

**МЕЃУНАРОДЕН
ГОДИШНИК**

НА ФАКУЛТЕТОТ ЗА БЕЗБЕДНОСТ

2016/2

**INTERNATIONAL
YEARBOOK**

FACULTY OF SECURITY

2016/2

ISSN 1857-6508

Издавач: ФАКУЛТЕТ ЗА БЕЗБЕДНОСТ - Скопје

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Печати:

"Ван Гог" - Скопје

Адреса на редакцијата

Факултет за безбедност - Скопје
1000 Скопје
Пош. факс 103
тел:+++(02)2546211

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"Van Gog" - Skopje

Address of the Publisher

Faculty of Security – Skopje
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P.O. Box 103
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Criminalistic education, situation and perspectives - 20 years after Vodinelic

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CONTENT:

| | |
|---|----|
| Osman Jašarević CRIMINAL LEGAL AND PSYCHOLOGICAL ASPECTS IN PROOVING THE ALIBY OF THE SUSPECTED PERSON, OF THE ACCUSED AND OF THE WITNESS | 9 |
| Muhamet Racaj Dashmir Nasufi APPLICATION OF SPECIAL INVESTIGATIVE MEASURES IN THE OBSTRUCTION AND PREVENTION FROM ORGANIZED CRIME IN THE REPUBLIC OF MACEDONIA | 20 |
| Pero Boškov Svetlana Nikoloska CRIMINAL PROCESSING OF BANKRUPTCY CRIMES | 27 |
| Kostadina Klechkaroska Ivona Shushak Ivan Ristov CHILDREN AS VICTIMS OF SEXUAL ABUSE..... | 35 |
| Biljana Bogdanova-Smilevska Top of Form SPECIAL INVESTIGAVE MEASURES - AN IMPORTANT CONSPIRATORIAL INSTRUMENT TO SUPPRESS DRUG CRIME | 44 |
| Ivona Shushak Emilija Mateska MEDIATION AS AN ALTERNATIVE OF CRIMINAL PROCEDURE..... | 52 |
| Vladimir M. Cvetković Dragan Stojković ANALYSIS OF GEOSPATIAL AND TEMPORAL DISTRIBUTION OF STORMS AS A NATURAL DISASTER | 59 |
| Aleksandra Angelovska Nada Doneva CHILD SEXUAL ABUSE: LEGAL FRAME, MECHANISMS AND FUTURE CHALLENGES IN THE REPUBLIC OF MACEDONIA | 70 |
| Bojan Jovcevski PREVENTIVE EFFECT OF CAPITAL PUNISHMENT (DEATH PENALTY) TO DELINQUENTS..... | 77 |
| Damjan Gjorgjievski ASYMETRIC THREATS AND RISKS AS A KEY CHALLENGE FOR SECURITY TODAY ... | 87 |
| Ljubica Kardaleska POINTS OF INTERSECTION BETWEEN LINGUISTICS AND LAW ENFORCEMENT | 94 |

| | | |
|--|---|-----|
| Martin Nedelkovski Martina Nedelkovska Dragan Milosovski | COMPARATIVE REVIEW OF THE ORGANIZATIONAL STRUCTURE OF THE SCIENTIFIC RESEARCH CENTERS FOR CRIMINALISTICS IN SOME BALKAN COUNTRIES..... | 100 |
| Martina Nedelkovska Nikolina Gaberova | THE IMPACT OF EDUCATION IN BUILDING A SYSTEM OF VALUES WHICH PRODUCES PROFESSIONAL SECURITY PERSONNEL..... | 105 |
| Ivana Portarska | INTEGRATED INTERNATIONAL APPROACH, IMPERATIVE TO EFFECTIVELY COMBAT HUMAN TRAFFICKING | 110 |
| Milena Dimitrioska | CLIMATE CHANGE AS GENERATORS OF NEW SECURITY CHALLENGES..... | 117 |
| Vlatko Dimitrioski Milena Dimitrioska | FIRST CYCLE OF STUDIES ON CRIMINAL EDUCATION IN THE REPUBLIC OF MACEDONIA | 122 |

CHILD SEXUAL ABUSE: LEGAL FRAME, MECHANISMS AND FUTURE CHALLENGES IN THE REPUBLIC OF MACEDONIA

Abstract

Child sexual abuse is a destructive socio - pathological and criminogenous phenomenon that has recently emerged as an extremely serious social danger. Increased evidence of pedophilia and sexual abuse is not only a result of the growing awareness for their reporting, but is mostly implicated by the inertia of the legal authorities and the lack of their constructive protection policy. In most cases, victimized children suffer long lasting psychological and psycho - social consequences. The growing common awareness of the social implications of this danger emphasizes the need for intensifying measures and activities in the legal domain above all, in order to coordinate and comprehensively response. The Republic of Macedonia in its efforts to meet the demands of the ratified international conventions, continuously harmonizes the domestic legislative with the EU regulations and directives, especially the Criminal Code by increasing the penalties for the child abuse perpetrators. However, for the purpose of prevention and protection against child sexual abuse, a coordinated social reaction is essential. This implies existence of protective interventions system which will primarily cover different levels of prevention, detection and recognition of the abuse, providing the children direct legal, health, socio - psychological care and rehabilitation as well as proper treatment of the perpetrators. This paper, using the normative, inductive method, the method of historical analysis and the method of comparison child sexual abuse analysis, deals with the issue of child sexual abuse in terms of legal aspects, especially the ratified international conventions and the specific measures and instruments provided by the Criminal Code of the Republic of Macedonia. Noted are detected deficiencies and proposed are measures for overcoming them.

Keywords: child sexual abuse, child exploitation, sexual abuse prevention, legislation, punishment, abused children treatment.

1. INTRODUCTION

Sexual abuse of girls and boys is happening globally and it is an alarming fact that most of these occurrences stay wrapped in silence. Very often, the victims suffer lifelong consequences on their health, as well as their mental and psycho - social condition and development. That is why the abuse is one of the biggest offences on children`s rights and arouses bigger and bigger concern in the contemporary, democratic structured societies. It is a destructive socio - pathological and criminal occurrence which in the last couple of years has imposed itself as an exceptionally serious social danger and has alarmed for investing optimal efforts directed towards protection of the children`s rights. Child sexual abuse manifested in the first place by the wave of pedophilia cases in the Republic of Macedonia, has opened on a large scale the question - how much are children in our country really protected and how should a defense mechanism which will protect and secure them, be built?! The awareness of the social danger of this problem has imposed the need for starting a process of taking legislative and institutional measures and activities, in order to give the issue a coordinated and comprehensive answer. In accordance to the international regulation which protects the children rights, including the child`s right to be protected of any kind of abuse, in our legislation too there are adequate regulations with which the sanctioning of any kind of violation to these rights is elevated to a level of a Law.

2. CONCEPTUAL DEFINITION OF CHILD SEXUAL ABUSE AND PEDOPHILIA

Child sexual abuse which in its most basic form represents a sexual act imposed on a child who is psychologically and physically not ready for it, is an exceptionally delinquent and destructive occurrence which endangers the basic rights of a child. "In accordance to the popular opinion, the mere mentioning of the pedophilia associates to abusers who molest and sexually attack children, but with a deepened analysis a different reality can be ascertained".¹¹⁵ That is why in this research an adequate attention will be dedicated to the conceptual determination of pedophilia and child sexual abuse in order to provide a scientific framework for understanding the punitive and legal answers of pedophilia and the concomitant issues which occur in relation to the child sexual abuse. At the very beginning, it is a good thing to make a certain distinction between the terms **pedophilia** and **child sexual abuse**. Here it is absolutely usual to equate these two terms as two qualitatively identical conceptual definitions, but there is a difference and for these reasons it is necessary to point out to it. The existence of pedophilia as an inclination and sexual preference i.e. interest for children in pre - puberty age, is not a criminal act, while having a sexual contact with a child when the other factor in the sexual intercourse is an adult, presents a criminal act which requires an appropriate sanction. It is undoubted that these two categories overlap in certain extent, but it does not give us the right to claim that they are synonyms. The usage of the terms pedophile or pedophilia refer to individuals who feel a need to please their sexual lust through sexual act or any kind of sexual contact with children, i.e. people who have not turned fourteen, no matter if they have manage to accomplish, i.e. to fulfill that need or urge. There are people who are pedophiles by their sexual preferences, but they have never in their life encroached upon a child in order to please their perverted sexual lusts, and the opposite of that, many child sexual abusers, during the acts of their felony, despite the pedophilia or the urge to please the sexual lust through any sexual contact with a child, they are guided from other reasons too, like the general antisocial tendencies, the high sexual urge, the temporary inhibition because of alcohol or drugs, etc. The differentiation of the definitions which are related to the pedophilia and those which are related to child sexual abuse points out to the fact that every sexual intimacy with a child "ipso facto" is not a determination for pedophilic behavior, and vice versa. Namely, "sexual attack on a child" and "child sexual abuse", are legal terms connected to the offences which cannot fully be equated to the medical term "pedophilia".¹¹⁶

The pedophilia is most often defined as a sexual preference of children who because of their age and the psychophysical development level are not capable of understanding the meaning of the act of abuse, during which this abnormal condition as a result of the wrong choice of a sexual object is manifested in permanent thoughts, fantasies, fancying, urges and sexual thrill.¹¹⁷ The child sexual abuse on the other side is one of the most serious types of deviation of the person. In the broadest sense of the word, the sexual deviation always exists when the preferences of the person are aimed at an inadequate sexual object. So, sexual deviations considered an intercourse between people of the same gender, between a human and an animal, sexual intercourse without the partner's consent, between close relatives, with a sexually immature person, etc. The child sexual abuse includes a wide spectrum of activities: watching pornographic magazines and movies together¹¹⁸, watching adults while masturbating, sexually colored game, touching child's genitals, as well as oral, anal or vaginal sexual contact with a child.¹¹⁹ The perpetrator often establishes a close relationship, friendliness and communication with the children in order to win him or her without using force. But the abuse can also be violent or becomes violent when it develops into a sexual intercourse. The violence continues until the child gets out of that relation of addiction, or until someone notice that and stops it."¹²⁰ Taking into consideration all the stated aspects of the child sexual abuse issue, one comprehensive definition

¹¹⁵ Michael C. Seto, *Pedophilia and Sexual Offending against Children (Theory, assessment and intervention)* (Washington: American Psychological Association, 2008), 7.

¹¹⁶ Dalida Rittossa, *Sexual offenses against children* (Zagreb: Croatian Association of Legal Sciences and Practice, 2007), p. 191.

¹¹⁷ A similar definition is also accepted in the diagnostic and statistic manual for mental disorders issued in 2000 by the American psychiatric association. According to this definition the pedophilia is a sexual preference of children in age of puberty which is manifested with consistent and permanent thoughts, fantasies urges, sexual thrill or behavior.

¹¹⁸ Karen L. Kinnear, *Childhood sexual abuse - second edition* (California: Library of Congress Cataloging, 2007), 1.

¹¹⁹ Mike Lew, *Victims No Longer - second edition (The Classic Guide for Men Recovering from Sexual Child Abuse)*, (New York: Harper Collins Publishers, 2004), p. 11 - 14.

¹²⁰ Association for protection of the children rights, Center for child's justice, *Children's Rights and Juvenile Justice* (Skopje: Grafohartija, 2002), 142 (from the seminar held on 28.06.2002 – 30.06.2002).

is most accepted and it reads as follows: *Child sexual abuse is a form of abnormal sexual behavior which comprises of children abuse in puberty for pleasing sexual lusts and needs, and which is based on its power and dominant position on the victim.*

3. INSIGHT IN THE NATIONAL LEGISLATION FOR CHILDREN PROTECTION FROM SEXUAL VIOLENCE

The Constitution of the Republic of Macedonia does not contain regulations which refer especially to the violence on children. Still, the long list of human rights provides their protection and guarantees the right of life and physical and moral dignity (Article 10 and Article 11), and a special protection is foreseen for the family, the mothers, the children and the minors (Article 42). The punitive and legal protection of sexual violence with children victims is regulated in detail in the Criminal Code¹²¹ and the Criminal Procedural Code.¹²² The Republic of Macedonia is a signatory of the UN Convention on the Rights of the Child from 1993, as well as to the two facultative protocols, i.e. the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, ratified in 2003 and the Optional Protocol on the Involvement of Children in Armed Conflicts, ratified in 2004. In the direction of fulfillment of the obligations of the international documents and achieving the set goal – the country's integration in EU, which presents harmonization of the domestic legislation with the legislation of the EU members, in our legislation for a period of time there is a tightening up of the punishments which are related to the criminal acts of sexual violence done on minors in continuity. As a result of these tendencies with the last amends of the Criminal Law was foreseen punishment of 12 years for performed criminal act - sexual assault on child who has not turned fourteen, while the qualified shape of the act provides imprisonment from fifteen years or a life imprisonment. In the criminal legislation from 1996 this incrimination was named as a "Sexual assault on a child". With that, according to the Article 188 paragraph 1 from this code, it was provided that "the person who will perform a rape or other sexual act on a child will be punished with imprisonment from six months to five years".¹²³ This data speaks enough for the fact that in the past couple of years the penalty politic has really evolved in a direction of its serious tightening. From the analysis of all legislative amends refers to the incrimination "Sexual act on a child who has not turned fourteen", it is **determined that** at the very beginning the rigor of the punishment of this behavior depended on that if it is a case of the basic form of the act or some of its qualified shapes: child rape or other sexual act by abusing its mental illness and weakness, performing the act by a teacher, educator, adoptive parent, guardian, step - parent, doctor or another person with an abuse of their position, a heavy bodily harm, death or other consequences or performing the act by multiple people or at an exceptionally cruel or derogatory way can be ascertained. With the amends from 2014,¹²⁴ there was a tendency of the legislator for this behavior to be punished severely, no matter of the circumstances in which the act has been performed. So there was a single qualified form in a case of caused heavy physical injury, death or other heavy consequences or when the act is done on multiple people on an especially cruel or humiliating way. For this kind of behavior, an imprisonment of at least fifteen years or lifelong imprisonment is foreseen. In a direction of coordination with the content of the UN Convention on the Rights of the Child,¹²⁵ the title of the incrimination was also changed, so instead of "Sexual assault on a minor who has not turned fourteen", the formulation "Sexual assault on a child who has not turned fourteen" was accepted. It is especially important to emphasize the fact that recently for the first time in the national legislation the possibility for a medical - pharmacological treatment of the offenders "sexual assault on a child who has not turned fourteen" was foreseen when there is a possibility for further acts of that kind; this kind of determination is largely under the influence of the positive experiences on the **clinical treatment of pedophiles**¹²⁶ in the comparative systems as one of the possible solutions of the problem.

¹²¹ Criminal Code, *Official gazette of Republic of Macedonia* 37/06

¹²² Criminal Procedure Code, *Official gazette of Republic of Macedonia* 150/10.

¹²³ Criminal Code, *Official gazette of Republic of Macedonia* 37/96

¹²⁴ Criminal Code, *Official gazette of Republic of Macedonia* 27/14

¹²⁵ According to the regulations of the Convention on the child's rights, a child is any human being which hasn't turned 18 years of life. Because of these reasons the formulation "minor who has not turned 14" with which the term "child" was marked in our legislative, was not in accordance with the content of the Convention

¹²⁶ William L. Marshall, Liam E. Marshall, Gerid A. Serran and Yolanda M. Fernandez, *Treating sexual offenders (An integrated approach)* (New York: Routledge, 2006), 46.

Consistent in its resolutions towards reducing this kind of crime, and especially towards eliminating of the children's inclusion in different forms of socio - pathological occurrences, in the Criminal Code there is a wide range of incriminations regarding the child prostitution and pornography. Namely, according to the evolutionary trend of criminal legislation conditioned by the evident increase in cases of children's sexual exploitation, the Law on Amendments to the Criminal Code from 2010¹²⁷, by adding a new Article 191 titled Child prostitution, fills in the default of existence of this kind of regulation. The need for this kind of intervention derives from the Convention on the Rights of the Child, which has obligated the countries to take all the necessary measures to prevent the use of children in prostitution, pornographic shows, materials and other illegal sexual acts.¹²⁸ Moving towards the answer of the demands of the modern society and its shapes of connection and communication between the people, the Law on Amendments to the Criminal Code from 2008 also gives a definition of the concept on child pornography¹²⁹ and incriminates the acts of production and distribution of child pornography¹³⁰ and showing a pornographic material to a child.¹³¹ In a direction of justification of the general conclusion that Codes that are related to the child sexual abuse are well grounded¹³², is the Criminal Code amendment from 2009¹³³. This kind of amendment is adequate to the politics the country is assuming in order to protect children and approximate its domestic legislation with the EU members law.

4. CRITICAL REVIEW ON THE SITUATION AND FUTURE CHALLENGES IN MACEDONIA

From the review of the domestic legislation solutions, it has been noticed a hasty process of enacting new codes as well as change and amend of the already existing ones, which is mainly due to the process of euro integration that imposes the need to standardize the national legislation with the international standards.¹³⁴ The positive side is that in this way the system of prevention is updated through creating concrete instruments that guarantee certain rights as well as mechanisms for their advancement and protection. But, the thing that is alarming is the lack of a system for following and implementing the provisions. On the basis of the data brought from the Report for the condition of the children's rights of the National coalition of non-governmental organizations for the rights of the child, in the part which refers to the sexual abuse, the thing that is missing in the sense of implementation of the established legal framework, is the absence of refuge for sexually abused children which would work 24 hours, for their protection with an appropriate rehabilitation and socialization within the first 72 hours. According to the data from the Report to the SOS - telephone for children and youth in the first children's embassy in the world "Megjashi", despite the pedophilia, it is more and more often the reporting of cases in showing photography of children and youth with a sexual content on the Internet. In a direction of exercising the regulations from the extensive legislation which refers to the protection on the children's rights, a web site for reporting cases of children sexual abuse and pedophilia was prepared and put into effect. Still, the results from the things that have been done by now suggest that it should be more investment in order to improve the current condition. That implies to a training of the professionals for the regulations from the Convention on the Rights of the Child and the two facultative protocols to it, as well as the other international documents which refer to the

¹²⁷ Law on Amendments to the Criminal Code, *Official gazette of Republic of Macedonia* 27/2014

¹²⁸ Act 34 of the UN Convention on the rights of the child, adopted of the Assembly of the United Nations on the 20th of November 1989.

¹²⁹ According to Act 122, art.21 from the Law on Amendments to the Criminal code, *Official gazette of the Republic of Macedonia* 7/2008, child pornography is understood as pornographic material which visually shows obvious sexual acts with a minor, or obvious sexual acts with a person who looks like a minor, or real pictures which show obvious sexual acts with a minor.

¹³⁰ Act 193 - a from the Criminal Code.

¹³¹ Act 193 from the Criminal Code

¹³² Violeta Chacheva and Stojanka Mircheva, *Neglected and stigmatized – Analysis of the condition: Child sexual abuse* (Skopje: Office of UNICEF, 2010), 60.

¹³³ Article 49 from the Law on Amendments to the Criminal code, *Official gazette of the Republic of Macedonia* 114/2009, as a novelty in the penalty legislation of the Republic of Macedonia incriminates the arranging an appointment or in any other way to lure the child who hasn't turned 14 years at a rape or any other sexual act of to production of child pornography through computer - communicative means and effectuating a meeting with the minor with that purpose and for the offender it is foreseen a penalty of imprisonment from one to five years.

¹³⁴ Macedonian national coalition of non - government organizations for the rights of the child, *Report for the condition of the rights of the children in the Republic of Macedonia* (Skopje: First children's embassy in the world "Megjashi", 2012), 20.

children's rights; a more transparent process of enacting the key laws; codification of the legal acts from the field of children's rights in one systemized legal act; education of the children on how to recognize and protect themselves from possible attempts of a sexual abuse; additional education for the teachers and parents to recognize the specific signs when a child is a victim of a sexual abuse; work with dysfunctional families and families at risk; encouraging children to report the attempts of sexual abuse; actualizing the role of the social work centers; providing psychiatric help for children - victims in 72 hours from the act of sexual abuse, etc.

Prevention from and elimination of the pedophilia and the child sexual abuse, implies not only a repressive act on the offenders, but also assuming all the possible activities in order to act socializing on them and to prevent a repeated act of the felony in future. This means above all an emphasizing the important role of the Social work centers in the work and treatment of people who have sexually attacked a child. Having in mind the practice until now it can be concluded that the centers should not be engaged only when the victim needs help and after the felony has already been committed but to act preventively and prevent someone from becoming a victim. When it comes to the care of the children, the family is of primary importance. Except for the role the **family** has, the importance of the **educational institutions and the citizen's associations** is undoubted, as a key holders of the process for prevention and elimination of an occurrence like pedophilia. As we mentioned before, one of the segments of the prevention process is the education and the citizens consciousness raising for the social danger of this phenomenon. This can be achieved by organizing campaigns for raising the awareness of the teachers and parents for their responsibilities under children as well as the ways in which they can help them protect themselves or react in cases of attempts for sexual abuse. The police, the psychiatrists, the psychologists and the employed in the social care centers should have an ear, understanding and a suitable approach to those who report to be victims and at the same time to take appropriate measures in the frameworks of their authorizations, in order to help them. Their authorizations are not only in helping the children - victims of abuse, but at the same time in working and treatment of the offenders. Exactly this segment from the work of the social work centers and other institutions have failed on a great scale. The practice until now has shown that the pedophiles after serving the sentence leave the prison and do not call in the social work centers, which on the other side are the main bearers of the socializing process. This kind of practice is only one segment of the post - penal help which is as important part of the process as the socialization as well as the serving of the sentence.

"Marking all the forms of acceptance of this form of help, actually represents an expression of the understanding that all people who are released from serving the sentence need help".¹³⁵ Except for the previously stated steps in the fight against pedophilia, the treatment is of key importance as well as being exposed to an appropriate medical treatment of the people who have sexually attacked a child. Having in mind the positive experiences in the comparative systems, in our legislation for the first time this year was foreseen the possibility for the previously mentioned medical - pharmacological treatment of the pedophiles. Medical treatment of people convicted of pedophilia is a question that for the first time approaches in the context of reforms modeling the criminal law for the protection of children and causes different views regarding the dilemma of its justification. Some of the experts are on the opinion that the introduction of chemical castration is completely justified as well as necessary completion of several reforms aimed at promoting measures for protection from sexual violence against children. Others claim that pedophilia is a sexual kinkiness and deviation of one person seeking psychological - medical treatment and the application of measures such as castration is an absolute violation of guaranteed human rights. The possibility for chemical castration or anti - testosterone treatment of people who have committed sexual abuse against minors, has emerged as a necessary solution in the creation of penal policy in the country after it became evident that the current decisions for stricter criminal legislation governing this matter, did not contribute in suppression of the problem. Medical - pharmacological treatment of people who have committed sexual assault on a child up to 14 years of age in our criminal justice system is introduced as a safety measure and is used under strictly defined conditions in our legal framework. Article 65-a of the Criminal Code provides that the prescribed punishment is proportionally reduced if the offender agrees to undergo chemical castration, which means that the consent of the offender is the main condition for the measure to be

¹³⁵ Naum Shurbanovski, *Where after the prison (accepting the sentenced people in the society after the serving of the sentence depriving of liberty)* (Skopje: NIO "Student's word", 1993), 63

imposed. As an exception, it is provided compulsory imposing of the measure when the offense is committed in return. The experiences of contemporary European countries show that with regular submission of this type of medical treatment, sex drive, compulsive sexual fantasies, and capacity to achieve sexual arousal in pedophiles, can be reduced. Most scientific achievements in this area clearly indicate that almost all sexual offenses to the detriment of the children are result of severe personality disorders and cannot be solved other than by taking measures such as castration, which is retributive in its essence. Considering that undergoing this treatment in our criminal - legal system is basically voluntary, except when the crime is done in return, we can say that the legal solutions that introduce this measure are balanced and do not collide with the ratified international documents protecting fundamental human rights. Given that the amendments to the Criminal Code came into force recently, this safety measure in practice has not been imposed so it remains to be seen how its implementation will go and how much it will contribute to the elimination of the problem. At the present level of scientific and practical achievements it is still very hard to ascertain that there are means with which the pedophilia would be fully rooted out as an exceptionally dangerous phenomenon, but on the other side, all the previously stated measures can contribute to a certain extent in the fight for repressing and decreasing the negative trend of it.

5. CONCLUSION

Child sexual abuse is a socio - pathological and criminality phenomenon which in the last couple of years has imposed itself as an exceptionally serious social danger. The ability to lure the child to a sexual act is based on the powerful and dominant position of the adult or the elder offender, which is in total opposition with the age of the child, its dependent and submissive position. Even in a case when the child is not resisting to the sexual act on him or her, it is still an abuse, because with regard of the age, he or she is not able to judge correctly what is right and what is not. Exactly this aspect of children's right violation is a sufficient argument which speaks in favor of the fact that the increased cases of pedophilia and the sexual violence on children are not only result of a bigger consciousness for their reporting, but also a direct product of the inertness of the state institutions and the absence of appropriate constructive policy for protection from this kind of abuse. The severe punishment of the people who have sexually assaulted a child is only a part of the policy for prevention and elimination that should be carried out by the state in the efforts to offer protection for the youngest. In our opinion the tightening of the penalties is necessary, but it is only a partial solution of the problem. Except for the strict penalties that are foreseen, it is necessary for the judges while sentencing, to range them to the maximum and contribute for the creation of a picture that the society is fighting this evil. The second, more important segment of the fight against this delinquent phenomenon is comprised of taking measures which will provide successful effectuation of the post - penal treatment and the process of socialization of the offenders, immediately after they finish serving their sentence. This is especially important because the previous experience has shown that the offenders, after leaving the prison, repeat the same criminal act again. Immediately after serving their sentence, it is necessary that the offenders call in to the social services, but this is not foreseen in our system as a legal obligation, as it is the case in many other countries. Apart from the social center services which have to continually perform a supervision of the offender and work on his or her socialization, an important role play the educational institutions and the civil associations. There is a need for a greater coordination, organization and professionalism in the work of all subjects involved in this issue - the judicial authorities, the police, the social work centers, the Ministry of Internal Affairs, psychologists, psychiatrists, the sociologists, etc. Apart from the measures assumed with a goal to influence re-educating of the offenders, in future it is necessary to work more at giving appropriate professional help to the children who become victims of sexual abuse. Taking into consideration all the aspects of the issue, there is an entirely logical conclusion that the fight against this terrifying phenomenon implies to creating constructive and carefully conceived preventive and penalty politics which in all its segments will satisfy the criteria of elemental human rights and will provide them with a proper development and carefree childhood of the youngest.

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