident. Consent of the child/children does not de-criminalise the act.

Question 9. Criminalisation

9.1. Does national law criminalise cases when adults:³

- a. possess child self-generated sexually explicit images and/or videos?

Answer:

Yes, the possession of child self-generated sexually explicit images and/or videos is criminalised under art. 374 of the Criminal Code, cited above.

- b. distribute or transmit child self-generated sexually explicit images and/or videos to other adults?

Answer:

Yes, the distribution or transmission **to any other person** (adult or child) of child self-generated sexually explicit images and/or videos is criminalised under art. 374 of the Criminal Code.

- c. distribute or transmit child self-generated sexually explicit images and/or videos to other children than those depicted on such images and/or videos?

Answer:

Yes, the distribution or transmission **to any other person** (adult or child) of child self-generated sexually explicit images and/or videos is criminalised under art. 374 of the Criminal Code.

9.2. Are there special circumstances (including alternative interventions) under which the above cases (9.1.a-c), although established in fact and in law, are not prosecuted and/or do not lead to conviction?

Answer:

No, there are no special cases of non-prosecution of the above mentioned cases. They are subject to the general regulations in criminal matters, with no exception.

9.3. What are the legal consequences of the above behaviours (9.1.a-c)?

Answer:

The above behaviours are sanctioned with prison within the limits provided in the text of article 374 of the Criminal Code.

Also, according to the general regulations of the Criminal Code, when applying an imprisonment sentence, the court may also apply a complementary sentence of up to 5 years which will be enforced after the execution of the prison sentence⁴.

³ If the replies of Parties to the General Overview Questionnaire as regards the implementation of Article 20 of the Lanzarote Convention (see replies to question 16) are still valid, please refer to them. Otherwise, please up-date such replies in the context of this question.

⁴ Criminal Code: ART. 55*)

The complementary sanctions can be:

- ban on the exercise of certain rights;
- military demotion;
- publication court decision.

The complementary sentence of banning certain rights can consist in banning, on a period of 1 to five years, of one or more of the following rights:

- right to be elected to the ranks of public authorities or any other public office;
- right to hold a position that involves exercise of State authority;
- right of a foreign citizen to reside on Romanian territory;
- right to vote;
- parental rights;
- right to be a legal guardian or curator;
- the right to take the position, exercise the profession or perform the activity they used in order to commit the offense;
- the right to own, carry and use any category of weapons;
- the right to drive certain categories of vehicles as established by the Court;
- the right to leave Romanian territory;

Complementary penalties

The complementary penalties are:

- a) ban on the exercise of certain rights;
- b) military demotion;
- c) publication of judgment to convict.

ART. 66

Content of the complementary penalty of receiving a ban on the exercise of a number of rights

(1) The complementary penalty of a ban on the exercise of a number of rights consists of a ban, for one to five years, on the exercise of one or several of the following rights:

- a) right to be elected to the ranks of public authorities or any other public office;
- b) right to take a position that involves exercise of State authority;
- c) right of a foreign citizen to reside on Romanian territory;
- d) right to vote;
- e) parental rights;
- f) right to be a legal guardian or curator;
- g) the right to take the position, exercise the profession or perform the activity they used in order to commit the offense;
- h) the right to own, carry and use any category of weapons;
- i) the right to drive certain categories of vehicles as established by the Court;
- j) the right to leave Romanian territory;
- k) the right to take a managerial position with a public legal entity;
- l) the right to be in certain localities as established by the Court;
- m) the right to be in certain locations or attend certain sports events, cultural events or public gatherings, as established by the Court;
- n) the right to communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or the right to go near such persons;
- o) the right to go near the domicile, workplace, school or other locations where the victim carries social activities, in the conditions established by the Court.

(2) When the law mandates a ban on the right to take a public position, the Court shall rule to ban the exercise of the rights stipulated at par. (1) lett. a) and lett. b).

(3) The exercise of the rights stipulated at par. (1) lett. a) and lett. b) shall be banned together.

(4) The penalty stipulated at par. (1) lett. c) shall not be ruled where there is probable cause to believe the person's life might be at risk or that the person might be subjected to torture or other inhuman or degrading treatment in case they are expelled.

(5) When the ban regards one of the rights stipulated at par. (1) lett. n) and lett. o), the Court shall specifically customize the content of that penalty so as to consider the circumstances of the case.

- the right to take a managerial position with a public legal entity;
- the right to be in certain localities as established by the Court;
- the right to be in certain locations or attend certain sports events, cultural events or public gatherings, as established by the Court;
- the right to communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the Court, or the right to go near such persons;
- the right to go near the domicile, workplace, school or other locations where the victim carries social activities, in the conditions established by the Court.

9.4. Does national law criminalise cases when adults:⁵

- a. possess child self-generated sexual content?
- b. distribute or transmit child self-generated sexual content to other adults?
- c. distribute or transmit child self-generated sexual content to other children than those depicted such sexual content?

Answer:

Yes, all the conduits above described are sanctioned in the national legislation according to art. 374 of the Criminal Code, as cited in the previous answers.

The legal texts that we provided for question 16 of the General overview questionnaire have been updated, by Emergency ordinance 18/2016 for amending and completing the Law no. 286/2009 on the Criminal Code, Law no. 135/2010 on the Criminal Procedure Code, as well as for the completion of art. 31 par. (1) of the Law no. 304/2004 on judicial organization (texts were reproduced on question 8.1).

The ordinance ensured the fully transposition in national legislation of the Directive 2011/93 of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JAI and also ensured the complete alignment to the Convention.

Therefore, a number of legal provisions regarding the incriminations of art. 18-23 of the Convention were amended and updated to the standards of the convention and those of the directive and the answers to 16.b) are no longer valid.

On comparison to the answers to question 16.b) of the general overview questionnaire, in the context of the present question:

- having recourse to child prostitution is now incriminated, regardless if it is committed within the context of human trafficking or not;
- possessing child pornography is now criminalized no matter what the purpose of the possession is;
- Procurement of child pornography is now incriminated no matter what the means of the procurement were.

For the content of the legal texts, see answer to question 8.1.

9.5. Are there special circumstances (including alternative interventions) under which the above cases (9.4.a-c), although established in fact and in law, are not prosecuted and/or do not lead to conviction?

⁵ If the replies of Parties to the General Overview Questionnaire as regards the implementation of Article 20 of the Lanzarote Convention (see replies to question 16) are still valid, please refer to them. Otherwise, please up-date such replies in the context of this question.

Answer:

No, there are no special cases of non-prosecution of the above mentioned cases. They are subject to the general regulations in criminal matters, with no exception.

9.6. What are the legal consequences of the above behaviours (9.4.a-c)?

Answer:

The above behaviours are sanctioned with prison within the limits provided in the text of article 374 of the Criminal Code.

Also, according to the general regulations of the Criminal Code, complementary sanctions can be imposed to the person convicted to prison.

For details, see answer to question 9.3.

9.7. Does national law criminalise cases when children:⁶

a. produce self-generated sexually explicit images and/or videos?

Answer:

Children are not prosecuted for producing self-generated sexually explicit images and/or videos when they are the subject of the images/videos.

If the images/videos have another child as a protagonist, the child perpetrator is subject to educative measures if he/she is criminal responsible, as described in the answer to question 9.9.

b. possess self-generated sexually explicit images and/or videos?

Answer:

Children are not prosecuted for possessing self-generated sexually explicit images and/or videos when they are the subject of the images/videos.

If the images/videos have another child as a protagonist, the child perpetrator is subject to educative measures if he/she is criminal responsible, as described in the answer to question 9.9.

c. distribute or transmit self-generated sexually explicit images and/or videos of themselves to peers?

Answer:

Children are not prosecuted for distributing or transmitting self-generated sexually explicit images and/or videos of themselves to peers.

d. distribute or transmit self-generated sexually explicit images and/or videos of themselves to adults?

Answer:

Children are not prosecuted for distributing or transmitting self-generated sexually explicit images and/or videos of themselves to adults.

e. distribute or transmit self-generated sexually explicit images and/or videos of other children to peers?

Answer:

Children are prosecuted for distributing or transmitting self-generated sexually explicit images and/or videos of other children if they are criminally responsible, as described in the answer to question 9.9.

⁶ This question does not in any way suggest that these behaviours should be criminalised.

- f. distribute or transmit self-generated sexually explicit images and/or videos of other children to adults?

Answer:

Children are prosecuted for distributing or transmitting self-generated sexually explicit images and/or videos of other children if they are criminally responsible, as described in the answer to question 9.9.

9.8. Are there special circumstances (including alternative interventions) under which the above cases (9.7.a-f), although established in fact and in law, are not prosecuted and/or do not lead to conviction?

Answer:

No, there are no special cases of non-prosecution of the above mentioned cases. They are subject to the general regulations in criminal matters, with no exception.

9.9. What are the legal consequences of the above behaviours (9.7.a-f)?

Answer:

The rules on criminal liability regarding children (persons under 18 years old) provided by the Romanian Criminal Code are as follows⁷:

⁷ Legal provisions mentioned above:

TITLE V*)

Underage offenders

CHAPTER I

Rules on criminal liability of an underage offender

ART. 113 Criminal liability limits

(1) A juvenile who has not turned 14 years of age does not have criminal liability.

(2) A juvenile who is between 14 and 16 years of age shall have criminal liability if proven they committed the act with discernment.

(3) A juvenile who turned 16 shall have criminal liability as under the law.

ART. 114 Consequences of criminal liability

(1) A juvenile who, at the time of the offense, is aged between 14 and 18, shall be subject to a non-custodial educational measure.

(2) The juvenile referred to in par. (1) may be subject to custodial educational measures in the following cases:

a) the juvenile committed another offense for which an educational measure was taken and served or the service of which started before the commission of the offense for which the juvenile is subject to trial;

b) the penalty required by law for the committed offense is a term of imprisonment of seven years or more, or life imprisonment.

ART. 115

Educational measures

(1) Educational measures are non-custodial or custodial.

1. The non-custodial educational measures are:

a) civic traineeship;

b) supervision;

c) weekend isolation;

d) assistance on a daily basis.

2. The custodial educational measures are:

a) confinement in an educational centre;

b) confinement in a detention centre.

(2) The educational measures to be taken against a juvenile shall be chosen in terms of Art. 114, according to the criteria stipulated in Art. 74.

ART. 116

Assessment report

(1) For the purpose of assessing a juvenile, according to the criteria laid down in Art. 74, the court shall require the Probation Service to draft a report also including justified recommendations on the nature and duration of social reintegration programs that the juvenile should follow, as well as any other obligations imposed on a juvenile by the Court.

(2) The compliance assessment report or the enforcement of educational measures and imposed obligations shall be prepared by the Probation Service in all cases in which the court orders the educational measure or the change or cessation of fulfillment of the imposed obligations, except as provided in Art. 126, when such report shall be drafted by the educational or detention centre.

CHAPTER II Rules on non-custodial educational measures

ART. 117 Civic traineeship

(1) The educational measure of civic traineeship consists of a juvenile's obligation to participate in a program not exceeding 4 months, which would help them understand the legal and social consequences they are exposed to when perpetrating offenses and would make them accountable for their future behavior.

(2) The Probation Service shall coordinate the organization, the juvenile's participation and the supervision during such civic traineeship, without affecting the juvenile's school or professional program.

ART. 118 Supervision

The educational measure of supervision consists of controlling and guiding a juvenile throughout their daily program, for a time period between two and six months, under the supervision of the Probation Service, in order to ensure their participation in school or vocational courses and to prevent them from engaging in certain activities or from contacting certain persons that might affect their reformation process.

ART. 119 Weekend isolation

(1) The educational measure of weekend isolation consists of a juvenile's obligation not to leave their domicile on Saturdays and Sundays, for a time period between 4 and 12 weeks, unless, in this period, they are required to participate in certain programs or to carry out certain activities imposed by the court.

(2) Supervision is performed under the coordination of the Probation Service.

ART. 120 Assistance on a daily basis

(1) The educational measure of assistance on a daily basis consists of a juvenile's obligation to follow a schedule set by the Probation Service, which contains the timetable and conditions for conducting activities as well as the prohibitions imposed on the juvenile.

(2) The educational measure of assistance on a daily basis is enforced for a period between 3 and 6 months and supervision is performed under the coordination of the Probation Service.

ART. 121 Obligations imposed on a juvenile

(1) During the service of non-custodial educational measures, the court may impose on a juvenile one or more of the following obligations:

- a) take classes in school or a vocational training;
- b) not to cross the territorial limit set by the Court, without the Probation Service's approval;
- c) not to be in certain places or at certain sporting cultural events or other public meetings indicated by the Court;
- d) to stay away from and not communicate with the victim or members of their family, the participants in the offense or other persons indicated by the Court;
- e) to report to the Probation Service on the dates set by the latter;
- f) to comply with medical control, treatment or care measures.

(2) In determining the obligation set forth by par. (1) lett. d), the court effectively customizes the content of such obligation, considering the circumstances of the case.

(3) Supervision of fulfillment of the obligations imposed by the Court is performed under the coordination of the Probation Service.

(4) During the service of a non-custodial educational measure, the Probation Service has to notify the court if:

- a) reasons justifying either the change of the obligations imposed by the court or cessation of some of them appeared;

b) a supervised person violates the conditions of the educational measure's service or fails to meet their obligations, under the established terms.

(...)

CHAPTER III

Rules on custodial educational measures

ART. 124

Internment in educational centers

(1) The educational measure represented by the internment in educational centers consists of the internment of underage offenders in institutions specialized in the recovery of underage offenders, where the latter attend educational and professional training programs in accordance to their skills, as well as social reintegration programs.

(2) Internment in educational centers is ordered for a time period between one and three years.

(3) If, during the internment period, an underage offender commits a new offense or is tried for a previously committed multiple offense, the court may sustain the measure of internment in an educational center, extending the duration of such measure without exceeding the maximum duration provided by law, or may replace it by the measure of internment in a detention center.

(4) If, during the internment period, an underage offender proves a continuous interest in acquiring knowledge and professional training, and shows obvious progress in view of social reintegration, following service of at least half of the internment period, the court may order as follows:

a) replacement of the internment by the educational measure of daily assistance for a period equal to the duration of the internment still to be served, but no more than six months, if the person admitted to a medical facility has not turned 18;

b) release from the educational center, if the person admitted to a medical facility has turned 18.

(5) Simultaneously with such replacement or release, the court shall order the observance of one or several obligations provided under Art. 121, until reaching the duration of internment.

(6) If an underage offender, in ill-faith, does not observe the conditions for the service of the measure of daily assistance or the obligations ordered, the court shall reconsider the replacement or release, and shall order service of the remaining measure of internment in an educational center.

(7) If, until the completion of the internment period, the person not having turned 18, with respect to whom the measure of internment in an educational center was replaced by the measure of daily assistance, commits a new offense, the court shall reconsider the replacement and shall order as follows:

a) service of the remaining initial internment measure, with a possibility of extension until reaching the maximum provided by law;

b) internment in a detention center.

ART. 125

Internment in detention centers

(1) The educational measure of internment in detention centers consists of the internment of an underage offender in an institution specialized in the recovery of underage persons, under guard and monitoring, while attending intensive social reintegration programs, as well as educational and professional training programs tailored according to their skills.

(2) Internment is ordered for a time period between 2 and 5 years, except for the case when the penalty provided by law for the committed offense is a term of imprisonment of 20 years or more, or life imprisonment, in which case internment is ordered for no less than 5 and no more than 15 years.

(3) If, during the internment period, an underage offender commits a new offense or is tried for a previously committed multiple offense, the court shall increase the measure of internment, without exceeding the maximum provided under par. (2), established considering the most serious penalty provided by law for the committed offenses. The measure of internment served until the date of the court order shall be deducted from the educational measure.

(4) If, during the internment period, an underage offender proves a continuous interest in acquiring knowledge and professional training, and shows obvious progress in view of social reintegration, following the service of at least half of the internment period, the court may order:

a) replacement of the internment by the educational measure of daily assistance for a period equal to the duration of the internment still to be served, but no more than six months, if the interned person has not turned 18;

The child who has not reached the age of 14 is not criminally liable, as there is a legal absolute presumption of him/her not having enough discernment.

The child aged between 14 and 16 years is held criminally liable only if it is proven that he/she committed the offence with discernment.

The child who has reached the age of 16 is held criminally liable, except the case in which it is proven, that he/she did not have discernment when the act committed.

Children who are criminally responsible can be imposed educative measures⁸. The educative measures can be either custodial, or non-custodial. As a rule, the child shall usually be subject to a non-custodial educational measure. The custodial educational measures can be imposed to child offenders in the following cases:

- he/she also committed another offense for which an educational measure was taken and served or the service of which started before the commission of the offense for which the juvenile is subject to trial;

b) the penalty required by law for the committed offense is a term of imprisonment of seven years or more, or life imprisonment.

The non-custodial educative measures are, in increasing order of their gravity:

a) civic traineeship;

The educational measure of the civic traineeship consists in the child's obligation to participate in a program lasting up to 4 months to help them understand the legal and social consequences they face in committing crimes and to make them more responsible to their future behaviour.

b) supervision;

Supervision consists in controlling and guiding the minor in his daily program, for a period of two to six months, under the coordination of the probation service, in order to ensure participation in school or vocational training and to prevent certain activities or the contact of the child with certain people which could affect the educational process.

c) weekend isolation;

This measure consists in the minor's obligation not to leave the home on Saturdays and Sundays for a period of between 4 and 12 weeks, unless he or she is required to attend certain programs or to carry out certain activities imposed by the court.

d) daily assistance.

Daily assistance consists in the obligation of the minor to observe a program established by the probation service, which contains the timetable and the conditions for carrying out the activities, as well as the prohibitions imposed on the minor for a period between 3 and 6 months.

b) release from the detention center, if the interned person has turned 18.

(5) Concurrently with the replacement or release, the court shall order the observance of one or several obligations provided under Art. 121, until reaching the duration of internment.

(6) If an underage offender, in ill-faith, does not observe the conditions for service of the measure of daily assistance or the obligations ordered, the court shall reconsider the replacement or release, and shall order service of the remaining measure of internment in a detention center.

(7) If, until completion of the internment period, a person not having turned 18, in whose respect a measure of internment in a detention center was replaced by a measure of daily assistance, commits a new offense, the court shall reconsider the replacement and shall order:

a) service of the remaining initial internment measure in a detention center;

b) extension of such internment as provided under par. (3).

The custodial educative measures are:

- internment in an educative centre for a duration of one to 3 years
- internment in a detention centre, on a period from 2 to 5 years, or, exceptionally, from 5 to 15 years. The measure of internment in a detention centre shall be disposed on a period of 5 to 15 years only in the hypothesis of very serious crimes, for which the law stipulates life detention or prison for at least 20 years.

- The child under 14 years old who committed a criminal act and does not have criminal liability can be subject to special protection measures: the placement or specialized surveillance.

The placement consists in a special protection measure, of entrusting the custody of the child, on a temporary base, to either a member of the family, a maternal assistant, or a residential specialized institute.

The measure of specialized surveillance consists in keeping the child in his/her family, under the condition of observing one or more obligation, such as: attending school courses; use of day-care maintenance services; following medical treatments, counselling or psychotherapy; the interdiction of attending certain places or to have relationships with certain persons.

9.10. Does national law criminalise cases when children:⁹

a. produce self-generated sexual content?

Answer:

No, national law does not criminalise such acts, when the child is the subject of the content.

b. possess self-generated sexual content?

Answer:

No, national law does not criminalise such acts if the child is the subject of the content.

c. distribute or transmit self-generated sexual content to peers?

Answer:

No, national law does not criminalise such acts, if the child is the subject of the content.

d. distribute or transmit self-generated sexual content to adults?

Answer:

No, national law does not criminalise such acts, if the child is the subject of the content..

e. distribute or transmit self-generated sexual content of other children to peers?

Answer:

Distributing or transmitting self-generated sexual content of other children to peers is criminalised in national law, if the perpetrator has criminal liability, as described in the answer at question 9.9.

f. distribute or transmit self-generated sexual content of other children to adults?

Answer:

Distributing or transmitting self-generated sexual content of other children to adults is criminalised in national law, if the perpetrator has criminal liability, as described in the answer at question 9.9.

⁹ This question does not in any way suggest that these behaviours should be criminalised.

9.11. Are there special circumstances or alternative interventions under which the above cases (9.10.a-f), although established in fact and in law, are not prosecuted and/ or do not lead to conviction?

Answer:

No, there are no special cases of non-prosecution of the above mentioned cases. They are subject to the general regulations in criminal matters.

9.12. What are the legal consequences of the above behaviours (9.10.a-f)?

Answer:

See answer for question 9.9.

Question 10. Production and possession of self-generated sexually explicit images and/or videos by children for their own private use

10.1. For Parties having made a reservation in accordance with Article 20(3) indent 2¹⁰

What measures have been taken to ensure that the production and/or possession of self-generated sexually explicit images and/or videos is not criminalised when it involves children who have reached the age set in application of Article 18(2) where these images and/or videos are produced and possessed by them with their consent and solely for their own private use?

10.2. For Parties that have not made a reservation in accordance with Article 20(3) indent 2¹¹

Does national law criminalise the production and/or possession of self-generated sexually explicit images and/or videos when it involves children who have reached the age set in application of Article 18(2) where these images and/or videos are produced and possessed by them with their consent and solely for their own private use?

Answer:

National law does not criminalise such cases.

Question 11. Reference in law to ICT facilitated sexual coercion and/or extortion

How does national law address ICT facilitated sexual coercion and/or extortion of children and/or other persons related to the child depicted on the:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexual content?

Answer:

Extortion is criminalised in Romanian legislation¹², regardless of the means of communication it is perpetrated by. Please see footnote.

¹⁰ Denmark, Germany, Liechtenstein, the Russian Federation, Sweden, Switzerland.

¹¹ Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

¹² ART. 207 of the Criminal code

Blackmail

Question 12. Jurisdiction rules¹³

Please indicate which jurisdiction rules apply under which conditions to the offences described above (questions 9-11) when the victim is not present in the Party when the offence is committed or when the offender is not present in the Party when the offence is committed.

Answer:

As a general rule¹⁴, Romanian criminal law applies to offenses committed outside Romanian territory by a Romanian citizen or a Romanian legal entity if the sentencing stipulated by Romanian law is life imprisonment or a term of imprisonment longer than 10 years.

(1) Coercion of an individual to give, to do, not do, or suffer something for the purpose of unlawfully acquiring a non-financial benefit, for themselves or for another individual, shall be punishable by no less than 1 and no more than 5 years of imprisonment.

(2) The same penalty shall apply to a threat to disclose a real or fictitious fact that is compromising for the threatened individual or for a member of their family, for the purpose set under par. (1).

(3) If the acts set by par. (1) and par. (2) were committed for the purpose of deriving a financial benefit, for themselves or for another individual, they shall be punishable by no less than 2 and no more than 7 years of imprisonment.

¹³ Please answer this question taking into account the requirements of Article 25 of the Lanzarote Convention.

¹⁴ Romanian Criminal code (Law 286/2009):

SECTION 2 Applicability of criminal law in space

ART. 8 Territoriality of criminal law

(1) Romanian criminal law applies to offenses committed on the territory of Romania.

(2) The territory of Romania is defined as the expanse of land, the territorial sea waters and inland waters, complete with the soil, sub-soil and airspace located inside the national borders.

(3) An offense committed on the territory of Romania is defined as any offense committed on the territory defined at par. (2) or on a ship sailing under Romanian pavilion or on an aircraft registered in Romania.

(4) The offense is also considered as having been committed on the territory of Romania when on that territory or on a ship sailing under Romanian pavilion or on an aircraft registered in Romania an action was committed with a view to perform, instigate or aid in the offense, or the results of the offense have been manifest, even if only in part.

ART. 9 Legal standing under criminal law

(1) Romanian criminal law applies to offenses committed outside Romanian territory by a Romanian citizen or a Romanian legal entity if the sentencing stipulated by Romanian law is life imprisonment or a term of imprisonment longer than 10 years.

(2) In the other cases Romanian criminal law applies to offenses committed outside Romanian territory by a Romanian citizen or a Romanian legal entity if the act is also criminalized by the criminal law of the country where it was committed or if it was committed in a location that is not subject to any State's jurisdiction.

(3) A criminal investigation can start on receiving authorization from the Chief Prosecutor of the Prosecutor's Office attached to the Court of Appeals in whose jurisdiction the first Prosecutor's Office is located that received information about the violation, or, as the case may be, from the Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice. A prosecutor is entitled to issue such authorization within 30 days of receiving the application for authorization; such deadline can be extended, under the law, but for no more than a total of 180 days.

ART. 10 Reality of criminal law

(1) Romanian criminal law applies to offenses committed outside Romanian territory by a foreign citizen or a stateless person against the Romanian State, against a Romanian citizen or against a Romanian legal entity.

(2) A criminal investigation can start on receiving authorization from the Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice, and only if the violation is not the object of judicial procedures that are already ongoing in the State on whose territory it was committed.

ART. 11 Universality of criminal law

(1) Romanian criminal law also applies to other violations than those stipulated at Art. 10, committed outside Romanian territory by a foreign citizen or a stateless person who is located voluntarily on Romanian territory, in the following cases:

In the other cases Romanian criminal law applies to offenses committed outside Romanian territory by a Romanian citizen or a Romanian legal entity if the act is also criminalized by the criminal law of the country where it was committed or if it was committed in a location that is not subject to any State's jurisdiction.

Also, by criteria of the victim's citizenship, Romanian criminal law applies to offenses committed outside Romanian territory by a foreign citizen or a stateless person against the Romanian State, against a Romanian citizen or against a Romanian legal entity. A criminal investigation can start in these cases on receiving authorization from the Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice, and only if the violation is not the object of judicial procedures that are already on-going in the State on whose territory it was committed.

Romanian criminal law also applies to other violations than those mentioned above, committed outside Romanian territory by a foreign citizen or a stateless person who is located voluntarily on Romanian territory, in the following cases:

- an offense was committed that the Romanian State has undertaken to repress on the basis of an international treaty, irrespective of whether it is stipulated by the criminal law of the State on whose territory it was committed;
- extradition or surrender of the offender has been requested and denied.

However, the general rules described below apply only unless otherwise required under an international treaty Romania is a party to (as the case of the Lanzarote Convention is).

Question 13. Specialised units/departments/sections

- 13.1. Are there specialised units/departments/sections in charge of dealing with ICT facilitated sexual offences against children, such as those referred to in this questionnaire (see questions 9-11):
- a. in law enforcement?
 - b. in prosecution?
 - c. in courts?

Answer:

Regarding prosecutors, according to art. 11 par. 1 point 2 of GEO no. 78/2016, the competence to conduct criminal prosecution for child pornography provided in art. 374 The Criminal Code belongs to the Directorate for the Investigation of Organized Crime and Terrorism. The prosecution is carried out by the prosecutor, who may delegate acts to judicial police officers.

At the level of the Romanian General Police Inspectorate, within the Directorate for Combating Organized Crime, the Office for Combating Child Pornography through Computer Systems functions with a number of 5 officers.

a) an offense was committed that the Romanian State has undertaken to repress on the basis of an international treaty, irrespective of whether it is stipulated by the criminal law of the State on whose territory it was committed;

b) extradition or surrender of the offender has been requested and denied.

(2) The stipulations of par. (1) lett. b) do not apply when, under the law of the state on whose territory the violation was committed, there is a cause to prevent the start of criminal action or the continuing of the criminal trial or the serving of the sentence or when the sentence has been served or when the sentence is considered as having been served.

(3) When the sentence has not been served or has only been served in part, the applicable procedure is that of the law on the recognition of foreign judgments.

ART. 12 Criminal law and the international treaties

The stipulations of Art. 8 – 11 shall apply unless otherwise required under an international treaty Romania is a party to.

Also, at the level of the Brigade for Combating Organized Crime, there are Criminal Intelligence Services, competent to carry out by delegation certain acts of criminal prosecution ordered by the prosecutors of the Directorate for Combating Organized Crime and Terrorism.

13.2. Please specify if there are specialised units/departments/sections in charge of dealing with ICT facilitated sexual offences against children committed by juvenile offenders.)

→ Please specify how the specialised units/departments/sections referred to above (questions 13.1 and 13.2) are organised (number of staff, structure, specialised in which areas within ICTs, etc.)?

→ As regards law enforcement, please indicate if:

- a. there is a victim identification function?
- b. there is an active contribution to the INTERPOL's International Child Sexual Exploitation (ICSE) image database? If not, why?

Answer:

At the level of the Romanian Police there is no formation dedicated to the children who are guilty of committing sexual offences.

The General Prosecutor's Order no 32/2014, appoints the prosecutors within the Directorate for Investigating Organized Crime and Terrorism which perform criminal prosecution in cases with children.

The Directorate for the Investigation of Organized Crime and Terrorism Crime is composed of the Central Structure (within which there are 9 prosecutors at the Cybercrime Service of the Counter-Terrorism and Cybercrime Division), with specialized prosecutors, (14 territorial offices and 26 territorial offices) in which there are 174 prosecutors who carry out criminal prosecution, including cases of cybercrime.

The working procedure in cases of child pornography through computer systems handled by prosecutors of the Directorate for the Investigation of Organized Crime and Terrorism and by the specialized officers of the Office for Investigation and Counterfeiting by Delegation involves a victim identification process by thoroughly analyzing photo-video materials identified on the high storage media from the suspect, including through the use of specialized programs. The most important instrument for identifying victims of child pornography is the ICSE - International Child Sexual Abuse Database, managed by Interpol. Officers from the Infant Pornography Bureau through Information Systems have received training programs to use the database and hold ICSE accounts. After finalizing photo and video file analysis, those falling under the law are loaded into the ICSE database. Also, police officers constantly connect to the database, actively participating in the process of identifying new victims, having discussions on the existing forum within the database.

At the same time, the most important tool for identifying victims of child pornography is the ICSE - International Child Sexual Abuse Database, managed by INTERPOL. After finalizing the photo and video file analysis, those falling under the law are uploaded to the ICSE database. Also, almost daily police officers are connected to the database, actively participating in the process of identifying new victims, having discussions on the existing forum within the database.

Romania has been participating in the ICSE database since 2009, when it was launched by INTERPOL. For the use of the ICSE, DCCO police officers have been specialized through training courses organized at the INTERPOL General Secretariat of Lyon.

Question 14. Challenges in the prosecution phase

What challenges do law enforcement, prosecution and courts face during the prosecution of ICT facilitated sexual offences against children involving the sharing of:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexual content?

Answer:

Generally, with regard to cybercrime - including in the case of child pornography - there are common problems identified at European level:

- the cross-border nature of the criminal activity requiring the obtaining of evidence through international judicial assistance, whether it is victim-related complaints or that it is about identifying IP addresses or other data;
- legislative differences between countries;
- encryption and anonymisation (generally the specialization of suspects in the technical field);
- lack of virtual currency regulation (currently preferred as a means of payment, including when it comes to blackmailing victims);
- lack of solutions for accessing data storage in the cloud;
- the lack of unitary data retention.

Also a challenge is sometimes the difficulty of obtaining testimonies from victims, as a consequence of trauma suffered during abuses. Instances of sexual abuse of minors usually involve specialists, such as psychologists and social workers within the Social Assistance and Child Protection Services, by providing consultations and introducing dedicated programs, making specialized reports, or even actually presenting places in home searches are carried out if urgent takeover of children is required. Subsequently, they continue to provide support to overcome the trauma suffered by providing specialist treatment.

Question 15. Training of professionals

Are the offences referred to in this questionnaire (questions 9-11) addressed in training for professionals such as:

- a. law enforcement agents (in particular for front desk officers)?
- b. prosecutors?
- c. judges?

→ If so, please share the details of the training offered, specifying whether the training is mandatory.

Answer:

In the context of the initial training program for court auditors (future judges and prosecutors), issues related to the matter of child protection against sexual exploitation and sexual abuse are addressed within the criminal law / criminal procedural module, and many discussions regarding practical issues in instrumentation of this type of causes are carried. Procedures in cases involving children are a priority for initial training in the field of criminal law, focusing on hearing / listening techniques. We point out that the initial training activity within the National Institute of Magistracy is eminently practical, with the court auditors using as teaching material, in training sessions, court files / real prosecutions.

Initial training activities take into account, as a matter of priority, the competence of the courts and prosecutor's offices attached to them, at which the auditors are to pursue their professional activity immediately after graduating from the Institute.

The National Institute of Magistracy also ensures the continuous (compulsory) training for magistrates and they are invited every year to formulate options for seminars or other continuous training activities in the areas of interest from the perspective of their specialization and job duties or in those areas where they feel the need to acquire additional knowledge.

Regarding the subject area, general seminars such as "Computer Crime" or "Rights, Support and Protection of Victims of Crime", "Forensic Expertise", "Hearing and Interaction with Minors in the Judicial Procedures", "Work with vulnerable or vulnerable groups - children, the elderly, people with disabilities, institutionalized people or other categories of people" are part of the curricula.

Also, in the framework of the continuous training activity carried out between 2015-2017, seminars dedicated to the protection of children's rights in various forms, including against sexual exploitation and sexual abuse, have been provided.

Thus, in 2015, the following activities were organized in the field of the protection of children's rights:

- The "justice for children" seminar was organized in Bucharest on May 11-12, 2015; the seminar was attended by 18 judges, 1 prosecutor, 1 full-time INM trainer, 1 expert from National Authority for Citizenship, 1 expert of the INM.

- The training seminar on child-friendly justice - organized by ERA in collaboration with NIM, in the framework of the European Commission funded project "Fundamental rights of the child in practice: furthering child-friendly justice within the EU legal framework" was organized in Bucharest on December 7-8, 2015, during which the aspects regarding the application of the Convention in the national practice were discussed. This training activity was attended by 15 European magistrates and 14 Romanian judges. Within this project, a set of materials on EU and international legal instruments on judicial cooperation in this field will be drafted. The materials, which will mainly consist of case studies developed by EU experts, will be used in seminars organized at national level.

In 2016, the following activities were organized in the field of child rights protection:

- The seminar on working with vulnerable categories - children, elderly people, disabled persons, institutionalized persons or other categories of people was organized in Bucharest between 2-3 June 2016. 13 judges and 5 prosecutors participated.

- The Seminar on Hearing and interacting with juveniles during judicial proceedings was organized between 23-24 June 2016 in Bucharest. 16 judges and 3 prosecutors attended.

As regards the activities planned for 2017, within the framework of the Project "Assistance for Institutional Capacity Building in the Field of Training of Judges and Prosecutors for the Application of the New Laws" financed under the Swiss - Romanian Cooperation Program for Reducing Economic and Social Disparities within the European Union, 6 centralized seminars on family law will be organized, which will include topics related to child protection and aspects of hearing techniques for minors.

We mention that until the moment of reporting, the following activities in the field of child rights protection were organized in 2017:

- The Seminar on Hearing and interacting with minors during judicial proceedings was organized between June 26-27, 2016 in Bucharest. 11 judges and 5 prosecutors participated.

- Seminar on Working with vulnerable or vulnerable categories - children, elderly, disabled, institutionalized or other categories of people to be held in Bucharest on 2-3 November 2017.

Professionals are also encouraged to participate in international seminars (EJTN, ERA, CEPOL, etc.)

Regarding police officers, both at national and international level, specialized courses are regularly organized in the field of investigation and fight against child pornography through computer systems, involving police officers investigating or participating in the investigation of such by deeds.

The concept of joint training of judicial authorities is reflected in the CYBEREX (Romanian Center for Excellence in Combating Cybercrime), which provides training courses in the field of cybercrime investigation in general for legal professionals (judges, prosecutors and police officers) , both in matters of substantive or procedural law, as well as in forensic issues.

Partnerships

Question 16. International co-operation

16.1. What measures have been taken to co-operate with other Parties to the Lanzarote Convention for:

- a. preventing and combatting sexual coercion and/or extortion resulting from the sharing of self-generated sexually explicit images and/or videos?
- b. protecting and providing assistance to the victims of sexual coercion and/or extortion resulting from the sharing of self-generated sexually explicit images and/or videos?

Answer:

Referring to sexually explicit images or videos, in Romania the ABUZ hotline (<https://oradenet.salvaticopiii.ro/esc-abuz>), set up under the Ora de Net project (safer Internet Project) exchanges reports with the international INHOPE ICCAM database, which collaborates with national law enforcement authorities.

- c. investigating and prosecuting sexual coercion and/or extortion resulting from the sharing of self-generated sexually explicit images and/or videos?

Answer (a + b+ c):

Specialized IGPR officers work with international law enforcement institutions and agencies, with an operational exchange of data and information to combat child sexual abuse. At the same time, the Romanian Police are actively involved in prevention campaigns at both national and international level, currently taking place at the international level the Prevention Campaign entitled "Say No", which involves broadcasting in the online environment, in the press, but also in the educational institutions, a twelve-minute video by EUROPOL. The film reveals the dangers that young people face in the online environment by accepting and providing information and personal photos of unknown people.

The National Authority for the Protection of Children Rights and Adoption (NAPCRA) and Save the Children Organization were part of the PROMISE PROJECT initiated by the Baltic Sea Council (CBSS) in 2015 and the Verwey - Jonker Institute in the Netherlands in partnership with the Child Circle Organization, Barnahus, Reykjavik, Iceland and other similar centers in Sweden, the Netherlands and Croatia.

Thus Romania was a pilot country together with 11 other European countries (Bulgaria, Cyprus, Estonia, Germany, Hungary, Latvia, Lithuania, Malta, Poland, England and Scotland).

The aim of the project was to present and promote at European level the model of the Barnahus Center in Iceland and the other Barnahus based centers as good practices and friendly environments for the multidisciplinary assessment of the victims, prevention of the child re-victimisation through unitary of the hearing and the rehabilitation of children victims or witnesses of violence.

The representatives of the pilot countries participated in the exchanges of experience during the project to define the activities of the multidisciplinary model teams and their inter-institutional case management procedures with the health services, the legal medicine services, the police, the parquet, courts, etc.

Also, within the project was developed and finalized a European (standard) European working instrument through the contribution of all the representatives of the participating states to the project. It comprises 10 standards which have been supplemented with information on best practices and three annexes which cover the main European directives in the field on which the document was drafted: European Parliament and Council Directive 2012/29/EU laying down minimum standards (Directive on Victims), Directive 2011/92/EU of the European Parliament on combating the sexual abuse and exploitation of children and child pornography (Sexually Abused

Child Directive) and the Council of Europe Convention on the Protection of the Rights of All Victims of Criminal child sexual exploitation and sexual abuse (Lanzarote Convention).

The project "AUDIS: for a better hearing of the minors in Romania» whose pilot phase was conducted from April 2012 to December 2014, aims to improve the existing practices in Romania in regard to the cases involving minors and, in particular, hearing of the minors involved in legal proceedings.

The project was coordinated by the Nongovernmental Organizations in Child Protection (FONPC) and implemented under an inter-institutional cooperation protocol between the French Embassy in Romania, the Association "Voix de l'Enfant", Ministry of Justice, Ministry of Interior, General Inspectorate of Romanian Police and the National Agency against Trafficking in Persons, Ministry of Labour, Family, Social Protection and Elderly - National Authority for the Protection of the Rights of the Child and Adoption, the General Directorate of Social Assistance and Child protection Cluj and Dolj county. Through AUDIS project implementation, there were established three hearing rooms in Cluj-Napoca, Craiova and in Bucharest

16.2. What measures have been taken to co-operate with other Parties to the Lanzarote Convention for:

- a. preventing and combatting sexual coercion and/or extortion resulting from the sharing of self-generated sexual content?
- b. protecting and providing assistance to the victims of sexual coercion and/or extortion resulting from the sharing of self-generated sexual content?
- c. investigating and prosecuting sexual coercion and/or extortion resulting from the sharing of self-generated sexual content?

Answer:

All areas related to cybercrime, namely, prevention, harmonisation of legal framework, institutional capacity building, cooperation with the private sector and international cooperation are priorities for law enforcement structures with competence in the field.

DIICOT has initiated some European projects (Romania - Spain, Romania - Hungary - Bulgaria, Romania - Italy - Bulgaria) resulting, among other things, in the development of good practice manuals.

Projects are also carried out by co-opting representatives from the private environment (communication service providers, IT developers, etc.) The specialized officers of the General Police Inspectorate - the Department for Combating Organized Crime cooperate with the international law enforcement agencies and agencies, with an operational exchange of data and information, in order to combat the sexual abuse of children. At the same time, there is an active involvement in the prevention campaigns conducted both nationally and internationally, and the "Say No" prevention campaign, which involves dissemination in the online environment, in the press and also in the educational institutions of a video produced by EUROPOL, presenting the dangers that young people face in the online environment by accepting and providing information and personal photos to unknown people.

Also, Romania is part of the EMPACT project and is a participant for the priority "Child Sexual Exploitation", and within this priority Romania through DCCO - IGPR - SCCI (ITC) participated in several operative actions established annually through Operational Action Plans, actions to combat child pornography through computer systems.