

Offences Against Sexual Freedom and Integrity. Legal Foundations and Current Perspectives

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Abstract

This article examines the legal framework governing offences against sexual freedom and integrity under Romanian criminal law, with a focus on recent developments influenced by European legislative standards and international jurisprudence. The analysis considers both the amendments to the Criminal Code and the Code of Criminal Procedure, as well as the impact of European Union directives and the case law of the European Court of Human Rights on the interpretation of key legal concepts such as consent, the victim's vulnerability, or the power imbalance between the perpetrator and the victim.

The text addresses the difficulties of legal classification, highlighting the wide range of forms in which such offences may occur and the need for clear legal definitions that reflect the complexity of interpersonal relationships and social contexts. It also discusses aggravated forms of these offences and the challenges of applying the legal provisions in cases where the victim is a minor, subject to a relationship of subordination, or exposed to emotional or economic coercion.

A separate section is devoted to the situations in which the initiation of criminal proceedings is subject to the filing of a prior complaint, which may hinder the fulfilment of the objectives of criminal law - particularly in cases where victims do not have access to adequate legal, psychological, or institutional support.

Finally, the article analyses the normative contribution of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 and the extent to which it has contributed to the development of a legal framework focused on the effective protection of the victim, in line with constitutional and European values. The article advocates for an integrated approach in which criminal law plays an

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active role in safeguarding the dignity and autonomy of individuals against sexual abuse.

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Introduction

Offences against sexual freedom and integrity, governed by Chapter VIII of Title I in the Special Part of the Criminal Code (Articles 218–223), constitute one of the most sensitive and complex categories of criminal acts, as they involve a direct relationship with the fundamental values protected by criminal law – human dignity, individual liberty, and the physical and psychological integrity of the person. In recent years, the applicable legal framework has undergone significant legislative changes, reflecting a dual pressure: on the one hand, the need to comply with the requirements of international conventions ratified by Romania, such as the Istanbul Convention; on the other hand, the necessity to respond to developments in domestic and European case law, particularly in light of the standards set by the European Court of Human Rights.

Substantial amendments have thus been introduced through recent legislative acts, among which the following are notable: Law no. 217/2023, which repealed Article 220 of the Criminal Code, reconfiguring the legal regime of minors' consent; Law no. 248/2023, which introduced a new aggravating circumstance for the offence of murder when committed by taking advantage of the victim's obvious vulnerability; and Law no. 171/2023, which criminalised the non-consensual disclosure of intimate images, thereby establishing a specific form of protection of private life in the sphere of sexuality.

Although these legislative interventions are isolated, they have generated numerous challenges in judicial interpretation and application, necessitating a doctrinal re-examination of the fundamental notions of consent, coercion, and sexual autonomy. Against this backdrop, the present article proposes an integrated assessment of the current regulations governing offences against sexual freedom and integrity, with a focus on the recent legislative amendments and their theoretical and case-law implications.

The Legal Basis for the Protection of Sexual Freedom and Integrity

The legal protection of sexual freedom and integrity represents an essential expression of the constitutional and international commitment of the state to defend human dignity and individual autonomy. These fundamental values are enshrined in national criminal law through a set of norms aimed at preventing, sanctioning, and deterring behaviors that affect a person's sexual privacy and will. Chapter VIII of Title I in the Special Part of the Criminal Code groups the offenses that harm these essential dimensions of human personality, providing a coherent normative framework in line with the requirements of the rule of law and relevant international jurisprudence.

Over the past two decades, the Romanian legislator has acted in a process of progressive harmonization of criminal legislation with the standards imposed by essential international documents such as the European Convention on Human Rights or the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – known as the Istanbul Convention. This harmonization has not been limited to a mere legislative translation of international obligations but has involved a conceptual and axiological adaptation, recognizing the right to sexual autonomy and integrity as autonomous values, distinct from traditional concepts of public morality or social order.

The Distinction Between the Notions of Sexual Freedom and Sexual Inviolability

The distinction between the notions of sexual freedom and sexual inviolability is fundamental for the correct understanding and application of the legal regime governing sexual offenses. In doctrine, sexual freedom is conceived as the inalienable right of every individual to exercise decision-making autonomy within the realm of sexual activities, freely and consciously, without being subjected to any form of coercion, manipulation, or constraint. This freedom implies that any act with sexual significance must be based on valid consent expressed by the involved person, a consent that reflects their real and unaltered will (Diaconescu, 2018). Thus, sexual freedom protects individual autonomy and free will, constituting an expression of dignity and fundamental rights of the person.

On the other hand, sexual inviolability refers to the protection of the physical and psychological integrity of the individual against any non-consensual sexual touching, regardless of whether there is an

apparent manifestation of will. This concept emphasizes the defense of the person against acts that may cause profound trauma, psychological or physical injuries, as well as the prevention of negative effects on their normal development and emotional balance. In this regard, sexual inviolability delineates a zone of personal protection that cannot be waived, regardless of circumstances, as any sexual aggression or abuse constitutes a serious violation of this integrity.

Therefore, sexual freedom and sexual inviolability complement each other, being two essential dimensions of legal protection in criminal matters. While sexual freedom highlights the right to free and informed decision-making, sexual inviolability ensures firm protection against all forms of non-consensual sexual aggression. Both concepts are reflected and enshrined in Articles 218 to 223 of the Criminal Code, which regulate sexual offenses, thus providing the necessary legal framework for the defense and respect of these fundamental rights of the person.

The Position of Offenses Against Sexual Freedom and Integrity Within the Structure of the Criminal Code

The position of offenses against sexual freedom and integrity within the structure of the Criminal Code reflects a clear and well-founded legislative choice regarding the gravity and importance of these acts. Their placement in Chapter VIII of Title I – Offenses Against the Person – indicates that the legislator considers them attacks on fundamental values of the human being, comparable in importance to life, health, or liberty. This classification emphasizes that such offenses are not merely breaches of social or moral conduct norms but represent profound harm to a person's dignity and integrity, requiring strong and specific legal protection.

This positioning has multiple practical implications in the application of criminal law. First, it influences the interpretation of general principles, including the determination of multiple offenses when several acts are committed in a complex criminal context. Additionally, their placement within the Criminal Code structure facilitates the application of aggravating circumstances, especially in cases of domestic violence or when offenses are committed against minors, areas where legal protection must be particularly strict and rigorous.

Moreover, placement in this chapter allows for the integration of special provisions addressing the particularities of these offenses. A concrete example is the regulation of the statute of limitations for

criminal liability in the case of minor victims, provided by Article 154 of the Criminal Code, which grants an extended and adapted term to meet the protection needs of these vulnerable categories. At the same time, this position ensures coherent coordination with other relevant normative acts, such as legislation on victim protection or protective measures issued by judicial orders within civil and criminal proceedings, thereby consolidating an integrated system for defending personal rights and preventing recidivism.

The position of these offenses within the Criminal Code reflects a modern and complex legal conception that recognizes the special gravity of sexual violence and the necessity of adequate and effective legal protection, in accordance with the values of the rule of law and the international commitments assumed by Romania.

The Reason for Criminalization: Protecting Sexual Autonomy and Human Dignity

The reason for criminalizing these acts cannot be separated from the value that the law attributes to human dignity and the freedom of self-determination. Modern criminal law no longer aims to sanction behaviors contrary to a dominant moral vision but intervenes exclusively to protect the individual against serious and unlawful infringements. Within this interpretative framework, doctrine emphasizes that sexual autonomy - as a specific form of individual freedom - can only be limited for the purpose of protecting another person in a vulnerable position (Toader, Michinici, and Crișu-Ciocîntă, 2014).

Streteanu and Nițu (2014) stress that the criminalization of non-consensual sexual acts or those committed under conditions of psychological or physical inferiority expresses the state's duty to guarantee the effective exercise of fundamental freedoms. Any sexual behavior that suppresses the capacity for self-determination - through force, intimidation, manipulation, or exploitation of a state of dependence - crosses the boundary between one's own freedom and violence against another and thus justifies criminal intervention.

This view is further supported by the practice of international courts, which have consistently recognized the positive obligation of the state to ensure a legislative and institutional framework capable of preventing and effectively sanctioning sexual offenses, especially when the victims are minors or persons in situations of severe vulnerability (European Commission, 2013; European Court of Human Rights, 2010).

The Evolution of Legal Regulations and European Influences

The regulation of offenses against sexual freedom and integrity in Romanian criminal law has undergone profound transformations in recent decades, influenced by convergence towards European standards and a new doctrinal and jurisprudential orientation. Thus, there has been a paradigm shift from a traditional-moralistic approach - in which sexuality was regulated primarily within the logic of protecting "public decency" - towards a vision focused on autonomy, freely expressed consent, and the protection of personal dignity (Boroi, 2024; Diaconescu, 2018). Within this dynamic, emphasis has shifted to gender equality, combating sexual harassment, and preventing re-victimization through adapting legislation to international requirements.

The History of Criminalizing Sexual Harassment

In this section, we will focus on the criminalization of sexual harassment, as it exemplifies the adaptation of Romanian criminal legislation to current requirements regarding the protection of dignity and sexual integrity in professional and educational contexts. The choice of this offense is justified by its relatively recent introduction into the Criminal Code - Article 223 was regulated for the first time as an autonomous offense with the entry into force of Law no. 286/2009 - as well as by its relevance for understanding how the notions of consent, psychological pressure, and power relations have been reconceptualized in contemporary criminal law (Boroi, 2024; Diaconescu, 2018).

Prior to this explicit regulation, behaviors targeted by Article 223 were treated through alternative classifications such as abusive conduct or outrages against public morality, solutions that ignored the relational specificity and systemic nature of harassment acts. This formalistic approach frequently led to impunity, especially when victims lacked direct evidence or faced subtle but persistent forms of psychological coercion (Stănilă, 2022).

The adoption of an autonomous norm was decisively influenced by Romania's international obligations, particularly through the transposition of Directive 2012/29/EU on victims' rights and protection, as well as by the jurisprudence of the European Court of Human Rights, which emphasized, in cases such as *M.C. v. Bulgaria*, the necessity of explicit criminalization of all forms of sexual abuse, regardless of the type of coercion involved (ECHR, 2013; European Commission, 2012).

This normative evolution indicates a profound paradigm shift: from a moralistic vision focused on protecting “public decency” towards a legal model centered on protecting sexual autonomy and equality of treatment, especially in situations marked by power imbalances. Sexual harassment thus appears not as an isolated act but as a symptom of domination relationships that require criminal intervention to prevent the normalization of abuse in institutional environments (Streteanu & Nițu, 2014).

Harmonization with European Standards

A key impetus for adjusting domestic legislation regarding the protection of victims of sexual offenses was Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. This legislative act enshrines a victim-centered approach, imposing on member states the obligation to ensure individualized treatment of each injured person according to their specific vulnerabilities, the nature of the offense, and the context in which it was committed. The directive explicitly requires avoiding re-traumatization through invasive judicial procedures, guaranteeing confidentiality of information concerning the victim, as well as effective and non-discriminatory access to justice and specialized support services (European Commission, 2012).

In Romania, these requirements have been concretized through amendments to the Code of Criminal Procedure aimed at strengthening the procedural status of the victim and ensuring protected participation within criminal prosecution and criminal trial. Thus, the law has established mechanisms such as hearing in conditions of privacy, the use of audio-video means to avoid direct confrontation with the perpetrator, as well as access to psychological and free legal assistance in cases of recognized vulnerability. Moreover, internal norms have begun to reflect European principles regarding the differentiated and respectful treatment of victims, especially in cases of minors or traumatized persons (Code of Criminal Procedure, 2010; Udrioiu, 2023).

This legislative harmonization indicates a reconfiguration of the criminal process from a victimological perspective, in which the protection of the victim’s dignity and safety becomes an objective as important as discovering the truth and sanctioning the offender.

The Contribution of the ECHR Jurisprudence to the Redefinition of Consent

The jurisprudence of the European Court of Human Rights (ECHR) has played a crucial role in reshaping the way consent is interpreted in contemporary criminal law, especially in cases concerning offenses against sexual freedom and integrity. A fundamental reference point in this evolution is the case of *M.C. v. Bulgaria* (ECHR, 2013), in which the Court ruled that the absence of explicit physical opposition from the victim cannot be equated with a tacit form of consent. Moreover, the Court emphasized that the lack of reaction may be explained by factors such as fear, shock, psychological manipulation, or subordinating relationships, which affect the person's sexual self-determination.

This jurisprudence has imposed a profound reconsideration of the standard of proof in sexual offenses, including in Romanian law, particularly regarding Article 218 of the Criminal Code, which criminalizes rape. Thus, the traditional interpretation - focused on physical manifestations of opposition or visible elements of coercion - tends to be abandoned in favor of a contextual and nuanced analysis, where courts must evaluate the psychological state of the victim, their vulnerable position, the relationship with the perpetrator, and the existence of explicit or implicit pressures that might have affected the possibility of freely expressing their will (Streteanu & Nițu, 2014; Toader, Michinici, and Crișu-Ciocîntă, 2014).

Therefore, under the influence of the ECHR jurisprudence, Romanian criminal law is increasingly confronted with the need to overcome the rigid paradigm of formal consent, accepting the idea that an individual's sexual freedom is incompatible with any form of pressure, intimidation, or manipulation, even in the absence of physical violence per se. This reconceptualization has already produced effects both legislatively and in judicial practice, where modern interpretations of consent contribute to a more complete and effective protection of the rights of injured persons, especially those in situations of social, psychological, or economic vulnerability.

Consequences for the Domestic Legal Framework

Currently, the Romanian normative framework applicable to offenses against sexual freedom and integrity reflects a substantial evolution, marked by the convergence of internal influences - constitutional and doctrinal - and external ones, generated by the European Union *acquis* and the jurisprudence of the European Court

of Human Rights. This legislative dynamic is not merely a formal adjustment but indicates a conceptual reconfiguration of how the infringement on the dignity and sexual autonomy of the person is understood and sanctioned.

A notable aspect of this transformation is the effort to explicitly regulate acts previously ignored or marginally treated, especially those committed against persons in situations of psychological, social, or economic vulnerability. The new legislative orientation therefore implies an extension of the scope of criminal protection - not only in terms of diversifying offenses but also in calibrating judicial intervention according to the specifics of each case. For example, in assessing the existence of consent or forms of coercion, courts are increasingly called upon to consider power relations, relational context, and the psychological impact on the victim (Diaconescu, 2018; European Commission, 2012; ECHR, 2013).

At the same time, the idea is becoming clearer that penal reaction should not be uniform and rigid but adapted to the gravity of the act, concrete circumstances, and individual vulnerabilities. This differentiated approach does not imply relativizing criminal liability but rather reaffirms the humanistic function of criminal law, which should not operate abstractly but be rooted in the social reality of the facts.

Essentially, this legislative trend reflects a repositioning of the state concerning its fundamental obligations, especially as guarantor of the rights and freedoms of the person. By strengthening the protection of sexual autonomy and human dignity, Romanian criminal law aligns with constitutional values (Article 1 paragraph (3) of the Constitution - human dignity as the supreme value) and European principles regarding the effective protection of persons against any form of sexual abuse. Thus, criminal law becomes not only an instrument for sanctioning antisocial conduct but also a mechanism for affirming fundamental values in a democratic society.

The Offences Provided in the Criminal Code and Their Doctrinal Analysis

The Romanian legislator expressly regulates a set of offenses whose primary legal object is the sexual freedom and integrity of the person, reflecting a legal vision consistent with constitutional values and the international commitments assumed by Romania in the field of fundamental rights protection. The offenses concerned are regulated in the special part of the Criminal Code, within a distinct group, which

confirms the special importance given to protecting dignity and sexual autonomy.

Rape (Art. 218 Criminal Code) represents one of the most serious forms of violation of sexual freedom, being defined as a sexual act committed through coercion, placing the victim in a situation where they cannot defend themselves or express their will, or by exploiting such a situation. Doctrine emphasizes that rape is characterized by a pronounced form of violence or abuse of vulnerability, and consent is completely absent or severely vitiated (Boroi, 2024; Streteanu & Nițu, 2014). The ECHR jurisprudence (M.C. v. Bulgaria, 2013) has consolidated the interpretation that the absence of explicit opposition does not equate to the expression of consent, and the factual evaluation must be contextual and aimed at protecting the victim.

Sexual assault (Art. 219 Criminal Code) criminalizes acts with a sexual connotation committed through coercion, without reaching an actual sexual act. This offense is subsidiary to rape but maintains a high degree of social danger, as it involves infringing sexual freedom through physical or psychological acts (Diaconescu, 2018). A clear distinction is observed between formal consent and actual consent - only a voluntary manifestation, free from any pressure, can be considered valid.

Sexual corruption of minors (Art. 221 Criminal Code) is regulated to protect the harmonious development of the minor's personality, considering their level of biological and psychological maturity. Unlike classical offenses against sexual freedom, the emphasis here is on preventing premature exposure to sexual acts, without requiring the minor's consent as a decisive element. According to doctrine, this special protection is justified by the heightened vulnerability status of minors and the positive obligations of the state to intervene preventively (Toader et al., 2014; Boroi, 2024).

Recruitment of Minors for Sexual Purposes (Art. 222 Criminal Code), in its revised form by Law no. 217/2023, defines the act of an adult proposing to a minor under 16 years old a meeting with the purpose of committing a sexual act or an act provided by Art. 374 Criminal Code. The offense is one of danger and aims to discourage any attempt to initiate sexual contact with minors, regardless of whether the act was consummated or not. Thus, the explicit and expressed intention of the adult to involve the minor in sexual conduct is sanctioned, even if it has not materialized in fact (Udroiu, 2023).

Sexual harassment (Art. 223 Criminal Code) is criminalized as a form of psychological or moral coercion exercised in a context of authority, influence, or subordination. The existence of unwanted

sexual behavior that generates a state of intimidation, humiliation, or hostility towards the victim is sufficient. The evolution of the norm reflects the assimilation of European practices regarding gender equality and combating abuses in professional, university, or institutional spaces (European Commission, 2012; Diaconescu, 2018). This offense highlights the social dimension of sexual autonomy and reaffirms the need to protect the personal space from any form of non-physical sexual pressure.

From the analysis of these regulations, a clear trend of legislative sophistication emerges, oriented towards differentiated and adapted protection of victims, depending on the degree of vulnerability, the nature of the act, and the social context. Criminal doctrine consistently supports this orientation, advocating for an approach that goes beyond formalistic interpretations and reflects the complexity of human relationships in matters of sexuality (Stănilă, 2022; Streteanu & Nițu, 2014).

Legal Qualification Issues and Aggravated Forms

Offenses against sexual freedom and integrity generate numerous practical difficulties regarding legal classification, especially in cases where the acts present common or overlapping elements with other offenses in the same category. One of the main challenges is establishing the boundaries between rape (Art. 218 Criminal Code) and sexual assault (Art. 219 Criminal Code), given that both imply a form of coercion and infringement of sexual freedom. Doctrine has emphasized that the distinction is based on the nature of the act committed - whether it constitutes a strictly sexual act or merely acts with a sexual connotation (Boroi, 2024; Stănilă, 2022).

Moreover, in offenses against minors, classification difficulties often arise when consent appears to have been expressed but is invalidated by age being below the legal limit. Sexual corruption of minors (Art. 221 Criminal Code) can be concurrent with rape or sexual assault offenses when the lack of real consent or the existence of coercion is demonstrated. Judicial practice has developed differentiating criteria targeting the degree of the minor's active participation, the initiative of the act, and the existence of a manipulative or abusive context.

Regarding the recruitment of minors for sexual purposes (Art. 222 Criminal Code), the current regulation allows sanctioning explicit intentions, even without physical contact. This criminalization is clearly distinct from attempted consummated acts, as it punishes the proposal addressed to the minor, without requiring acceptance or consummation

of the act. Doctrine has noted that this formulation has a strong preventive character but may generate evidentiary difficulties, since messages or proposals may be ambiguously formulated or in a complex contextual framework (Udroiu, 2023; Diaconescu, 2018).

Concerning aggravated forms, the Criminal Code expressly provides a series of circumstances that increase the limits of punishment. Thus, rape, sexual assault, and sexual corruption of minors have aggravated variants depending on the victim's age (under 15 years), the existence of serious consequences (bodily harm, death of the victim), the commission of the act by a public official, or for the purpose of producing pornographic materials (Boroi, 2024; Toader et al., 2014).

A frequently problematic aspect is determining the unity or plurality of offenses in cases where acts have been repeatedly committed against the same person or in different contexts but with the same active subject. Practice has oscillated between classifying this as a continuous offense, in an aggravated form, and recognizing a real concurrence of offenses. Recent doctrines support applying the principle of speciality and absorption only to the extent that successive acts form part of a unitary conduct with the same criminal intent (Streteanu & Nițu, 2014; Stănilă, 2022).

A particular difficulty also arises in the case of sexual harassment (Art. 223 Criminal Code), where the correct classification often depends on the nature of the relationship between the perpetrator and the victim (relationship of authority, professional dependence, hierarchical subordination). There is a risk that certain morally reprehensible behaviors may not meet all the requirements of legal typicality, which requires a thorough analysis of the context and a rigorous correlation with the available evidence.

Against this background, a nuanced application of the rules is essential, in accordance with the standards of European jurisprudence, which demands effective protection of sexual autonomy and integrity, especially in cases involving vulnerable victims or situations of power imbalance (ECHR, 2013; European Commission, 2012).

Doctrinal Analysis of the Constituent Elements of Offenses Against Sexual Freedom and Integrity

The analysis of the constituent elements of offenses regulated in the chapter concerning acts that infringe sexual freedom and integrity highlights a series of doctrinal controversies, especially

regarding the distinction between forms of coercion, the nature of the incriminated acts, and the standards applicable to consent.

In the case of rape (Art. 218 Criminal Code), legal literature emphasizes the complexity of proving coercion, which may take physical, moral, or psychological forms. Streteanu and Nițu (2014) show that the victim's opposition should not be understood exclusively in terms of physical resistance but may also include a lack of reaction justified by fear or the impossibility of resistance. This interpretation is supported by ECHR jurisprudence, according to which consent cannot be presumed but must be expressed clearly and unequivocally (ECHR, 2013).

For sexual assault (Art. 219 Criminal Code), doctrine consistently distinguishes this offense from rape, emphasizing its subsidiary character. Sexual acts that do not involve penetration are included within the scope of this norm. Boroii (2024) underlines that these are acts which, although not meeting the specific gravity of rape, seriously violate sexual freedom and are committed abusively.

In the case of sexual corruption of minors (Art. 221 Criminal Code), the material element is defined by sexual acts of any nature other than those involving penetration, committed with the purpose of provoking the perpetrator's sexual pleasure. Doctrine points out difficulties in legal classification, especially in situations where the minor consents formally but the context suggests a lack of psychological maturity or an abusive influence exerted by the adult (Diaconescu, 2018; Stănilă, 2022).

For the recruitment of minors for sexual purposes (Art. 222 Criminal Code), amended by Law no. 217/2023, doctrinal discussions mainly focus on the subjective element, namely the intention to propose a meeting for sexual purposes. Udrioiu (2023) emphasizes that the existence of a clear proposal, including one made through remote communication means, is sufficient, without requiring the consummation of the act.

The subjective side of these offenses generally presumes direct intent, but some opinions also admit indirect intent in cases where the perpetrator accepts the possibility of the result occurring. Furthermore, recent doctrine highlights the contextual dimension of consent, especially in cases involving minors or vulnerable persons (European Commission, 2012).

Romanian doctrine reflects a tendency to align with European requirements in the sense of an evolving interpretation of the constituent elements, with an emphasis on the effective protection of

the dignity and sexual freedom of the person, especially in cases involving power relations, subordination, or vulnerability.

Protection of Victims and Practical Challenges

An essential aspect in addressing offenses against sexual freedom and integrity is the effective protection of victims. They often find themselves in a position of extreme vulnerability, affected not only by the criminal act itself but also by the psychological, social, and procedural consequences of exposure to the criminal justice system. In this context, a critical analysis of the regulations and the practical difficulties identified in practice is required, focusing on three main dimensions: the regime of the prior complaint, difficulties in proving consent, and the need for a legal framework genuinely oriented towards protecting the victim.

The Prior Complaint Procedure and Its Implications for Victims

In accordance with the provisions of the Code of Criminal Procedure (2010), the exercise of criminal prosecution for certain offenses against sexual freedom and integrity is conditional upon the existence of a prior complaint filed by the injured party. This regime applies, for example, in cases of sexual harassment (Art. 223 Criminal Code) or simple forms of sexual assault without aggravating circumstances. The rationale of this regulation lies in respecting the autonomy of the victim, who cannot be forced to participate in a criminal trial against their will, especially in a particularly intimate and sensitive area. It also aims to avoid institutional re-victimization through public exposure or direct confrontation with the aggressor (Diaconescu, 2018; Toader et al., 2014).

However, judicial practice and empirical research have highlighted numerous practical difficulties generated by this condition. Frequently, victims avoid filing a complaint within the legal deadline provided by Art. 295 Code of Criminal Procedure, due to feelings of shame, fear of social or professional stigmatization, or under pressures from family, acquaintances, or even local authorities. In such situations, the protection offered by law becomes purely theoretical, and the absence of a complaint leads to case dismissal, regardless of the severity of the act or the existence of solid indications of its commission (Udroiu, 2023).

Moreover, in cases where the act is committed within a context of power imbalance - such as teacher-student, employer-employee, or

doctor-patient relationships - the victim may be discouraged from initiating formal procedures for fear of retaliation or loss of social or economic advantage. In such a context, maintaining the conditional nature of criminal prosecution affects the very effectiveness of criminal law and contravenes the state's obligation to ensure effective protection of fundamental rights, including guaranteeing access to justice (European Commission, 2012).

In this regard, part of the criminal doctrine and judicial practice supports the need to reconfigure the regime of the prior complaint in the case of certain sexual offenses, by extending the scope of ex officio criminal prosecution, at least when conditions such as the existence of a dependency relationship between the victim and the perpetrator, the commission of the act within an institutional setting, or recidivism are met. Such an approach would allow for more effective intervention by authorities and would increase the level of protection for vulnerable persons, without completely excluding the victim's autonomy (Stănilă, 2022).

Thus, the reevaluation of procedural rules in this matter, in relation to the requirements of European law and the jurisprudence of the European Court of Human Rights (ECHR, 2013), becomes not only timely but also necessary to ensure the effective and fair application of criminal law in the delicate field of offenses against sexual freedom.

Difficulties in Proving Consent and in the Administration of Evidence

One of the most challenging issues in criminal proceedings concerning offenses against sexual freedom and integrity is proving the absence of the victim's consent. This issue becomes even more complex in situations where there are no visible physical marks or eyewitnesses to confirm the circumstances of the act. In such cases, the resolution of the case relies predominantly on the assessment of the statements of the involved parties, which can lead to subjective interpretations and risks of judicial error (Diaconescu, 2018).

Furthermore, in the context of sexual offenses involving psychological violence or other subtle forms of coercion, factors such as fear, psychological manipulation, or shock may cause victims not to react physically or verbally during the commission of the act. These behaviors may be misinterpreted by investigators or courts as a form of tacit consent, which further complicates the determination of the victim's actual will. Thus, a major evidentiary difficulty arises, resulting in a significant number of case dismissals or acquittals despite the

existence of circumstances clearly indicating the absence of the victim's free and unaltered consent.

To address this problem, the solution is not to lower the standard of proof, as this would severely affect the fundamental principles of criminal justice. Rather, it is necessary to adapt and improve procedural tools by specializing investigators in the field of sexual crimes and applying specific interviewing techniques that take into account the victim's age and trauma. In this regard, the victim's hearing must be conducted under conditions that minimize the risk of re-victimization and ensure a secure, empathetic, and professional environment.

Thus, the proper and sensitive administration of evidence is essential to ensuring fair justice that genuinely protects victims' rights, while simultaneously respecting legal rigor and the principle of the presumption of innocence.

The Need to Strengthen a System Oriented Towards Victim Protection

In this context, European standards call for a paradigm shift from a vision focused on the criminal act and its perpetrator to a framework oriented towards the effective protection of the victim. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (European Commission, 2012) requires Member States to ensure an individualized treatment of victims, taking into account their vulnerabilities and the risk of secondary victimization. Likewise, the case law of the European Court of Human Rights has consistently reaffirmed the importance of respecting victims' rights during criminal proceedings, especially in cases involving sexual offences (ECtHR, 2013). Romania has taken steps towards aligning with these standards; however, significant shortcomings persist with regard to effective access to psychological counselling, the use of special hearing procedures, and the professional training of those involved in criminal investigations.

Therefore, protecting victims of offences against sexual freedom and integrity entails not only an adequate criminal response towards perpetrators, but also the development of institutional and procedural mechanisms capable of meeting the specific needs of victims. Such an approach requires constant coordination between

domestic regulations and European requirements, as well as sustained investment in the training of justice professionals.

Conclusions

The analysis of current regulations on offences against sexual freedom and integrity in Romanian criminal law highlights a clear transition from a moralizing vision, focused on defending public order and “good morals”, towards a model centred on respecting human dignity, sexual autonomy, and equality in interpersonal relations. This transformation results both from internal doctrinal developments and from Romania’s European and international obligations, particularly through the transposition of Directive 2012/29/EU and the incorporation of the case law of the European Court of Human Rights.

An essential aspect arising from this evolution is the reformulation of the concept of consent, not merely as the absence of explicit opposition, but as the active and unequivocal expression of a person’s free will. National courts are called upon to examine the facts within a broader context, taking into account power dynamics, the victim’s vulnerability, and indirect means of coercion.

At the same time, the separate regulation of offences such as sexual harassment or the solicitation of minors reflects a trend towards normative differentiation, intended to respond more accurately to contemporary social realities. The need to adapt criminal procedures to the needs of victims is also evident, particularly by ensuring a procedural framework that avoids re-traumatization, allows for dignified participation, and facilitates effective access to justice.

Finally, although the current legislative framework can be improved, it offers the premises for a more nuanced protection of sexual freedom, conditioned, however, by the consistent and sensitive application of legal norms. Only through a contextual, empathetic, and firm interpretation of the law can a balance be achieved between the state’s right to sanction antisocial acts and its obligation to protect the interests and fundamental rights of the victim.

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