

Child Sexual Abuse and Presumption of Innocence

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ABSTRACT: Child abuse, especially sexual abuse, is regulated by both national and European rules, just as the presumption of innocence is regulated. Minors, being the weak part, need support from the authorities, as the European Court of Human Rights has recommended in cases involving minors, cases that we will refer to throughout this article. On the other hand, the presumption of innocence must not be disregarded, precisely because the latter is a guarantee against arbitrariness. The difficulty of reconciling these notions is also given by the fact that in certain situations of abuse there is no direct evidence to scientifically establish such a fact. Până la rămânerea definitivă a hotărârii judecătorești, prin care este stabilită vinovăția sau nevinovăția inculpatului, legea prevede și posibilitatea luării unor măsuri preventive, care pot fi restrictive sau privative de libertate. Another aspect is represented by the psychology of the minor in his reports, taking into account his age, the education received, especially sex education, given the access to technology existing today among minors, as well as the accuracy of statements and last but not least, the degree contamination of statements by suggestibility. During the criminal process, until the final decision of the court is a difficult road, in which the judiciary, lawyers and psychologists have a difficult mission in finding out the truth, to bring to justice the guilty and if there is no guilt to order the acquittal of the innocent.

KEYWORDS: minor, presumption of innocence, sexual abuse, impartiality, criminal trial, sex education

Some aspects of the presumption of innocence

The presumption of innocence was proclaimed, for the first time, as a rule of autonomous law, in the legislation of the United States of America (18th century) and then in the Declaration of the Rights of Man and of the Citizen of 1789.

It is a common thing that even before the written, official recognition, the idea of the presumption of innocence was supported long before, but in a less refined and rigorous form, compared to the current one. For example, in the Roman world, the rule was widespread and recognized that it is better to leave a possible crime unpunished than to punish an innocent person.

In any rule of law, the presumption of innocence is recognized, differing only in the ways in which it is regulated and guaranteed.

If we analyse the presumption of innocence from an exclusively social perspective, we will find that it is based on the idea of human trust in people. Naturally, man as a social being must have confidence and in turn have confidence in people.

Moreover, it is necessary for any person to maintain his confidence in the accused persons until the final conviction, waiver of the sentence or the postponement of the sentence. A society that does not guarantee the freedom of every individual and does not trust them, until its guilt is clearly contradicted by legal and relevant evidence, is a sick society that cannot have a future without change. Therefore, the presumption of innocence has an important social function, because by recognizing the trust between members of society, it ensures its proper functioning, but also an essential legal function, because it helps to avoid judicial errors, guarantees fair justice and ensures the prestige of justice.

At the international or European level, there are also several normative acts, which provide for the principle of the presumption of innocence. Thus art. 11 para. (1) of the Universal Declaration of Human Rights, provides: *"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence"*. Also, art. Article 14 (2) of the International Covenant on Civil and Political Rights states: *"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law"*.

It is a principle that requires that until the final judgment, which finds the guilt or innocence of the accused of committing a crime, to be found not guilty.

The Romanian Code of Criminal Procedure (Law no 135/2010) contains a more extensive regulation than the constitutional one of the presumption of innocence, stipulating that “*any person is considered innocent until his guilt is established by a final criminal decision*” (art. 4 para. 1 of Law no 135/2010). This principle represents an important component of the right to a fair trial, being provided by art. 6 para. (2) of the European Convention on Human Rights.

Innocence must be understood not only as not fulfilling the conditions regarding the subjective side of the crime, but also as not fulfilling the conditions regarding the objective side, those regarding the subjects of the crime, or as the absence of any of the essential features of the crime.

The presumption of innocence is both a procedural guarantee, linked in its classical sense to the notion of burden of proof and the need to prove the commission of the act beyond any reasonable doubt, and a subjective non-patrimonial right (Udroiu 2018, 12).

Thus, before pronouncing a solution, by which a court to rule that a person has committed the crime of which he is accused are incompatible with the presumption of innocence any attitudes or manifestations of the judge or other judicial bodies or public authorities, journalists who betray the fact that the person would be guilty.

Considerations regarding sexual abuse of minors

The minor can be a passive subject of many crimes. The rights of minors are also protected by special laws, namely by Law no 272/2004 on the protection and promotion of children's rights. The content of this normative act defines the forms of abuse and the protection measures that can be taken against the abused child. The legislative protection offered to the minor is so civil, according to the norms provided by art. 489 Civil Code (Law no 287/2009) regarding the limits of the disciplinary measures that the parent can take against the child, as well as of a criminal nature, according to art. 197 Criminal Code (Law no 286/2009), which regulates the crime of ill-treatment of a minor. Also from the content of Law no 217/2003 for the prevention and combating of domestic violence shows that minors are also protected by this normative act, there is the possibility that the police officer and the court take the measure of the protection order against them, if it is found that a family member abused them in any of the forms of violence provided by the legal text.

In the field of psychology, abuse is defined as abuse by a family member or other person. Abuse can take the form of physical abuse (the use of physical force that harms the child's health, survival, development, or dignity), the form of psychological abuse (failure to provide a supportive and emotionally comfortable environment), and the form of sexual abuse (involvement of a child in a sexual activity that he does not understand or when the child is not able to give his consent).

Sexual abuse

In the national regulation, several crimes have as passive subject the minor or the minor under 13 years old, all including different forms of sexual abuse. The most serious forms of sexual abuse are those involving sexual exploitation either in the production of pornographic material, or in the form of juvenile prostitution, or in the form of child trafficking (for the purpose of sexual exploitation or exploitation for begging or forced labor).

Sexual abuse can also take the form of sexual exploitation (when the acts of abuse are aimed at financial gain).

In a study (Groza 2019, 191) that aimed to analyse the incidence and characteristics of cases of sexual exploitation of minors, researchers divided the forms of exploitation into three broad categories and reached the following results:

a) Minors may be exploited by a third party (pimp or child trafficker). During 2005, there were 793 arrests in the United States involving pimping or child trafficking. Almost all the victims were women.

b) Prostitution of a minor on his own (including for the production of pornographic materials). Most male minors who provide sexual services on their own do so on their own. Many have problems with drug abuse or sexual orientation and are rejected by their families. Their age is, to a large extent, between 16 and 18 years old. In 93% of cases, minors who prostitute themselves find their clients on the street;

c) Sexual abuse of minors by a relative (family or acquaintance), sometimes in exchange for sums of money. A percentage of 23% of these cases involved minors under 14 years old.

The study described above considered 1,450 cases reported and completed with a conviction in 2005 in the United States. Only 9% of exploited minors presented themselves to customers as minors.

The recommendations of the study's authors for combating sexual abuse against minors are (Groza 2019, 193-194):

- Understanding the diversity of the phenomenon of sexual exploitation
- The community must come to the aid of these victims through active involvement
- The state must collaborate with experts in interviewing and communicating with victims with special needs and have special centres for hearing victims of human trafficking. It is much more difficult to communicate with a victim of sexual exploitation than with other types of victims. Obstacles such as shame, guilt, blame, lack of trust, can be removed with difficulty, even by specialists.

Intimate conviction - mental reality, cognitive affective, volitionally energized

From a legal perspective, the guarantee of intimate conviction is twofold, starting from the constitutional principle of separation of powers in the state, which must be expressly provided in any democratic constitution and ending with the principle of independence of magistrates and their submission only to the law.

The intimate conviction of the judge, the basis of the sentences he pronounces, is an essential element that should be studied from a psychological point of view. This belief is in turn based on what is called legal conscience. This is not an abstract notion. Any member of the judiciary, and in particular the judge called upon to settle a specific case, shall be guided in his work by the principles of legal conscience (Butoi 2019, 290).

In today's conditions, even this intimate conviction is formed on the basis of established legitimacies, legitimacies that do not admit the principle of assessing evidence according to formal criteria. Procedural laws leave the evidence to the exclusive discretion of the court, establishing as the only basis for this assessment the judge's intimate conviction based on the investigation of the circumstances of the case, considered in their entirety. At this nodal point the psychological factors intervene.

Conclusions

The application of the presumption of innocence in a case involving sexual abuse, in which minors are or are involved, depends on the strength of the judge who has the case to be resolved. Given that the judge also has feelings, he could be emotionally affected by a case of sexual abuse of the minor and could easily overlook a fundamental principle of criminal proceedings. Balancing the two notions, namely the presumption of innocence and sexual abuse is necessary and a balance must be maintained between them. If the belief was based only on the fact that a child does not lie, or what interest would he have to say about sexual abuse? There would be situations in which the defendant will have to prove his innocence, and the worst thing would be that the parents will be able to use their own children to obtain certain benefits from them.

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