

# INTERPRETABLE JURISPRUDENTIAL ASPECTS OF PIMPING, CHILD PORNOGRAPHY AND BLACKMAIL

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## **Abstract:**

*Child pornography, sexual exploitation of various vulnerable persons, trafficking in minors and human beings in general are crimes whose number has increased exponentially throughout Europe and particularly in countries considered poor - Romania and the Republic of Moldova being considered, unfortunately, to be among the "leading" countries in terms of perpetration of such antisocial acts.*

*Our study wishes to analyze some nuanced aspects related to the way some of these crimes and the ways of committing them are interpreted in the case law, this article being based on a relatively recent case where different interpretations were given to the same facts, and in the appeal appeal a change of legal framework was made which we rejected and which we wish to criticize in this way.*

**Keywords:** *Minors, child pornography, human trafficking.*

## **Introduction**

Pornography itself is a growing phenomenon in postmodern societies and carries with it a wide range of information that directly or indirectly affects those affected by this type of crime. It has become increasingly evident that it has a significant impact on the psychosocial structure of the subject who comes into contact with pornographic material [1].

The problem arises, therefore, when unhealthy stimuli become the paradigm of sexual intercourse. Today's widely circulated pornographic content is based on an overestimation of the vulnerability of women and the female body. A logic of consumption, in its destructive connotation, follows the vexatious perspective of imposing the subordinate role of women, because this is what excites the target audience [2].

“The consumption of pornographic images of children is not new”. In the 1970s “there was a great explosion of child pornography produced”, mainly in Denmark, the Netherlands and Sweden, which had “liberal laws concerning sexuality. In these countries movies, magazines and books containing pornographic images of minors were sold legally “[3], [4].

'Currently Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011, on combating the sexual abuse and sexual exploitation of children and child pornography, sets out the European actions in this area. This directive, together with the Budapest Convention (Convention on Cybercrime of 23 November 2001) and the Lanzarote Convention (Convention of the Council of Europe for the protection of children against sexual exploitation and abuse, Oct. 25 2007) have been the basis of the recent reforms implemented in Spanish criminal law in combating this type of crime'[5].

As follows from Art. 2 lit. (c) of Directive 2011/93/EU<sup>6</sup>, child pornography comprises any material which visually depicts a child engaged in real or simulated sexually explicit conduct, any depiction of the genitals of a child primarily for sexual purposes, any material which visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct, or any depiction of the sexual organs of a person appearing to be a child primarily for sexual purposes or realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child primarily for sexual purposes [6].

Phenomena of this type are occurring more and more often in Romania, which, more recently, has become a rich source of young people without opportunities who, being tempted by a quick and easy gain, fall very quickly into the net of pimps and human traffickers. The preferred target of such criminals are people from single-parent families, disorganized families or people in foster care or in the care of social workers, lacking affection and easily influenced and manipulated, as was the case here.

"Romania is recognised as one of the primary countries of origin for human trafficking across Europe; in 2021, 71 per cent of identified victims were of sex trafficking. Moldovan women are often trafficked through Romania and there are reports of traffickers working in both countries to exploit Moldovan women". Despite the strides by both governments to improve the situation, trafficking in Romania and Moldova is a "longstanding issue, in part due to the incidence of poverty. Women living in poverty are especially vulnerable to becoming victims, as they are often desperate to escape poverty and believe they are being presented with an opportunity to do so".

Both countries grappled with communist authoritarianism until the late 1980s and have struggled to build stable economies since. Romania has the highest poverty rate in

the EU, while Moldova, now a candidate country since the war in Ukraine, remains among the poorest countries as a whole [7].

“According to the Organization for Security and Co-operation in Europe (OSCE), despite only 19% of THB victims being trafficked for sex, sexual exploitation makes up to 66% of the global profits associated with human trafficking, at around \$99 billion/year. In 2020, the average annual profits generated by each victim of forced sex was at around \$100.000/year, six times more than the average profits resulting from other trafficking forms, worldwide - this helps sex trafficking yield investment returns between 100% to 1.000%”.[8], [9].

“Romania remained the profile country of origin for the sexual exploitation of women and children in Europe. The vulnerable population, predisposed to low levels of well-being and in shortage of real long-term economic prospects, ventured outside the country and turned towards mass migration”. On top of it, the high levels of poverty and insufficient labour opportunities have pressed individuals to assume highly risky decisions. Despite the growing number of awareness-raising campaigns provided by governmental agencies (mainly the National Agency Against Trafficking in Persons, ANITP) and non-profit organizations, human and sex trafficking are still regarded as taboo activities, with collective prejudice stereotyping the nature and context of the registered victims” [10] [11].

### **Short description of the case**

Initially, the defendant was indicted for child pornography, attempted trafficking in persons, sexual act with a minor in a continuous form, extortion in a continuous form and instigation to theft in a continuous form provided for by art.374 para.1,2 of the Penal Code, art. 32 of the Penal Code to art.211 par. I, para. 2 lit. a. Penal Code with reference to art. 210 par. I lit. a Penal Code, art. 220 par. I Penal Code with application of Art. 35 para. 1 of the Penal Code. and art.207 of the Penal Code with application of art.35 para.1 of the Penal Code and art.47 of the Penal Code with reference to art.228 para.1 of the Penal Code with the application of Art.38 (1) Penal Code.

His actions consisted in the fact that on 16.08.2021 the workers of SCCO Vrancea were notified ex officio that the named X.P. has sexually explicit images with the minor

A.C. aged 14. The minor has been having conversations with the defendant through Facebook Messenger and Whatsapp applications since approximately April 2021, also since then considering that she has a friendly relationship with him. On July 17, 2021, the two engaged in normal sexual intercourse and did not use any protective measures, with the minor claiming that the defendant was the first man with whom she had sexual intercourse.

From the beginning of the relationship, the defendant asked her for sexually explicit pictures, and the minor agreed, considering that during the relationship she sent him about 100 pictures. After having sexual relations with the defendant the defendant started asking her to make videos with implicit sexual content. There were instances when the minor refused to comply with the defendant's instructions and he threatened to block her on all social media applications and stated that if she did not send him pictures he would leave her [12].

On the offence of attempted trafficking in minors provided for by Art. 32 of the Criminal Code reported to Art. 211 para.1, para.2 lit. a. of the Penal Code with ref. 210 (1) (a) of the Criminal Code also held against the defendant in the indictment, by the conclusion of 20.09.2023, the Court held that the criminal activity charged against the defendant (pressuring the minor on several occasions to have sexual relations with other persons in exchange for money) would be more in line with the provisions of Article 213 (1) of the Criminal Code. 1, 2 and 3 of the Criminal Code, since it has been taken into account that the theft material submitted in the case does not reveal, beyond any reasonable doubt, the presence of the purpose provided by law for the existence of the offence of trafficking in persons/minors, namely that of "exploitation" of the injured person. It has thus been shown that the defendant cannot be said to have forced the minor A.C. to engage in prostitution within the meaning of Article 182(1) of the Criminal Code, letter of the Criminal Code [13].

For these reasons, the above-mentioned conclusion ordered a change in the legal classification of the accused from the offence of attempted trafficking in minors provided for by Article 32 of the Criminal Code to Art. 211 para. 1, para. 2 letter a of the Criminal Code with reference to Art. 210 para.1 lit. a of the Criminal Code to the offence of

attempted procuring under Art. 32 of the Criminal Code in relation to Art. 213 para.1, 2 and 3 of the Criminal Code [14].

As regards the charge of attempted procuring, according to which the defendant X.P. attempted to induce the minor victim, by means of moral coercion (emotional/emotional blackmail), to engage in prostitution in order to obtain income, as mentioned above, the Court considers that it has not been proved beyond reasonable doubt.[15].

However, the Court finds that this discussion is a singular one, and the rest of the evidence in the case does not reveal that the defendant subsequently took any other step that would convince us that he tried to induce the injured person to start practicing prostitution

In this evidentiary context, the Court considers that the discussion between the defendant and the injured person may include the explanation that the defendant gave to the courts, namely that he only wanted to know the opinion of the injured person.

Therefore, the evidence of the case does not clearly support that the defendant's intention was to induce the injured person to start practicing prostitution for his own benefit, in order to obtain income easily and how according to the provisions of Article 103 para. 2 final sentence of the Code of Criminal Procedure, conviction is ordered only when the court is convinced that the charge has been proven beyond reasonable doubt, the doubt benefiting the defendant, the Court considers that the defendant must be acquitted of the offence of attempted procuring, provided for in Article 32 of the Criminal Code in relation to Article 213 para. 1, 2 and 3 of the Criminal Code.

In the light of these considerations, with regard to the offence of attempted procuring, provided for in Article 32 of the Criminal Code in relation to Article 213(1), (2) and (3) of the Criminal Code, the Court finds that the offence of attempted procuring is not covered by Article 213(1) and (3) of the Criminal Code. 1, 2 and 3 of the Criminal Code, the decision to acquit the accused must be adopted on the basis of the provisions of Article 16 para. 1 letter c Code of Criminal Procedure, as there is no evidence that the defendant committed the crime [16].

In our opinion, the first legal framework made by the Court was correct, so we opted to respond to the change of legal framework. In the following aspects that we will

expose and analyse we will show why we considered (just like the representative of the Public Prosecutor's Office) that the minor victim was the victim of a crime of attempted pimping and even attempted trafficking in minors.

### **Critical analysis regarding child trafficking and trafficking in human beings**

According to Article 211 (1) of the Criminal Code, recruiting, transporting, transferring, harbouring or receiving a minor for the purpose of exploitation constitutes a criminal offence, the amount of the penalty being higher under the aggravating circumstances provided for in paragraph 2 (a) when the acts were committed by coercion, abduction, misleading or abuse of authority.

The offence of trafficking in minors is carried out in the form of direct intent qualified by purpose, the essential condition being the existence of the purpose with which the perpetrator attempted to commit the act being that of exploitation of the victim within the meaning of Article 182 of the Criminal Code.

From the evidence administered both at the criminal prosecution and during the trial, it appears that the defendant committed sexual acts with the minor A.C., a situation admitted by him over a long period of time, cultivating in the victim the feeling that he likes her, encouraging her to maintain the relationship but with certain conditions that border

From the content of the defendant's conversations with the victim, found on pages 75 to 79 (screenshots), it appears that the victim asked him to have sex with a friend in exchange for money or to satisfy his own pleasures in the presence and contribution of another man. Although the minor tells him in several circumstances that she does not agree, the defendant insists that she must do whatever he says, exploiting her vulnerability, i.e. the attraction and feelings she has towards him [17].

Returning to the concept of exploitation, the term is defined as follows: "Exploitation of a person shall mean: including compelling a person to engage in prostitution, pornographic performances for the production and dissemination of pornographic material or other forms of sexual exploitation.

Another way of exploiting people is by forcing them into prostitution by coercing a person to engage in sexual acts with various persons or by forcing them to engage in pornographic acts with a view to producing or disseminating pornographic material in

order to obtain financial or other benefits for themselves or another person. In this case, the offence of trafficking in human beings provided for in Article 210 of the Criminal Code will be committed in actual concurrence with the offence of procuring provided for in Article 213 of the Criminal Code [18].

In this case, it is clear that the defendant, when he committed the crime, tried (at least) to use the victim for the purpose of practicing prostitution with various acquaintances in order to take advantage of the sums of money, which, moreover, he obtained from her through other occult means - he instigated her to steal some family jewellery and to steal some money from the maternal assistant who had her in his care.

Exploitation itself, as a way of working, can intervene here in the discussion as long as the minor victim (she was 13 years old at the time of the commission of the offences) was subjected to numerous pressures to engage in sexual acts with the defendant and his insistence that these acts be performed with various other persons in exchange for money. Moreover, money was the motive throughout the consummation of the relationship between the two and, although the amounts obtained from her were not necessarily substantial, the manner in which they were obtained leads us to believe that the defendant used the sentimental ascendancy he had over the naive victim in order to obtain these amounts.

As such, we consider that in this case there was a certain type of recruitment of this minor (through social networks) with a view to attracting her and a future explanation in order to obtain sums of money, so that the classification made by the first instance relating to attempted trafficking in persons and sexual act with a minor in continuous form should be upheld and sanctioned as such.

Trafficking is also characterised by: taking advantage of a person's inability to defend him/herself or to express his/her will, or of a person's apparent vulnerability;

As far as trafficking (in human beings) is concerned the methods of trafficking differ from one case to another, but looking at the phenomenon as a whole, we can outline how traffickers operate and the stages they go through before actually exploiting people. In carrying out their criminal activities, traffickers take into account several aspects in their choice of victims, namely lack of a satisfactory standard of living, lack of education,

demand for victims' services, and also lack of criminal law or lack of diligence in its implementation.

It is obvious that in this case the defendant, older than the victim and having a somewhat more consistent life experience, took full advantage of her state of vulnerability (consisting of lack of affection, lack of an organized family and naivety of age), which strengthens even more the frame of the crime retained by the court.

### **Proxenetism / Proxenetism and blackmail**

With regard to the commission of the offence of procuring in this year's case law of the national courts it was held that the defendants induced the victims to engage in prostitution by starting an amorous relationship with them, and during this relationship, persuaded them to engage in prostitution. For example, in one case it was found that the defendant had cohabiting relationships with three women, who he induced into prostitution and then facilitated their activity by providing them with protection [19].

Taking into account the above considerations, as well as those in the above mentioned decision, it can be concluded that the social value protected by the criminalisation of the offence of procuring under Article 213 of the Criminal Code is the freedom of the person, and the holder of this freedom is the "exploited" person, who thus becomes the passive subject of the offence. Based on the group of offences in which the offence of procuring has been included in the new Criminal Code, the main legal object of this offence consists in social relations relating to the fundamental attributes of the person, relations which presuppose the procurement of means of subsistence through work, in conditions of respect for the rules of morality and the assurance of human dignity, excluding any act of acquiring financial gain from the practice of prostitution by another person" [20].

It is true that the court of appeal did not follow up on the classification of attempted pimping, but we consider that in this case there was also an abuse of an obsessive nature against the minor who was repeatedly instigated to have sexual relations with other male persons known to the defendant in order to obtain possible sums of money that he was going to offer her, there being evidence in the case file of statements and interceptions of the DIICOT in this regard.

A similar situation is presented by the indictment number 1721/P/2012 of the Prosecutor's Office of the G. Court, the defendant was sent to trial for committing the crime of "pimping", provided for by Article 213 paragraph (1) of the Criminal Code, with the application of Article (5) and Article 43 paragraph (1) of the Criminal Code.

Not having her own accommodation, in September 2008 the suspect agreed to stay at the home of the defendant K.D.P. in the town of R., where the two were to share the proceeds of prostitution. The suspect claims that the defendant asked her to "produce" the sum of 500 lei every day, and if she did not have enough clients during the week, she was obliged to make up the shortfall on other days. P. D. estimated that between 2008 and 2001 she made approximately 100,000 lei from prostitution. With the money he earned, the defendant bought a car and a plot of land on which he built a house. The suspect claims that she spent only a small part of the money she made, to buy food and cigarettes [21].

As it regards child pornography, initially mentioned in the case by the Court of First Instance, on the merits, it was not reanalysed in the appeal, the latter court making a strict reference to the other three offences, which in our opinion was wrong based on the jurisprudential and doctrinal considerations listed below.

It should be noted that it has been pointed out in doctrine that the purpose of the legal rules on child pornography is to criminalize the production and possession of images of children engaged in sexually explicit activities [22], [23].

On the occasion of a previous study, in the context of the analysis of the offence of child pornography in the version provided for by Art. 374 para. (11) of the Criminal Code as a form of exploitation of a vulnerable person, we pointed out that: "the purpose of obtaining financial gain gives the offence a character specific to the crimes of trafficking and exploitation of vulnerable persons, in which the exploited person is a commodity in the hands of the perpetrators" [24], [25].

As regards to blackmail certain courts have held that The fact that he defendant threatened the injured person, aged 12, with the disclosure of a real, compromising fact for the injured person, namely the bringing into the public domain of videos in which the two had different types of sexual relations, in order to unfairly acquire a patrimonial benefit for himself, namely a sum of money, the injured person succeeding in handing him the

sum of 10 lei meets the typical elements of the offence of blackmail in the assimilated variant and in the aggravated variant revised by Art. 207 para. (2) and para. (3) of the Criminal Code; not of the typical offence and the aggravating variant of this offence provided for by Art. 207 para. (1) and para (3) C. pen Criminal Division {26}.

Otherwise, the main legal object of the offence of extortion consists of social relations relating to a person's mental freedom; the secondary legal object is social relations relating to a person's physical integrity, property relations or relations relating to a person's non-patrimonial rights or interests [27].

According to the case law on the subject, the subjective aspect implies direct intent, because the perpetrator commits the act with the aim of unjustly gaining a benefit for himself or for another. The use sought by the perpetrator may be of any kind, for himself or for another person, and may come from any person, not only from the person who was coerced, because the purpose of the law is not to harm the victim, but to gain a benefit [28].

In fact, in another case, it was held in the writ of summons, in essence, that between 12.08. ...20, the defendant A.A.A. exerted continuous psychological pressure (repeated phone calls, intimidating text messages, unannounced visits to the victim's home) and physical violence (repeated blows with his fists and feet, as well as with the handle of an axe; spraying the victim with fuel; siccing large dogs on the victim) on the injured person C.C.C. with the aim of unjustly obtaining for oneself pecuniary benefits consisting of the sum of 70 euros and 1000 lei, which represents the alleged debt accumulated by the injured person as a result of loans granted with interest [29].

There are many similarities between all these cases and the case analyzed by us, as in the case analyzed there were repeatedly threatening messages and attitudes towards the victim who was easily manipulated and impressed, considering that she had not had previous similar relationships. The purpose was for the defendant to obtain for himself various benefits, in particular sums of money, all with direct intent. As such, here too, in our opinion, the existence of an offence of blackmail in a continuous form can be retained.

## Conclusions

As can be seen from the above analysis, the intensity and seriousness of such acts is very high, as the minor victims may remain forever psychologically affected by their effects and by the way their exploiters act. It is possible that at the moment they do not acutely feel what has happened to them, but the undesirable effects are felt much later, in adulthood, when they find that they cannot organize a coherent family life, cannot have serious and lasting relationships, children, etc. I believe that the presentation of such cases and how they are resolved by the courts are useful both from a criminal jurisprudential and sociological perspective, the phenomenon being one of widespread in both Romania and Europe.

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