

# Crimes That Can be Committed Online: Crime Against the Person

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**Abstract.** The present article proposes a brief presentation of the criminalization rules in Romania that address incidents and provide protection against possible illegal conduct that can be committed online, with reference only to the most common crimes against the person in the online environment. To contextualize the problem that is the subject of this study, preliminary aspects regarding crimes against individuals in general and those likely to be committed online will be presented initially. Subsequently, general considerations will be made regarding the active subject, the passive subject, and the immediate follow-up of the crimes relevant to the matter, as well as procedural aspects. The purpose of this article is to raise an alarm signal and highlight the importance of acts committed in the online environment that could be criminalized from a legal perspective, along with the means available for individuals to protect themselves against potential illicit conduct of malicious persons.

**Keywords:** Author, Crimes, Online, Injured Person, Immediate Follow-Up

## 1 Introduction

In modern society, digital crimes have become a major concern for authorities and citizens around the world. People are forced to adapt as quickly as possible to technological advances, digitization, and artificial intelligence. The mindset of perpetrators, the motives for committing criminal acts, and the modus operandi have all adapted to the digital environment and the opportunities it offers. The increase in online connectivity, the development of the Internet, and the rise of social networks are some of the factors that have led to the increase in online crimes. The use of computers across all sectors of social life—transportation, telecommunications, medical services, national security, etc.—has led to the development of society but has also facilitated the development and specialization of criminal activities. States have had to continuously adapt their legislation and regulations in the cyber field, and the institutions responsible in this area are trying to outline strategies and solutions to prevent and combat digital crimes, while also contributing to rebuilding trust and safety in the online environment.

It is well known that crime in cyberspace has increased, involving organized crime, hacking, the use of botnets, the theft of data from within organizations, and coordinated

attacks on critical information infrastructures, with the damage caused by this type of crime constantly increasing. This criminal phenomenon takes many forms, ranging from cyber-attacks through malware programs to fraud using electronic means of payment, fraud through online platforms, cyberbullying or sexual exploitation of minors on the Internet. In addition to the crimes against the person that will be presented in the following sections, there are also illegal conducts committed in the online environment that can constitute crimes as defined by the Romanian Criminal Code, namely: Violating the privacy of correspondence (Art. 302), False identity (art. 327) [1], Public instigation (art. 368) [2], Incitement to hatred or discrimination (art. 369) [3], Attempt to determine the commission of an offense (art. 370), Child pornography (art. 374) and other such crimes.

Offenses that are considered to harm the person are contained in Title I - Offense against the person, Special Part of the Romanian Criminal Law. Each category is systematized within a chapter, namely: Chapter I - Offenses against life, Chapter II - Offenses against bodily integrity or health, Chapter III – Offenses against a family member, Chapter IV – Assault on a fetus, Chapter V – Violations of the obligation to assist persons in danger, Chapter VI – Offenses against individual freedom, Chapter VII – Trafficking in , and exploitation of vulnerable persons, Chapter VIII – Offenses against sexual freedom and integrity, and Chapter IX – Offenses against home and private life. In Romania, among the most common crimes committed online are: Threats (Art. 206), Blackmail (Art. 207), Harassment (Art. 208), Determining or facilitating the maintenance of sexual acts or of a sexual nature between minors (Art. 219), Sexual corruption of juveniles (Art. 221), Recruitment of juveniles for sexual purposes (Art. 222), and Violation of privacy (Art. 226), which will be the subject of this study.

In ordinary speech, a *person* is understood to be a living human being who enjoys bodily integrity, health, freedom, sexual life, and dignity. However, in the context of criminal law, the term has a different meaning. In the Romanian Criminal Code, a *person* also refers to an unborn being, even in an incipient state, namely in the form of a being that has just been conceived and is in the process of developing during pregnancy. Moreover, under the title of crimes against the person, the domicile, the professional headquarters, and private life are protected—values that do not actually refer to the person as a being but to certain attributes associated with that person [4].

## 2 Offenses against individual freedom

The right to freedom represents, along with the right to life, bodily integrity and health, a fundamental human right. The right to freedom is guaranteed to every person, having comprehensive protection, which refers to freedom of action and movement, and moral or mental freedom [5].

In Title I of the Special part of the Romanian Criminal Code, which addresses crimes against the person, the legislator dedicates a separate chapter—Chapter VI—to the criminalization of acts that affect the personal freedom: Illegal deprivation of liberty (Art. 205), Threats (Art. 206), Blackmail (Art. 207), and Harassment (Art. 208). The focus will be on the last three crimes, which can also be committed online.

The *threat* constitutes a dangerous fact because it jeopardizes the mental freedom of the person, creating a state of alarm, fear, and concern for the fate and health of a close person. This, in turn, prevents the close person from having a natural, normal behavior in social relations. On the other hand, this state of fear and alarm restricts the possibility of the threatened person to express their will regarding the actions they intends to perform. The threatened individual no longer acts according to their will but according to the will of the one who exercises the threat [6]. In the online and social media environment, the serious nature of the threat must be analyzed very carefully, given that the doctrine [7] shows that threats made in jest cannot be considered crimes. Thus, if the manner in which the threat is addressed reveals a jovial, joking character, the norm of incrimination will not apply.

*Blackmail* refers to acts that restrict the mental freedom of the person, which they determine through coercion to do acts that they would not have wanted to perform, this coercion being done in order to justly obtain a benefit from the one exercising the compulsion. If the benefit pursued by the coercer has a patrimonial nature, the act of coercion will be more severely sanctioned [6]. The basic variant, with coercion as a material element, can be committed by sending threats in the online environment, doubled by issuing demands that the injured person *to give, to do, to refrain from doing, or to suffer, in order to gain an unfair advantage*. Thus, the crime could be incident in this form if the perpetrator threatened the victim, through a post on social networks or through a private message, that if he does not transfer a sum of money to an account, next time they meet, physical violence will be used against them. In the assimilated version, the threat of publishing a real or imaginary fact, compromising for the threatened person or for a member of their family, is sanctioned, accompanied by the same claims presented in the case of the basic version. A classic example is the one in which the threat concerns the publication or distribution to the family of some images or videos with sexual content in which the blackmailed person appears in order to obtain material, sexual benefits, or various personal favors.

The crime of *harassment* refers to certain facts occurring in everyday life through which a person in bad faith seeks to create a state of fear for the victim. This includes following the victim without right or a legitimate interest, monitoring his home or workplace, making phone calls, or uses other forms of communication in an abusive manner [6], [8]. The assimilated variant from para. (2) is specific to committing by means of remote communication. Phone calls refer strictly to landlines or mobile phones, but the notion of remote communications covers any applications or platforms that could be used via a laptop, tablet or phone. This notion also covers communications addressed to the general public, and not private messages addressed to the injured person. Repeated postings on one or more accounts, or the repeated creation of accounts whose purpose is to communicate offensive, derogatory statements of a person, could meet the typicality of this crime, to the extent that it would cause a state of fear to the person concerned by those posts. It is not necessary for the author to send the posts directly to the person in question, but the norm of incrimination will be all the more incident when the person is tagged in the posts or they are transmitted to him by the author through various means.

The main legal object in the case of these three crimes consists in the social relations regarding the freedom of the person. This is protected in all its aspects, including the moral one through the criminalization related to threat, blackmail and harassment. The secondary legal object can consist, for example, in the case of the crime of blackmail in social relations of a patrimonial nature when the victim is forced to give an asset.

The active subject can be any person. Criminal participation is possible both in the form of co-authorship, instigation and complicity. The passive subject is the person on whom the action of the passive subject is reflected. The immediate consequence is the violation of the person's freedom.

Offenses against a person's freedom are punishable by imprisonment, the limits of which are different from one crime to another, in relation to the degree of social danger of the incriminated acts. The fine is provided as an alternative to imprisonment for the crimes of threat and harassment [9]. The criminal action is initiated upon the prior complaint of the injured person in the case of the crimes of threat and harassment and *ex officio* in the case of the crime of blackmail.

### 3 Offenses against sexual freedom and integrity

Physical and mental freedom is recognized for each person. Among the fundamental rights and freedoms of the natural person are those concerning sexual freedom, specifically the ability of a person, regardless of sex, to decide on his own about his sexual life without the fear of being hindered in its exercise.

The European Court of Human Rights through its decisions ruled that the sex life of a person to have a sex life of his choice, in accordance with his deep identity. Sexual freedom is both an individual value and an ethical-social value and, as such, must be protected by law.

The Romanian Criminal Code criminalizes acts against sexual freedom and integrity in Chapter VIII of Title I, including the following crimes: Rape (Art. 218), rape of a minor (Art. 218<sup>1</sup>), Sexual assault (Art. 219), Sexual assault committed against a minor (Art. 219<sup>1</sup>), Determining or facilitating the maintenance of sexual acts or of a sexual nature between minors (Art. 219<sup>2</sup>), Sexual intercourse with a juveniles (Art. 220 – currently repealed), Sexual corruption of juveniles (Art. 221), Recruitment of juveniles for sexual purposes (Art. 222), Acts committed in aggravating circumstances (Art. 222<sup>1</sup>) and Sexual harassment (Art. 223). Of these, only the crimes of Determining or facilitating the maintenance of sexual acts or of a sexual nature between minors, Sexual corruption of juveniles and Recruitment of juveniles for sexual purposes can also be committed online.

*Determining or facilitating the maintenance of sexual acts or acts of a sexual nature between minors* refers to the standard version of the crime, where an adult determines the continuation of a sexual relationship, a sexual act, as well as any other acts assimilated by law, between minors who do not have reached the age of 16, as well as the determination of a minor to endure or perform such an act. Unlike the first modality of the material element of the crime, the adult causes a single minor to endure (as a passive subject) or perform (as an active subject) sexual acts or acts of a sexual nature.

*Sexual corruption of juveniles* - the legal object of the crime consists in the social relations regarding sexual life. Criminal law protects this by criminalizing acts that disrupt the preparation and development of minors for a sexual life that does not harm their physical or mental health, as well as their physical integrity and psyche. It also aims to help minors preserve their feelings of decency and morality regarding sexual life—values that should be nurtured in their preparation for a normal sexual life. Art. 221 para. 4<sup>1</sup> expressly provides that the incitement of a minor up to 16 years of age by an adult, by means of remote transmission, through electronic communication or social networks, to commit any act of a sexual nature on themselves, on another person, or together with someone else—regardless of whether the sexual act is actually committed—is punishable by imprisonment from six months to three years or by a fine.

*Recruitment of juveniles for sexual purposes* - the act of recruiting (attracting) juveniles for sexual purposes consists in the act of an adult proposing to a minor who has not reached the age of 16 to meet, in order to commit a sexual act of any nature, including when the proposal was made by means of remote transmission, so specific social media platforms are also included in this category. With regard to the trapping of victims via the Internet, a growing concern is the use of social networking platforms such as OnlyFans, where the exchange of pornographic material for a fee is normalized. These digital spaces become gateways to prostitution, generally affecting juveniles.

Any person, regardless of gender, can be an active subject. In the case of the crime of recruiting juveniles for sexual purposes, the active subject can only be an adult. An adult shall mean a person, regardless of gender, who has reached the age of 18. Any of the crimes analyzed in this section are likely to be committed in criminal participation, in any of its forms: authorship, co-authorship, instigation and complicity.

The passive subject is the juvenile, regardless of gender, who has not reached the age of 16 at the time of the commission of the act. The legislator limited the age of the minor to 16 years because up to this age the minor can easily be sexually perverted through various manipulations that incite his curiosity specific to his age and lead him to perform sexual acts of any nature.

The immediate consequence of these crimes consists in the damage brought to the social values defended by the criminalization of the acts that constitute the crimes of sexual freedom and integrity.

The criminal action is initiated *ex officio*. The competence to perform the criminal investigation belongs to the criminal investigation bodies of the judicial police, and the trial in the first instance belongs to the court.

#### **4 Offenses against home and private life**

The Romanian Criminal Code incriminates within the framework of Chapter IX of Title I, Special Part relating to offenses affecting the home and private life, it criminalizes four acts: Trespassing (Art. 224), Trespassing in professional offices (Art. 225), Violation of privacy (Art. 226) and Disclosure of professional secrecy (Art. 227). Of these, the crime of violation of privacy is of interest to this study.

The legal object of the crime is the social relations whose existence and normal development are conditioned by respect for the private life of the person. The criminalization aims to grant criminal protection to a value enshrined in art. 26 of the Romanian Constitution. At the same time, the Romanian criminal legislation was brought into line with the European one, respectively, with art. 8 of the European Convention on Human Rights. This fundamental human right has become more and more tested by the current social reality, through the development of technology that led to the emergence of the Internet, websites and social networks.

The legal object of the crime is the social relations whose existence and normal development are conditioned by respect for the private life of the person [10]. People submit personal information on the Internet, including financial information, medical information, and details about their work and personal lives. This information is valuable to cybercriminals, who can use it to commit crimes, including identity theft and fraud [11].

The active subject can be any person who meets the general conditions of criminal liability and who carries out any of the criminalized activities. According to paragraph (2<sup>1</sup>) of Art. 226 the disclosure, diffusion, presentation or transmission, in any way, of an intimate image of a person identified or identifiable according to the information provided, without the consent of the depicted person, likely to cause him/her mental suffering or harm his image, is punishable by imprisonment from six months to three years or a fine. This shows that the perpetrator of the crime can also be the operator of the online platform on which the intimate image is published and which broadcasts the image to the general public, without the consent of the person in question. Criminal participation is possible both in the form of co-authorship, instigation and complicity.

The passive subject can be any person whose privacy has been violated through the use of means of interception of data, sounds, information or images. The immediate consequence is to create a state of danger for a person's private life. The criminal action is initiated upon the prior complaint of the injured person.

## 5 Conclusions

The crimes discussed represent some of the most common offenses that can be committed in the online environment. With the COVID-19 pandemic caused by the SARS-CoV-2 virus, people began to conduct most of their daily activities online—on the Internet—encompassing education, recreation, gaming, shopping, discussions on chat, navigation, sharing of various documents, and establishing relationships. The novel SARS-CoV-2 coronavirus has acted as an external shock to all societies, resulting in lasting impacts that have profoundly changed individual, political, and corporate decisions [12]. As contemporary society has become hyper-connected, so has the prevalence of cybercrime. No single state can eliminate or even reduce the problem of criminality in cyberspace. The legal provisions that must provide security to the users of new technologies—by preventing and repressing illegal behaviors—have undergone necessary transformation in recent years. However, they remain insufficient, due to their limited character, as there are still typologies criminal offenses not provided for

in the Criminal Code. We are beginning to witness the effectiveness of advanced technologies designed to detect and prevent illegal activities online, such as cybersecurity software and digital data analysis.

With the advancement of technology, complete digitization, and the development of the online environment, it is expected that digital criminals will continue to adapt their tactics and use emerging technologies to commit crimes and misdemeanors [13]. Currently, there are various means to counteract these activities, including methods for identifying perpetrators and specialized criminal investigation bodies dedicated to the investigation, discovery, and prosecution of such offenses. As science has evolved, so too have the methods for committing crimes, necessitating modernized approaches to identifying these acts. At the same time, IT searches and digital investigations are carried out, which include both the investigation and confiscation of digital evidence from electronic devices (such as mobile phones and computers) and the search and analysis of data stored on cloud platforms. These processes are essential components of cyber investigations and require the use of specialized techniques and tools to ensure compliance with individual rights and to obtain relevant evidence in legal proceedings. Moreover, the collaboration of criminal investigation bodies [14] and prosecutors with platforms such as Facebook, Instagram, and others ultimately leads to the identification of the device from which a particular account was accessed, allowing authorities to trace back to the individual who committed the offense. It is essential that the legal frameworks and investigative techniques evolve alongside these changes, ensuring we stay one step ahead in protecting individuals and communities from digital threats.

## References

1. Hegheș, N.-E.: The Offense of False Identity in the Romanian Criminal Code. In: Shen, Y., Rotaru, I.G. (eds). Proceedings of the 35th International RAIS Conference on Social Sciences and Humanities, pp. 158-162. The Scientific Press, Cambridge, MA, Washington DC, USA (2024)
2. Franguloiu, S., Hegheș, N.-E.: Hate Crimes and Hate Speech: A Comparative Study. *Scientia Moralitas - International Journal of Multidisciplinary Research*. **8**(2), 1-12 (Dec. 2023)
3. Hegheș, N.-E.: The Offense of Incitement to Violence, Hatred or Discrimination Provided in the Romanian Criminal Code. In: Puschunder, J.M. (ed.). *Scientia Moralitas Conference Proceedings*, February 19-20, 2023, Washington, DC, USA, <https://scientiamoralitas.education/scientia-moralitas-conference-proceedings-3/>
4. Antoniu, G.: *Infrațiuni contra persoanei (Crimes against person)*. In: Antoniu, G. Toader, T. (coord.) *Explicațiile Noului Cod Penal (Explanations of the New Penal Code)*, vol. III Art. 188-256. Universul Juridic, Bucharest (2015)
5. Corlățean, T.: *Protecția europeană și internațională a Drepturilor Omului [European and International Protection of Human Rights]*, 2nd. edn. Universul Juridic, Bucharest (2015); Corlățean, T. *Protecția drepturilor omului prin tratate internaționale în sistemele regionale non-europene [Protection of human rights through international treaties in non-European regional systems]*, pp. 215-220. In: *Revista Dreptul* 5 (2013)
6. Toader, T., Safta, M.: *Infrațiuni contra libertății persoanei [Offenses against the freedom of the person]*. In: Antoniu, G. Toader, T. (coord.) *Explicațiile Noului Cod Penal [Explanations of the New Penal Code]*, vol. III Art. 188-256. Universul Juridic, Bucharest (2015)

7. Cioclei, V.: Drept penal. Partea specială I. Infrațiuni contra persoanei și infracțiuni contra patrimoniului [Criminal law. Special part I. Crimes against the person and crimes against property]. 8<sup>th</sup> edn. C. H. Beck, Bucharest (2023)
8. Brutaru V., *Violența/hărțuirea on line sau Cyberbullying-ul (Online violence/harassment or Cyberbullying)*. In *Revista Studii și Cercetări Juridice*. Ed. Academiei Române, Bucharest. 4/2021, pp. 371-387
9. See Art. 206, Art. 207 and Art. 208 from Romanian Criminal Code
10. Kádár, H.: *Analiza infracțiunii de violare a vieții private dintr-o perspectivă europeană [Analysis of the crime of violation privacy from a European perspective]*, pp. 167-190. In: Veress E. (coord.) *Sapientia Iuris*. C.H. Beck, Bucharest (2018),
11. Jitariuc, V., Ciudin, O.: *Profilarea criminalilor cibernetici și rolul ei în elaborarea și dezvoltarea strategiilor eficiente de prevenire și combatere a infracțiunilor cibernetice [Profiling cybercriminals and its role in designing and developing effective strategies to prevent and combat cybercrime]*. In: *Perspectivile și Problemele Integrării în Spațiul European al Cercetării și Educației*, Vol. Vol.10, 1<sup>st</sup> Part, pp. 251-25. „CentroGrafic” SRL, Cahul (2023)
12. Puaschunder, J.M., Gelter, M.: *The law, economics and governance of Generation COVID-19 long-haul*. *Indiana Health Law Review* **19** (1), 47-126 (2022),
13. Ștefan. E.-E.: *Delimitarea dintre infracțiune și contravenție în lumina noilor modificări legislative [The demarcation between crime and contravention in light of the new legislative changes]*. In: *Revista Dreptul* 6/2015, pp.143-160 (2015)
14. Jitariuc, V.: *Operative-investigative infiltration and its role in the research and discovery of crimes*. In: *Romanian Journal of Forensic Science* **24**, 1(133), 31-39 (2023)