ATTITUDES ABOUT THE RATIONALE BEHIND INCriminating Certain CATEGORIES OF CHILD PORNOGRAPHY

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ABSTRACT: This study begins with analysing the legal provisions pertaining to the crime of child pornography on an international, European and national level, with the aim of ascertaining whether the legislator’s incrimination of certain forms of child pornography, pseudo-pornography and virtual pornography that involve minors is opportune. The literature is rife with reservations and controversies stemming from the fact that the social value protected by this crime has not been clarified, and situations can arise in which the legislator criminalises certain acts that, although immoral, nonetheless exceed the scope of criminal law.

In order to fully analyse the phenomenon from the viewpoint of social perception as well, an empirical study has been performed comprising 607 persons. The aim of this study is to investigate the attitudes of the population with regard to child pornography, taking into account familiarity with the notion, the content of legislation and opinions about the rationale of criminalisation. The results show that certain demographic variables can give rise to differences in perceiving the object of the study, and respectively, that there are certain forms of the crime that are thought to be subject to an excessively harsh system of penalties. Nevertheless, a segment of the population is not fully informed as to child pornography, which justifies further efforts to raise awareness of the subject.

KEYWORDS: child pornography, pseudo-pornography, virtual pornography, legislations, legal interest

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1. INTRODUCTION AND BASIC CONCEPTS

Respecting fundamental human rights and the freedoms constitute the basis for justice and peace in the world.\(^1\) Child pornography severely infringes upon these fundamental values, such as that of sexual freedom and human dignity. To combat these injuries, child pornography acts have been criminalised globally (Mărgineanu 2013).

Child pornography has multiple legislative definitions that vary according to the time they were adopted. Compared to the first legal provisions in this matter, current legislation is much more comprehensive. These definitions also differ from the level of the legislations in which they had been instituted: international provisions display a much more general character than national legislation, which are more specific and concrete. The common trait of these definitions is that they ascribe these acts of child pornography to the sphere of criminal law.

Child pornography (also called paedo-pornography, paedophilia, infant pornography, juvenile pornography) in its strictest sense refers to materials that involve a minor in an explicitly sexual conduct (Boldova Pasamar 2008). In scholarly literature, it has been shown that the spread of this criminal act coincided with the expansion of the Internet. This phenomenon is explained by the universal nature of the virtual medium and “its ability to connect millions of users around the world, the speediness of access and the exchange of information, the anonymity of users and those involved, as well as low costs (Boldova Pasamar 2008, p. 4). Thus, infringers make use of modern technologies, namely computers and the Internet, as the means by which they commit the crime in a virtual environment (Vasiu & Vasiu 2011).

In order to curtail the spread of pornographic acts that involve minors, legislators around the world began to criminalize the specific varieties of transgression, such as pseudo-pornography and child pornography (Teslovan 2015).

Pseudo-pornography (pseudo-infantile pornography) comprises sexual materials in which an adult person pretends to be a minor (King 2008). This category of child pornography, criminalised by the European legislator as well, has been criticised because the pornographic materials themselves feature no underage persons (Bogdan, Șerban & Zlati 2014). In light of the fact that the transition with regard to age is a natural process, an adult may look like a minor. The criterion of identifying age based on the person’s physical appearance is subjective in nature and up to individual appreciation. The above-mentioned restriction – lacking an objective criterion – cannot serve as a basis for criminalization, since it can harm adult persons whose physical appearance is similar to minors.”\(^2\)

Thus, the rationale of criminalization is absurd, since material with sexually

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explicit content involving a person over 18 years of age and with the physical appearance of a 17-year-old minor could constitute a crime of pseudo-pornography (Bogdan, Șerban & Zlati 2014).

Virtual pornography, another form of child pornography consists of “computer-generated images (CGI), which is created wholly through computers and does not involve the abuse of real children but nevertheless raises important legal and ethical issues” (Eneman 2010, p. 43). The doctrine regarding this form has also been intensely criticised for the same reason, namely, that it does not constitute a factual infringement of any children’s rights (Williams 2004).

Foreign literature provides a series of concrete examples through which these pornographic acts can be committed; they comprise altered and manipulated images: “for example, the alteration could involve superimposing the face of a child onto an (adult) pornographic picture, or removing the image of a child (for example eating an ice-cream) and superimposing it onto a pornographic picture so as to make it look like the child is participating in a sex act. Such images can still be considered sexually exploitative since although no abuse has necessarily occurred to the child, it remains exploited since a recognisable picture of the child is displayed purporting to show it engaging in sexual activities. A second form of morphing is to take an adult pornographic image and, using a graphic manipulation package, transform the image into a child. So, for example, the hips of the female could be slimmed, breast size be reduced and pubic hair airbrushed out or thinned. The resulting image would appear to show a child. Again, where it shows a recognisable person this could be said to be exploitative since a person recognising the person portrayed may think (wrongly) that the person posed sexually whilst a child” (Eneman, Gillespie & Stahl 2009, p.5).

It is noticeable that according to Romanian doctrine, the provisions that criminalize the two forms of child pornography “punish profoundly immoral behaviours that create a potential risk (unsupported by empirical studies) for children who would become future subjects of child pornography.” (Bogdan, Șerban & Zlati 2014, p. 725).

Were we to accept the idea that virtual pornography and pseudo-pornography does not infringe upon the rights of minors, it would seem to constitute a limitation to the freedom of expression, protected by the European Convention on Human Rights in Article 10(1): „Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”³ However, this freedom is not absolute; it can be limited in certain justifiable conditions.

The rationale behind the criminalisation of these forms of child pornography might be the prevention of corrupting minors for sexual purposes (grooming). Grooming is

defined as a category of direct harassment of children with the aim of committing abuse on them (Wortley & Smallbone 2006).

It has been maintained that the forms of pseudo-pornography and virtual pornography could easily manipulate children, resulting in actual abuse on them (Astinova 2013). Similarly – if not criminalised –, acts of pseudo-pornography and virtual pornography could have an encouraging effect on committing acts of child pornography in which minors are actually involved (Cisneros 2002).

Criminalising acts of grooming has been proposed instead of the fictional images of pseudo-pornography and virtual pornography (Williams 2004). However, acts of grooming can be more difficult to prove, “and that tackling the images rather than their use would, at least, allow them to be removed from circulation, thereby potentially preventing their use in grooming” (Gillespie cited in Eneman, Gillespie, & Stahl 2009, p.6).

In conclusion, it is clear that criminalising these forms of pornography has more of a preventive role in combating certain categories of much more severe crimes such as corrupting minors for sexual purposes and child pornography, and thus interference with the freedom of expression seems to be justified and does not infringe upon the provisions of the Convention on Human Rights.

2. INTERNATIONAL LEGISLATION

On an international level, there is a series of fundamental provisions that constitute the primary measures for combating the phenomenon of child pornography:

The United Nations Convention on the Rights of the Child, adopted in 1989, constitutes the first legislation regarding the protection of minors; however, it is not sufficiently specific in the matter of child pornography. Thus, the Convention, although establishing minimum standards of protection to which children are entitled to, including protection against harmful influences, abuse and exploitation, among which it mentions child pornography, it does so without providing a definition for it: “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.\(^4\)

In its conclusions, The International Conference on Combating Child Pornography on the Internet (Vienna, 1999) recommends “the worldwide criminalisation of the

\(^4\)Article 34 Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx
production, distribution, export, transmission, import, intentional possession and promotion of this type of pornography, emphasizing the importance of closer cooperation and association between governments and the online sector” (Boldova Pasamar 2008, p.8).

Another regulatory act is The United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution. Unlike the Convention on the Rights of the Child, which did not define child pornography, this Protocol defines this crime in Article 2 as: “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”. Article 3(1) provides for the criminalisation of the different methods in which this act can be committed: “Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child”.

„The United Nations Commission on Human Rights decided to appoint a Special Rapporteur to consider matters in relation to the sale of children, child prostitution and child sexual abuse content. The Special Rapporteur’s reports in 2004 and 2009 observed that although more than 137 of the United Nations Member States had ratified the Optional Protocol, the in comprehen sive and ambiguous legislation on child sexual abuse content still «leaves a dangerous gap that exposes children to the risk of abuse”. Given that countries have no borders where internet use is concerned, «coordinated, effective and structured international co-operation for the protection of all children» worldwide is therefore of paramount importance in the Special Rapporteur’s opinion. For this purpose, the reports called for increased international cooperation, including establishing an international mechanism for reporting internet-related offences” (Wei 2011, p. 10).

„The Council of Europe Convention on Cybercrime was established with the aim of implementing a cooperative and uniform approach to the prosecution of cybercrime and protecting legitimate interests in the use and development of information technologies. The Convention entered into force in July 2004 and laid down binding obligations for all governments wishing to develop legislation against cybercrime. Since it was not only open for signature by European states, but also open for signature by non-European states, the Convention provides a framework for international co-operation in the field of cybercrime and it is therefore deemed as the first international instrument on criminal offences committed through a computer system” (Wei 2011, p.12). This criminalises the following acts as methods of perpetrating child pornography: producing child pornography for the purpose of its distribution through a computer system; offering or making available child pornography through a computer system; distributing or

transmitting child pornography through a computer system; procuring child pornography through a computer system for oneself or for another person; possessing child pornography in a computer system or on a computer-data storage medium. In Article 9(1), it provides: For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts: a minor engaged in sexually explicit conduct; a person appearing to be a minor engaged in sexually explicit conduct; realistic images representing a minor engaged in sexually explicit conduct. It can be noted that unlike other international legislative instruments, the convention criminalises pseudo-pornography (a person appearing to be a minor engaged in sexually explicit conduct).

It can be noted that none of these acts provide for virtual child pornography. On the other hand, pseudo-pornography is mentioned, yet the notion is not emphasized.

Another important document is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007, also known as the Lanzarote Convention. According to Article 20, child pornography means “any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes”, and can be committed in the following ways: producing, offering or making available, distributing or transmitting, procuring child pornography for oneself or for another person, possessing, knowingly obtaining access, through information and communication technologies, to child pornography. The convention nevertheless leaves the punishment of the production and possession of pornographic material: consisting exclusively of simulated representations or realistic images of a non-existent child to the discretion of the signatory states. Romania ratified this Convention via Law No. 252/2010.

3. THE EUROPEAN PERSPECTIVE AS TO THE CRIMINAL PHENOMENON OF CHILD PORNOGRAPHY

The legal instruments of the European Union have been concentrating on continuously updating texts in connection with child pornography together with the development of modern technology. The first European attempts to halt child pornography date back to 1996, when the European Council adopted the “Communication on Illegal and Harmful Content on the Internet” and the “Green Paper

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on the Protection of Minors and Human Dignity in Audio-Visual and Information Services”; yet these pieces of legislation have proved to be insufficient (McIntyre 2010).

In the first article, Council Decision of 29 May 2000 to combat child pornography on the Internet8 encourages Internet users to inform law enforcement authorities, either directly or indirectly, on suspected distribution of child pornography material on the Internet, if they come across such material. Internet users shall be made aware of ways to make contact with law enforcement authorities or entities which have privileged links with law enforcement authorities, to enable such authorities to fulfil their task of preventing and combating child pornography on the Internet. With the aim of preventing such acts against minors, the decision compels Member States to guarantee quick action on the part of law enforcement authorities. It has also been provided in Article 2 that Member States should accomplish ample and quick cooperation in order to facilitate efficient investigation and prosecution. The primary role of the above-mentioned Framework Decision is to prevent and combat pornographic acts on the Internet, laying the burden of various prevention and cooperation measures upon the Member States.

Another fundamental act at the level of the European Union is Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.9 This Decision defines child pornography in Article 1 as “pornographic material that visually depicts or represents: a real child involved or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child; or (ii) a real person appearing to be a child involved or engaged in the conduct mentioned in (i); or (iii) realistic images of a non-existent child involved or engaged in the conduct mentioned in (i).” It can be noted that section (ii) of the Decision criminalises the pseudo-pornography acts previously presented, while section (iii) criminalises acts of virtual pornography. Among the methods of perpetrating the crime in Article 3, the following are provided for: production of child pornography; distribution, broadcasting or transmission of child pornography; the act of offering or making available child pornography; purchasing or possessing child pornography.


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replaces. Among the changes introduced by this directive are: broadening the number of crimes, such as those facilitated by the use of information and communication technology and emphasizing the prevention of such acts via harsher sanctions than the old legislation (Măhălean 2014). According to Article 2 of the Directive, child pornography comprises (i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; (ii) any depiction of the sexual organs of a child for primarily sexual purposes; (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes. Among the methods of perpetration are: acquisition or possession of child pornography; knowingly obtaining access, by means of information and communication technology, to child pornography; distribution, dissemination or transmission of child pornography; offering, supplying or making available child pornography and production of child pornography.

Both regulatory acts can be seen to act along the lines of criminalising child pornography to the same degree, with the note that Directive 2011/92/EU emphasises the methods of perpetration through computer technology and provides for the application of harsher punishment than Decision 2004/68/JHA. However, both pseudo-pornography and virtual pornography are criminalised under the definition of the crime and the categories of child pornography. The two pieces of legislation have been criticised in the literature, where it has been pointed out that virtual pornography does not even indirectly involve a minor (Pasamar 2008), and at the same time, the need for a legitimate protected interest is exceeded (European Criminal Policy Initiative 2009). It can also be noted that the phrase “a person appearing to be a child” is not clear and predictable enough, leaving too much room for interpretation (Măhălean 2014).

4. CHILD PORNOGRAPHY IN ROMANIAN LEGISLATION.

Before the New Criminal Code, acts of sexual exploitation of minors were regulated in three distinct and special laws: Law No. 678/2001 on the prevention and combating of human trafficking\(^\text{11}\), Law No. 161/2003 on certain measures for ensuring transparency in exercising public offices and functions in the public and business sectors, the prevention and punishment of corruption\(^\text{12}\) and Law No. 196/2003 on the prevention and combating


of pornography. Although the above-mentioned three regulatory acts are no longer in force, in the following we will make short presentation on the evolution of the pertinent Romanian legislation, after which we will analyse the changes brought by the current Penal Code (2014).

Law No. 678/2001 criminalised the following acts as child pornography within Article 18: to exhibit, sell or disseminate, rent, distribute, manufacture or possess with the purpose of disseminating objects, films, photographs, slides, emblems or other graphical material that represent sexual positions or acts with a pornographic character and that display or imply minors under 18 years of age, or importing or conveying such objects to a transportation or distribution agent with the purpose of trading in or distributing them.

In article 51, Law No. 161/2003 defined child pornography as “producing with the purpose of dissemination; offering or making available; dissemination or transmission, procuring for oneself or another person pornographic materials featuring minors through computer systems or possessing, without the right to do so, pornographic material with minors in a computer system or a digital means of data storage”. The definition strengthened the protection measures afforded to minors by modernising penal dispositions to effectively circumscribe the use of computer systems in committing child pornography (Vasiu & Vasiu 2006). According to this law (Art. 35(1) (j)), “pornographic material featuring minors means any materials that display a minor engaging in sexually explicit behaviour or an adult person who is presented as a minor engaging in sexually explicit behaviour or images that, although not portraying a real person, credibly simulate a minor engaging in sexually explicit behaviour.”

It can be noted that both simulated pornographic acts and virtual (pseudo-pornography) ones were criminalised. Scientific and artistic works were exempted from the incidence of criminalisation (Vasiu & Vasiu 2010).

Law No. 196/2003 on preventing and combating pornography punished, in Article 11, obscene acts that depict minors. Acts and materials of an obscene nature were defined in Article 2, according to which sexually explicit gestures or behaviours included images, sounds or words as well as other forms of indecent displays regarding sexual life, as well as objects, engravings, photographs, holograms, drawings, writings, prints, emblems, publications, films, audio and video recordings, advertisement videos, software and digital applications, musical pieces and other forms of expression that depict or suggest sexual activity.

Comparing the crime of child pornography through computer systems as provided for in Art. 51 of Law No. 161/2003, with the crime of child pornography as provided for in Art. 18 of Law No. 678/2001, the following differences can be ascertained: the crime of

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child pornography through computer systems as provided for in Art. 51 of Law No. 161/2003 can be accomplished by the simple procurement or possession, without the right to do so, of pornographic materials featuring minors, while in the case of the crime of child pornography as provided for in Art. 18 of Law No. 678/2001, only the possession of such materials with the purpose of dissemination is criminalised. According to Art. 51 of Law No. 161/2003, the crime is perpetrated exclusively by computer systems, while the notion of pornographic materials featuring minors defined by Law No. 161/2003 is further expanded: Thus, the act of procuring and possessing, without the right to do so, pornographic materials featuring minors in a computer system, materials viewed together with other persons within the same computer system only falls under the provisions of Art. 51 of Law No. 161/2003, which is the special rule, but not in the provisions of Art. 18 of Law No. 678/2001, which constitutes the general rule in the matter, as it results from Decision No. 499/2012 expressed by the High Court of Cassation and Justice of Romania (ICCJ). In judicial practice, these acts were under the purview of Law No. 161/2003 because most of the time, child pornography materials have been produced and distributed through computer systems, but hypotheses can be imagined where this kind of acts might not be committed through such systems, and in this situation the act does not fall under the purview of any laws, and thus the perpetrator might not incur liability (Bugnar 2014).

The entry into force of the New Penal Code in 2014 brought significant changes in the legislation of pornographic acts that involve minors. The texts from previous legislation were transposed into the content of a single crime of child pornography (Bogdan, Ţerban & Zlati 2014). Currently, virtual pornography is criminalised, while pseudo-pornography is not criminalised by the Romanian legislator.


Thus, according to Article 374 of the new Penal Code, “(1) Producing, possessing with the purpose of exhibition or distribution, purchase, storage, exhibition, promotion, distribution, as well as making available, in any way, of pornographic material featuring minors is punished”, even in situations in which these acts “were perpetrated through a computer system or other means of digital data storage.” At the same time, “accessing, without the right to do so, pornographic materials featuring minors through computer systems or other means of electronic communication” is also criminalised. “Pornographic material featuring minors means any materials that displays a minor

14 Decision No. 499 of 21 February 2012, delivered on appeal by the Penal Section of the High Court of Cassation and Justice, regarding child pornography, http://www.iccj.ro/cautare.php?id=70687
engaging in sexually explicit behaviour or which, although not portraying a real person, 
credibly simulate a minor engaging in sexually explicit behaviour.”

It can be noted that storage unqualified by purpose is not identical to possession, 
because compared to this, storage requires an additional act – an action with the aim of 
organising and arranging these materials. The choice of the legislator to criminalise 
storage but not simple possession is welcome, since the latter would risk infringing on 
the right to privacy (Bugnar 2014).

In Laws No. 678/2001 and 196/2003, the contents of the crime did not contain 
purchasing as a method of perpetrating the crime. Consequently, the two laws were 
lacking in this sense as well.

The new Penal Code brings novations in the matter in this sense as well, 
criminalising the act even under the method of purchasing.

The novations introduced by the new Penal Code were considered generally positive: 
“the first praiseworthy element of this new piece of legislation is to concentrate the 
norms regarding child pornography, dispersed in three separate laws, within the same 
article. At the same time, the legislator unified traditional child pornography and digital 
child pornography, and the definition given to pornographic materials featuring minors is 
applicable in both cases of pornography, and thus the legal gap has been solved” 
(Bugnar 2014, p.45). Pornographic materials featuring minors can determine impulses 
incongruent with morals in certain persons. “This kind of materials can turn into 
criminogenic factors relevant to the matter of crimes against sexual freedom. Similarly, 
acts of child pornography generically affect “the right of image” and the “dignity” of 
the minor. Specifically, the minor who is the subject of child pornography images may 
suffer deep psychological trauma (Dobrinoiu et al., 2012, p. 949).

5. STUDY METHODOLOGY

This study comprises empirical research based on the opinions of 607 persons about 
the phenomenon of child pornography. The sample was largely made up of university 
students and graduates familiar with the on-line environment.

Quantitative methods of gathering, processing and interpreting data based on an 
anonymous questionnaire were used to carry out the study. The questionnaire was 
devised using Google Forms and administered on-line via the Facebook social network, 
and the data were imported and processed using the SPSS software suite.

Data gathering took place in the spring of 2015.

Administering the questionnaire was conceived analogously to the non-probability, 
non-random “snowball” sampling technique, transposed in the on-line environment via 
the above-mentioned social network. The author’s social network connections, both

15 Article 374 of Law No. 286/2009 on the new Penal Code, published in the Official Gazette no. 510 of 24 
individuals and interest groups, were asked to fill in the questionnaire and then distribute it on their personal pages and interest groups.

Among the aims of the study was obtaining information about the awareness of the notion and pertaining legislation as well as the investigation of attitudes towards the phenomenon of child pornography.

Study questions such as whether the prohibition of child pornography acts was justified and why, whether the participating persons perceived any differences between child pornography and adult pornography, whether they were aware of the contents and limits of the legislation in the matter and how they assessed punitive measures, and respectively, if they could supply reasons that would justify engaging in pseudo-pornography, and how they perceived the criminalisation of pseudo-pornography.

6. THE RESULTS OF THE STUDY

Demographic data
The sample was made up of 607 persons, out of which 81.4% (n=494) were female and 18.6% (n=113) were male.

Of these, 48.7% (n=290) of valid responses were given by respondents of up to 22 years of age, 41.0% (n=244) were between 23 and 35, 6.9% (n=41) were between 29 and 35, and 3.4% (n=20) were over 36 years of age.\(^\text{16}\)

With regard to the level of education in subjects, 5.8% (n=35) answered that they had passed the National Baccalaureate, 56.0% (n=339) were students, 34.9% (n=211) were university graduates, and 3.3% (n=20) had postgraduate degrees.\(^\text{17}\)

Of the persons queried, 87.7% (n=528) resided in urban areas and 12.3% (n=74) in rural areas.\(^\text{18}\)

The distribution by religious denomination was the following: 57.4% (n=328) were Christian Orthodox, 11.2% (n=64) Roman Catholic, 17.2% (n=98) Reformed, 5.6% (n=32) Unitarian, 2.6% (n=15) atheists, while 6.0% (n=34) were of other denominations, such as Baptist, Pentecostal, Jehovah’s Witnesses or non-religious, etc.\(^\text{19}\)

Out of the subjects providing valid answers, 82.1% (n=491) stated that they were religious and 17.9% (n=107) reported being secular. No answer was provided by 1.5% (n=9) of respondents.

Overview of the answers to the survey questions
Initially, awareness of the notion of child pornography was assessed: Of the respondents, 87.4% (n=527) answered in the affirmative, 1.5% (n=9) answered in the negative, and 11.1% (n=67) were uncertain with regard to the meaning of the notion. 0.7% (n=4) failed to answer the question.

\(^\text{16}\) Two per cent (n=20) of the subjects failed to provide their age.
\(^\text{17}\) 0.3% (n=3) failed to provide their level of education.
\(^\text{18}\) 0.8% (n=5) of respondents failed to specify the area in which they resided.
\(^\text{19}\) No answer was provided by 5.9% (n=36) of respondents.
Of the valid answers, 72.4% (n=436) believed that such acts were forbidden in Romania, 9.5% (n=57) felt that they were not forbidden, while 18.1% (n=109) were uncertain.

82.7% (n=498) believed that child pornography acts differed from adult pornography, 6.0 (n=36) believed that they did not, while 11.3% (n=68) were uncertain in this regard.

This shows that a large majority of the population studied was aware of the notion of child pornography and of the fact that such acts are prohibited in Romania and that these differed from adult pornography. However, we learned that a small segment of the population was not fully informed as to the nature of this phenomenon, which would justify further efforts to raise awareness of the subject.

Of the respondents, 60.6% (n=366) believed that pornography constituted a crime, 11.9% (n=72) opined that it is of a conventional nature, 23.3% (n=141) did not know the answer to the question, while 4.1% (n=25) believed that such acts were not punished. Thus, we discovered that a relatively high number of persons were not aware of the criminal nature and the system of penalties for child pornography acts.

With regard to the question whether all Member States of the European Union prohibited child pornography, 52.3 (n=316) believed that such acts are generally prohibited at the level of all European states, 14.2% (n=86) opined that they are not prohibited in all EU Member States, while 33.4% (n=202) held no such information. As to the question whether such acts were prohibited in all countries in the world, 16.9% (n=102) answered in the affirmative, 44.4% (n=267) responded in the negative, while 38.7% (n=233) were uncertain in this regard. The data obtained confirm our first observations, namely that awareness needed to be raised in a significant segment of the population.

Of the subjects, 75.2% (n=451) answered in the negative as to the possibility of there being a reason justifying child pornography, 10.6% (n=64) believed that there were such reasons, while 14.2% (n=85) were uncertain, which shows that the reasons for the prohibition are not evident to all.

The main reason for the prohibition of child pornography is protecting minors for 89.6% (n=525), ethical considerations for 6.8% (n= 40), religious considerations for 2.6% (n=15), while 1.0% (n=6) indicated other reasons.

Punishing pseudo-pornography was considered to be an excessive measure by 45.3% (n=271), 35.9% (n=215) were of the opinion that it was reasonable, while 18.9% (n=113) were uncertain. This shows that it is not only the literature that is divided by the issue, but the persons taking part in the study also have reservations about the current legislation.

Analysis of the answers according to demographical variables

Statistical analysis of the data comprises reporting demographical variables and answers to the study questions themselves by cross-tabulation. The case processing
summary shows that valid answers varied between 91.1% (n=553) and 99.5% (n=604), with the remainder lacking data because of non-responsive subjects. Each table was tested for statistical significance using Pearson’s chi-square test or, as appropriate, Fisher’s exact test.20

**Gender**

Gender, when reported to the awareness of the notion of child pornography, represents an independent variable, which is to say that there is no relationship between awareness of the notion of child pornography and the gender of the persons who took part in the study; the differences were not statistically significant.21 Neither is knowledge of the fact that child pornography acts are prohibited in Romania a determining factor from a gender standpoint.22

The attitude towards acts of pornography for adults is a variable that is gender-dependent, where the chi-square test removes the null hypothesis (H_0), meaning a lack of any relationship of dependency, and favours the alternative hypothesis (H_1), meaning that gender and attitude towards adult pornography may have a certain relationship: both categories of genders are for keeping adult pornography legal, yet men (67.9%, n=82) seem to favour such acts more than women (57.2%, n=281); (c^2=9.400, df=2, p<.01).

Assessing the differences between child pornography and adult pornography has no correlation with the gender of the responders. Awareness of the prohibition at a European and global level is once again not influenced by gender.23

The main reason for which child pornography acts should be prohibited differ significantly depending on to gender, with a significant association according to the Fisher test (Fisher’s exact test=11.754, p<.01). Both gender categories state that the main reason is protecting minors, yet men had indicated ethical reasons to a greater degree (11.2%, n=12) than women (5.8%, n=28).

Although the vast majority of subjects (87.6% in total, n=529) refuses to consider child pornography as a sexual preference, men are tolerant and/or uncertain to a significantly higher degree than women (c^2=8.716, df=2, p<.05).

With regard to simulating acts of child pornography by adults (pseudo-pornography), men tend to consider the punishment more excessive than women, who tend to consider the punishment for acts of simulation more reasonable (c^2=22.589, df=3, p<.01).

**Age**

20 when over 20% of cells had expected values under 5.
21 (c^2=4.286, df=2, p=n.s.) where p=n.s. means that the level of significance is over p>0.5 and thus the differences between the two variables are not significant.
22 (c^2=0.841, df=2, p=n.s.).
23 (c^2=8.30, df=3, p=n.s.).
24 (c^2=6.794, df=3, p=n.s.).
25 (c^2=2.183, df=2, p=n.s., and c^2=2.132, df=2, p=n.s., respectively).
The age of the subjects was organized into four groups: up to 22, between 23 and 28, from 29 to 35 and over 36. The reason for this grouping lies in the specific characteristics of life according to age, in our experience: young people up to 22 years of age are finishing their studies; from the age of 23 to 28, they take their place in the employment market and are at the beginning of their career; from 29 to 35 years of age, they start their own families; and beginning with the age of 36, their occupation and families have already been consolidated. Thus, age groups could determine different sensitivities in persons towards the issues of child pornography.

As to the awareness of the concept of child pornography and awareness of the fact that it is prohibited in Romania and the European Union, age is a circumstance with a low level of statistical significance. Nevertheless, based on the data gathered it seems that young persons up to 22 years of age are less informed than more senior age groups.

Child pornography is viewed differently from adult pornography by all age groups, with the following notes, however: young persons under 22 perceive differences to a smaller degree (76%, n=218), than persons between 23 and 28 (87.2%, n=212) and persons between 29-35 (97.6%, n=40) and those over 36 years of age, respectively (89.5%, n=17) (c^2=21.198, df=6, p<.01).

Age has no significant bearing to opinions about the system of penalties for acts of child pornography. Neither do the attitudes regarding the main reasons for prohibiting them differ significantly according to age groups.

Young persons up to 22 years of age believe to the lowest degree (67.6%, n=194) out of all age groups and compared to the grand total (75.2%, n=442) that there should not be any justifying reasons for acts of child pornography (Fisher’s exact test=21.658, p<.01).

Similar results were obtained with regard to the perception of child pornography acts as sexual preferences as well, where young persons under 22 of age were those who would not accept this possibility (82.6%, n=238) compared to the grand total of age groups (87.5%, n=518); (Fisher’s exact test=14.108, p<.05).

Level of education

The level of education seems to be connected to the attitudes about child pornography. The research subjects were divided into four groups: Baccalaureate level, student, university graduate and postgraduate degree. Alongside a rising level of education, there seems to be more awareness of the issues surrounding child pornography. We have discovered significant correlations between the education of the subjects and the awareness of the concept and the fact that such acts are prohibited in Romania and the European Union (e.g., c^2=30.007, df=6, p<.01 at the question regarding the EU).

26 (c^2=7.025, df=6, p=n.s.).
27 (c^2=14.801, df=9, p=n.s.).
Concerning acts of adult pornography, those with postgraduate degrees proved to be the most tolerant (85%, n=17), \((c^2=18.089, df=6, p<.01)\), and this group was also the one which could differentiate them from acts of child pornography to the highest degree (Fisher’s exact test=13.643, p<.05).

The level of penalty\(^{28}\), the reasons for prohibition\(^{29}\), the system of penalties\(^{30}\) as well as the simulation of child pornography acts by adults\(^{31}\) do not seem to be associated with level of education.

**Beliefs**

From the point of view of the awareness of the concept\(^{32}\), of its prohibition in Romania\(^{33}\), of its distinction from adult pornography\(^{34}\), the system of penalties\(^{35}\), of the justifying circumstances\(^{36}\), of the assessment of pornography as a simple sexual preference\(^{37}\), of the reasons for prohibition\(^{38}\) and the simulation of child pornography acts by adults\(^{39}\), we could not establish significant correlations to beliefs.

Beliefs seem to have a bearing on the attitude towards prohibiting adult pornography (\(c^2=15.781, df=2, p<.01\)). Religious persons are more predominantly uncertain or supportive of complete prohibition than non-religious ones; still, the majority in both groups accept the idea of adult pornography (54.6%, n=267 in the religious and 85%, n=91 in the non-religious).

**Place of origin**

In most of the variables – represented by the questions in the survey –, urban or rural areas have no significant correlation with respect to the attitudes about child pornography, as evidenced by the aforementioned tests (chi-square and Fisher’s exact test). However, the data must be processed carefully due to the composition of the sample, which was significantly weighted towards persons coming from urban areas (87.7% n=527) much more so than those coming from rural areas (12.3% n=73).

Consequently, place of origin seems not to be a determining factor regarding the attitudes toward child pornography.

**Correlations**

The answers given by the research subjects were tested for correlations using the two-tailed Pearson correlation method. We have found that there are several significant correlations between the answers, but most of the interdependences are moderate or

\(^{28}\) (Fisher’s exact test=5.827, p=n.s.).
\(^{29}\) (Fisher’s exact test=6.582, p=n.s.).
\(^{30}\) (\(c^2=7.930, df=6, p=n.s.\)).
\(^{31}\) (\(c^2=8.362, df=9, p=n.s.\)).
\(^{32}\) (\(c^2=3.014, df=2, p=n.s.\)).
\(^{33}\) (\(c^2=1.59, df=2, p=n.s.\)).
\(^{34}\) (\(c^2=1.288, df=2, p=n.s.\)).
\(^{35}\) (\(c^2=1.298, df=3, p=n.s.\)).
\(^{36}\) (\(c^2=3.196, df=2, p=n.s.\)).
\(^{37}\) (\(c^2=3.323, df=2, p=n.s.\)).
\(^{38}\) (Fisher’s exact test=4.015, p=n.s.).
\(^{39}\) (\(c^2=5.836, df=3, p=n.s.\)).
weak ($r^{40} < -.03$, $p^{41} < .05$). According to the results, the people who are convinced that they know what child pornography is believe that such acts are forbidden in Romania ($r=.31$, $p<.01$); they believe that it is different from adult pornography ($r=.34$, $p<.01$); they are aware that it is prohibited in all Member States of the European Union ($r=.14$, $p=.01$); they do not believe in reasons justifying child pornography ($r=.34$, $p<.01$); and they tend to believe that it is a sexual preference ($r=.19$, $p<.01$).

The relationships recorded between the study variables show that those who believe themselves to be informed about the significance of child pornography are in fact aware of its elements, but still have incomplete knowledge of the legal consequences of the act or are indifferent towards the system of penalties, an assertion that stems from the lack of significant correlations between the variables of the awareness of the concept and the method of punishment.  

7. CONCLUSIONS

Child pornography constitutes one of the gravest offences of sexual exploitation and abuse directed towards minors. With the appearance and expansion of technology and as the Internet and social networks gain ground, the number of acts has reached new heights, and as a consequence, several methods of perpetration, such as virtual pornography and pseudo-pornography, have been criminalised.

The literature has criticised this legislative measure firstly because the two acts, although immoral in themselves, do not directly infringe upon the rights of children, making their scope too broad. The reproaches also refer to the insufficient predictability of the rules that leave room for interpretation, while the social value protected is not clarified from a penal point of view.

There are also opinions to the contrary which state that these material acts may facilitate the process of corrupting minors, may lead to manipulating minors and may encourage various persons to commit such acts.

Compared to the results of the study, we have primarily discovered that a minority segment of the population is not fully informed with regard to child pornography, which would justify further efforts to raise awareness of the subject.

Both men and women are of the opinion that the rationale behind criminalisation resides in the protection of minors, yet men tend to invoke to a higher degree ethical considerations in justifying prohibition. Child pornography cannot be viewed as a sexual preference, but men are more tolerant/uncertain than women.

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40 The value “$r$” denotes the correlation index: if $r=1.0.5$, the interdependence of the variables is strong, if $r=0.5-0.3$, the interdependence of the variables is moderate, and if $r=0.3-0.1$, the interdependence is weak.
41 The value “$p$” denotes the level of significance: if $p<.05$, the correlation is significant.
42 ($r=-.02$, $p=n.s.$), where $p=n.s.$ means that the level of significance is over $p>.05$, and thus the differences between the variables are not significant.
The system of penalties for child pornography is considered to be reasonable, except for the case of pseudo-pornography, where men believe it to be more excessive than women.

The final conclusion is that the legal framework of the crime of child pornography should be clarified with regard to the forms of pseudo-pornography and virtual pornography – taking into account the criticism delivered by the literature and the divided attitudes of the population.

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