

R O M A N I A
MINISTRY OF INTERNAL AFFAIRS
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DOCTORAL THESIS

**PREVENTING AND COMBATING SEXUAL ASSAULT
AGAINST POTENTIAL VICTIMS**

DOMAIN : „*Public Order and National Security*”

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Thesis elaborated for obtaining the title of Doctor in
„*Public Order and National Security*”

BUCHAREST, 2020

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I. CONCEPTUAL GUIDELINES OF THE RESEARCH

In any society, sexual abuse or sexual violence is an extremely serious phenomenon affecting social relationships, but in particular having long-lasting consequences for the victims. One of the problems of sexual abuse of all kinds is related to the fact that it is the least acknowledged and reported form of violence, and a large percentage of cases do not even come to the attention of the authorities. This issue has been addressed by numerous national and international bodies, non-governmental organisations, which has led to an increasing awareness of the importance of reporting cases of sexual assault.

In the literature, sexual abuse is defined in various forms. Therefore, in addition to the definition of sexual offences in the text of the law, the Criminal Code, there are a number of definitions of sexual abuse from psycho-social perspectives – the sexual violence is any form of coercion on sexual intercourse and behaviours with exaggerated sexual content, which can occur in very different contexts, from sexual harassment at the workplace, rape of minors, to the obligation of having sex in marriage. Sexual violence is characterized by an exercise of power that humiliates and discourages the victim. It does not necessarily involve physical or bodily violence, sometimes being enough a threat of force or punishment.

However, a special situation is represented by the sexual abuse against minors which involves an adult engaging into sexual intercourse a minor, immature and dependent child or teenager who is not able to understand these kind of actions which violate the traditional norms of the family.

Recently, in the European states, there has been an increase in the debate on the protection of the population against sexual assault regarding the promotion of social measures. This concern did not necessarily come from the alarming increase in the number of such acts, but also as a result of the awareness that this negative aspect of a democratic society is seriously harming victims through the trauma it causes.

A number of European bodies and organisations have put on the agenda the issue of the risk that sexual assaults may pose as a priority in identifying and promoting certain viable solutions to this phenomenon. Over the years, they have also developed a number of studies or projects that have only highlighted the issue and called for the best way to improve the situation. The Community and international institutions have often joined positive initiatives in relation to this area affected in recent times and have collaborated in line with the possibilities conferred by the EU acquis.

An important aspect that has been identified is the mobility of offenders, generally speaking, but of sex offenders in particular, benefiting from this opening of borders in the European area, they began to travel from one country to another in search of new victims or to lose track. The European Union is an area created for its citizens, having the common principles or values that promote the peace and well-being of members, human dignity, freedom, security and justice without borders, all of which completely exclude deviant, anti-social behaviour.

In this respect, some States have identified certain measures which, while not limiting the right and freedom of movement provided for in European and international legislation, monitor the movements of sexual abusers, thereby intimidating their criminal intentions. Also, an attempt has been made to find solutions in order to create an efficient and operative information exchange system concerning these sexual offenders who travel for sexual purposes, starting by investigating their criminal record through the ECRIS system, following the identification of an information exchange channel through which the member states could be informed regarding certain dangerous sexual offenders who freely travel through Europe.

In recent years, a number of serious, tragic cases, within the European countries involving dangerous sex offenders, have made law enforcement authorities in these countries more aware that measures need to be taken in order to prevent and combat such crimes. Some of these states have adapted their criminal legislation to this new challenge tightening the penalties for sexual offences.

The theme of this research project is reflected and analysed concerning both our national authorities and European and international bodies to prevent and combat sexual abuse offences in all that these facts entail, but in particular when the potential victims are minors.

Starting from the initial working hypothesis, *the judicial cooperation concerning the prevention and combating of sexual abuse*, the main purpose of research at issue is represented by the analysis and research of the existing realities and requirements within sexual abuse, being an integrated and interdisciplinary research whose *specific objectives* are illustrated across the paper's chapters.

- Knowledge of the current framework in the field of sexual abuse in the context of globalisation;
- Knowledge of the current diagnosis of the case of sexual abuse
- Social impact of sexual abuse;
- Analysis of forms of protection of victims of sexual abuse;
- Comparative analysis of the effectiveness of the systems of social control and criminal control of sexual abuse at European and Romanian level;
- Dissemination of the results obtained and the transfer of information through the completion of the research directions and doctoral thesis.

The research I have carried out during my doctoral studies is particularly contemporary at national, European and international level, and has focused on the comparative analysis of criminal policies in several European countries, criminal legislation, defence mechanisms and the risk of sexual abusers in terms of their likelihood of recurrence.

Also, a part of the research had into consideration the processing of statistical data on crimes against sexual freedom and integrity that have been recently reported at the level of the Romanian Police, trying to analyse the trend of crime in this field, as well as the characteristics resulting from these data.

The research methodology, which combined both the bibliographic study and the study of social documents, consisted of systemic, comparative analysis and the complex approach of the researched theme, considering the goals and tasks proposed from the beginning.

The research methods used along the way were represented by:

1. *Analysis of social documents* - study of international, European and national laws, bibliographic documents which exist in Romania, access to specialized websites on the Internet, analysis of case law in the field of sexual abuse;
2. *Comparative analysis* of the legislative and inter-agency cooperation system in different states to prevent and combat sexual abuse;
3. *Statistical analysis* on crime in the field in Romania and other countries;
4. *S.W.O.T. analysis* of criminal policies in the field of preventing and combating sexual abuse;
5. *Questionnaire-based sociological analysis* concerning the Romanian criminal policy systems in the field of prevention and combating of sexual abuse

Finally, the scientific research, following these predetermined steps to achieve the proposed objectives, led to the submission of relevant proposals based on well-founded conclusions.

The content of the thesis has been determined by the purposes and tasks of the research, established from the beginning, and is structured in 5 chapters, bibliography and annexes, with a balanced content, each of which is developed within its own subchapters and sequences dedicated to conclusions.

The introduction, stands for the topicality and appropriateness of the subject at issue, the objectives of the research, the used research methods, the structure of the doctoral thesis, and the importance of the work in the present scientific context.

Chapter 1 - "Current proportions of crimes of sexual offenses", is the beginning of the research and has a first sub-chapter aimed to present the current state of

knowledge of the problem of sexual abuse and the aspects concerning the shortcomings found at the level of the Romanian law system.

Our research has started from a series of recent findings, which relate to a pressing but still unresolved issue in our country, that of the management by the responsible authorities of the risk that sex offenders or violent offenders pose when they are released from prison.

Romania had legislative gaps in this area, as there were no special laws and no criminal policies implemented to manage the risk to the community of sexual abusers. Except for criminal law, Penal Code, Criminal Procedure Code and several related application laws, there were no mechanisms, procedures, or other tools within the reach of law enforcement authorities to combat the phenomenon.

In the same context, the Prison Administration is quite widowed of the necessary mechanisms to achieve an effective re-education of offenders in the prison environment, but also of specialists who carry out studies and prison treatment programmes. Probation is also another authority responsible for the reintegration into society of free offenders, based on *Law No.252/2013 on the organisation and functioning of the probation system*, but it cannot be said that the results are appropriate in this respect.

The general issue has also been discussed at European level, an example of which is '*SOMECEC – Serious Offending by Mobile European Criminals – Serious Crimes committed by travelling criminals in Europe*'¹, a two-year project (2013 - 2015), co-financed by the European Commission with the main aim of improving the management of perpetrators of serious, violent or sexual offences and the exchange of information on persons travelling to European Union states.

Another point to mention is the fact that the Romanian police did not have specialized structures on the line of prevention and combating crimes of sexual nature,

¹ www.somec-project.eu – accesat la 24.04.2018

except for an office in the General Police Directorate of Bucharest. At the same time, on the line of managing the sexual offenders, no application was developed to help the operative structures on the two components, of documenting and investigating the criminal activity and of supervising and managing the perpetrators.

Also in this chapter are *presented the particularities regarding sexual crime, both at the level of Romania and other European states, by statistical analysis of crime figures in the field*. As far as Romania is concerned, data from the official statistics of the last five years have been taken in order to be as accurate as possible, considering the changes in criminal law in 2014.

For an understanding of the danger and severity of the criminal acts of these sexual abusers, this picture was complemented by the exposition of some of the most well-known cases in international judicial practice, which highlighted their aggressiveness and cruelty, but also the risk of very high recidivism. For Romania, there are quite a few isolated but specific cases of serial rapists: Bălan Constantin Gabriel - 13 rapes and attempted rape, Chirilă Viorel – 3 murders and 7 rapes, Mihai Serafim Macavei Albu – 40 rapes, Vlad Nicolae – 3 murders, 3 rapes, 1 robbery, 1 assault and 1 bodily harm, Manzăru Florin – 1 rape murder, Ninel Mogoșeanu – 1 rape, Stan Eugen – 18 acts of sexual assault, Râmaru Ion - 15 offences, 4 murders and 8 attempts of rape murder , 1 rape, 1 robbery and 1 theft.

A succinct conclusion is that, against the background of a general decrease in the criminal phenomenon in Romania, the acts against sexual freedom and integrity increase by relatively small percentages. The presentation also revealed some of the general characteristics of these categories of facts, so that an in-depth detail and analysis was carried out in a future chapter.

This is a trend reported from previous years, offences of rape or sexual assault committed in rural areas against persons of female sex, aged or under the age of 15-18 years. One of the main causes identified is the lack of defence of these people, who live alone in rural areas, often in isolated houses.

It is obvious, even from the few exposed cases, that all these sex offenders, serial rapists, had a criminal record or were convicted prior to committing such offences or violent offences. These dangerous, violent criminals were released over time, sometimes paroled, before the final deadline, but almost all the time, they recurred, more often than not, with even greater violence, with more atrocity and evolving to more serious acts.

In order to carry out **the second chapter "Socio-legal diagnosis and the polymorphic dimensions of sexual abuse"**, part of the scientific research, the statistical analysis has been used as a method by processing statistical data on crimes against freedom and sexual integrity that were reported at the level of the Romanian Police, over a period of time. Thus, the result was centred on the identification of patterns, criminal and victim typologies, different aspects of the strict presentation of statistical data, carried out in the previous chapter.

Therefore, in order to achieve the objective of the scientific research, this study of cases reported throughout the country could lead to the establishment of the defining and statistical behavioural elements for the perpetrators and victims of these crimes, including the context in which the aggression has been committed, thus succeeding in the realization of typologies of an explanatory nature.

Data were identified and implemented on 556 criminal offences in the conceptual sphere of sexual offences, all committed in 2017 - divided into 311 offences of sexual act with a minor (56%), 146 rapes (26%), then 63 sexual aggression (11%) and 36 acts of sexual corruption (7%). A worksheet containing a number of indicators that have been implemented in an Excel database, structured on the following dimensions, has been prepared for the collection of information:

- a) Characteristics of the crime place: county, locality, the environment of the crime, the date and time, whether or not the place of the crime is isolated, etc.
- b) Characteristics of the victim: sex and age, if they have disabilities and what, data on the growth and care of the minor, etc.

- c) Aspects of the crime committed: the type of sexual assault, the commission in competition with another offence, the manner of subjugation of the victim, whether the victim resisted and the type of the victim, data on the trauma caused to the victim, etc.
- d) Characteristics of the author: sex and age, distance to which he lives from the victim, relationship with the victim, criminal history, occupation, marital status, level of education, whether the perpetrator consumes alcohol and/or drugs, etc.

Finally, this research has led to the realization of typologies, outlined on two levels, that of the authors of sexual assaults (Figure 1) and the victims of sexual assault (Figure 2), which will add value to the work of all law enforcement structures, but, in particular, to the work of police bodies with competences to prevent and combat crime. Through these results, there have also been created the premises for carrying out research and studies on this line.

The most likely statistical typology of sexual offenders

INDICATORS	CRIME			
	RAPE	SEXUAL AGGRESION	SEXUAL ACT WITH A MINOR	SEXUAL CORROPTION
Sex	masculine 99%	masculine 98%	masculine 99%	masculine 100%
Age	Below 35 years 61%	36-55 years 44%	Below 25 years 72%	Over 45 years 45%
Ethnicity	Romanian 78%	Romanian 90%	Romanian 71%	Romanian 85%
Residency environment	rural 55%	urban 51%	rural 61%	urban 54%
Level of Education	gymnasium education 38%	secondary education 47%	gymnasium education 45%	Secondary education 34%
Occupation	No regular occupation 46%	No regular occupation 37%	No regular occupation 60%	No regular occupation 37%
Standard of living	low (subsistence) 53%	satisfactory 61%	low (subsistence) 67%	satisfactory 32%
Marital Status	unmarried 59%	unmarried 50%	unmarried 81%	unmarried 44%
Family tree	No children 59%	No children 59%	No children 82%	No children 73%
Lives with :	Family origin 45% (24% with parents and 21% with parents and siblings)	Family established with wife/concubine 50%	Family origin 51% (33% with parents and 18% with parents and siblings)	Family origin 42% (13% with parents and 29% with parents and siblings)
Criminal Record	No criminal record 82%	No criminal record 58%	No criminal record 95%	No criminal record 100%
Relationship with the victim	Friend/pal 34%	Stepfather/ Mother's concubine 24%	In a relationship 60%	neighbour 30%

FIGURE 1

The most likely statistical typology of victims of sexual offences

INDICATORS	CRIME			
	RAPE	SEXUAL AGGRESSION	SEXUAL ACT WITH A MINOR	SEXUAL CORRUPTION
Sex	feminine 82%	feminine 87%	feminine 95%	feminine 75%
Age	Over 12 years 54%	Over 12 years 43%	13 – 15 years 76%	9-12 years 58%
Ethnicity	Romanian 84%	Romanian 93%	Romanian 73%	Romanian 89%
Residency environment	rural 51%	urban 51%	rural 61%	urban 56%
Level of education	Attending school 68%	Attending school 81%	Attending school 51%	Attending school 78%
Dwells with:	Both parents 49%	Both parents 52%	Both parents 51%	Both parents 50%
Level of education - MOTHER -	Gymnasium education 47%	Secondary education 36%	Gymnasium education 40%	Secondary education 44%
Level of Education - FATHER -	Secondary education 42%	Secondary education 53%	Gymnasium education 41%	Secondary education 60%
Occupation - MOTHER -	housewife 55%	housewife 64%	housewife 81%	housewife 71%
Occupation - FATHER -	Occupation with secondary education 44%	Occupation with secondary education 55%	No occupation 42%	Occupation with secondary education 52%
Standard of living	low (subsistence) 66%	satisfactory 55%	low (subsistence) 70%	satisfactory 56%
Family tree - Siblings	1-2 siblings 54%	1-2 siblings 49%	1-2 siblings 48%	1-2 siblings 45%
Family environment	neglected 47%	favourable 59%	neglected 58%	favourable 72%
Crime place	Author s residence 27%	Common dwelling 28%	Author s residence 38%	Decommissioned street, block, building 49%

Figure 2

Therefore, the typologies made have brought to the attention the most likely characteristics of the perpetrators and the victims of sexual offences, in our country. It has emerged for both the perpetrators and the victims that is not a specific to all sexual offences common pattern, each of the four analysed offences leading to different typologies, although not substantially.

The author is a Romanian, unmarried and childless man, residing in rural areas, with secondary or middle education, without stable occupation which leads to a satisfactory or low level of subsistence, usually lives with the family of origin, with no criminal history, and the rest of the circumstances being different.

The victim is a Romanian woman who is attending school and dwells with her parents, having one or more siblings. The father has secondary education and the mother is a housewife, the other circumstances being different to each offence.

The social reaction from civil society and the public, as well as the media, was explained in this chapter, being, in most of the cases, a positive one, on the part of these partners but also or non-governmental organisations.

Throughout this chapter has also been psychologically approached the problem of sexual abuse, being analysed a number of studies, international specialized reference papers, in order to understand the determining factors of the violent behaviour of these offenders.

In the literature, the specific terms are defined in various forms. The World Health Organisation defines, in its 2002 report, in broader terms the concept of sexual violence – *„any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work”*².

² Etienne G. KRUG, Linda L. DAHLBERG, James A. MERCY, Anthony B. ZWI and Rafael LOZANO, *World report on violence and health*, World Health Organization, Geneva, 2002, cap.6, pag.149.

It should be mentioned that sexual violence and sexual abuse are also defined in Romanian legislation, the only two laws being *Law No. 217 of 27 August 2003 for the prevention and combating of domestic violence - art. 4 alin.(1) lit.d*) and *Law No. 272 of 21 June 2004 on the protection and promotion of the rights of the child - art. 94 alin.(1)*.

Chapter 3 - "The efficiency of the activity of preventing and combating sexual abuse through legal instruments" is also of particular importance, as it includes a retrospective foray through the Romanian law system, starting with the period of the Romanian Principalities, on existing criminal regulations, resulting in their development and modernisation, in terms of the definition of crimes, content and punishments, in step with social changes and with the evolution of Romania.

Thus, it was reviewed a brief overview of the sections of the four criminal codes in force for almost two centuries, which contain rules relating to offences against sexual freedom and integrity, as they are currently referred to, to try to establish an overview of the regulations in order to reach conclusions and legislative proposals, also comparing with the situation in other legal systems

Also called **the "Cuza Code"**, it is the first penal code to appear in 1864 and to establish a legislative unification, signifying the start of the Romanian criminal law. The sexual offences, called *„Attacks against good morality”* and consist of punishments of life or established time forced labour until maximum reclusion, in the case of serious offences as well as prison penalties in the case of less serious offences.

The first Romanian Criminal Code remained in force until 1936, when the Criminal Code, also known as the **"Carol II Criminal Code"**, has been promulgated. This normative act has appeared after considerable period of time since the one from 1864. Throughout this period of time there have been a lot of political, social and economic changes within the Romanian borders, and foreign countries, such as the First World War. The offences are also called *„Offences against the morals or against the*

good morality” and the new concept that was introduced for the most serious crime was *the term of rape*.

In the following period, **the Criminal Code of 1969** was adopted in Romania, and the „*Offences regarding the sexual life*” are included in the first part of the Law. This code has undergone a few changes by the year 2000 which consisted of adapting the new ways of committing the crimes, generally aggravating forms concentrated on the reconsideration of the cases when the victim is a minor, but also the increasing of the limit of the punishment.

The New Criminal Code, currently in force, was adopted by Law No. 286 of 17 July 2009 (published in the Official Gazette of Romania, Part I, no. 510 of 24 July 2009), but effectively came into force on 1 February 2014.

The texts of these Criminal Codes were set out in the Annexes of the paper.

The evolution in Romania of good practices in criminal policies was presented in one of the subchapters. Thus, a project initiated in 2018 and completed in 2019 resulted in **Law No.118 of 20 June 2019 on the National Automated Register on persons who have committed sexual offences, exploitation of persons or minors, as well as for the completion of Law No. 76/2008 on the organisation and functioning of the National System of Judicial Genetic Data**, published in Official Gazette No. 522 of 26 June 2019. The purpose of this regulatory act is to prevent and combat sexual crime and to limit the risk of recidivism of persons known to have committed such acts.

With regard to the offences covered by that law, acts for which the perpetrators will be included in the Register, the first article lists a number of 17 offences, mainly those provided for in *Chapter VIII - Offences against sexual freedom and integrity*, analysed in this paper, but also a number of other offences related to sex life.

Some important aspects of this law: there will also be listed within this automated Registry the Romanian citizens who are reported by the foreign authorities to have committed such offences in the corresponding state. The persons who are not Romanian citizens but about whom there is information they will travel to Romania will also be

listed in the Registry, Sexual offenders will undergo biological samples examination (besides photography and fingerprinting) for the genetic profiling database, the ways of documents release who confirm Registry mentions (*Certificate of behavioural integrity*, copies or registry extract), for both persons, institutions or state authorities.

The particularities of the European legal framework are set out in the same chapter, over time being seen a strong involvement of the European Union and the Member States, driven by the need to promote a criminal policy to prevent and combat this type of crime, against children sexual abuse, sexual exploitation and child pornography, which threatens children's best interests, which is considered paramount.

Among these steps, there are: *Framework Decision no. 2004/68/JAI of the Council concerning the combating of the children sexual exploitation and child pornography, European's Council Convention regarding the protection of children against sexual exploitation and sexual abuse*, adopted at Lanzarote, 25 October 2007, *Directive nr.92/2001/EU concerning the combating of children sexual abuse, children sexual exploitation and child pornography and of replacement of Council's Framework Decision 2004/68/JAI*.

Directive 92/2011/EU is a European law which has been the basis for numerous subsequent legislations at EU level. *The Lanzarote Convention* has been a significant European-standard moment, with regard to the European Union's concerns to take measures to prevent sexual exploitation of children and sexual abuse, in the context of an alarming increase in the international use of new information and communication technologies. The Lanzarote Convention is the most ambitious and comprehensive international instrument for the protection of children and has created obligations for Member States to criminalise all forms of sexual assault against minors and to adopt specific criminal policies and legislation to prevent sexual violence, to help protect victims, investigate and convict criminals, and internationally to promote cooperation in this area.

Internationally there are noted the *Universal Declaration of Human Rights* (16th of December 1948), *Convention for the Suppression of Trafficking in Persons and the Exploitation of Prostitution of Fellow human* (2nd of December 1949 ONU), *Convention on the Rights of the Child* (20th of November 1989 ONU) which defining the civil, economic, political, social and cultural rights of children.

An important internationally debated issue, of a real interest in the issue of sexual abuse and exploitation, is the age of sexual consent, the objective being to protect children from the consequences of early sexual activity, their rights, but above all, their development. This threshold links a number of other aspects of criminal policy: the criminalisation of acts of a sexual nature constituting offences, the delimitation of aggravating circumstances and the amount of penalties.

In the literature it is considered that setting an age limit of sexual consent is particularly important, being the age at which a person is considered to be sufficiently mature, physically and mentally developed, to understand what normal sexual activity means and to be able to freely express consent about engaging sexual relations with other persons, but also to understand the consequences of sexual relations. Therefore, the laws of the states at international level have set these relatively different limits from one area to another.

In Romania, the age of consent is set at 15 years by the New Criminal Code, after the limit of 14 years in the past criminal law until 2014 (was changed in 2002 by *Emergency Ordinance No.143 of 24 October 2002*).

In order to better understand the legal framework at international level, as regards the prevention and combating of sexual abuse, issues related to the regulations on such crimes, existing in some of the European states, have also been addressed, comparing them, in particular the amount of penalties provided for. Therefore, it is both important and necessary, in order to create a complete image of the way each law system has understood to build its criminal policy, to create a succinct exposition of the offences.

Criminal codes from a number of European states, as well as the US and Canada, were analysed. Various criteria were considered in the choice of countries to be analysed, in order to create an exhaustive picture of understanding the problem. Consequently, states from all areas have been chosen, starting from those in the vicinity of our country, Bulgaria, Hungary, Moldova (whose similarities are due to spatial rapprochement), to Western states with a consolidated, functional system of law for a long period of time (Germany, Netherlands, France, Spain, Italy, the last three considered close to the common Latin origin which largely coincides with the similarity of the legal systems) , but also to the Nordic States, with a different system of law (Norway, Finland) or Latvia, from another part of Europe. A particular situation is Great Britain, the United Kingdom being an example of criminal policies in preventing and combating sexual assault. Several central European countries, the Czech Republic and Croatia, were also added, specific to Slavic membership. Finally, the US and Canada, strong systems of law, of an Anglo-Saxon nature, complementary to the support of those states that makes the policy of preventing and combating this crime extremely effective.

Therefore, there have been closely analysed the law system of those 16 states, Romania having been thoroughly presented in the previous chapters. These criminal provisions are mostly illustrated by the Penal Code, with the exception of Great Britain, whose sexual crimes are embodied within a different law, *The Sexual Offences Act 2003*, who is a replacement for the Penal Code.

Some of the conclusions drawn from this brief analysis of national regulations concerning sexual crime show us that some states have an extremely strict approach, a criminal policy based on the prevention of crime by imposing large sentences, up to the sentence of life imprisonment - France, and, in particular, the United Kingdom, Canada and the United States. On the other hand, there are the criminal systems from both our geographical area, Eastern Europe, Hungary, Bulgaria, Moldova, even Czech

Republic, in other areas, Finland, provided with lower penalties, meaning a more permissive system probably due to a low criminality rate set on this line.

Finally, we can notice that, from the perspective of the penalty system, Romania is a middle-positioned country between the two categories mentioned above. We could state that in Romania, through the New Criminal Code, it has been aimed to the implementation of a corresponding penalty system to the seriousness of the offences, the individualization of each crime according to both the author and the way of committing, which has to be correlated with an immediate and strict enforcement of the penalties by the competent judicial bodies, in order to efficiently and primarily combat such offences. Thus, a solution to increase the amount of punishments was not agreed by the Romanian legislature at the time of the legislative changes. This has contributed greatly to the specifics of the Romanian law system, from ancient times, but also the social and cultural characteristics of our society.

Some exceptional procedural issues have also been identified to these 16 States. In most States, when it comes to offenses against underage victims, the notification is made *ex officio*, as the injured person does not need to complain, and the reconciliation of the parties never removes criminal liability, except for Bulgaria, where marriage is a non-punishment clause, but not for rape offenses.

France is very open as to the period within which the victim may bring an act against him, taking that period up to 10 years from the date of the offence. Also French law has a provision for application in space, for offences committed outside the territory of France, by a person who is a French citizen or who is domiciled in his territory. Italy also has a longer period than the general average, within a prior complaint can be filed in the case of sexual offences - 6 months.

In the US, in the case of sexual assault against minor victims, psychological counselling is obligatory for the authors, and suspension of the penalty execution is only possible after a psychologist expert submits a report on the convicted offender. Special attention is also paid to victims of sexual crimes, in particular domestic

violence, who receive a specific police card, which requires a series of measures, and, above all, psychological support.

In Hungary, in Penal Code there are provisions on limiting access to certain areas for perpetrators of sexual offences (prostitution or indecent exposure), a separate article prohibiting the presence of persons known to have a criminal history in this regard, a regulation specific to Anglo-Saxon States.

Zoo philia is also criminalized in countries such as the US, Canada, Germany, the Netherlands or England, as well as sexual intercourse with a corpse or sexual intercourse in a public toilet in England.

In addition to the main prison sentence, there are laws which also provide for fines, often in a very large amount, depending on the seriousness of the acts. This is the case for Bulgaria - up to 150,000 euros and the US - from a few thousand dollars to \$25,000), but also the Netherlands with the specific system of fines classified by category, sexual offences from category 2 (3,350 – 3,900 euros) to category 5 (67,000-78,000 euros).

Chapter 4 is the most consistent in terms of volume, entitled „*Critics of the effectiveness of social and criminal control systems for sexual abuse*”.

In order to identify the best solutions for the management of sexual abuse, an extremely detailed study has been made in this chapter, by analysing the documents, of the situation existing in the various states. For some important conclusions, we also referred to two broad categories of criminal policy elements, the first of a legislative nature comprising criminal codes and specific legislation, and the second relating to the surveillance programmes of sex offenders.

Thus, in order to carry out a relevant analysis of good social and criminal control practices, a summary description of the mechanisms, procedures and systems created in those legislations has been carried out. Only a part of the criminal policies developed at the level of each country, the issue of the management of sexual abusers, the methods by which each individual State has tried, by legislative, institutional and procedural means, to manage the risk that perpetrators of sexual crimes pose in a children's society,

in order to reduce their recidivism, were taken into account. For example, legal systems in European and international countries have been selected on certain principles that allow the possibility of shaping the characteristics of the best legal system.

Thus, most states are aware of the danger that this type of crime poses to society, as a number of legislative measures have been adopted that have made it possible to set up and operate sex offender registries. We believe that this means developed only by a part of the states is one of the main means of prevention in the criminal policy picture at national level.

The presentation showed that of the 23 legal systems at issue, 12 of them covered a register of sex offenders (United Kingdom and Ireland, France, Spain, Cyprus, Malta, Portugal, Latvia, USA and Canada, Australia and New Zealand) in various more or less sophisticated forms, with various rules of operation. It is obvious that registries in the US, Canada and the UK are the best examples, based on very strict and well-defined regulation.

It can be seen that there are European states in the vicinity of Romania that do not have a special regulation on sexual abusers, such as Bulgaria or Serbia, especially Moldova, which is not part of the European Union. However, there is also a concern in this part of continent about sexual abusers, in which countries such as Hungary, Greece or Poland, the Czech Republic have developed various forms of protection, but without establishing such a register.

Other States that do not benefit from the aid of a register are based on existing legislation and criminal record-specific applications, which do not create the facilities of the registry in terms of risk management by sexual abusers.

The thesis emphasized the more evolved systems in the UK, USA and Canada, especially the British model being detailed for a much clearer understanding of how to manage, which can be a model to follow.

Britain has the most developed system by which it manages the problem of sexual offenders, both from a legislative point of view, through the special law passed a few

years ago, *The Sexual Offences Act (2003)*, and through a coordinated involvement of law enforcement agencies across the country – the MAPPA mechanism.

In the risk assessment activity, the MAPPA mechanism relies on a National Information System for the Management of Offenders who pose a high risk of danger to the community - „*Violent and Sex Offender Register*” (*ViSOR*). This database has been created and used by the police since 2005, but since June 2008 it has been possible to operationalise the system and to use the three responsible authorities involved at the same time. With the help of ViSOR, the ability of responsible authorities to exchange information and assess the risk of sexual and violent offenders has increased, with the aim of community safety by making the management of offenders more efficient.

ViSOR is a computer application which is 24/functional, secure and can be accessed by police due to its content of reports concerning many categories of offenders, primarily sexual offenders- Register sex offenders, alongside other sexual or violent criminals.

From the analysis of all the systems presented in this chapter, there are some aspects that need to be noted because they can be taken into account as best practices for improving procedures in other countries or developing new ones, and in particular what interests us, can also be adapted to the Romanian system.

We have to mention that the working procedure of the ViSOR Registry, generally speaking, within the borders of Great Britain is of great importance concerning the general context of managing the risk of sexual abusers, in the respect there are reported some other categories except from the sexual abusers as well, such as violent offenders who show a great risk for the community. This is also found in Ireland, but also in France, where the *F.I.J.A.I.S. Register - The National Automated Judicial File on Perpetrators of Sexual or Violent Crimes* also includes offenders who have committed acts against life, bodily integrity and health. Related to this register it is important to remember that it is connected with another similar application belonging to the Ministry of Justice, *F.N.P.I. - National File on Incarcerated Persons*.

Situations of non-compliance with notification obligations by registered persons are considered to be offences which are sanctioned in all cases, and in some of these states, such as Cyprus - imprisonment up to 3 years or a fine up to 170,000 euros.

With regard to the notification rules, where it is legislated, are similar in all systems in terms of obligations, data to be notified, time limits for information, period of maintenance of notification. It is important to specify that convicted persons are obliged to have genetic samples taken to establish DNA, and their genetic profiles are included in national forensic genetic data systems.

In order to prevent the commission of recidivism by these registered persons, it is very important to provide that sexual abusers cannot be employed in any kind of service where they can have contact with children, so the legislation requires the issue of a certificate necessary for the employer stating that he is not a person convicted of sexual offences.

Significant is the aspect of access to the data contained in these registers, whether the website is public or not. There is a significant difference between the system present in the US and several other states (Australia, South Korea, Chile), where the sex offender register is accessible to the public by posting part of the data on the public website, and other registers in most countries, where data are only available to law enforcement authorities in the performance of crime prevention and combat tasks, mainly the police, the prosecutor's office and possibly the courts.

The second aspect of **surveillance programmes**, most of which are based on regulations adopted at the level of that State, and are founded on a number of scientific studies carried out to establish the most effective of these programmes that can guarantee the best results.

Chapter 4 is also important for the fact that it has developed a general picture of the criminal policies adopted, over time, by each state with regard to the supervision of sexual abusers (examples from the practice of different countries as an area or as a legal

system), which can have an important effect in their criminal behaviour after returning to the community and thus lead to a reduction in recidivism.

A surveillance programme is understood as a coherent set of activities to monitor delinquent behaviour, involving a number of elements of control and surveillance, as well as treatment. Two aspects can be distinguished, on the one hand, the control elements, such as the monitoring and registration of sex offenders, and, on the other hand, support activities, such as supervision and psychological treatment. There are also two categories of monitoring elements, technical ones (polygraph and electronic monitoring system – electronic bracelets) and non-technical ones (inopportune visits to the offender's residence or police patrol in the area of their homes).

On the other hand, support activities may consist of aid in integration into society, leisure activities through social involvement or in the creation of a good quality entourage, but in particular in identifying employment solutions. As far as treatment is concerned, it can be reduced to learning reoffending strategies or about attitude or behaviour changes.

An effective mechanism for reducing recidivism can be that consisting of several stages - active case management, involvement of forensic psychiatric expertise of the abuser, observation and monitoring of his behaviour and movements, exchange of information and, last but not least, involvement of the social environment.

This supervisory mechanism involves a number of bodies and institutions, starting from probation, which have the main role and continuing with the police and the prison system, as well as psychiatric medical institutions, the administration, owners' associations or even private companies and non-governmental organisations.

The main elements, which are part of surveillance mechanisms, are:

- ⇒ Treatment with elements of behavioural-cognitive therapy and pharmacology;
- ⇒ Case management through a reintegration plan;
- ⇒ Active involvement of psychiatric experts and a very good "client-specialist" relationship;

- ⇒ Observation and monitoring of delinquent behaviour, through polygraph and electronic bracelets;
- ⇒ Collaboration and information exchange between the concerned authorities;
- ⇒ Social support and social reintegration.

To sum up all, we could say that there may exist many different types of surveillance programmes which are used by law enforcement bodies in the attempt of efficiently monitoring of sexual abusers, and finally the decreasing of recidivism.

The first model is programmes providing psychological treatment during prison detention, followed by subsequent supervision and attention in society, alongside the application of specialised psychological treatment programmes, including at large, by probation services. It stands out to be the most effective of the existing mechanisms.

The second type of program is that based on the administration of a libido inhibition medication, hormone treatment to reduce the risk of relapse, especially in the case of sexual abusers with hyper sexuality, a mechanism that delimits itself from others by concept, but considered with good results in terms of relapse.

A different type of program, Circles of Support and Accountability (COSA), in which many volunteers participate and a number of impact studies are carried out. This mechanism focuses on a combination of components of social control and support from civil society, a mix that seems to be very effective in terms of the outcome of reducing recidivism among sex offenders.

The general conclusion after describing and presenting some of the characteristics of the surveillance programmes is that they have considerably increased the knowledge in this area, but there are still many aspects that make it difficult to sketch certain decisions about the effectiveness of a particular programme or the elements of which it is composed.

From a legislative point of view, there are several types of regulations:

- I.** Registration of sex offenders in different forms of electronic register;

- II. Notifying the authorities and/or persons in the community of the release of such offenders and their residence;
- III. Restrictions of residence in certain areas for sex offenders.

The Registration is mandatory, sex offenders must provide the police with the main data, which relate to identification, address of residence, travel abroad, and any change of such data.

The notification refers to informing the authorities that a sexual abuser has been released after a sentence for committing a sexual offence, or, moreover, to making the public aware that a particular sex offender has been released and lives or works in their vicinity. This is an extremely drastic measure of notifying the community of the area where a sexual offender lives, a provision present only in American law.

Restrictions on the residence of sex offenders relate primarily to existing regulations in U.S. law, where it is forbidden for a sex offender to live at a certain distance from places where children can gather, such as schools, kindergartens, playgrounds or even bus stops for school transport.

Chapter 4 also includes an important part of the research one study carried out by applying the technique of the opinion poll aimed at knowing attitudes towards criminal policies developed in Romania, in the field of preventing and combating sexual abuse. Thus, for a very good perspective on how to try to use in practice the data obtained during the research, the method of sociological survey based on questionnaire, an activity involving 92 volunteer subjects, of which 73.9% is male and 25% female, was used. The majority of subjects come from the Police (81.5%), and less than 10% come from the Public Prosecutor's Office units (9.8%), from the Probation System (4.3%) social assistance system (3.3%).

The five exploratory objectives probed perceptions by building items with pre-coded responses to highlight the distribution of opinions, consistency and variability, such as:

- 1. Subjects' perception of criminal policies in the field of preventing and combating sexual abuse;*
- 2. Measuring respondents' attitudes towards sexual abuse issues;*
- 3. Probing the perception of the most effective methods of preventing and combating sexual abuse;*
- 4. Professional experience and perception of sexual offenders in their relationship with their victims;*
- 5. Measuring opinions about the psycho-behavioural picture of sex offenders.*

The value of the sociological research presented here is given in particular by the professional experience of the subjects questioned, all operating in structures to prevent and combat sexual abuse. It is certain that the shift from the study group structures to the sampled constructions (statistically representative) would add to knowledge and may constitute a new direction of research.

The research captures the sensitive dimension of the investigation of sexual abuse and highlights some value-ideas that represent the expression of respondents' attitudes.

Firstly, the issue of sexual abuse must be addressed holistically and not sectorally. The efficiency of social control measures is not solely the responsibility of a single institution but should be an expression of the convergence of institutions, whether private or State.

Secondly, the value of those captured in the research supports the idea that the treatment of sexual offenders is a public health problem, and the verifiable criterion is the recidivism of this particular category of offenders. By studying recidivism, we can measure the success and failure of organizing and implementing measures to prevent and combat sexual abuse.

Third, the punitive system of criminal law must maintain control over sexual abusers by imprisoning them. The measure is not effective in its singularity. Consistent social measures are needed in which all responsible institutions participate.

In the last chapter, **Chapter 5 - "Final Conclusions and Proposals"**, the conclusions of the previous chapters were presented very succinctly, and then the general conclusions resulting from the research were summarised in order to highlight the results obtained and to initiate proposals to improve the legislative, procedural and institutional framework.

In order to have an exhaustive picture on the proposed theme, „*Preventing and combating sexual assaults on potential victims*”, the research had to go through several stages that ultimately led to ideas and themes of reflection on the phenomenon. And in order to reach relevant conclusions and, further, to valuable proposals, we have considered a number of methods, which are conjugated, to give it scientific value - *analysis of national and international social documents, comparative analysis of the legislative system, statistical analysis on crime in the field, analysis of S.W.O.T. on criminal policies, sociological analysis on the basis of questionnaire.*

It is worth noting the **two studies carried out during the research**, presented in chapters 2 and 4, which offer the originality and veracity of the approach taken. Thus, the first study, extremely valuable by the resulting conclusions, based on information collected from the operational area, *analysis of the trend of crime of a sexual nature, using the method of statistical analysis.* In order to carry out the study, the set-up event sheet required a number of indicators that give it accuracy in order to obtain conclusive results.

The second study was carried out using the *social survey method on the basis of a questionnaire*, equally valuable in scientific research, in order to have a very good perspective on how the data obtained during the research will be used in practice. By applying the technique of the opinion poll, it was aimed at knowing attitudes towards criminal policies developed in Romania, in the field of preventing and combating sexual abuse.

A starting point of the research was to establish the current dimension of this type of crime, both at the level of Romania and of European States, by statistical analysis of

crime figures in the field. For our country, the data presented showed that crimes against sexual freedom and integrity are increasing, contrary to the decreasing trend of general crime in recent years. It is specific for us, as a society, that these kinds of acts are more likely to be committed in rural areas, the social framework of the villages being prone to crime of a sexual nature, and the causes are well known – the lower degree of culture, the increased vulnerability of certain categories of people, from the elderly to the children, the socio-human characteristics of the population of the villages, the preponderance of isolated places (houses, forests, fields, etc.), the predisposition to alcohol consumption, these corroborated by an acute lack, in recent times, of the coercive element of the state, the police.

To complement the socio-legal diagnosis and polymorphic dimensions of sexual abuse, the research continued with the presentation of the general framework for committing sexual crimes, as well as some considerations concerning victims and perpetrators of sexual abuse. To conclude, there have been presented the most likely typologies of perpetrators and victims of sexual assault.

The most important part of the research was the analysis of the effectiveness of the systems of social and criminal control of sexual abuse, where by using social document analysis and comparative analysis, an attempt have been made to identify the best possible solutions to prevent and combat these serious acts on potential victims.

We can conclude that there is a positive development, over time, of Romanian criminal regulations, primarily with regard to the penal code. Sexual offences have undergone changes in the four existing codes, both in terms of content and, in particular, in terms of penalties alongside their amount. These changes usually came because of the external context, especially the European one, through membership of the European Union, but also because of the changes in Romanian society, taking into account that Romania has gone through several forms of government.

The results of the scientific research are materialised in the proposals, and in this case the proposals are very concrete and achievable and are found, in particular, in the area of criminal legislation incidental to the register of sexual offenders, procedural issue and institutional cooperation.

➤ **Cooperation mechanisms**

Following the conclusions summed up within this scientific research had resulted to the main proposal which refers to the interinstitutional cooperation mechanisms with the purpose concerning the protection of the population, the community from a potential harm caused by sexual and violent offenders. By facilitating the exchange of data and information on these sexual abusers as a result of institutionalised collaboration between the authorities, a subsidiary objective of criminal policies can be achieved, preventing offenders from reoffending serious or sexual crimes.

Taking over the model developed in the United Kingdom, which has proven its effectiveness over a longer period of time, a Protocol of cooperation between the same authorities - Police, Penitentiaries and Probation - responsible for the management of convicted and released persons can be initiated, and currently uses it by achieving much better cooperation between the three factors and reducing the rate of recidivism of sexual abusers. It is noteworthy that another European country - Latvia, adopted the system after a documented analysis for several years, and now uses it to achieve a much better cooperation between the three factors and reducing the rate of recidivism of sexual offenders.

In order to highlight this proposal and to reinforce the importance of implementation, a draft protocol has been drafted which is intended to be a starting point in achieving the proposed objective. At the end of the work, the Protocol in question is presented.

There are also some basic principles that guide the whole process within the future mechanism, namely the identification of the offender, the open exchange of information between the three responsible authorities, then risk assessment and finally risk

management. As this mechanism develops, other public institutions or bodies, non-governmental organisations to support efforts to reintegrate convicted offenders into society, will also be co-opted.

This cooperation mechanism must be complemented by a informational system containing all the data and information necessary for case management, such as the United Kingdom's ViSOR, a single, common system to be used and, at the same time, powered by all authorities. There is also a need for such an instrument to ensure the proper functioning of the cooperation mechanism, a methodology/working procedure to be designed taking as an example the experience, already known, of the established states, but adapted to the conditions of our country.

In addition, it was proposed that this initiative to underpin the mechanism and to create operating methodologies or procedures should be achieved, by starting a project with European funds that could benefit, in addition to the necessary amounts and the experience of specialists in the field, from abroad.

In conclusion, we propose the establishment of a mechanism for interinstitutional cooperation, a set of rules and measures by which the authorities concerned can manage, in a coordinated manner, the risk management of perpetrators of sexual or violent crimes, and the primary aim is, as stated earlier, to reduce the behaviour, tendency to recur sexual or violent offenders, to protect the population, the community, including victims of crime, from a potential harm that could be caused by them.

➤ **Law No. 118/2019 on the sex offender register**

The research carried out in the paper revealed conclusions that paved the way for a number of other proposals, one of them, resulting from the comparative analysis of criminal policy systems existing in other states, but also from our police practice.

Since the beginning of the current scientific research (in 2016-2017), the idea of the need to establish in Romania, like other countries, a register of sex offenders, which will manage the work of the responsible authorities, in particular with regard to the

work of the police, has been shaped in order to reduce the risk of recidivism of sexual abusers and, therefore, of preventing and combating crimes. The ideas and principles set out in this paper were to constitute concrete proposals for future law, but during the course of the scientific research some of them were already implemented, by a normative act in this field, which can only confirm the originality and achievement of the objective of the research.

This is Law No. 118/2019 on the sex offender register which was adopted on 20th of June 2019 and is due to come into force by the end of 2020. It can be observed that the purpose of the adopted law is precisely the subject of the carried out research, as provided for in Article 1, alin. (1).

The law is an important legislative step in improving criminal policies to prevent and combat crimes against sexual freedom and integrity. However, we believe that some amendments or even additions would be needed in order to better achieve the purpose for which it was developed.

Thus, we can talk here about issues related to forcing sexual offenders to inform police units, including any departure abroad, for periods of more than 5 days, three days before it happens, which is not provided for in the current form. To this end, they must notify data on their destination, period, day of departure, means of travel and even the hotel or place where they will stay abroad.

In the same context, it is necessary to punish the convicted person for all situations in which he does not comply with his obligations under the law, but, in particular, the tightening of this sanction (currently the penalty is imprisonment from 3 months to 2 years or a fine), as are the provisions in the laws under consideration: United Kingdom – imprisonment up to 5 years and the United States– imprisonment from 12 months to 10 years.

Another very important aspect arises from the need for better monitoring of sex offenders, for which it is necessary to establish the criterion of territorial competent

police unit, as that unit in the area where the person actually resides, and the responsibility to be transferred subsequently to another unit.

These proposals brought to the attention above will be the subject of a briefing of the factors able to initiate an amending procedure. The comparative analysis of the legal systems in various states carried out in the framework of scientific research has also revealed a number of other aspects that need to be brought to light in order to be proposed for implementation.

➤ **The parole**

Currently, the provisions of The Penal Code on Parole do not refer to any psychological expert report for the assessment of the risk of recidivism of that convicted person, nor does the secondary legislation governing the regime of the execution of custodial sentences and measures have express provisions requiring such a procedure prior to release.

As such, we would like to propose to amend the legislative framework with regard to the institution of the 'Conditional Freedom' existing in New Penal Code in Article 99 and the following, by inserting in that article a text requiring the carrying out of psychological expertise as a 'self-qua-non' condition for the release of persons convicted of sexual or serious offences.

➤ Complex mechanisms have not been developed in Romania, as there are in other areas that are efficient and are the starting point for various other studies, which can form the basis of interinstitutional strategies. They exist only at the level of disparate institutional practices in various areas, but they are not raised at the level of national programmes. No specific strategic social assistance mechanisms have been put in place to provide solutions to prevent the risk of recidivism by sexual abusers.

Thus, **we aim to support the development** of these issues raised, on all areas of competence that we have in responsibility or with which we interfere in any way, which may be the subject of a future study.

➤ **Institutional proposals in the area of competence of the Romanian Police**

Efforts will continue to develop ViCLAS in the best possible conditions, this extremely useful instrument, which is currently in implementation, as well as efforts to expand it at European level.

With this project developed in partnership by The Prosecutors' Office attached to the High Court of Cassation and Justice and the Romanian Police, a ViCLAS specialised unit will be set up at central level to manage the application in question and the products offered by it, which is particularly important in the investigation of crimes against freedom and sexual integrity.

➤ **Specialised unit for the investigation of sexual offences**

The creation of a specialised structure at the level of the General Inspectorate of the Romanian Police - Central Units, with competences on the line of prevention and combating crimes of a sexual nature, with tasks, primarily of an operational level, but also of regulating programmatic normative acts on this line of competence, coordination, operational and institutional cooperation, at national and international level. In strictly operational terms, it will be the sole point of contact of the police structures in our country with foreign partners.

In conclusion, the scientific innovation of the paper results from the fact that it is the first research to scientifically support the modification of criminal laws and criminal policies in the field of preventing and combating sexual abuse against potential victims.

The originality of the research lies in the fact that certain concrete mechanisms of cooperation between Romanian institutions with competences in the field have been proposed, mechanisms by which to adopt a new approach to prevent the committed of sexual abuse and minimize the risks of recidivism on the part of sexual offenders. These results are based on studies, statistical and comparative analyses carried out on existing instruments at the level of other law enforcement agencies in European States.

The mechanism exposed will have, first of all, a generally appreciated result of increasing the safety of the population, the community, but also their confidence in law enforcement authorities, which was detailed in the paper.

The modalities for validating this research will consist in identifying the resources and premises for bringing the three authorities to the negotiating table for the implementation of the common protocol, but in particular also in the research directions that may emerge from our study.

Returning to the research directions, one of these may be the need to carry out very detailed, thorough analyses of crime on this line. Thus, based on the results obtained from our research, studies can be developed to ensure an exhaustive understanding of the determinants of the tortious behaviour of sexual offenders, a number of prevention programs and campaigns can be initiated, to support the prevention and combating of sexual assault.

Important studies and extensive, exploratory research should also be carried out in terms of reducing the risk of recidivism of offenders, in particular sexual abusers, which could form the basis of criminal policies for the management of recidivism, the premises for the introduction of registration mechanisms in our country, the notification of sexual offenders or restrictions of residence, and up to the most complex, treatment, polygraph.

In addition, the research will open up the possibilities of study on all subjects and ideas addressed, by specialists in various fields of competence, including those under the responsibility of the Romanian Police.

Finally, we want, following the public support, the research material to become a working tool for all specialists interested in this field, for people working in the field of criminal policies to prevent and combat sexual abuse, as well as for informing and raising public awareness about the issue.

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