

## The implementation of the Convention on Cybercrime in Romania

Romania signed the Convention on Cybercrime on 23.11.2001. In order to harmonize the Romanian legislation with the provisions of the Convention it was adopted the Law 161/2003<sup>1</sup>. TITLE III of this Law regulates the combating and prevention of cybercrime.

- The Convention was used as a guideline in order to draft the Romanian legislation on cybercrime implementing its requirements article by article. This systematic approach led to the result of **achieving a legislation that fully implements the Convention and compatible with the international standards on the matter**. On 12 May 2004 Romania ratified the Convention on cybercrime having already the legislation in line with the provisions of the Convention.

Under Article 1 of the Convention some terms are required to be defined. Romania law defines the terms provided by the Convention (**computer system, computer data, service provider, traffic data, child pornography, data on the users/subscriber information**) and also give some additional definitions (**automatic data processing, computer program, security measures, without right**).

All offences established by the Convention require the *intentional element* and to be committed *without right*.

- Under the Romanian legal system an act that resides in an action committed with negligence shall be an offence only when the law provides this expressly (article 19 paragraphs 2 Criminal Code). As a result of this provision it was stated that there is no need to specify expressly the intentional element in the text. If the law does not provide any mental element in the case of an offence consisting of an action the mental element required is intend.

The other element "**without right**" is used in the Convention to exempt conduct from criminal liability that has a legal justification and it is left to the Parties to give the definition. Romania Law provides such definition in article 35 paragraph 2.

Regarding substantive law according to the Romanian law there are three categories of criminal offences:

**1. Offences against the confidentiality and integrity of computer data and systems: illegal access to a computer system; illegal interception of a transmission of computer data; data interference; system interference; misuse of computer devices or programs.**

- Article 5 of the Convention (**System interference**) criminalises the intentional hindering of the lawful use of computer systems. The text is formulated in a neutral way so that all kinds of functions can be protected by it (e.g. distributed denial of service attacks (DDoS), cyber terrorism etc). Thousands of DDoS are occurring around the world every day. Such attacks can be a very serious threat with great financial losses for companies or even for states. **Parties should criminalize this offence and provide adequate penalties.**

**2. Computer-related offences: computer-related forgery; computer-related fraud.**

**3. Content-related offences: offences related to child pornography through computer systems.**

- In the recent years the Internet is more and more used for trading child pornographic materials. The use of computer systems in order to produce and distribute child pornography comparing to the traditional way of committing of this offence presents at least two advantages: first is the possibility to distribute and make available child pornographic materials for many users and second the low costs of producing and distributing such materials.

The country profiles (also confirmed by the draft of the study on legislation) reflected that few legislations criminalize child pornography requiring expressly that the offence to be committed through computer systems. It is important **to criminalize (and provide adequate penalties) child pornography in all its manifestations when is committed through the computer systems.**

Article 10 of the Convention, which requires to criminalizes the infringements of copy right and related rights when committed wilfully, on a commercial scale and by means of a computer system, is *partially* covered by Law no 8/1996 on copyright and related rights (several times amended).

- Most of the procedural law provisions have been implemented by Law no 161/2003. However, the new Criminal Procedure Code will incorporate these provisions and also reconsider the issues that haven't been fully implemented yet (e.g. real time collection, production order).

---

<sup>1</sup> The relevant provisions for preventing, discovering and sanctioning the offences committed through the computer systems are incorporated in Title III of the Law 161/2003 on certain measures to ensure transparency in the exercise of public dignity, public office and in the business environment, to prevent and sanction corruption (published in the Official Gazette no 279 from 21 April 2003)

Law no 161/2003 contains also provisions on international cooperation on cybercrime that oblige the Romanian authorities to cooperate with the foreign authorities on various criminal matters in order to investigate and fight against cybercrime.

Law No. 302/2004 on international judicial co-operation in criminal matters regulates general cooperation procedures (extradition, surrender based on European Arrest Warrants, transfer of proceedings in criminal matters etc.).

- Under the existent MLA agreements the cooperation is often very slow and therefore reduces the intended efficiency. Solutions to speed up the mutual legal assistance procedures should be considered.

Among the main tendencies identified that defines the evolution of the transnational crime in Romania it is also the increasing of the cybercrime. The most common cybercrimes: internet fraud and electronic payment instruments fraud in view of fraudulent use.

Currently, the Romanian legislation on cybercrime consists mainly of the Title III of the Law No.161/2003 on cybercrime (drafted entirely based on the provisions of the Convention) corroborated with the relevant provisions of the Criminal Procedure Code and Criminal Code.

It can be concluded that the Romanian legislation meets the requirements of the Convention and proved to be effective in practice.