

Criminal law to protect children against sexual offences: Substantive law benchmarks

*Workshop 4: Responses to the Sexual Exploitation of Children (Octopus
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Criminal Law Measures to Protect Children against Sexual Offences:

Assessment underway



- ☐ Prepared under the **Global Project on cybercrime** funded by Estonia, Japan, Monaco, Romania, Microsoft, McAfee, Visa and Council of Europe
- ☐ Use of **Article 9** of the Cybercrime Convention (**Budapest Convention**) and **Articles 18-24** of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (**Lanzarote Convention**) as core elements for harmonisation of legislation
- ☐ Legislation from **47 countries** through replies to a questionnaire
- ☐ Additional information collected during various activities carried out globally from **20 countries**
- ☐ Focus on the **substantive law provisions**

Overall Purpose



To urge countries for action to:

- ☐ Adopting strategies to protect children from sexual abuse
- ☐ Undertaking legal reforms as soon as possible to ensure legislation in place
- ☐ Full implementation of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and Convention on Cybercrime

The study will contribute to:

- ☐ Raising awareness of countries of the existing instruments already available
- ☐ Promoting global standards for harmonising legislation and a framework for effective and efficient international cooperation
- ☐ Serve as a database for legislation on protecting children to share good practices



Lanzarote Convention: The added value

- ❑ Requires criminalisation of sexual abuse of children and groups various forms of sexual crimes against children under a single umbrella
 - ❑ Addresses the issue of “grooming”
 - ❑ Prevent repeat offences against children by means of intervention programmes or measures targeting sex offenders
 - ❑ Specific investigation and criminal procedure measures ensuring that the needs of the child are taken into account
 - ❑ Limitation periods for certain offences continues to run for a sufficient period of time to allow prosecutions
 - ❑ Eliminates, in relation to the most serious offences, the rule of dual criminality
 - ❑ Training for staff responsible for judicial procedures
- ➡ *Provide a comprehensive strategy for protection of children against sexual conduct*

Information about legislation

Complete information from 49 countries



Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, **Costa Rica**, Croatia, Cyprus, Czech Republic, Denmark, **Dominican Republic**, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, **Japan**, Latvia, Liechtenstein, Lithuania, Luxembourg, **Mexico**, Moldova, Monaco, Montenegro, Netherlands, Norway, **Philippines**, Poland, Portugal, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, **Sri Lanka**, Switzerland, “The Former Yugoslav Republic of Macedonia”, Turkey, United Kingdom, Ukraine

Information on Article 9 (Child pornography) of the Budapest Convention from **additional 20 countries worldwide**



Legislative Approach

- ❑ Offences provided by criminal codes and other laws (e.g. Bulgaria, Ireland, Japan, Romania, United Kingdom)
- ❑ Specific provisions to protect children against such behaviour when committed via computer systems (e.g. Albania, Bulgaria, Japan, Ireland, Moldova, Netherlands, Romania)
- ❑ General provisions cover also online offences (Austria, Azerbaijan, Georgia, Moldova, UK)

Recent or on-going legal reforms

- ❑ Azerbaijan, Belarus, Bulgaria, Croatia, Denmark, Estonia, Georgia, Germany, Hungary, Ireland, Japan, Netherlands, Romania, United Kingdom and many others

The study looks at:



The term “**child pornography**”= 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*
- ☐ *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*

Article 18 (Lanzarote Convention): **sexual abuse** (coercion, abuse of trust, vulnerable situation etc.)

Article 9 (Budapest Convention) and Article 20 (Lanzarote Convention): **child pornography** offline and online

Article 21 (Lanzarote Convention): **participation of a child in pornographic performances** (recruiting, coercing, exploiting, attending such performances)

Article 19 (Lanzarote Convention): **child prostitution** (recruiting, coercing, having recourse to child prostitution)

Article 22 (Lanzarote Convention): **corruption of children**

Article 23 (Lanzarote Convention): **grooming** (solicitation of children for sexual purposes)

Aggravating circumstances + who is a child/minor (below the age of 18)

➡ **Lanzarote Convention = minimum consensus – possibility for supplementing or establishing higher standards in domestic law**

Sexual abuse implementation



Countries	engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities	engaging in sexual activities with a child where: <ul style="list-style-type: none"> - use is made of coercion, force or threats; or - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence 	other
Albania	yes	yes	yes
Armenia	p	p	yes
Austria	yes	Yes	yes
Azerbaijan	p	p	yes
Belarus	yes	p	yes
Bulgaria	yes	yes	yes
Costa Rica	yes	yes	yes

Issues



- ☐ Paragraph 1 a): engaging in sexual activities with a child in order to be an offence is *subject to the legal age for sexual activities*
- ☐ Paragraph 1 b) acts *should be criminalised regardless the age of the victim*
- ☐ Lack of specific provisions to criminalise abuse made of a recognised position of trust, authority or influence over the child, including within the family
- ☐ Application of law is limited by controversial conditions e.g. *Latvia: the victim to be a female juvenile; committing immoral acts with a minor against the will of the minor; the offender has attained the age of majority; Armenia: the offender has attained the age of 18; Japan: through assault or intimidation, forcibly commits an indecent act; a similar provision in the existent legislation of Azerbaijan will be changed under the draft law*

Child pornography implementation



Countries	producing child pornography	offering child pornography	making available child pornography	distributing child pornography	transmitting child pornography	procuring child pornography for oneself or for another person	possessing child pornography	knowingly obtaining access, through information and communication technologies, to child pornography
	producing child pornography for the purpose of its distribution through a computer system	offering child pornography through a computer system	making available child pornography through a computer system	distributing child pornography through a computer system	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	
Czech Republic	yes	yes	yes	yes	yes	no	yes	no
Denmark	yes	p	?	yes	?	p	yes	p
Estonia	yes	yes	yes	yes	yes	no	yes	draft law
Georgia	yes	yes	yes	yes	yes	yes	yes	no
Germany	yes	yes	yes	yes	yes	yes	yes	?
Hungary	yes	yes	yes	yes	yes	no	yes	no
Moldova	yes	yes	yes	yes	yes	no	yes	no

Issues



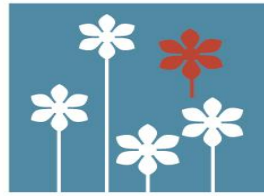
- ❑ Many legislations lack a clear definition of “child pornography”
- ❑ Not criminalised virtual child pornography or pornographic images which depict a person appearing to be a minor engaged in sexually explicit conduct
- ❑ Not all the manifestations of child pornography are criminalised (production, distribution, procuring etc.)
- ❑ In some cases the general provisions are not sufficient to adequately prosecute the acts when committed via computer systems

FUTURE WORK



- ☐ Continue the work under cooperation projects on cybercrime
- ☐ Cooperation with European Union, VGT, INTERPOL, ICMEC, ECPAT, OECD, InHope, Microsoft, Visa etc.
- ☐ Publish the results of the assessment (appendix with extracts from legislation)
- ☐ Interaction with the Lanzarote Convention Committee of the Parties (T-ES) (1st meeting Strasbourg, 20-21 September 2011)
- ☐ Contribute to various international events on this issue

Council of Europe campaign
to stop sexual violence
against children



one in five
un sur cinq

Campagne du **Conseil de l'Europe**
contre la violence sexuelle
à l'égard des enfants

TEACH YOUR CHILD THE UNDERWEAR RULE



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