



## Global Project on Cybercrime

Discussion paper

# Protecting children against sexual violence:

## The criminal law benchmarks of the Budapest and Lanzarote Conventions

Data Protection and  
Cybercrime Division

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[www.coe.int/cybercrime](http://www.coe.int/cybercrime)



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#### **Disclaimer**

This discussion paper does not reflect official positions of the Council of Europe, nor does it reflect the positions of the donors funding this project or of the State Parties to the instruments referred to.

The findings of this discussion paper should not be understood as pre-empting evaluations or assessments to be carried out, in their respective fields of competence, by the Cybercrime Convention Committee (T-CY) and the Committee of the Parties to the Lanzarote Convention (T-ES).

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## **Abstract**

The substantive criminal law provisions of the Budapest Convention on Cybercrime (CETS 185) and the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201) of the Council of Europe serve as benchmarks for criminal law reform aimed at the protection of children against sexual violence.

In this study, States are analysed against the following provisions:

- Budapest Convention on Cybercrime
  - Article 9 – Child pornography (including the definitions)
  
- Lanzarote Convention
  - Article 3 – Definitions
  - Article 18 – Sexual abuse
  - Article 19 – Offences concerning child prostitution
  - Article 20 – Child pornography
  - Article 21 – Participation of a child in pornographic performances
  - Article 22 – Corruption of children
  - Article 23 – Solicitation of children for sexual purposes

Online sexual violence against children, in particular, is a transnational phenomenon. Comprehensive domestic legislation that is harmonised with international standards is a prerequisite for effective international cooperation between States in the investigation and prosecution of child sexual offenders.

The study shows that the Lanzarote and Budapest Conventions can provide guidance to any State in any part of the world in the development of such domestic legislation.

The study was undertaken under the Global Project on Cybercrime of the Council of Europe. It is to feed into technical cooperation activities, into the work of the Cybercrime Convention Committee and Lanzarote Committee, but also the activities of other organisations, including in particular the “legislative engagement strategy” of Interpol and the Virtual Global Taskforce (VGT).

# 1 Introduction

The objective of this study is to demonstrate how the provisions of the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201) and the Budapest Conventions on Cybercrime (CETS 185) of the Council of Europe can be used by any State on any continent as benchmarks for developing substantive criminal law.

Sexual violence against children should be of major concern to any society. It can happen anywhere – very often it is committed by people in close contact with children such as members of the family or people who work in educational and social care institutions – and it can take many forms such as incest, child prostitution and pornography, grooming and others. Children may not only be victims but also engage in deviant and self-exploiting behaviour.

The boundaries between normal and abusive sexual behaviour can be obscure; cultural differences and traditions between societies cannot be ignored. However, while concepts and definitions can be the subject of academic debate, victims, without doubt, live through a traumatic experience with devastating and often irreversible effects.

The evolution of new technologies and networks, including the Internet, has multiplied the opportunities for offenders to commit sexual crimes against children. The number of websites devoted to child pornography is growing; 200 images containing child pornography are reportedly put into circulation every day. Child victims depicted in pornography are getting younger, and the images are becoming more explicit and more violent. Some 20% of sex offenders are believed to continue to commit new offences after conviction.<sup>1</sup>

Child pornography is harmful whether or not its production involves real children; what is important is the message. Child pornography (images of child sexual abuse) cannot be construed as a freely expressed opinion. The right to freedom of expression and information as enshrined in Article 10 of the European Convention on Human Rights (ETS No. 5) shall not prevent States to take measures against offline and online sexual exploitation and sexual abuse of children.

The annual and charity reports<sup>2</sup> of the Internet Watch Foundation reveal dramatic figures:

- In 2009, 72% of child victims appeared to be between the ages of 0 and 10 years and 44% of images depict the rape or torture of the child.
- In 2010, 73% of child victims appeared to be under 10 years old; 65.6% of the images and videos depicted sexual activity between adults and children, including the rape and sexual torture of children.
- In 2011, 74% of child victims appeared to be 10 years old or under; 64% of all the child sexual abuse URLs depicted sexual activity between adults and children including the rape and sexual torture of the children; 65% of the victims were girls, 26% were boys, 8% contain both genders and a small number of the victims were unidentifiable as male or female; a total of 12,966 URLs contained child sexual abuse hosted on 1,595 domains worldwide. This figure did not include newsgroup content.

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<sup>1</sup> Source Europe – The European Union official website:  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/379&format=HTML&aged=1&language=EN&guiLanguage=en>

<sup>2</sup> <http://www.internetwatch.co.uk/accountability/annual-reports>

The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents<sup>3</sup> ("Rio Declaration") pledges for a more comprehensive concerted global effort. Enhanced cooperation between different organisations and initiatives is particularly important in the light of challenges related to the information society. In the face of the growing threat of cybercrime, common efforts to strengthen legislative frameworks, criminal justice capacities, international cooperation and public/private cooperation are required.

A complex, multifaceted approach is required, including for example:

- *Prevention:* The cost of child sexual abuse to society is extensive in terms of medical care, criminal justice, education and others, and, therefore, States should consider that preventive measures are less expensive than dealing with the consequences of child sexual abuse on individuals, family and society<sup>4</sup>. Parents and media education play an important role in prevention.
- *Awareness:* The best ways to take care of children interests are insufficiently discussed. Parents, teachers, carers should talk more openly about child sexual violence and all of them should be alert to signs of abuse that children may show.
- *Empowering children:* Children need to be educated to disclose their abuse. Sexual violence against children is one of the most underreported forms of violence and often a taboo subject. Stronger reliance on peer to peer and self-help strategies should be also promoted<sup>5</sup>.
- *Harmonised legal framework:* Criminalising all forms of sexual violence against children in line with international standards and providing for adequate investigative powers are crucial. This will facilitate international cooperation among States.
- *Enforcement of laws:* It is widely recognised that once legislation has been adopted, significant work is needed to enforce the law and ensure the capability of criminal justice authorities to investigate, prosecute and adjudicate such offences.
- *Learn from victims:* It is very important to learn from child victims' perspectives, including when designing and developing law enforcement mechanisms. Evidence shows that victims sometimes do not think of themselves as being victimised until after the images have been discovered<sup>6</sup>.
- *Public-private cooperation:* The fight against online sexual violence cannot succeed without the involvement of Internet service providers as Internet is a primary area used for committing such offences<sup>7</sup> as well as mobile phone network operators, search engines etc.

Important international standards, tools and good practices are available. They are not always sufficiently known or implemented. Priority should be given to ensuring the implementation of agreed upon existing instruments. In this respect, more technical assistance is required to help States worldwide in their endeavours to prevent and control sexual violence against children.

The protection of children is a primary objective of the Council of Europe<sup>8</sup>. A wide range of measures to protect children against sexual violence has been proposed to member States, ranging from prevention, to protection and prosecution. On the basis of standards developed, capacity building projects, campaigns and other initiatives, the Council of Europe has been providing support to help States in Europe and beyond to address these issues<sup>9</sup>.

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<sup>3</sup> [http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII\\_Outcome\\_Document\\_Final.pdf](http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf)

<sup>4</sup> Child Sexual Abuse, co-ordinated by Corinne May-Chahal and Maria Herczog, page13, Council of Europe, July 2003

<sup>5</sup> Expert Meeting on Sexual Abuse and Exploitation of Children in Converged Online/Offline Environment - Meeting report, Innocenti Research Center (IRC) , Florence 3-4 June 2010

<sup>6</sup> Expert Meeting on Sexual Abuse and Exploitation of Children in Converged Online/Offline Environment - Meeting report, Innocenti Research Center (IRC) , Florence 3-4 June 2010

<sup>7</sup> Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Explanatory Report, 69 available at: <http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=185&CM=8&DF=19/05/2012&CL=ENG>

<sup>8</sup> [www.coe.int/children](http://www.coe.int/children)

[http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Protecting%20children/Default\\_en.asp](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Protecting%20children/Default_en.asp)

<sup>9</sup> See [www.coe.int/cybercrime](http://www.coe.int/cybercrime) and [http://www.coe.int/t/dghl/standardsetting/children/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/children/default_en.asp)

Key instruments include in particular the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the "Lanzarote Convention")<sup>10</sup>. This treaty provides for a holistic approach comprising criminal law measures, preventive and protective measures to deal with all forms of sexual violence against children, and for setting up a specific monitoring mechanism. The Lanzarote Convention is not limited to the online or ICT environment.

The Budapest Convention on Cybercrime<sup>11</sup> specifically addresses child pornography offences committed by means of computer systems. It furthermore requires Parties to this treaty to provide their law enforcement authorities with procedural law powers to investigate and secure electronic evidence and to engage in efficient international cooperation.

Both treaties combined contain a comprehensive set of measures to address sexual exploitation and sexual abuse of children both in the online and offline environment. Widely applied, they will contribute to global harmonisation of criminal law, and this in turn will facilitate international operational cooperation as underlined by Interpol and the Virtual Global Taskforce<sup>12</sup>.

The present study is to demonstrate how the Lanzarote and Budapest Conventions can be used as benchmarks for substantive criminal law measures to be taken by States.

This is expected to:

- enhance implementation of both treaties;
- encourage criminal law reform;
- raise awareness of the need for comprehensive strategies against the sexual violence against children;
- facilitate technical assistance;
- allow for following the progress made by States.

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<sup>10</sup> The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201) was elaborated by the Council of Europe with the participation of Canada, Holy See, Mexico, Japan and the USA. It was opened for signature in 2007 and entered into force on 1 July 2010.

By 22 November 2012, twenty-two (22) States had signed the Convention (Andorra, Armenia, Azerbaijan, Belgium, Cyprus, Estonia, Georgia, Germany, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Monaco, Norway, Poland, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland and United Kingdom) and twenty-three (23) countries ratified (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Denmark, Finland, France, Greece, Iceland, Luxembourg, Malta, Moldova, Montenegro, Netherlands, Portugal, Romania, San Marino, Serbia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine). Two (2) CoE Member States have not signed the Convention, namely Czech Republic and Latvia.

According to article 46 after the entry into force of the Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention.

<sup>11</sup> The Budapest Convention was elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA. It was opened for signature in 2001 and entered into force on 1 July 2004.

By 4 December 2012, ten (10) States had signed the Convention (Canada, Czech Republic, Greece, Ireland, Liechtenstein, Luxembourg, Poland, South Africa, Sweden and Turkey), thirty-seven (37) countries ratified (Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Italy, Japan, Latvia, Lithuania, Malta, Moldova, Montenegro, Netherlands, Norway, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland, "The Former Yugoslav Republic of Macedonia", Ukraine, United Kingdom, United States of America) and one country (Australia) has been acceded to the treaty. Four (4) CoE Member States have not signed the Convention, namely Andorra, Monaco, Russia and San Marino.

According to article 37 any State may accede to the Convention following majority vote in Committee of Ministers and unanimous vote by the parties entitled to sit on the Committee of Ministers. Eight (8) countries (Argentina, Chile, Costa Rica, Dominican Republic, Mexico, Panama, Philippines and Senegal) have been invited so far to accede.

See: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=8&DF=21/02/2010&CL=ENG>

<sup>12</sup> See: <http://www.virtualglobaltaskforce.com/2011/strengthening-laws-to-combat-online-child-sexual-exploitation/>

For the Resolution adopted by the Interpol General Assembly in November 2011 see

<http://www.interpol.int/content/download/12387/85371/.../AG-2011-RES-05.pdf>



The study is motivated by:

- the call of the above-mentioned Rio Declaration for more harmonised legislation;
- the assumption that full implementation of the Lanzarote and Budapest Conventions will lead to better protection of children against sexual exploitation and abuse;
- requests for technical assistance in the elaboration of legislation in line with the two treaties;
- the “legislative engagement strategy” of Interpol and the Virtual Global Taskforce<sup>13</sup>, which considers the Lanzarote and Budapest Conventions as legislative benchmarks, and that their full implementation will facilitate law enforcement operations to rescue children and prosecute offenders.

Article 38 paragraph 4 of the Lanzarote Convention provides for the obligation of Parties to endeavour to include preventing and combating the sexual exploitation and sexual abuse of children in development assistance programmes benefiting third States. Many Council of Europe member States carry out programmes that cover areas such as the restoration or consolidation of the rule of law, the development of judicial institutions, combating crime, and technical assistance for the implementation of international conventions. Some of these programmes may target countries faced with substantial sexual exploitation and sexual abuse of children. It seems appropriate, in this context, that action programmes should take account of and duly incorporate issues relating to the prevention and punishment of this form of crime<sup>14</sup>. The present study might be of use in such programmes.

The discussion paper may feed into the work of the Lanzarote Committee<sup>15</sup> as well as that of the Cybercrime Convention Committee (T-CY). It should, however, be underlined that the discussion paper does not reflect the views of these Committees nor does it pre-empt the results of assessment or monitoring exercises that to be carried out by them in their respective fields of competence<sup>16</sup>.

The standards of reference are the substantive criminal provisions of the Budapest Convention and of the Lanzarote Convention:

- Budapest Convention on Cybercrime
  - Article 9 – Child pornography (including the definitions)
- Lanzarote Convention
  - Article 3 – Definitions
  - Article 18 – Sexual abuse
  - Article 19 – Offences concerning child prostitution
  - Article 20 – Child pornography
  - Article 21 – Participation of a child in pornographic performances
  - Article 22 – Corruption of children
  - Article 23 – Solicitation of children for sexual purposes

Obviously, a range of other criminal justice measures are highly relevant even if they are not the subject of this study, such as procedural law measures,<sup>17</sup> public/private cooperation,<sup>18</sup> the liability of

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<sup>13</sup> <http://www.virtualglobaltaskforce.com/2011/strengthening-laws-to-combat-online-child-sexual-exploitation/>

Following the adoption of the respective resolution by the Interpol General Assembly on 1 November 2011, the VGT and the Council of Europe on 22 November 2011 signed an agreement to cooperate with each other in the implementation of this strategy.

<sup>14</sup> Lanzarote Convention, Exp. Rep, 261

<sup>15</sup> Committee of the Parties to the Lanzarote Convention CETS 201

<sup>16</sup> The preparation of this study started in 2009 when the Lanzarote Convention Committee (T-ES) had not been established yet.

<sup>17</sup> Analyses of such tools are carried out under other activities of the Global Project on Cybercrime and the Cybercrime Convention Committee (T-CY) . See: [www.coe.int/cybercrime](http://www.coe.int/cybercrime)

service providers, the question of self-regulation, “notice and takedown” by removing the illegal content upon identification, assessment and tracing of any images assessed as child sexual abuse,<sup>19</sup> the issue of filtering,<sup>20</sup> or the question of access blocking.<sup>21</sup>

The preparation of the study comprised several stages. In a first stage, Parties, Signatories and States invited to accede to the Budapest Convention were requested to reply to a questionnaire.<sup>22</sup> Forty-eight States<sup>23</sup> provided information through their replies to this questionnaire. Nine States targeted in this stage did not reply. Additional information was collected in the course of other cooperation activities. After a first analysis of information collected, results were verified with the responding States.

A word of caution:

- The analysis of domestic legislation in this report is based on the text of the laws. Some of the issues raised may have been addressed in jurisprudence and resolved in practice.
- In the preparation of the present study it became clear that reforms are underway or envisaged in many States. Regular updates of this analysis would be required to reflect new developments.

Following this introduction:

- Chapter 2 describes the substantive criminal law benchmarks and the approaches pursued in different States.
- Chapter 3 comprises comparative tables showing how different elements of these benchmarks have been transposed into domestic criminal law provisions.
- Chapter 4 draws conclusions and identifies issues to be addressed.

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<sup>18</sup> See for example: Cooperation between law enforcement and internet service providers against cybercrime: toward common guidelines available at: [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Reports-Presentations/567%20prov-d-wg%20STUDY%20final%20\\_25%20june%202008\\_.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/Documents/Reports-Presentations/567%20prov-d-wg%20STUDY%20final%20_25%20june%202008_.pdf)

<sup>19</sup> According to Internet Watch Foundation – 2009 annual and charity report, this process is carried out in UK in partnership with the relevant police agency to ensure evidence is preserved and has operated since 1996 and is UK-wide. As a result the proportion of child sexual abuse content known to the IWF which is hosted in the UK has reduced from 18% in 1997 to less than 1% since 2003. In Netherlands Notice-and-take-down Code of Conduct establishes a procedure for intermediaries to deal with reports of unlawful content on the Internet. The code is provided for intermediaries that provide a public (telecommunications) service on the Internet in the Netherlands.

<sup>20</sup> Governmental Filtering of Websites: the Dutch Case, W.Ph. Stol, H.K.W. Kaspersen, J. Kerstens, E.R. Leukfeldt & A.R. Lodder, page 1

<sup>21</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA in paragraph (47) states that *despite the efforts to remove child pornography content at its source often this is not possible when the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long. Therefore, mechanisms may also be put in place to block access from the European Union's territory to Internet pages identified as containing or disseminating child pornography. The measures undertaken to remove or, where appropriate, block websites containing child pornography could be based on various types of public action, such as legislative, non-legislative, judicial or other. This should not prejudice the voluntary action taken by the Internet industry to prevent the misuse of its services and should ensure that it provides an adequate level of legal certainty and predictability to users and service providers. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interests of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union*

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

<sup>22</sup> See Appendix 3

<sup>23</sup> 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, Switzerland, “The Former Yugoslav Republic of Macedonia”, Turkey, United Kingdom, Ukraine

The Appendices comprise:

- Appendix 1 provides an illustration of the holistic approach of the Lanzarote Convention.
- Appendix 2 provides examples of other relevant initiatives aimed at the protection of children against sexual violence.
- Appendix 3 contains the questionnaire sent to national authorities.
- Extracts of domestic legislation.

## 2 Substantive criminal law benchmarks

The Rio Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents<sup>24</sup> – adopted at the International World Congress III against the Sexual Exploitation of Children and Adolescents (Brazil, 25–28 November 2008) – stated that the commercial sexual exploitation of children was:

a fundamental violation of children’s rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery. Commercial sexual exploitation of children consists of criminal practices that demean and threaten the physical and psychosocial integrity of children.

Key findings of the ECPAT contribution to this World Congress included that:

There is still some way to go to achieve equivalent legislation in all jurisdictions against the online sexual abuse of children<sup>25</sup>. Discrepancies can cause difficulties for investigations both at home and abroad and, whilst criminalisation of these activities is essential, adequate provision must be made in those States with new legislation to ensure successful investigative outcomes<sup>26</sup>.

The Rio de Janeiro Declaration urged States to criminalise the:

- intentional production, distribution, receipt and possession of child pornography, including virtual images and the sexually exploitative representation of children, as well as the intentional consumption
- accessing and viewing of such materials where there has been no physical contact with a child.

The Lanzarote and Budapest Conventions represent international standards that may serve as benchmarks and may support the harmonisation of criminal law aimed at protection children against sexual exploitation and abuse.<sup>27</sup>

Article 3 of the Lanzarote Convention stipulates that the “sexual exploitation and sexual abuse of children” shall include the behaviour as referred to in Articles 18 to 23 of this Convention. The Budapest Convention covers child pornography in Article 9. The present study makes use of these Articles as agreed upon minimum international standards.

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<sup>24</sup> [http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII\\_Outcome\\_Document\\_Final.pdf](http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf)

<sup>25</sup> ECPAT International defines sexual abuse of a child as “contacts or interactions between a child and an older or more knowledgeable child or adult such as a stranger, sibling or parent, when the child is being used as an object of gratification for the abuser’s sexual needs”. These actions are carried out using force, threats, bribes, trickery or pressure and could include exhibitionism or voyeurism and do not necessarily involve physical contact.

Through commercial sexual exploitation, a child becomes not only a sexual object but also a commodity. The child is used for sexual purposes in exchange for cash, goods or in-kind favours, which are given to the child and/or to an intermediary who profits from the sexual exploitation of the child. There are situations which are difficult to categorise (child domestic labourers; child abuse images created for non-commercial use.”

(Questions & Answers about the Commercial Sexual Exploitation of Children: An information booklet by ECPAT International. Available at: [http://www.ecpat.net/EI/Publications/About\\_CSEC/FAQ\\_ENG\\_2008.pdf](http://www.ecpat.net/EI/Publications/About_CSEC/FAQ_ENG_2008.pdf))

<sup>26</sup> Online Child Sexual Abuse: The Law Enforcement Response - A contribution of ECPAT International to the World Congress III against the Sexual Exploitation of Children and Adolescents Rio de Janeiro, Brazil, 25–28 November 2008 available at: <http://www.ecpat.net/worldcongressIII/index.php>

<sup>27</sup> Obviously, designing legislation at the national level requires adapting international standards to the specific realities of a country. For example, the criminalisation of drawings might seem unnecessary in some parts of the world while in other States this might be a pressing issue. Introducing such a criminalisation in the Lanzarote Convention – at least at this point – would have been controversial (for instance, criminalisation of possession and viewing of child pornography was and still is controversial) and thus would have reduced its chances of making a global impact. In any case, there is still much to be done to ensure full implementation of the minimum standards already agreed upon

In 2011, the European Union adopted Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography<sup>28</sup>. This Directive is compatible with the Lanzarote Convention. The proposal for the Directive stated that:

by incorporating provisions of the Lanzarote Convention into European Union law, the Directive facilitates faster adoption of national measures (compared to national procedures for ratification) and ensures better monitoring of implementation<sup>29</sup>.

The report intends to outline how different States have regulated the protection of children against sexual exploitation and sexual abuse.

## **2.1 Laws regulating offences on sexual exploitation and sexual abuse of children, including child pornography**

States may follow different approaches when establishing the legal framework for the protection of children against sexual exploitation and sexual abuse by regulating these matters either in the criminal code, or specific criminal and civil laws.

With regard to the criminalisation of these acts, in some States the criminal code is supplemented by specific laws that criminalise additional conduct to protect children against sexual violence (such as in Bulgaria, Ireland, Japan, Philippines, Romania, United Kingdom and others) .

Specific provisions to protect children against such behaviour – when committed via computer systems and/or the Internet – have been adopted in Albania, Bulgaria, Japan, Ireland, Moldova, Philippines, Netherlands, Spain, Switzerland, Romania, “The Former Yugoslav Republic of Macedonia” and others, while general provisions covering also online offences can be found in the laws of Austria, Azerbaijan, Belgium, Denmark, Finland, Georgia, Lithuania, Moldova, Monaco, Portugal, Ukraine, United Kingdom<sup>30</sup>.

## **2.2 Recent or on-going reforms on legislation in this field**

A positive development is that more and more States are aware of the need to take legislative measures to ensure that legal frameworks are in place for protecting children against sexual violence.

- *Albania*: Several amendments to the Criminal Code were submitted to the Parliament by the Council of Ministers (decision no. 262/2007, no. 278/2007, no. 833/2010 and no. 926/2010) and approved by Law no. 23/201231. These amendments included a new provision stipulating loss of parental rights when a person has been convicted for a criminal offense against the child and amended the first paragraph of Article 124/b that criminalises “physical

<sup>28</sup> It replaces Council Framework Decision 2004/68/JHA. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

<sup>29</sup> Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

<http://eur->

[lex.europa.eu/Notice.do?val=510356:cs&lang=en&list=525713:cs,510356:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&hecktexte=checkbox&visu=](http://eur-lex.europa.eu/Notice.do?val=510356:cs&lang=en&list=525713:cs,510356:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&hecktexte=checkbox&visu=)

The Directive contains some additional elements, such as definitions or clarifications e.g. pornographic performances, grooming, which are valuable for member States of Council of Europe and the European Union, and which can be relevant also beyond Europe.

<sup>30</sup> For the purpose of this analysis the general provisions that make no distinction between online and offline offences are considered to implement also online offences unless the wording could pose difficulties in prosecution

<sup>31</sup> Unfortunately, these amendments had been already sent to the Parliament when the work on legislation carried out under the joint regional project of the European Union and Council of Europe CyberCrime@IPA started. Thus it was not possible to provide advice on the text on time.

[http://www.coe.int/t/DGHL/cooperation/economiccrime/cybercrime/cy%20project%20balkan/Default\\_IPA\\_en.asp](http://www.coe.int/t/DGHL/cooperation/economiccrime/cybercrime/cy%20project%20balkan/Default_IPA_en.asp)

or psychological mistreatment of a minor by parents, sister, brother, grandfather, grandmother, legal guardian or any person who is obliged to care for”.

- *Armenia:* A working group has been established to amend the cybercrime legislation. The Council of Europe in cooperation with OSCE is currently assisting the authorities to draft amendments in line with the two conventions.
- *Azerbaijan:* A joint working group consisting of the representatives of law enforcement agencies, judges, prosecutors, professors and lawyers was established to amend the Criminal Code, which included cybercrime. The Group identified the problems encountered in practice, analysed the level of implementation of the requirements resulting from international agreements to which Azerbaijan is party to and prepared proposals for improvement. One of the proposals was to bring the substantive criminal law of Azerbaijan in line with the Budapest Convention. Under the joint European Union and Council of Europe project Eastern Partnership – Cooperation against Cybercrime (CyberCrime@EAP)<sup>32</sup> legal advice was provided to bring the draft law closer to the standards of the Budapest and Lanzarote conventions. In June 2012, a new chapter in the Criminal Code dealing with cybercrimes that includes child pornography offences (Article 171-1) was adopted.
- *Bosnia and Herzegovina:* The country consists of two entities (the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS) and Brčko District (BD) each of them having separate criminal codes and criminal procedure codes. In some fields, legislation is enacted at the State level (e.g. international cooperation, organised crime, terrorism etc.). There are thus also State level criminal and criminal procedure codes. Initially, in 2003, similar provisions on criminal law were adopted under the criminal codes and criminal procedural codes for FBiH, RS and BD. Meanwhile, the Republika Srpska enacted a specific law concerning criminal offences against security of computer data (OJ 73/10, July 30, 2010, in force since 7 August 2010), which amends the Criminal Code. In spite of the global trend to attempt harmonisation of cybercrime legislation based on common standards in order to facilitate international cooperation, in Bosnia and Herzegovina a tendency towards diverging developments is noted that includes also cybercrime legislation. This raises challenges for authorities to cooperate both at national and international levels. An Action Plan for 2010-2012 that includes measures for amending legislation was adopted by the Council of Ministers of Bosnia and Herzegovina in 2009. The Action Plan includes activities on improving legislation against child pornography e.g. define more clearly the provisions addressing child pornography; criminalisation of possession of child pornographic material and engaging in child prostitution, as well as to provide obligations for Internet service providers to cooperate with law enforcement agencies at the state level. On 12 October 2011, Bosnia and Herzegovina signed the Lanzarote Convention and in 2012 ratified it. Under the joint EU/CoE regional project CyberCrime@IPA, the Council of Europe is assisting the Ministry of Justice to include some of the provisions of the Cybercrime Convention in the criminal legislation enacted at the State level.
- *Bulgaria:* The National Assembly adopted in September 2006, May 2007 and April 2009 amendments to the Criminal Code aimed at strengthening the protection of minors and underage persons against violence, in particular against all forms of sexual exploitation and abuse, as well as increasing the sanctions for sexual offences against children.
- *Croatia:* A comprehensive criminal law reform was launched in 2008. The new Criminal Procedure Act entered into force on 1 July 2009 with regard to criminal proceedings within

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<sup>32</sup> More information about the project is available at: [www.coe.int/cybercrime](http://www.coe.int/cybercrime)

the competence of the Office for Suppression of Corruption and Organised Crime (USKOK) and for other criminal proceedings on 1 September 2011. A new Criminal Code was adopted in November 2011 to enter into force on 1 January 2013. The provisions on the protection of children against sexual violence transposed closely the Convention on Cybercrime and Lanzarote Convention and could be used by other States for inspiration in drafting or amending their national legislation.

- *Cyprus*: New regulation is in process of approval by the National Parliament regarding the Directive of the European Parliament 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography.
- *Denmark*: The Standing Committee on Criminal Law is reviewing the provisions of the Criminal Code on sexual offences, and a report is expected to be published later in 2012.
- *Dominican Republic*: The new Constitution approved in 2009 and in force since 2010, specifically prohibits "slavery, servitude, and human trafficking" in all forms (Article 41) and reiterates the government's obligation to protect minors against sexual abuse and sexual, commercial, labour or economic exploitation (Article 56) .
- *Estonia*: Several amendments to the Criminal Code were adopted since 2010 concerning the protection of children against sexual violence. A new amendment package is to implement the European Union Directive and the remaining provisions of the Council of Europe conventions.
- *Finland*: It ratified the Lanzarote Convention in 2011. In view of ratification amendments were prepared, which entered into force on 1 June 2011. These amendments included among others heavier penalties for sexual offences against children, criminalisation of solicitation of children for sexual purposes, attending child pornographic performances etc. Furthermore, the provisions on distribution and possession of child pornography are made clearer and all different stages relating to child pornography from production and distribution to possession are now criminalised.
- *Georgia*: It signed the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse on 12 March 2009 and specific amendments are envisaged to bring the legislation in compliance with the requirements of the Convention.
- *Germany*: On 18 June 2009 the Federal Parliament (German Bundestag) adopted a law to combat child pornography in communication networks<sup>33</sup>. Following public controversies and elections, this law has not come into force. The law required Internet access providers to block websites containing child pornography, at least at the level of fully qualified domain names. According to the provisions of the European E-Commerce Directive (Dir. 2000/31/EC, Art. 15) the access providers must not be forced to search for such websites themselves. Thus a blocking list was to be provided by the German Federal Criminal Police Office (Bundeskriminalamt). The law provided safeguards with regard to privacy protection, telecommunication secrecy and freedom of information. However, the law was formally repealed in December 2011<sup>34</sup>.

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<sup>33</sup>[http://www.bundesrat.de/cln\\_090/SharedDocs/Drucksachen/2009/0601-700/604-09,templateId=raw,property=publicationFile.pdf/604-09.pdf](http://www.bundesrat.de/cln_090/SharedDocs/Drucksachen/2009/0601-700/604-09,templateId=raw,property=publicationFile.pdf/604-09.pdf)

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[http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger\\_BGBl&bk=Bundesanzeiger\\_BGBl&start=//\\*%5B@attr\\_id=%27bgbl111s2958.pdf%27%5D](http://www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBl&bk=Bundesanzeiger_BGBl&start=//*%5B@attr_id=%27bgbl111s2958.pdf%27%5D)

- *Hungary*: On 25 June 2012 the Parliament adopted a new Criminal Code (Act C of 2012), which will enter into force on 1 July 2013. The new Criminal Code introduces new provisions concerning the protection of children against sexual exploitation and sexual abuse (e.g. knowingly attending pornographic performances involving the participation of children, solicitation of children for sexual purposes). Furthermore, on 29 June 2012 an amendment to the Criminal Code (Act LXII of 2012) entered into force providing as an aggravating circumstance the abuse or violence against children by making use of a recognised position of authority or influence over the victim (previously special circumstances were applied only when the victim was under care, custody or supervision or received medical treatment from the perpetrator).
- *India*: The Information Technology Act 2008 was amended in 2009. The Council of Europe provided a legal opinion to bring the law (including Section 67B on child pornography) closer to the standards of the Budapest Convention. A new draft law (Bill, No XIV, 2011) on the protection of children from sexual offences is now in the Parliament; it has raised controversies in the media as it seemed to amount to "criminalising" sex between young people by stipulating that sex under the age of 18 – even if consensual – would be deemed statutory rape and an offence under the Juvenile Justice Act carrying a maximum punishment of three years imprisonment. The draft law contains detailed provisions related to the meaning of terms such as "consent", "penetrative sexual assault" etc.
- *Ireland*: Major reforms of the laws protecting children against sexual abuse and exploitation are being prepared in Ireland.
- *Japan*: The Child Pornography Prohibiting Act adopted in 1999 was amended in 2004. The amendment included an increase in penalties and considered the standards provided by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children and the Budapest Convention on Cybercrime. In 2009, a bill that included the criminalisation of possession or acquisition of child pornography was debated but it did not pass due to the dissolution of the House of Representatives. In 2011, a Bill was submitted to the Diet and passed in June. The Bill revised the Penal Code (in effect on 14 July 2011) and the Criminal Procedure Law (in effect on 22 June 2012) and allowed Japan to ratify the Budapest Convention few weeks later (3 July 2012). The amendments included offences related to distribution of pornography criminalising those who email pornography to unspecified persons or a number of persons.
- *Liechtenstein*: A revision of sexual crimes was undertaken in view of implementing the Budapest and Lanzarote Conventions as well as the UN Optional Protocol to the Convention on the Rights of the Child. The amendment to the Criminal Code includes new provisions that criminalise sexual abuse and sexual exploitation on the Internet, pornographic performances and prostitution of minors as well as corruption and solicitation of minors.
- *Moldova*: By Decision of the Minister of Internal Affairs 18/1483/11 November 2008, a working group was created to implement the Lanzarote Convention. These measures were envisaged by National Plan for preventing and combating trafficking in human beings (2008 – 2009), which was approved by Government Decision 472/26 February 2008.
- *Monaco*: Although it has not yet signed the Budapest Convention and has not yet ratified the Lanzarote Convention, the amendments to the Criminal Code from 2007 (Law no 1344/26 December 2007) reinforced the repressive measures to protect children, implementing most of the substantive law provisions provided by the two conventions concerning protection of children against sexual violence.



- *Montenegro*: In 2010 a new Criminal Code (Official Gazette of Montenegro 25/2010) was adopted, which implements the provisions of Article 9 of the Budapest Convention except for a definition of the term "child pornography".
- *Netherlands*: The relevant legislation was amended followed by the ratification on 1 March 2010 of the Lanzarote Convention. The amendments came into force on 1 January 2010. The implementation of the new European Union Directive on the combating the sexual abuse, sexual exploitation of children and child pornography might lead to a "tightening of certain aspects" of the offences on protecting children against sexual exploitation and sexual abuse.
- *Norway*: A new Penal Code, including a revised chapter on sexual offences, was adopted by the Parliament in June 2009. In the new Chapter 26 on sexual offences, sexual assaults against minors are more consistently governed in separate provisions and in line with the Lanzarote Convention. In order to underline the seriousness of sexual assaults against minors, any sexual activity as well as the more qualified sexual acts with children under the age of 14 are regarded as rape regardless of how the sexual activity or the sexual act was committed. The new Penal Code is envisaged to enter into force in 2012 at the earliest. For the purpose of this analysis both existing and future provisions were considered based on the explanations provided in the replies to the questionnaire.
- *Romania*: The relevant legal framework consists of general provisions of the Criminal Code and several laws that regulate sexual abuse of children i.e. Law 678/2001 on prevention and combating of trafficking in persons; Law 196/2003 on prevention and combating of pornography; Law 161/2003 (Title III) on cybercrime.<sup>35</sup> A new Criminal Code has been adopted<sup>36</sup> (not yet in force) in line with Lanzarote Convention standards e.g. grooming is criminalised under Article 222 (Recruiting minors for sexual purposes) while Article 20 paragraph 1 f of the Convention is implemented in Article 373 (Accessing without right pornographic materials with minors through information systems) .
- *Spain*: An important reform of the Criminal Code was undertaken as a result of the adoption of the Organic Act 5/2010 of 22 June 2010, which came into force on 23 December 2010.
- *United Kingdom*: The laws in this area are under constant review. In 2009, the Internet Watch Foundation extended the reporting service to accept reports of extreme pornography from the public in line with new legislation criminalising the possession of such content. In June, the Ministry of Justice asked IWF to extend Hotline service to enable the public to report non-photographic visual depictions of the sexual abuse of children hosted in the UK, as set out in the Coroners and Justice Act 2009. It was acceded to this request as from April 2010.<sup>37</sup>

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<sup>35</sup> The Law 161/2003 implements the Convention on Cybercrime and criminalises in Article 51 offences related to child pornography committed through computer systems. The new Criminal Code (still not yet in force) implements both Article 9 of Budapest Convention and the new conduct introduced by Lanzarote Convention

<sup>36</sup> Law 286/2009 regarding the Criminal Code published in the Official Journal no. 510/24.07.2009

<sup>37</sup> Internet Watch Foundation – 2009 annual and charity report

## 2.3 Definition of child pornography

Different approaches have been taken by States with regard to terms such as “child pornography”, “child sexual abuse images”, “sexual exploitation” and “sexual abuse” against children sometimes depending also on moral, religious, social economic and cultural factors<sup>38</sup>, which can vary significantly across jurisdictions.

More harmonisation would be necessary regarding such terms, and therefore consideration should be given to definitions agreed upon at the international level. Harmonised definitions can be of significant relevance when international cooperation is required for the purpose of an investigation.

The meaning of the term “child pornography” in international instruments reflects a consensus and follows similar approaches using common elements. The definition provided by the Lanzarote Convention is based on the Optional Protocol to the United Nations Convention on the Rights of the Child<sup>39</sup>. Paragraph 2 of Article 20 of the Lanzarote Convention defines the term “child pornography” as “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”.

Both explanatory reports of the Budapest and Lanzarote Conventions state that “sexually explicit conduct” must cover at least the following real or simulated acts:

- a) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between children, or between an adult and a child, of the same or opposite sex;
- b) bestiality;
- c) masturbation;
- d) sadistic or masochistic abuse in a sexual context; or
- e) lascivious exhibition of the genitals or the pubic area of a child.

It is not relevant whether the conduct depicted is real or simulated.

Such images are governed by national standards pertaining to bodily harm, or the classification of materials as obscene or inconsistent with public morals. Therefore, material having an artistic, medical, scientific or similar merit, i.e. where there is absence of sexual purposes, does not fall within the ambit of this provision. The visual depiction includes data stored on computer diskette or on other electronic means or other storage device which are capable of conversion into a visual image<sup>40</sup>.

The term “child pornography” means 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.

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<sup>38</sup> For example, although forced marriage might be seen in some opinions as a tradition this is clearly a form of sexual abuse and a violation of human rights condemned by the Council of Europe Convention on preventing and combating violence against women:

<http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=210&CM=8&DF=01/05/2012&CL=ENG>

<sup>39</sup> Article 2 (c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

‘For the purpose of the present Protocol:

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes’.

<http://www2.ohchr.org/english/law/crc-sale.htm>

<sup>40</sup> Lanzarote Convention, Exp. Rep, 142

The definition practically covers depictions of sexual abuse of a real child, pornographic images which depict a person appearing to be a minor engaged in sexually explicit conduct, and images, which, although "realistic", do not in fact involve a real child engaged in sexually explicit conduct. This latter scenario includes pictures which are altered, such as morphed images of real persons, or even generated entirely by the computer<sup>41</sup>.

In the debate on child pornography versus freedom of expression some argue that speech that records no crime and creates no victims through its production cannot be prohibited<sup>42</sup> as no real harm has been caused and there is no child involved. It is clear that the protected legal interest is different. In one case it focuses directly on the "protection against child abuse" while the second and third scenarios aim at providing "protection against behaviour" that although not necessarily creating harm to the "child" depicted in the material, as there might not be a real child, it might be used to encourage or seduce children into participating in such acts, and hence form part of a subculture favouring child abuse<sup>43</sup>. Child pornography is not just about images of naked children: the desire for sex with real children is maintained and promoted whether or not the image of the child is "real". Moreover, there are clear links between child pornography and the sexual abuse of children<sup>44</sup>.

Due to advances in technology, actual child pornography and virtual child pornography have become almost indistinguishable. The most obvious use of child pornography is sexual arousal and gratification. It is also used to validate certain beliefs and behaviour, establish trust among others interested in abusing children, gain entrance to private clubs, and make economic profit. In many cases paedophiles and child molesters use such materials for a persuasive purpose in order to make the idea acceptable to their victims and seduce or groom them to commit sexual acts and sometimes it wets paedophiles' appetites and encourages them to engage in illegal conduct<sup>45</sup>. Therefore, States should give careful consideration when they decide if the final product – even without physical involvement of a child – is considered illegal or not<sup>46</sup>.

The Budapest Convention and Lanzarote Convention allow Parties to make reservations and not to criminalise pornographic images which depict a person appearing to be a minor engaged in sexually explicit conduct, and images, which, although "realistic", do not in fact involve a real child engaged in sexually explicit conduct. Although in some opinions allowing the possibility of making reservations is susceptible of criticism<sup>47</sup> the reason was to allow States that would not accept to criminalise such conduct to still join these treaties for the sake of international cooperation. However, the Explanatory Report of the Lanzarote Convention draws attention of States to acknowledge, when making such reservations, to rapid developments in technology which allow the producing of extremely lifelike images of child pornography where in reality no child was involved. It thus recommends to avoid the legalisation of such productions by not applying relevant reservations of these treaties<sup>48</sup>.

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<sup>41</sup> Budapest Convention, Exp. Rep, 101

<sup>42</sup> See: Ashcroft v. The Free Speech Coalition

<sup>43</sup> Budapest Convention, Exp. Rep 102

<sup>44</sup> See, for example, Questions & Answers about the Commercial Sexual Exploitation of Children: An information booklet by ECPAT International

<sup>45</sup> Budapest Convention, Exp. Rep, 93

<sup>46</sup> Supreme Court of Canada R v Sharpe (Clough,2008) :

1.Child pornography promotes cognitive distortions such that it may normalise sexual activity with children in the mind of the possessor, weakening inhibitions and potentially leading to actual abuse

2.Child pornography fuels fantasies that incite offenders

3.Prohibiting the possession of child pornography assists law enforcement efforts to reduce the production, distribution and use that result in direct harm to children

4.There is "clear and uncontradicted" evidence that child pornography is used for grooming and seducing victims

<sup>47</sup> "The 2007 Council of Europe Convention on the Protection of Children, the criminalisation of "simulated representations or realistic images of a non-existent child" is optional" - Online Child Sexual Abuse: The Law Enforcement Response - A contribution of ECPAT International to the World Congress III against the Sexual Exploitation of Children and Adolescents Rio de Janeiro, Brazil, 25-28 November 2008 available at: <http://www.ecpat.net/worldcongressIII/index.php>

<sup>48</sup> Lanzarote Convention, Exp. Rep. 144

It seems that in Europe, perhaps due to Council of Europe and European Union instruments, the tendency is to criminalise both real and simulated conduct. However, there is still legislation that lack a definition of "child pornography" (e.g. Albania, Armenia, Belarus, Belgium, Bosnia and Herzegovina, Denmark, Liechtenstein, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, Norway, Poland, Portugal, Serbia, Slovenia, Spain, Switzerland, "The Former Republic of Macedonia", Turkey, Ukraine) and do not criminalise virtual child pornography or pornographic images that depict a person appearing to be a minor engaged in sexually explicit conduct. For instance, *Montenegro, Denmark, Hungary, Switzerland, United Kingdom* took the reservation not to apply Article 9, paragraph 2, item b of the Budapest Convention (a person appearing to be a minor engaged in sexual explicit conduct). *France* made the reservation that "Article 9, paragraph 1 shall apply to any pornographic material that visually depicts a person appearing to be a minor engaged in sexually explicit conduct, in so far as it is not proved that the said person was 18 years old on the day of the fixing or the registering of his or her image". *Iceland* made the reservation not to apply Article 9, paragraph 2 letters b (a person appearing to be a minor engaged in sexual explicit conduct) and c (realistic images representing a minor engaged in sexual explicit conduct) of the Budapest Convention. The *United Kingdom* declared that it reserves the right not to apply Article 9 paragraph 2, letter c (realistic images representing a minor engaged in sexual explicit conduct) as Scotland has no offence covering a "realistic" image which is not, and is not derived from, a photograph of a real person. *The United States of America* reserved the right to apply paragraphs 2, letters b and c of Article 9 only to the extent consistent with the Constitution of the United States as interpreted by the United States and as provided for under its federal law, which includes, for example, crimes of distribution of material considered to be obscene under applicable United States standards.

The Explanatory Report of the draft law related to child pornography proposed to the Parliament in March 1995 in Belgium stated that it is impossible to provide in the Criminal Code a coherent legal definition for the notion "pornography". Jurisprudence has never stopped attempts to clarify the question from what point onwards songs, pamphlets etc. or images are contrary to "*bonne mœurs*". This notion is evolving. The border between what is shocking and what is considered acceptable is changing. This doesn't mean that there are not divergent opinions in the jurisprudence. However, it was accepted that the lack of consensus regarding what is contrary to "*bonne mœurs*" and "pornographic" leaves a considerable margin of appreciation to a judge.

Article 171-1 of the Criminal Code in *Azerbaijan*, which was introduced in 2012, criminalises some acts in line with the Budapest Convention. A Note in this Article explains the meaning of the term "child pornography" i.e. "any material or item that visually depicts a minor engaged in sexually explicit conduct or a child's sexual organs for sexual purpose" and thus covering a minor engaged in sexually explicit conduct but not a person appearing to be a minor or realistic images representing a minor engaged in sexually explicit conduct.

In *Bosnia and Herzegovina (FBiH)*, a definition is missing and the provision seems not to relate to modern ICT-based methods of the production of visual material while in *Republika Srpska*, child pornographic material is defined largely along the lines of Article 9 Budapest Convention except for a person appearing to be a minor. It should be mentioned that in the case of realistic images, it might be very difficult, if not impossible, to establish if a person under 16 is involved as required in the provision.

In *Bulgaria*, the term "pornographic material" as defined by Article 93 (28) of the Criminal Code covers "an indecent, unacceptable or incompatible with the public moral material, which depicts in an open manner a sexual conduct". Such conduct shall express real or simulated sexual intercourses between persons from the same or the opposite sex, sodomy, masturbation, sexual sadism or masochism, or lascivious demonstration of the sexual organs of a person. According to information received the definition is generic and does not make a distinction between "pornographic material" in

general and "child pornography". Such an approach may be questioned as the protected legal interest is obviously different i.e. the life and dignity of children (many cases involving pre-speech children) versus obscenity as an affront to community standards posed by pornographic material involving adult people, which in many States is legal.

The *Danish* Criminal Code criminalises the acts of "taking or recording indecent photographs, films or similar of a person who is below 18 years with the intention to sell or otherwise disseminate the material". This wording would probably cover production of child pornography where a real child/person is involved but not realistic images produced in a computer.

An interesting approach is followed by *Estonia*, which criminalises in Article 178 of the Criminal Code the manufacturing, storing, handing over, displaying or making available in any other manner pictures, writings or other works or reproductions of works depicting a person of less than 18 years in a pornographic situation, or a person of less than 18 years in a pornographic or erotic situation. Thus, not only the pornographic material involving minors below the age of 18 is criminalised but also material depicting a minor in an erotic pose.

In *Georgia*, Article 255 provides two notes explaining the meaning of "pornographic material involving image of minors". The first note covers all the elements of the two conventions except appearing to be a minor and includes audio material. The second note/definition, which is understood that would apply only to the acts provided in paragraph 3 (production or distribution of the material involving image of minors) includes also "a person appearing to be a minor".

In *Germany*, child and juvenile pornography are defined in the Criminal Code. Pursuant to section 184b (1) StGB, child pornography is defined as written materials related to sexual activities performed by, on or in the presence of persons who are younger than the age of fourteen. Juvenile pornography, pursuant to section 184c (1) StGB, means written materials related to sexual activities performed by, on or in the presence of persons between the ages of fourteen and eighteen years. According to the rulings of the German courts, these definitions are covering the element of appearing to be a minor. With regard to the type of material covered the German Criminal Code (Section 11-Terms Relating to Persons and Subject Matter) states that "(3) Audio and visual recording media, data storage media, illustrations and other images shall be the equivalent of writings in those provisions which refer to this subsection".

The Criminal Code of Finland uses the term "sexually offensive picture" that covers pictures or visual recordings that factually or realistically depict a child, violence or bestiality (Chapter 17, Section 18). A "child" is a person under 18 years of age and a person whose age cannot be determined but who can be justifiably assumed to be under 18 years of age. The picture or visual recording is deemed factual if "it has been manufactured in a situation in which a child has actually been the object of sexually offensive conduct and realistic, if it resembles in a misleading manner a picture or visual recording manufactured through photography or in another corresponding manner of a situation in which a child has been the object of sexually offensive conduct".

The Information Technology (Amendment) Act, 2008 – No of 2009 of *India* refers to "any book, pamphlet, paper, writing, drawing, painting representation of figures in electronic form except when (i) the publication is justified as being for the public good on the ground that such [...] is in the interest of science, literature, art or learning or other objects of general concern; or (ii) which is kept or used for *bona fide* heritage or religious purposes". This clarification still raises questions with regard to the meaning of the term "obscene" used and if the element 'appearing to be a minor' would be covered.

In *Ireland*, the Child Trafficking and Pornography Act, 1998 provides for a definition of "child pornography" (although the limit age for a "child" is 17 years) that includes "a figure resembling a person that has been generated or modified by computer-graphics or otherwise, and in such a case the fact, if it is a fact, that some of the principal characteristics shown are those of an adult shall be disregarded if the predominant impression conveyed is that the figure shown is a child".

The Criminal Code of *Lithuania* in Article 309 refers to "pornographic material displaying a child or presenting a person as a child". Concerning the term "child pornography" a clarification was provided stating that it applies Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Lithuania ratified this instrument in 2004)<sup>49</sup>. Furthermore, the meaning of „pornographic material" in Article 309 of the Criminal Code can be explained by referring to the Article 2 of the Law on the Provision of Information to the Public (No I-1418/2 July 1996 as amended on 20 December 2011 by No XI-1820) : "Information of pornographic nature" means information where an actual or simulated sexual intercourse, genitalia, defecation, masturbation or paraphilias (paedophilia, sadism, masochism, zoophile, necrophilia, etc.) are shown explicitly and in detail, this being the main purpose of such information".

Similarly, article 204a of the Criminal Code of *Norway* refers to "any presentation of sexual abuse of children or any presentation of a sexual nature that involves children". An explanation is provided that in this section child means any person who is or who appears to be under 18 years of age. However, clarification regarding the wording "sexual abuse" or "presentation of a sexual nature" would be needed.

In *Montenegro*, Article 211 of the Criminal Code refers to production of child pornographic material such as pictures, audio-visual or other objects of pornographic content or for a pornographic show, as well as distribution of such material. The article makes a distinction between children and juveniles, the acts being more severely punished if a child is involved.

In *Moldova*, the law provides for a definition of "child pornography" that covers simulated conduct but not a person appearing to be a minor: "image or other representation of one or more children involved in explicit sexual activities, real or simulated, or images or other representations of sexual organs of a child, represented in a lascivious or obscene manner, including in a computer system".

The Criminal Code of *Monaco* provides in Article 294. 3 (introduced by Law 1344/26 December 2007) a definition in line with Article 9 of the Budapest Convention: "1) the image or representation of a minor engaged in behaviour sexually explicit; 2) the image or representation of a person who appears as a minor suffering or engaged in behaviour sexually explicit; 3) realistic image representing a minor engaged in sexually explicit conduct. "Realistic picture" means, inter alia, the image altered to a natural person, in whole or in part created by numerical methods". The provisions of this section do not apply if the images or representations of images are collected for research or the prosecution of criminal offences.

In the *Netherlands*, Article 240b of the Criminal Code is supposed to cover all forms of child pornography. The element "in which someone who evidently has not reached the age of eighteen is involved or appears to be involved" - if introduced with the intention to cover persons appearing to be a child and realistic images representing a child - lacks clarity.

A unique solution can be found in Section 3 of R.A. 9775 of the *Philippines*, which instead of providing a definition for child pornography, defines the term child as "a person below eighteen years of age or

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<sup>49</sup> It can be questioned though such approach in case several international instruments ratified by Lithuania provide for different definitions

over, but is unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. Furthermore, for the purpose of this child pornography Act, a child shall also refer to a person regardless of age who is presented, depicted, or portrayed as a child as defined herein; and computer generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein”.

The Criminal Code of *Switzerland* (Article 197) includes in the same category representations depicting sexual acts involving children or animals or sexual acts involving violence. Such material includes pornographic documents, sound or visual recordings, depictions or other articles of a similar nature or pornographic representations.

The Criminal Code of *Turkey* lacks a definition of child pornographic material and the wording used in the relevant provisions i.e. “indecent scenes, words or articles” might be too vague and could lead to over-criminalisation.

In the *United Kingdom* the Criminal Justice and Immigration Act 2008 (section 69) has extended the meaning of a photograph to include derivatives of photographs such as tracings (made by hand or electronically). The Government also passed in 2009 provisions in the Coroners and Justice Act 2009 to make illegal the possession of non-photographic visual depictions of child sexual abuse, including computer generated images of child abuse with a three year maximum prison sentence.

## **2.4 Who is a child/minor?**

In some cultures, to be considered an adult depends on marriage, death of the head of the family etc. rather than the achieving of a certain age. The legal age of consent for consensual sexual activity varies also significantly around the world, as does the age of consent for participation in depictions of sexual conduct, whether implicit or explicit.

In *Yemen*, a new law was adopted in April 2010 that limits the minimum age of marriage to 17. The law was welcomed by child-rights organisations although its implementation will require a lot of effort and education in order to stop the phenomenon of child marriages. The marriage of young girls is widespread in many other States of Africa (e.g. Kenya, Ethiopia, Nigeria, Mal, Niger, Chad and many cases in Yemen) or South Asia (India, Pakistan etc.). Many such marriages are poverty related, with parents seeking for the bride price to support the rest of the family. In India, the Child Marriage Restraint Act, 1929 was passed during the tenure of British rule on pre-partition India, and forbade a male younger than twenty-one or a female younger than eighteen to get married<sup>50</sup>. Early marriages threaten a child’s human rights, including their right to education, health and freedom of expression. In many cases, once married, an underage person can lose the “child” status and the protection attached. Sometimes, the marriage is not intended to be permanent as temporary marriages are possible via a short term marriage contract (siqueh in the Middle East and North Africa). This, combined with a low legal age of marriage make it possible to circumvent the illegal act of child prostitution.<sup>51</sup>

The age limit to be considered a child varies from country to country, which might create difficulties in practice. As long as the law is not harmonised “legal” child pornography with minors can be produced in one country and distributed through the Internet in States where this is illegal.

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<sup>50</sup> Source Wikipedia: [http://en.wikipedia.org/wiki/Child\\_marriage#Africa](http://en.wikipedia.org/wiki/Child_marriage#Africa)

<sup>51</sup> Source: Questions & Answers about the Commercial Sexual Exploitation of Children An information booklet by ECPAT International

In *Germany*, a person is a "child" below the age of 13, "minor" below the age of 16 and "juvenile" below the age of 18 whilst in *Ireland*, Section 2 of the 1998 Act<sup>52</sup>, defines a "child" as a person under the age of 17. In *Japan*, Article 2 of the Child Pornography Prohibiting Act provides for the term "child" as a person under 18 years. In *Lithuania* Article 2 of the Law on Fundamentals of Protection of the Rights of the Child defines the child as 'a human being below the age of 18 years, unless otherwise established by laws'. In the *Philippines* (Section 1 of R.A. 6809, Article 234 of Executive Order No. 209, the Family Code of the Philippines) emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of 18 years.

The term "minor" in relation to child pornography is defined in general as persons under the age of 18, in accordance with the definition of a "child" in the UN Convention on the Rights of the Child (Article 1). It is an important policy matter to set a uniform international standard regarding age. It should be noted that the age refers to the use of (real or fictitious) children as sexual objects and it is different from the age of consent for sexual relations.

Article 9 of the Budapest Convention defines the term "minor" as including all persons under 18 years. However, as a result of negotiations a reservation is possible and a Party may require a lower age-limit, which shall be not less than 16 years. For example, *Switzerland* made the reservation on the occasion of the ratification of the Budapest Convention that, within the context of Article 9, paragraph 2, it understands by the term "minor" any person under the age of sixteen. However, the Lanzarote Convention is strict in this respect defining in Article 3 a child any person under the age of 18 years and no reservation is possible.

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<sup>52</sup> An Act To Prohibit Trafficking In, Or The Use Of, Children For The Purposes Of Their Sexual Exploitation And The Production, Dissemination, Handling Or Possession Of Child Pornography, And To Provide For Related Matters. [29th June, 1998]



## 2.5 Types of offences (conduct that States need to criminalise)

### 2.5.1 Sexual abuse (Article 18 Lanzarote Convention)

To be criminalised:

- 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:
  - 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.

A significant number of young people engage in mutual consensual sexual relationships with peers between the ages of 13 and 16. In some European States this would be illegal given the age of consent, but it would be misleading to consider this behaviour sexual abuse. If not tolerated, it would be considered illegal or immoral at most<sup>53</sup>.

The Lanzarote Convention states clearly that its provisions are not intended to govern consensual sexual activities between minors. A similar approach is taken by EU Directive 2011/92<sup>54</sup>.

For the purpose of its provisions each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.<sup>55</sup> The age for sexual consent varies in different States. In the European Union it ranges from the age of 13 in Spain to 17 in Ireland, Austria 14, Belgium 16, Czech Republic 15, Denmark 15, Estonia 14, Finland 16, France 15, Germany 16, Hungary 14, Ireland 17, Italy 14, Latvia 16, Luxembourg 16, Netherlands 16, Poland 15, Slovakia 15, Slovenia 15, Spain 13, Sweden 15, United Kingdom 16)<sup>56</sup>, Lithuania, 16<sup>57</sup> and Romania, 15 (13 under the new Criminal Code). Similarly, outside the European Union the legal age for sexual activities varies from 14 (Montenegro, Serbia), 16 years (Armenia, Belarus, Georgia, Norway, Switzerland), to 13 years (Japan), or 16 years (currently and 18 under the draft Bill in India).

A provision of the Criminal Code of *Moldova*, for example, will exempt from criminal liability sexual intercourse other than rape with a person who had not reached the age of 16, if his age or physical and mental state is close to that of the victim. The *Austrian* criminal law exempts criminal liability in case of various sexual abuse offences if the perpetrator is not more than four years older than the minor unless the minor is under 12 years of age. Similar amendment was introduced in 2010 in

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<sup>53</sup> Child Sexual Abuse, co-ordinated by Corinne May-Chahal and Maria Herczog, page 5, Council of Europe, July 2003

<sup>54</sup> (20) This Directive does not govern Member States' policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies. These issues fall outside of the scope of this Directive. Member States which avail themselves of the possibilities referred to in this Directive do so in the exercise of their competences.

<sup>55</sup> Article 2 (b) of the EU Directive 2011/92 defines the 'age of sexual consent' as the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child.

<sup>56</sup> Report from the Commission Based on Article 12 of the Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography (Brussels, 16.11.2007, COM(2007) 716 final) available at:

[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=COMfinal&an\\_doc=2007&nu\\_doc=716](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2007&nu_doc=716)

<sup>57</sup> According to the Paragraph 1 of Article 151(1) of the Criminal Code (as amended by the Law No. XI-989/2 July 2010 that entered into force 20 July 2010) the age below which it is prohibited to engage in sexual activities with a child is 16

*Lithuania* in addition to the case law<sup>58</sup>. The Criminal Code of *Montenegro* provides that the act shall not be punished if there is no large difference between the perpetrator and the child in respect to their mental and physical development. In *Serbia* the offender is not punished if there is no considerable difference between the offender and the child in respect of their mental and physical development. In *Finland* (Criminal Code, Section 7(a) – Restrictive provision (540/2011) an act that does not violate the sexual autonomy of the subject and where there is no great difference in the mental and physical maturity of the parties shall not be deemed sexual abuse of a child, or the aggravated sexual abuse of a child. In *Switzerland*, the act (Article 187, Criminal Code) is not an offence if the difference in age between the persons involved is not more than three years.

A different approach is taken by *Turkey* by criminalising in Article 104 of the Criminal Code<sup>59</sup> “any person who has sexual intercourse with a child who completed the age of fifteen without using force, threat and fraud” with imprisonment from six months to two years upon filing of a complaint. If the offender is older than the victim by more than five years, the punishment to be imposed is doubled.

In accordance with contemporary standards and trends, States should consider the criminalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim<sup>60</sup>. In this context, it has to be highlighted that there are groups of children who are more vulnerable than others: children with no family, or with family having history of violence or close to people who themselves were sexually abused, disabled children or in poverty. Studies show that people who have mental illness tend to show higher rates of child sexual abuse. In such cases the child may consent to the sexual relations, but his or her situation of vulnerability renders the capacity to consent invalid. Children in certain relationships must be protected, even when they have already reached the legal age for sexual activities and there is no use of coercion, force or threat. These are situations where the persons involved abuse a relationship of trust with the child resulting from a natural, social or religious authority which enables them to control, punish or reward the child emotionally, economically, or even physically<sup>61</sup>.

The first act of Article 18 of the Lanzarote Convention – “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” – is criminalised in a number of States analysed. However, some States with similar legal systems (e.g. Armenia, Azerbaijan, Belarus, etc.) make the criminalisation of engaging in sexual

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<sup>58</sup> Decision No 49 of the Senate of the Supreme Court of the Republic of Lithuania of 30 December 2004 on case law in criminal cases on rape and sexual assault :

4. [...] Sexual intercourse or another form of satisfaction of sexual desire by mutual consent where persons doing this are at least 14 years of age shall not be a crime. However, if a victim does not understand or does not fully understand the nature or essence of actions performed with the victim due to a mental disease, retardation in social or mental development, the committed act shall be or may be deemed to have been committed against the victim's will.

If the victim is under 14 years of age, the court shall evaluate the person's mental and social maturity and only after that draw a conclusion as to whether the consent was given consciously, understanding the nature and essence of actions performed with that person. Otherwise, even if there is formal consent of the person, the act shall be deemed to have been committed against the victim's will.”

10. Sexual intercourse or satisfaction of sexual desire taking advantage of a hopeless state of a victim is sexual intercourse or satisfaction of sexual desire without using any external actions to break the victim's will or break down the victim's resistance, but, on the other hand, without the victim's consent to sexual intercourse or satisfaction of sexual desire due to reasons related to the victim's physical or mental condition. [...]

Sexual intercourse or satisfaction of sexual desire with a minor is usually treated as making use of a helpless state of the victim, except in cases where physical and mental development as well as social maturity of the victim enables the victim to understand the essence of actions performed with the victim and give consent to such intercourse or where such actions were performed at the initiative of a minor (victim) . [...].

<sup>59</sup> Source LegislationOnline OSCE ODIH:

<http://www.legislationline.org/documents/action/popup/id/16257/preview>

<sup>60</sup> When assessing the constituent elements of offences, the Parties should have regard to the case-law of the European Court of Human Rights; in this respect, the negotiators wished to recall, subject to the interpretation that may be made thereof, the *M.C. v. Bulgaria* judgment of 4 December 2003, in which the European Court of Human Rights stated that it was “persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy (Exp. Rep of the Lanzarote Convention, 121)

<sup>61</sup> Lanzarote Convention, Exp. Rep,124

activities with a minor subject to the condition that the offender is 18 years or older. This approach could be questioned in case of an abuse where there is a significant difference with regard to age, physical and mental development between the perpetrator and the victim. Such exceptions could refer to "consensual sexual activities between children or involving persons who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse" using, approach taken by Lanzarote Convention (Article 18 paragraph 3) and the EU Directive 2011/92.

Although one of the articles of the Criminal Code of *Georgia* (Article 140 – Sexual intercourse or other action of sexual character with one under sixteen) uses a similar approach, there are other offences that are not subject to the condition that the offender to be at the age of majority. It should be noted that there is a number of provisions in Georgia covering most of the offences required by Article 18 with the exception of the conduct committed within the family, which would probably be punished but it is unclear which provision and sanction would apply. However, the concern regarding the existing provisions on sexual abuse in Georgia is related to the lack of a consistent approach; some of them might overlap whilst the penalties provided can differ significantly. The Georgian authorities intend to review this chapter in view of implementing the Lanzarote Convention.

The wordings used by the Criminal Code of *Albania* to implement this article "sexual or homosexual relations with children" under the age of 14 years "or with a female child, who is not sexually matured" could raise criticism in respect of such distinctions. Furthermore, the Revised Criminal Code of the *Philippines* criminalises in article 337 (Qualified seduction) "the seduction of a *virgin* over twelve years and under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced". The condition to be virgin is not required anymore in case the offence is committed against a sister or descendant, whether or not she is a virgin or over eighteen years of age. Article 338 (Simple seduction) criminalised the seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit. The seduction is defined "when the offender has carnal knowledge of any of the persons and under the circumstances described". It should be noted that this assessment has not considered such terminology, but only if the required conduct could be prosecuted.

The Criminal Code of *Hungary* provides as an aggravating circumstance the act committed against a relative or person under the education, supervision, care or medical treatment of the offender, or by abusing any other relationship of power or influence over the victim for a number of offences, namely sexual coercion (Section 196), sexual violence (Section 197), sexual abuse (Section 198), pandering (Section 200), child pornography (Section 204).

In *Lithuania* under Article 149 of the Criminal Code (Rape) criminalises - qualified version in case the victim is minor - the act committed "against the will by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim". Article 150 (Sexual assault) punishes - qualified version in case the victim is minor – a "person who, against a person's will, satisfies his sexual desires through anal, oral or inter-femoral intercourse by using physical violence or by threatening the immediate use thereof or by otherwise depriving the victim of a possibility of resistance or by taking advantage of the helpless state of the victim" (qualified version in case the victim is minor). Article 151 "(Sexual Abuse) punishes a person who, by threatening to resort to violence, using other mental coercion or by taking advantage of a person's dependency, compels the person to have sexual intercourse with or otherwise satisfy sexual desires of the offender or a third person" (qualified version in case the victim is minor). Only the offence provided in "Article 151(1) (Satisfaction of Sexual Desires by Violating a Minor's Freedom of Sexual Self-Determination and/or Inviolability) is not made subject to 'use of force', 'against the person's will' etc., however there is a significant decrease in the punishment i.e. fine or restriction of liberty or by arrest or by imprisonment for a term of up to three years".

Comprehensive legislation on protecting children against sexual exploitation can be found in the *United Kingdom*. Under Section 9 (Sexual activity with a child under 16) and Section 10 (Causing or inciting a child under 16 to engage in sexual activity) the acts are criminalised if the offender is aged 18 or over. However, when such acts are obviously involving penetration this condition is not required anymore. Moreover, section 13 provides for child sex offences committed by children or young persons. Additional conduct, including those required by Article 18 of the Lanzarote Convention is criminalised by UK legislation and could inspire the legislation of other States.

Severe penalties are provided under new *Romanian* Criminal Code (not yet in force) for sexual intercourse with a minor, who has not reached the age of 13 or with a minor between 13 and 15 years. Among the acts criminalised are: sexual intercourse, of any nature, with a person of the opposite sex or of the same sex aged 13 to 18 committed by the person's guardian or curator or by his/her supervisor, by the person in charge of his/her care, by his/her physician, teacher, professor or educator, while taking advantage of their capacity, or if the perpetrator has abused the victim's confidence or his/her own authority or influence over the victim; for the purpose of producing pornographic material; by using coercion.

However, although the acts provided by Article 18 paragraph 1 b) of the Lanzarote Convention represent serious offences not many States have adequately implemented these provisions. The use of coercion, force or threats to commit the sexual abuse is in general criminalised. In some legislation such conduct constitutes rape<sup>62</sup>. Despite the fact that in many cases the offenders are persons in close contact with children most of the legislation analysed lack provisions to specifically criminalise (and more severe punish) abuse made of a recognised position of trust, authority or influence over the child, including within the family (e.g. Azerbaijan, Belarus, Georgia, Japan). Such conduct is most likely punished under other offences; however since there is a higher risk for a child to be abused by a person with whom he/she is often in contact the legislation should specifically target this category of offenders.

An important distinction has to be made in the implementation of Article 18 of the Lanzarote Convention. Under paragraph 1 a) the offence of engaging in sexual activities with a child is subject to the legal age for sexual activities. However, the acts provided by paragraph 1 b) "should be criminalised regardless of the age of the victim". If the victim is under 18 years the conduct falls under the laws on the protection of children; if the victim has reached 18 years the conduct would probably fall under a different criminal conduct e.g. incest, rape etc.

The *Armenian* Criminal Code in Article 166 criminalises the involvement of a child in committing acts related to prostitution or creation of pornographic materials or items by person who is 18 years age or older. These acts when committed by a parent, teacher or other person in charge of rearing the child are more severely punished. However, such a qualified version is not provided for this category of offenders in the case of engaging in sexual activities with a child.

The approach taken by *Denmark* is to criminalise 1) sexual intercourse with a person under 18 who is his adoptive child, step-child or foster child or has been entrusted to him for instruction or education and 2) procuring sexual intercourse with a person under 18 where he "gravely abuses his superiority due to age and experience" (Article 223, Criminal Code).

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<sup>62</sup> Romania: According to the Decision no. 17/2008 (Official Gazette no. 866 of 22 December 2008) the High Court of Cassation and Justice, United Sections, granted the recourse in the interest of the law submitted by the General Prosecutor within the Prosecutor's Office assigned to the High Court of Cassation and Justice stating that:

"1. Sexual intercourse committed for the achievement of the same criminal purpose, when the victim is a family member, by coercion or taking advantage of the impossibility of that person to defend or to express volition, both before and after the victim reached 15 years old, gathers the constitutive elements of the offence of rape [...]"

2. The offence of rape to the meaning of sexual intercourse [...] shall be retained in concurrency with the offence of incest [...]"

The draft Bill on the Protection of Children against Sexual Offences, 2011 of *India* provides a number of aggravated circumstances. Under Section C (Sexual assault and punishment therefor) the act of touching with sexual intent sexual parts of a child or making the child to touch the person or “doing any other act with sexual intent which involves physical contact without penetration” is criminalised. As stated before, without making a distinction when such acts are committed consensually between young people these provisions could lead to over-criminalisation.

Comprehensive provisions implementing Article 18 of the Lanzarote Convention can be found in the Criminal Code of *Netherlands* (Article 242-249).

The approach of the Criminal Code of “*The Former Yugoslav Republic of Macedonia*” (Article 188 - Sexual assault of a juvenile under the age of 14) is rather complicated. The acts of raping or some other sexual act (paragraph 1) and if the “crime is committed by a blood relative in direct line of kinship or a brother, i.e. sister, teacher, educator, adoptive parent, guardian, stepfather, stepmother, doctor or some other person, by misusing his position or while performing family violence” is punishable only when it concerns a juvenile under 14 years of age. However, under Article 194 (Incest) “statutory rape upon a blood relation of the first line or with a brother, respectively sister, shall be punished with a fine or with imprisonment of five to ten years. If the crime is performed with a juvenile 14 years of age or older the sanction is imprisonment of at least ten years.

The scope of existent provisions is narrowed in some States by attaching additional conditions e.g. in Latvia the victim has to be a female juvenile or the ‘immoral acts’ with a minor to be committed *against the will of the minor*; the offender has attained the age of majority<sup>63</sup>; in Japan the act is committed through assault or intimidation or by use of force.

### **2.5.2 Child pornography (Article 20 Lanzarote Convention, Article 9 Budapest Convention)**

To be criminalised:

- producing child pornography;
- producing child pornography for the purpose of its distribution through a computer system;
- offering child pornography;
- offering child pornography through a computer system;
- making available child pornography;
- making available child pornography through a computer system;
- distributing child pornography;
- distributing child pornography through a computer system;
- transmitting child pornography;
- transmitting child pornography through a computer system;
- procuring child pornography for oneself or for another person;
- procuring child pornography through a computer system for oneself or for another person;
- possessing child pornography;
- possessing child pornography in a computer system or on a computer-data storage medium;
- knowingly obtaining access, through information and communication technologies, to child pornography.

The measuring of the real dimension of the volume of child pornography circulating around the world is probably impossible. While the volume and activity via Internet Relay Chat (IRC) or WWW sites

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<sup>63</sup> A similar provision in the existent legislation of Azerbaijan will be changed under the draft law.

containing child pornography could somehow be measured, it would not be able to consider the volume of traffic which occurs through private channels<sup>64</sup>. Two of the main means to get an understanding of the size of the problem and of important characteristics<sup>65</sup> include incidental data (cases identified over a limited period of time) and prevalence studies (the number of people who have experienced abuse during their lifetime).<sup>66</sup> In any case, special consideration should be given also to various legal systems and traditions; what in some jurisdictions is considered criminal behaviour may be legal in others.

As pointed out by ECPAT International<sup>67</sup>:

child pornography exploits children in many different ways. Children may be tricked or coerced into engaging in sexual acts for the production of pornography, or images may be made in the process of sexually exploiting a child without the child's knowledge. These images are then distributed, sold or traded. Secondly, those who "consume" and/or possess pornographic depictions of children are also exploiting the children. Thirdly, the makers of pornography commonly use their products to coerce, intimidate or blackmail the children used in the making of such material.

Reports demonstrate<sup>68</sup> that the techniques used by criminals who buy, sell, share or collect child sexual abuse images are sophisticated and diversifying. The methods of operation are becoming faster, cheaper and more opportunistic. Internet services are often exploited for the distribution of child sexual abuse content in States with developed technological infrastructures and a range of flexible hosting services e.g. North America, Europe (including Russia) and to a lesser extent, Asia.

When criminalising child pornography, it is of utmost importance to bear in mind that there is a difference in the rationale between adult pornography and involvement of children in the production of such material. Prohibition of the dissemination of adult pornography is a matter of public morals. The rationale of the prohibition of the production and dissemination of pornographic material involving minors is mainly to protect the dignity of minors and to prevent the promulgation of child abuse. Although several offences required by Lanzarote or Budapest conventions would be probably prosecuted in some States under articles that do not necessarily target the protection of minors but are offensive to moral, the combination of two distinct offences with different protected legal interests is not recommended.

Paragraph 3 of Article 20 of the Lanzarote Convention allows for a reservation with regard to the production and possession of pornographic material 'involving children who have reached the age of consent to sexual activity where these images are produced and possessed by them with their consent and solely for their own private use'.

States might choose to regulate exceptions from criminal liability e.g. in *Austria* production and possession of child pornography is not punishable if the material depicts a minor over 14 years who consented or it is for his own private use and there is no risk of dissemination. Under the *Danish Criminal Code*, the possession of indecent pictures of a person who has reached the age of 15 would not raise criminal liability if that person has consented to the possession.

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<sup>64</sup> For more information see: Child pornography in the digital age, Anna Grant, Fiona David and Peter Grabosky in: Transnational organized crime, vol. 3, no. 4, pp. 171-188. ISSN 1357-7387 London: Frank Cass & Co., 1997

<sup>65</sup> For more information see: Child Sexual Abuse, co-ordinated by Corinne May-Chahal and Maria Herczog, page10-17, Council of Europe, July 2003

<sup>66</sup> See for example some statistics organised by prevalence (the percentage of the population that is affected by child sexual abuse) and consequences (the impact that child sexual abuse has on a victim/survivor and on society over time) provided by Darkness to Light: [http://www.darkness2light.org/KnowAbout/statistics\\_2.asp](http://www.darkness2light.org/KnowAbout/statistics_2.asp)

<sup>67</sup> [http://www.ecpat.net/EI/Publications/About\\_CSEC/FAQ\\_ENG\\_2008.pdf](http://www.ecpat.net/EI/Publications/About_CSEC/FAQ_ENG_2008.pdf)

<sup>68</sup> Internet Watch Foundation – 2010 annual and charity report, page 9

The criminalisation in Article 263 of the Criminal Code of Armenia focuses in the first paragraph on pornographic materials or items in general (dissemination, advertisement, manufacturing of pornographic materials or items, as well as, printed publications, films and videos, images or other pornographic items). Paragraph 2 criminalises distribution of child pornography via computer system as well as keeping/saving such material in computer data storage system. Article 166 (as amended) criminalises the act of "committing acts related to prostitution or creation of pornographic materials or items by a person older than 18 years age [...]". Additional qualifications are provided when: the act is committed by a parent, teacher or other person in charge of rearing the child; in relation to two or more persons; it was accompanied with violence or threat of violence. These provisions might not cover in practice all the acts required by Article 9 of the Budapest Convention and the wording "involving a child" excludes realistic images.

A similar approach regarding the age of the offender is taken by *Azerbaijan* under the existing Article 242 of the Criminal Code (i.e. illegal distribution of pornographic materials or objects) . However, the recent amendments to the Criminal Code adopted in 2012 introduced Article 171-1 (Producing and distributing child pornography) , which is overall in line with the Article 9 of the Budapest Convention.

In *Belarus*, production and dissemination of pornographic materials or articles of a pornographic character depicting a minor through the use of the global computer network Internet, or another public telecommunication network or a dedicated telecommunication network is a qualified version and more severe punished (Article 343<sup>1</sup> Criminal Code). It should be noted that the meaning of "pornographic materials or articles of a pornographic character depicting a minor" may lead to over-criminalisation.

In *Bosnia and Herzegovina (FBiH)*, the conduct criminalised is making photographs for the purpose of production of audio-visual pornographic material as well as the possession, the import, selling, trading of such material, or the inducement of children and juveniles to participate in pornographic shows. The wording does not fully reflect the meaning of Article 9 of the Budapest Convention. It might include the mere act of making available on the internet e.g. through websites such material however, it does not refer to transmission of such material, e.g. through e-mail or other methods of file-transfer. Brčko-District criminalises making pictures of a child or juvenile for the purpose of producing photographs, audio and video material or other material containing pornographic elements. In addition, possession, input, selling, distribution or presentation of such material is prohibited. By referring to traditional photo and camera techniques it limits the scope of the provision considerably. On the other hand, Bosnia and Herzegovina goes beyond the Budapest Convention by including as child pornographic material audio material and writings, as well as criminalising the actual act of taking pictures.

*Finland* under Section 18 (Distribution of a sexually offensive picture (650/2004) criminalises the acts of manufacturing, offering for sale or for rent or otherwise offering or making available, keeping available, exporting, importing to or transporting through Finland to another country, or otherwise distributing pictures or visual recordings that factually or realistically depict (1) a child, (2) violence or (3) bestiality. Section 18(a) (Aggravated distribution of a sexually offensive picture depicting a child (650/2004) provides for aggravating circumstances if in the distribution of a sexually offensive picture depicting a child: (1) the child is particularly young; (2) the picture also depicts severe violence or particularly humiliating treatment of the child; (3) the offence is committed in a particularly methodical manner or (4) the offence has been committed within the framework of a criminal organisation.

*India* under Information Technology (Amendment) Act, 2008 – No 10 of 2009, which deals with computer related offences, criminalises the act of creating (producing?) text or digital images, which is assumed to cover also movies or other pornographic material in electronic form. Some of the offences

provided by the Act 2008 – collects, downloads (= possession?) , seek (=procuring?) , browses (=access?) – although they might raise some concerns regarding the risk of over-criminalisation, could be considered the equivalent of the acts required by Article 9 of the Budapest Convention. The additional acts included, i.e. publishes, advertise, promotes, exchange would be redundant in the wording used under Article 9. However, the Act goes beyond the Convention by criminalising text of pornography as well as who “(c) cultivates, entices or induces children to online relationship with one or more children for a sexually explicit act or in a manner that may offend a reasonable adult on the computer resources” or (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children”.

Again the scope of existent provisions is narrowed in some States by certain conditions e.g. in *Montenegro, Serbia, Turkey* the wording “use a minor (or children) ” to produce child pornography might not include realistic images.

An appropriate solution can be found in the Article 255<sup>1</sup> of the Criminal Code of *Georgia* where the act of “involving a minor into illicit production and distribution of pornographic material” is criminalised as a separate offence.

The Explanatory Report of the Budapest Convention provides additional explanation to help legislators make the distinction between different acts and facilitates the implementation of these provisions, namely:

- “offering” of child pornography through a computer system is intended to cover soliciting others to obtain child pornography and implies that the person offering the material can actually provide it.

An interesting provision in this respect can be found in *Ireland*. Section 5 (1) of the 1998 Act criminalises the acts of distributing, publishing, selling or showing child pornography. The term “distribute” is defined in section 5 (2) , in relation to child pornography by including “parting with possession of it, or exposing or offering it for acquisition by another person, and the reference to “distributing” in that context shall be construed accordingly”. Irish legislation is quite detailed covering a broad range of acts aimed at protecting children. It must be underlined that in the absence of such clear interpretation in the law the term “distribution” would be considered in this analysis that it does not cover the act of “offering”.

In the Budapest Convention:

- “making available” is intended to cover the placing of child pornography on line for the use of others e.g. by means of creating child pornography sites or the creation or compilation of hyperlinks to child pornography sites in order to facilitate access to child pornography<sup>69</sup>;
- “distribution” is the active dissemination of the material. Sending child pornography through a computer system to another person would be addressed by the offence of 'transmitting' child pornography<sup>70</sup>;
- “procuring for oneself or for another” in paragraph 1(d) means actively obtaining child pornography, e.g. by downloading it<sup>71</sup>.

According to the reply to the questionnaire, in *Ireland* anyone who procures child pornography can be prosecuted for possession (section 6 of the 1998 Act) .

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<sup>69</sup> Budapest Convention, Exp. Rep. 95

<sup>70</sup> Budapest Convention, Exp. Rep. 96

<sup>71</sup> Budapest Convention, Exp. Rep. 97



Article 235 of the *Danish Criminal Code* establishes as offences the dissemination of indecent photographs or films or other indecent visual reproductions of persons under 18 and possession or in return for payment acquiring access to or knowledge of indecent photographs, films or other indecent visual reproductions etc. of persons under 18. It is, however, unclear if the acts of making available by publishing on a website (not necessary active disseminating) , simple transmission by email to known or unknown persons or acquiring without payment of child pornography would fall under the ambit of this provision.

Although *Monaco* has not ratified the Budapest Convention, close implementation of Article 9 (including the amendment introduced by Lanzarote Convention) can be found in Article 294-3 (introduced by law No. 1344/26 December 2007) .

On the occasion of the ratification of the Budapest Convention, *Montenegro* declared that obtaining child pornography through computer systems for oneself and other persons and possession of child pornography in computer systems or on mediums for storage of computer data shall not be considered offences in case the person depicted in these materials is fourteen years and gave his/her consent. *Ukraine* reserved the right not to apply to the full extent subparagraph 1.d (procuring child pornography through computer system for oneself or for another person).

*Norway*, in the replies mentioned that although the Penal Code section 204 a does not use the wording "making available" such acts may be punished as delivery to others, or attempt for such, or as publishing, selling or attempt to disseminate. However, the new Penal Code (enacted, but not yet in force) in section 311 explicitly mentions "making available". This will also apply to the making available through a computer system.

*Poland* in the questionnaire clarifies that although not every act is *expressis verbis* provided for "the perpetrator will not avoid the liability since his/her behaviour can be considered as inciting, aiding or abetting or possessing or committing other acts that are already criminalised depending on the circumstances of the case".

Further elements in the Conventions cover:

- criminalising "possession" of child pornography in general or in a computer system or on a computer-data storage medium; and
- "knowingly obtaining access" to child pornography sites without downloading.

It is recognised that that possession of child pornography in a computer system or on a data carrier (e.g. CD-Rom) stimulates demand for such material and, therefore, an effective way to reduce the production of child pornography is to attach criminal liability to any conduct from production to possession<sup>72</sup>.

Article 20 of the Lanzarote Convention was inspired by Article 9 of the Budapest Convention and it is aimed at modernising criminal law provisions to prevent computer systems from being used to facilitate sexual abuse and exploitation of children. The main difference in the Lanzarote Convention is that the offence is not restricted to child pornography committed by the use of a computer system and a new element is introduced by paragraph 1 f, namely, "knowingly obtaining access to child pornography". The Lanzarote Convention uses the broad term "information and communication technology" (ICT) to ensure that any future developments in this field will also be covered, targeting in particular Internet service providers but also mobile phone network operators and search engines<sup>73</sup>.

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<sup>72</sup> Budapest Convention, Exp. Rep. 98

<sup>73</sup> Lanzarote Convention, Exp. Rep. 69

Paragraph 1 f of Article 20 of the Lanzarote Convention requires criminalisation of the access to child pornography sites without downloading, which cannot be identified under the offence of procuring or possession in some jurisdictions. It is required the intent to enter a site where child pornography is available and knowing that such images can be found there. The intentional nature of the offence may result from the fact that it is recurrent or that the offences were committed via a service in return for payment<sup>74</sup>. The images in a cache cannot be sufficient to prosecute for possession without proving that the defendant knowingly obtained access to child pornography sites, which means he/she was aware of his act<sup>75</sup>. In some jurisdictions (e.g. Cyprus, Germany) this offence is prosecuted under possessing child pornography in a computer system or on a computer data storage medium.

Introducing the requirement to criminalise possession of child pornography as well as knowingly obtaining access to child pornography sites without downloading in the most recent international instruments (e.g. Lanzarote Convention and later on the EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children, and Child Pornography) have been subject to intensive debate. In some opinions criminalisation of the mere attempt to possess or view child pornography as preparatory offences "are not legitimate as they are not in compliance with the general principles of criminal law and in particular with the harm principle"<sup>76</sup>.

It is important that, when establishing such offences, careful consideration to be given to the constituent elements of these offences, including the intent, in order to avoid over-criminalisation. For instance, EU Directive 2011/92 (18) requires criminalisation of knowingly obtaining access, by means of information and communication technology, to child pornography stating that:

To be liable, the person should both intend to enter a site where child pornography is available and know that such images can be found there. Penalties should not be applied to persons inadvertently accessing sites containing child pornography. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offence was committed via a service in return for payment.

Section 160.2 of the Criminal Justice Act 1988 of the *United Kingdom*, for example, provides three defences where a person is charged for possession of such material: (a) that he had a legitimate reason for having the photograph or pseudo-photograph in his possession; or (b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect it to be indecent; or (c) that the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time<sup>77</sup>.

Article 263 paragraph 2 of the Criminal Code of *Armenia* criminalises the act of keeping/saving child pornography in computer data storage system. The Lanzarote Convention requires the criminalisation of possession of child pornography, by whatever means, such as magazines, video cassettes, DVDs or portable phones, including stored in a computer system or on a data carrier, as well as a detachable storage device, a diskette or CD-Rom<sup>78</sup>. Thus the wording used by Article 263 might not cover all means of possession unless other provisions apply.

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<sup>74</sup> Lanzarote Convention, Exp. Rep. 140

<sup>75</sup> For more information see SALVADORI I., Legal problems of possession and viewing child pornography in Internet", in HERCZEG, J., HILGENDORF, E., GRIVNA T. (HRSG) , Internetkriminalität und die neuen Herausforderungen der Informationsgesellschaft des 21. Jahrhundert. Praha, Wolters Kluwer ČR, a. s., 2010

<sup>76</sup> See SALVADORI I., Legal problems of possession and viewing child pornography in Internet", in HERCZEG, J., HILGENDORF, E., GRIVNA T. (HRSG) , Internetkriminalität und die neuen Herausforderungen der Informationsgesellschaft des 21. Jahrhundert. Praha, Wolters Kluwer ČR, a. s., 2010

<sup>77</sup> For more information see Dr. Ivan Salvado SALVADORI I., Legal problems of possession and viewing child pornography in Internet", in HERCZEG, J., HILGENDORF, E., GRIVNA T. (HRSG) , Internetkriminalität und die neuen Herausforderungen der Informationsgesellschaft des 21. Jahrhundert. Praha, Wolters Kluwer ČR, a. s., 2010

<sup>78</sup>Lanzarote Convention, Exp. Rep. 139

Several provisions in the Criminal Code of Germany (Section 184b - Distribution, acquisition and possession of child pornography and Section 184c - Distribution, acquisition and possession of juvenile pornography) criminalises whoever [...] stocks [...] pornographic written materials related to sexual activities performed by, on or in the presence of children (child pornography)/ persons between the ages of fourteen to eighteen years (juvenile pornography); undertakes to obtain possession for another of child/juvenile pornography reproducing an actual or realistic activity; obtain possession of child pornography/juvenile reproducing an actual or realistic activity [...]. Data storage media feature among the things that are equivalent to the "written materials" defined in sections 184b, 184c StGB (see section 11 (3) StGB). According to the rulings of the German courts, this means that a perpetrator is liable to criminal punishment in accordance with section 184b (3), first sentence, StGB or section 184c (3), first sentence, StGB just by opening a website containing child/juvenile pornography intentionally, during which this content is saved in the computer's cache or main memory

In Japan, the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and Protection of Children under Article 7 (1) punishes '*any person who provides child pornography [...]*' and '*a person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, in a visible way through electric telecommunication lines. Paragraph (2) punishes 'any person who produces, possesses, transports, imports to or exports from Japan child pornography for the purpose of the activities prescribed in the preceding paragraph 1 [...]*' as well as '*a person who retains the electromagnetic records prescribed in the preceding paragraph for the purpose of the same activities*'.

In practice this means possession is only criminalised if it is for the purpose of "providing" it to others. It seems that prosecutions for possession as such are therefore not possible.

*Ukraine* reserved the right not to apply to the full extent subparagraph 1.e (possessing child pornography in a computer system or on a computer-data storage medium) of Article 9 of the Convention. *Denmark* took the reservation that criminal area according to Article 9 of the Budapest Convention shall not comprehend the possession of obscene pictures of a person attained the age of fifteen, if the person concerned has given his or her consent to the possession, cf. Article 9, paragraph 1, letter e.

Currently, knowingly obtaining access through information and communication technologies, to child pornography is covered in *Norway* by section 204a: "procures" and "for payment or systematically acquaints himself with any presentation [...]" . However, the new Penal Code section 311 (not yet in force) the wording is altered to "wilfully obtaining access to" in order to ensure compliance with the Lanzarote Convention (Article 20 paragraph 1 letter f) .

The Criminal Code of 2011 of *Montenegro* (Article 211) does not criminalise the possession of items with pornographic content if it depicts a "senior juvenile" who gave his/her consent and the person keeps such material exclusively for his/her own use.

The new Criminal Code adopted in *Romania* criminalises in Article 374 (Child pornography) producing, holding for display or distribution, acquiring, storing, exposing, promoting, distributing, as well as offering in any way pornographic material depicting children and if the acts are committed using a computer system or any other way of storing computer data a more severe penalty is provided (2 to 7 years imprisonment). Moreover, paragraph 3 criminalises the act of accessing without right of pornographic materials depicting children by using computer systems or other means of electronic communication.

According to the *Irish legislation* obtaining access to child pornography can result in the prosecution for possession or, in some circumstances, distribution.

*Portugal* makes a distinction in the sanctioning of acquiring or possessing child pornography photography with the intent to distribute, import, export, advertise, display or transfer and when there is no such intent.

Under the Protection of Children Act 1978 (as amended) , in the *United Kingdom* it is absolute prohibited the taking, making, distribution, showing and possession with a view to distribution of any indecent photograph or pseudo-photograph of a child under 18 and such offences carry a maximum sentence of 10 years imprisonment. Section 160 of the Criminal Justice Act 1988 also makes the simple possession of indecent photographs or pseudo-photographs of children an offence and carries a maximum sentence of 5 years imprisonment.

As previously mentioned, Parties have the possibility to make reservations and the right not to criminalise the production or possession of images that consist entirely of simulated representations or realistic images of a child who does not exist in reality. However, when making reservations States should acknowledge that such material is used for a persuasive purpose in order to make the idea acceptable to offenders as well as victims and seduce or groom them.

### **2.5.3 Participation of a child in pornographic performances (Article 21 Lanzarote Convention)**

To be criminalised:

- recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
- coercing a child into participating in pornographic performances;
- profiting from or otherwise exploiting a child for such purposes;
- knowingly attending pornographic performances involving the participation of children.

The United Nations Convention on the Rights of the Child, in Article 34, requires Parties to take all appropriate measures to prevent “the exploitative use of children in pornographic performances”. Similarly, EU Directive 2011/92 provides as an offence the recruiting of a child into participating in pornographic performances.

Article 21 of the Lanzarote Convention establishes links between the supply and the demand by attaching criminal liability to the organiser of such pornographic performances as well as the customer. The definition “pornographic performances” is left to the Parties taking into account, for example, the public or private, or commercial or non-commercial nature of the performance. The provision is intended to deal essentially with organised live performances of children engaged in sexually explicit conduct<sup>79</sup>.

The EU Directive 2011/92 defines in Article 2 (e) “pornographic performance” as a live exhibition aimed at an audience, including by means of information and communication technology, of: (i) a child engaged in real or simulated sexually explicit conduct; or (ii) the sexual organs of a child for primarily sexual purposes.

The *Austrian Criminal Law* in article 215a (Promotion of prostitution and pornographic performances of minors) states that “a person shall be deemed to participate in a pornographic performance if he performs a sexual act which is reduced to itself, removed of other expressions of life and for the

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<sup>79</sup> Lanzarote Convention, Exp. Rep. 147

sexual arousal of the viewer, on himself, on another person or with an animal, allows such a sexual act to be performed on himself or who displays his genitals or pubic region in such a manner”.

Under the Criminal Code of *Azerbaijan* (Article 171) the involvement of a minor in prostitution or commission of other immoral acts is more severe punished. The wording “immoral actions” is intended to cover also pornographic performances.

It is unclear if the provision of Article 169 (Lecherous acts) of the Criminal Code of *Belarus* related to lecherous acts performed by a person who has attained the age of 18 years in respect of a person known to be under the age of 16 years would cover at least partially the conduct provided by Article 21 of the Lanzarote Convention.

In *Bosnia and Herzegovina*, the incitement of children to participate in pornographic performances is could be the corresponded provision for the first act required by Article 21 (recruiting a child into pornographic performances) . However, in the process of ratification it should be considered the implementation of the other acts provided by this article, namely coercing a child, profiting/exploiting a child and knowingly attending pornographic performances involving the participation of children.

Article 228 of the Criminal Code of *Denmark* criminalises the acts of “inducing another to seek a profit from indecent sexual activity with others; inducing another, for the sake of gain, to seek indecent sexual activity with others or preventing another who engages in such activity as a profession from giving it up; keeps a brothel”. Adding and abetting is punishable (same penalty) when the person is under the age of 21 and when a person under 21 is used for such purposes.

Specific provisions addressing participation of a child in pornographic show are included in the Criminal Code (Child Pornography – Section 204) of *Hungary*, which includes also a definition of the term 'pornographic show'<sup>80</sup>.

Close implementation of Article 21 of the Lanzarote Convention can be found in the Criminal Code of *Monaco* (Article 294-5 introduced by Law 1344/2007) .

The replies to the questionnaire from *Poland* mention that the Criminal Code does not *expressis verbis* provide for “pornographic performances” nevertheless they are covered by the term “public presentation of pornographic material” which has a broad meaning. Moreover, according to the Criminal Code a single criminal act can cover at the same time the constituent elements of other criminal acts and in such cases the perpetrator will be liable for all those acts. Thus it is considered that there is no need to introduce separate legal provisions concerning pornographic performances as Article 202 § 3 is dealing with pornographic material in connection with related articles 198 – 200 on sexual abuse.

The *United Kingdom* criminalises this conduct under the condition that the offender does not reasonably believe that the victim is 18 years or over unless the victim is under 13 years.

#### **2.5.4 Child prostitution (Article 19 Lanzarote Convention)**

To be criminalised:

- recruiting a child into prostitution or causing a child to participate in prostitution;
- coercing a child into prostitution;
- profiting from or otherwise exploiting a child for such purposes;

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<sup>80</sup> 'pornographic show' means an act or performance that displays sexuality in a gravely indecent manner, designed specifically arouse sexual desire

- having recourse to child prostitution.

To a greater extent than adult prostitution, the sex trade involving children depends on people who encourage, organise and profit from it. Article 19 of the Lanzarote Convention, therefore, establishes links between demand and supply of child prostitutes by requiring criminal sanctions for both the recruiters and the users of child prostitutes imposing penalties on the customers of child prostitutes.

EU Directive 2011/92 defines in Article 2 (d) the term "child prostitution" as "use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party."

Article 152 (Sexual relations and other actions of sexual nature with the person who has not reached the age of 16 years) of Criminal Code of *Azerbaijan* would probably cover that act of having recourse to child prostitution but the scope of the requirement in Article 19 of the Lanzarote Convention is to specifically target the customers of child prostitutes.

The provision of Article 171<sup>1</sup> of the Criminal Code of *Belarus* criminalises the drawing into prostitution or coercion into continued prostitution also in respect of a person known to be a minor provided that the offender is 18 years old. A more severe penalty is provided if the act is committed by a parent, a teacher or another person responsible with the upbringing of the minor or by an organised group in respect of a person known to be a minor.

The *Danish* Criminal Code criminalises the act of aiding or abetting a person to engage in sexual activity as a profession and taking part in bringing another person out of the country to make that person provide sexual services abroad or letting that person be used for such purposes where the person concerned is less than 21 years old or not informed of the intention. The relevant provisions of the *Danish* Criminal code does not seem to specifically target involving minors and prostitution in general. Although such a distinction exists in the Criminal Code of *Norway* with regard to having recourse to child prostitution conduct, Section 203 refers to prostitution in general without making a distinction when minors are involved.

In relation to child exploitation in tourism, Law 136-03 of *Dominican Republic* punishes persons (regardless of their nationality) who trade or traffic children, whoever lodges or permits children to visit a hotel or similar establishment without the company or authorization of their parents (Art. 414) . In addition, the private sector has drafted and applied a Code of Conduct for Hotels in the Dominican Republic to fight against the commercial sexual exploitation of children.

In *Ireland* the provisions indicated to cover recruiting a child into prostitution (section 9 (a) of the 1993 Act) do not address the protection of minors, but there are general provisions on coercing or compelling any person to prostitute (of any age) . Additional provisions on exploitation of children for sexual purposes can be found in the Criminal Law (Human Trafficking) Act 2008, which includes under the term:

"sexual exploitation" in relation to a child (a person under the age of 18 years) the following acts: inviting, inducing or coercing the child to engage in prostitution or the production of child pornography"; the prostitution of the child or the use of the child for the production of child pornography; the commission of an offence specified in the Schedule to the Sex Offenders Act 2001 against the child; causing another person to commit such an offence against the child; or inviting, inducing or coercing the child to commit such an offence against another person; inviting, inducing or coercing the child to engage or participate in any sexual, indecent or obscene act, or inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child.

### 2.5.5 Corruption of children (Article 22 Lanzarote Convention)

To be criminalised:

- the intentional causing, for sexual purposes, of a child who has not reached the age below which it is prohibited to engage in sexual activities with a child, to witness sexual abuse or sexual activities, even without having to participate.

Article 22 of the Lanzarote Convention introduces a new offence which is intended to address the conduct of making a child watch sexual acts, or performing such acts in the presence of children, which could result in harm to the psychological health of the victim, with the risk of serious damage to their personality, including a distorted vision of sex and of personal relationships<sup>81</sup>.

Article 108 of the Criminal Code of *Albania* is indicated to implement this article criminalising "serious immoral acts conducted with minors under the age of 14 years". It is assumed that the jurisprudence provides clarification of the meaning of "serious immoral acts" and includes corruption of children.

The *Austrian Criminal Code* criminalises in Article 208 the performing of an act that is likely to endanger the moral or psychological development or health of persons under 16 years in front of a minor or a person under 16 years with whose upbringing, education or supervision he is charged, in order sexually to arouse or satisfy himself or a third party.

According to the replies received from Azerbaijan, this act would be criminalised under Article 153 of the Criminal Code ("Depraving actions, carried out without the use of violence against the person who obviously has not reached age of 14") .

The *Danish Criminal Code* does not specifically target the protection of minors by criminalising the act of "inciting or inviting another to indecent sexual activity or exhibits an indecent lifestyle in a manner capable of violating other persons' sense of decency or cause public offence".

Under Article 179 (Sexual enticement of children) of the Criminal Code, *Estonia* criminalises the act of handing over, displaying or making otherwise knowingly available pornographic works or reproductions thereof to a person of less than 14 years of age, as well as engaging in sexual intercourse in the presence of such person or knowingly sexually enticing such person in any other manner.

Chapter 20 (section 6) of the Criminal Code of *Finland*, although it does not explicitly provide for this act, has been used to punish acts that may impair the child's development. According to the replies to the questionnaire there were convictions in cases where adults caused a child to witness their sexual interaction (e.g. having sexual intercourse in front of the child).

Section 162 (Immoral acts with a minor) of the Criminal Code of *Latvia* criminalises the act of "committing immoral acts with a minor against the will of the minor or if such have been committed by a person who has attained the age of majority" and paragraph 2 when the act is committed with a juvenile (no additional requirements) .

In the case of *Lithuania* although the conduct is not described in the wording used in Article 22 of the Lanzarote Convention, this act is likely to be criminalised under a general provision (Article 153) on sexual molestation of a child.

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<sup>81</sup> Lanzarote Convention, Exp. Rep. 151

Several provisions in the Criminal Code of *Slovenia* could be applied to prosecute this act.

By introducing the element of 'using violence in order to commit this offence' (e.g. *Georgia*) the scope of this provision is narrower than what was intended by Article 22 of the Lanzarote Convention. On the contrary, the wording in Article 226-(1) of the Criminal Code of *Turkey*, could lead to over-criminalisation by making an offence a) allowing (intentionally?) a child to watch an indecent scene or a product, or to hear shameful words, or b) displaying these products at places easy to reach by children, or reading the contents of these products, or letting other to speak about them.

### **2.5.6 Solicitation of children for sexual purposes – grooming (Article 23 Lanzarote Convention)**

To be criminalised:

- the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purpose of committing any of the following offences and where this proposal has been followed by material acts leading to such a meeting:
  - 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;
  - producing child pornography.

Statistics show that, for example in the United States, approximately 1 in 5 (19%) of children aged from 10 to 17 years using Internet have received a sexual solicitation, 1 in 4 had unwanted exposure to sexually explicit material, 1 in 17 were threatened or harassed and 3% of the sample received aggressive sexual solicitations (Finkelhor et al, 2000)<sup>82</sup>. The risk of grooming by paedophiles through chat rooms becomes more and more problematic. With the use of mobile phones, the risk is higher since there is less parental supervision<sup>83</sup>.

In the United Kingdom, surveys conducted in 2006 in schools by the Child Exploitation and Online Protection Centre (CEOP) suggests that 25% of children and young people have met offline someone that they first contacted online. A CEOP report<sup>84</sup> states;

it is consistently apparent from the reports that children and young people have often placed themselves at risk online by engaging in risky, cybersexual behaviour that may have incited, catalysed or otherwise facilitated the resulting abuse scenario.

The United Kingdom does not use Internet specific legislation but the law applies equally online and offline. The law on indecent photographs apply to the distribution of such material via the Internet or by other means e.g. DVDs through the post. The Sexual Offences Act 2003, which came into force in May 2004, created a specific set of offences to deal with sexual exploitation of children, such as causing or inciting a child to engage in sexual activity, either offline or including for instance via webcam. The offence of meeting a child following sexual grooming can also be used to apprehend offenders who groom children either face to face or through the internet and then arrange to meet them for sexual exploitation.

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<sup>82</sup> Child Sexual Abuse, co-ordinated by Corinne May-Chahal and Maria Herczog, page13, Council of Europe, July 2003

<sup>83</sup> Protecting children from harmful content, Report prepared for the Council of Europe's Group of Specialists on Human Rights in the Information Society by Andrea Millwood, Directorate General of Human Rights and Legal Affairs, Council of Europe, Strasbourg, June 2009

<sup>84</sup> CEOP (2007) Strategic overview 2006-7: Making every child matter ... everywhere. London: Child Exploitation and Online Protection Centre"(p. 12)



The offences provided by Article 23 of the Lanzarote Convention, namely the solicitation of children for sexual purposes ("grooming") are intended to reflect the increasingly worrying phenomenon of children being sexually harmed in meetings with adults whom they had initially encountered in cyberspace, specifically in Internet chat rooms or game sites.

The EU Directive 2011/92 states also that:

solicitation of children for sexual purposes is a threat with specific characteristics in the context of the Internet, as the latter provides unprecedented anonymity to users because they are able to conceal their real identity and personal characteristics, such as their age. At the same time, Member States acknowledge the importance of also combating the solicitation of a child outside the context of the Internet, in particular where such solicitation is not carried out by using information and communication technology. Member States are encouraged to criminalise the conduct where the solicitation of a child to meet the offender for sexual purposes takes place in the presence or proximity of the child, for instance in the form of a particular preparatory offence, attempt to commit the offences referred to in this Directive or as a particular form of sexual abuse. Whichever legal solution is chosen to criminalise "off-line grooming", Member States should ensure that they prosecute the perpetrators of such offences one way or another.

Both the Lanzarote Convention and EU Directive 2011/92 exclude from the scope of this provision other forms of grooming through real contacts or non-electronic communications<sup>85</sup> stating as means for committing this offence information and communication technology. This can be justified by the reasoning that it is more likely to conceal the real identity in virtual space than in real life and such conduct might have different elements in real life that can be covered under other offences.

*Belgium* has no specific provisions on grooming. However, an interpretation of case law of the existing law on electronic communications (Art. 145 §3bis Law of 13 June 2005) allows to prosecute acts of "grooming" if they are committed through computer systems.

Through recent amendments, which entered into force in April 2012, the Criminal Code of *Estonia* (Article 178<sup>1</sup> – Agreement of sexual purpose for meeting with child (grooming) ) establishes as an offence the act of making a proposal for meeting a person of less than 18 years of age who was not capable of comprehending the situation, or a person of less than 14 years of age, or concluding an agreement to meet him or her, and performance of an act preparing the meeting, if the aim of the meeting is to commit an offence provided for in 133, 133<sup>1</sup>, 141–146, 175, 178 or 179 of this Code [...].

In *Georgia*, the legislator is considering whether grooming should be criminalised as a separate offence or the current solution should be maintained, i.e. grooming could be punished as an attempt to the relevant offences provided by the Criminal Code.

In *Hungary*, solicitation of children for sexual purposes (grooming) will be criminalised by the new Criminal Code as follows: Any person over the age of eighteen who attempts to persuade a person under the age of fourteen to engage in sexual acts with him or her or someone else (Section 198 (2). Any person who provides the conditions necessary for or facilitates the making, distribution or trade of pornographic material of persons under the age of fourteen is guilty of a misdemeanour (Section 204 (6))<sup>86</sup>.

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<sup>85</sup> Lanzarote Convention, Exp. Rep 159

<sup>86</sup> The current assessment considered also the future provisions

In *India*, under the general wording “facilitates abusing children online” could probably cover “grooming” unless there is an impediment to be punished as a preparatory act and with some concerns in respect of over-criminalisation.

In *Ireland*, the definition of the term “sexual exploitation” under the Criminal Law (Sexual Offences) (Amendment) Act 2007 includes “coercing, inviting or inducing a child to engage in prostitution”. This provision seems to cover partially Article 23 of the Lanzarote Convention regardless the mean of committing the act i.e. through information and communication technologies or not.

*Monaco* implements the act of grooming in Article 294-6 (introduced by Law 1344/2007) by criminalising the act of proposing a meeting by a major person and using a network of electronic communications to a person knowing that the person is a minor in order to commit any sexual offence punishable by a term of imprisonment greater than or equal to three years. When the meeting took place the penalty is more severe.

The *Serbian* Criminal Code (published in Official Gazette of the Republic of Serbia no 72/09) introduced *Article 185b* (“Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor”) , criminalising:

(1) Whoever with intent to commit criminal offence specified in Articles 178, paragraph 4 (sexual intercourse that resulted in death) , 179, paragraph 3 (sexual intercourse with a helpless person/minor that resulted in death) , 180, paragraphs 1 (sexual intercourse with a child) and 2 (sexual intercourse with a child that resulted in grievous bodily harm) , 181, paragraphs 2 (sexual intercourse committed by teacher, tutor, guardian, adoptive parent, stepfather or other person who abuses his position or authority) and 3 (sexual intercourse against a child) , 182, paragraph 1 (other sexual acts) , 183 paragraph 2 (pimping and procuring) , 184 paragraph 3 (mediation in prostitution) , 185, paragraph 2 (producing child pornography) and 185a (induce minor to attend sexual acts) [...] by using computer network or communication with other technical devices makes appointment and appears on the place of the appointment, shall be punished [...] (2) Whoever commits criminal offence specified in paragraph 1 of this article, against the child [...]

Through recent amendments adopted, *Slovenia* criminalises in Article 173. a of the Criminal Code the acts of grooming and thus implementing Article 23 of the Lanzarote Convention.

Section 201a of the Criminal Code of *Norway* provides a penalty for any person who has agreed on a meeting with a child under the age of 16 with a purpose to commit an act mentioned in sections 195, 196 or 200 second paragraph. It thus covers partially Article 23 grooming (as a preparatory act) with the intent to engage in sexual activities but not for producing child pornography, which would be probably covered as an attempt but not at this initial stage. However, the new Criminal Code (Section 306) extends the provision to cover grooming for the purpose of producing child pornography as well.

### **2.5.7 Aggravating circumstances<sup>87</sup>**

Article 28 of the Lanzarote Convention requires States to ensure that the following circumstances – if they do not already form part of the constituent elements of the offence –be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with the Convention:

- a. the offence seriously damaged the physical or mental health of the victim;
- b. the offence was preceded or accompanied by acts of torture or serious violence;

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<sup>87</sup> For additional aggravating circumstances see also Article 9 of the EU Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

- c. the offence was committed against a particularly vulnerable victim;
- d. the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;
- e. the offence was committed by several people acting together;
- f. the offence was committed within the framework of a criminal organisation;
- g. the perpetrator has previously been convicted of offences of the same nature.

Recent amendments to the Criminal Code of *Azerbaijan* adopted on 29 June 2012 introduced Article 171-1 (Producing and distributing child pornography) , which is in line with the Budapest Convention. The Article provides as aggravating circumstances when the offender is a parent or other person responsible with education, health, supervision etc. of the minor; the acts are committed by a group with a premeditated conspiracy or by an organized group; or against a person under age of 14.

Article 177<sup>1</sup> of the Penal Code of *Portugal* criminalises with a more severe penalty the acts described in articles 163-165 and 167-176 if there are committed by: a) an ascendant, descendent, adopting or adopted, relative until the second grade or b) has a familiar relationship or an hierarchic, economic or working dependency and the crime is perpetrated based on relation of that dependency.

Article 197 (rape) of the Criminal Code of *Romania* provides for imprisonment from 5 to 18 years and the prohibition of certain rights, if sexual abuse against a minor is committed by two or more persons together; the victim is under care, protection, education, guard or treatment of the perpetrator; b) the victim is a family member; c) the victim suffered serious injury to corporal integrity or health. If the victim was under the age of 15, the penalty shall be 10 to 25 years imprisonment and the prohibition of certain rights, and if the act resulted in the victim's death or suicide, the penalty shall be imprisonment from 15 to 25 years and the prohibition of certain rights.

The draft Bill on the Protection of Children against Sexual Offences, 2011 of *India* provides a number of aggravating circumstances e.g. Section B (Aggravated Penetrative Sexual and Punishment Therefor) covers sexual offences committed on a child by a police officer, a member of the armed forces or security forces, being from the management or staff of a jail, protection home, observation home, hospital, education institution, relative, guardians, etc.

Aggravating circumstances that result in a more severe punishment have been introduced in the Criminal Code of *Spain* through the amendments adopted in 2010, namely:

- the assault consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices;
- the scarce intellectual or physical development of the victim has caused a situation of total defencelessness and, in all cases, when under four years old;
- the acts are committed by the joint action of two or more persons;
- the violence or intimidation made are of a particularly degrading or humiliating nature;
- in order to execute the offence, the offender has availed himself of a superiority or relationship, due to being the ascendant, descendent or brother, biological, adopted or in-law of the victim;
- the offender has endangered the life of the minor.

### 3 Examples of criminalisation in different States

#### 3.1 Normative strategies: examples

Adoption of specific Laws/Regulations	Provisions in the Criminal Code
Albania Costa Rica Denmark Dominican Republic Philippines Romania Moldova Monaco Germany Latvia Lithuania India Ireland Japan Ukraine United Kingdom	Albania Armenia Austria Azerbaijan Belarus Belgium Bulgaria Bosnia and Herzegovina Costa Rica Croatia Czech Republic Denmark Dominican Republic Estonia Finland Georgia Germany Hungary Japan Latvia Lithuania Luxembourg Moldova Monaco Montenegro Netherlands Norway Philippines Portugal Romania Serbia Slovak Republic Switzerland "The former Yugoslav Republic of Macedonia" Turkey Ukraine

#### 3.2 Types of offences (what is punished)

Yes	implemented in the law/corresponded provision/s available
P	partially implemented in the law OR not fully in line with the standards of CC and CPS
No	not implemented in the law
?	information missing OR clarification needed

### 3.2.1 Criminalising sexual abuse

<b>States</b>	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: - 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	attempt, aiding or abetting of such conduct
1. Albania	yes	yes	yes	yes
2. Armenia	p	p	yes	yes
3. Austria	yes	yes	yes	?
4. Australia	analysis underway			
5. Azerbaijan	P	p	yes	yes
6. Belarus	yes	p	yes	?
7. Belgium	yes	yes	yes	yes
8. Bosnia and Herzegovina	?	?	-	-
9. Bulgaria	yes	yes	yes	yes
10. Costa Rica	yes	yes	yes	yes
11. Croatia	yes	yes	yes	yes
12. Cyprus	p	p	yes	yes
13. Czech Republic	yes	yes	yes	yes
14. Denmark	yes	yes	yes	yes
15. Dominican Republic	yes	yes	yes	yes
16. Estonia	yes	p	yes	yes
17. Finland	yes	yes	yes	yes
18. France	analysis underway			
19. Georgia	yes	p	yes	yes
20. Germany	yes	yes	yes	yes
21. Greece	analysis underway			
22. Hungary	yes	yes	yes	yes
23. India	yes	yes	yes	yes
24. Ireland	yes	yes	yes	yes
25. Island	analysis underway			
26. Italy	analysis underway			

27. Japan	yes	p	no	?
28. Latvia	yes	p	yes	yes
29. Liechtenstein	yes	yes	yes	yes
30. Lithuania	yes	yes	yes	yes
31. Luxembourg	yes	yes	yes	yes
32. Mexico	yes	yes	yes	yes
33. Moldova	yes	p	no	yes
34. Monaco	yes	yes	yes	yes
35. Montenegro	yes	yes	yes	yes
36. Netherlands	yes	yes	yes	yes
37. Norway	yes	yes	yes	yes
38. Philippines	yes	yes	yes	yes
39. Poland	yes	yes	no	yes
40. Portugal	yes	yes	yes	yes
41. Romania	yes	yes	yes	yes
42. Serbia	yes	yes	Yes	yes
43. Slovak Republic	yes	yes	no	yes
44. Slovenia	yes	yes	yes	yes
45. Spain	yes	yes	yes	yes
46. Sri Lanka	analysis underway			
47. Switzerland	yes	yes	yes	yes
48. "The Former Yugoslav Republic of Macedonia"	yes	p	yes	?
49. Turkey	yes	yes	yes	yes
50. Ukraine	yes	yes	yes	?
51. United Kingdom	yes	yes	yes	yes

### 3.2.2 Criminalising child pornography

States	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	Other	Attempt, aiding or abetting of such conduct
	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			
1. Albania	yes	yes	yes	yes	yes	no	no	no	yes	yes
2. Armenia	yes	p	p	yes	p	no	p	no	no	yes
3. Austria	yes	yes	yes	yes	yes	yes	yes	no	no	?
4. Azerbaijan	yes	yes	yes	yes	yes	yes	yes	p	yes	yes
5. Belarus	yes	no	p	yes	no	no	p	no	no	?
6. Belgium	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
7. Bosnia and Herzegovina	p	p	p	P	p	no	p	no	yes	?
8. Bulgaria	yes	p	yes	yes	yes	no	yes	no	yes	Yes
9. Costa Rica	yes	Yes	yes	yes	yes	yes	yes	?	yes	yes
10. Croatia	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
11. Cyprus	yes	yes	yes	yes	yes	yes	yes	yes	no	yes
12. Czech Republic	yes	yes	yes	yes	yes	no	yes	no	yes	yes
13. Denmark	p	p	?	yes	?	p	yes	p	yes	yes
14. Dominican Republic	yes	yes	yes	yes	yes	yes	yes	?	yes	yes

15. Estonia	yes	yes	yes	yes	yes	yes	yes	no	no	yes
16. Finland	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
17. Georgia	yes	yes	yes	yes	yes	yes	yes	no	yes	yes
18. Germany	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
19. Hungary	yes	yes	yes	yes	yes	yes	yes	p	yes	yes
20. India	?	yes	yes	yes	yes	yes	yes	yes	yes	yes
21. Ireland	yes	yes	yes	yes	yes	?	yes	no	yes	yes
22. Japan	yes	yes	yes	yes	yes	no	p	no	yes	yes
23. Latvia	yes	?	yes	yes	?	yes	yes	no	yes	yes
24. Liechtenstein	yes	yes	yes	yes	yes	yes	yes	no	yes	yes
25. Lithuania	yes	yes	yes	yes	yes	yes	yes	p	no	yes
26. Luxembourg	yes	p	p	yes	p	no	yes	no	yes	no
27. Mexico	yes	no	p	p	?	no	yes	no	yes	yes
28. Moldova	yes	yes	yes	yes	yes	no	yes	no	yes	yes
29. Monaco	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
30. Montenegro	p	yes	yes	yes	yes	yes	yes	no	yes	yes
31. Netherlands	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
32. Norway	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
33. Philippines	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
34. Poland	yes	yes	yes	yes	yes	yes	yes	no	yes	yes
35. Portugal	yes	yes	yes	yes	yes	yes	yes	no	yes	yes
36. Romania	yes	yes	yes	yes	yes	no	p	yes	yes	yes
37. Serbia	P	yes	yes	yes	yes	yes	yes	P	yes	yes
38. Slovak Republic	yes	yes	yes	yes	yes	yes	yes	no	no	yes
39. Slovenia	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
40. Spain	yes	yes	yes	yes	yes	yes	yes	no	yes	yes
41. Switzerland	yes	yes	yes	yes	yes	yes	yes	no	yes	yes
42. "The former Yugoslav Republic of Macedonia"	yes	yes	yes	yes	yes	yes	?	no	yes	yes
43. Turkey	p	yes	yes	yes	?	no	?	no	yes	yes
44. Ukraine	yes	?	?	yes	?	no	no	no	yes	?
45. United Kingdom	yes	yes	yes	yes	yes	yes	yes	yes	yes	?



### 3.2.3 Criminalising participation of a child in pornographic performances

States	Recruiting a child into participating in pornographic performances or causing a child to participate in such performances	Coercing a child into participating in pornographic performances	Profiting from or otherwise exploiting a child for such purposes	Knowingly attending pornographic performances involving the participation of children	Other	Attempt, aiding or abetting of such conduct
1. Albania	p	p	p	no	no	?
2. Armenia	yes	yes	p	no	No	yes
3. Austria	yes	yes	yes	no	yes	?
4. Azerbaijan	yes	yes	no	no	yes	yes
5. Belarus	p	p	No	no	No	?
6. Belgium	yes	yes	yes	yes	yes	yes
7. Bosnia and Herzegovina	p	p	no	no	no	?
8. Bulgaria	yes	yes	yes	yes	no	yes
9. Costa Rica	Yes	Yes	Yes	no	Yes	Yes
10. Croatia	yes	yes	yes	yes	yes	yes
1. Cyprus	yes	yes	yes	no	yes	yes
11. Czech Republic	no	no	no	no	no	no
12. Denmark	yes	p	p	yes	yes	yes
13. Dominican Republic	yes	yes	yes	yes	yes	yes
14. Estonia	Yes	Yes	Yes	No	no	Yes
15. Finland	yes	yes	yes	yes	no	yes
16. Georgia	yes	p	no	no	no	yes
17. Germany	yes	yes	yes	no	yes	yes
18. Hungary	yes	yes	yes	yes	yes	yes
19. India	yes	p	no	p	no	yes
20. Ireland	no	no	no	no	no	-
21. Japan	No	No	No	No	No	No
22. Latvia	p	p	p	no	no	?
23. Liechtenstein	no	no	no	no	-	-
24. Lithuania	yes	yes	yes	p	no	yes
25. Luxembourg	yes	p	?	no	no	yes
26. Mexico	yes	yes	p	no	no	yes

27. Moldova	No	No	No	No	No	No
28. Monaco	yes	yes	yes	yes	no	no
29. Montenegro	p	yes	no	yes	no	yes
30. Netherlands	yes	yes	yes	yes	no	yes
31. Norway	yes	yes	yes	no	no	yes
32. Philippines	yes	yes	yes	p	yes	yes
33. Poland	p	no	no	no	no	?
34. Portugal	yes	p	no	no	-	yes
35. Romania	yes	yes	p	No	No	yes
36. Serbia	yes	yes	yes	No	no	yes
37. Slovak Republic	no	no	no	No	no	no
38. Slovenia	yes	yes	yes	yes	yes	yes
39. Spain	yes	yes	yes	p	yes	yes
40. Switzerland	no	yes	yes	no	no	yes
41. "The Former Yugoslav Republic of Macedonia"	p	p	?	yes	yes	?
42. Turkey	yes	p	?	?	-	-
43. Ukraine	no	no	no	no	-	-
44. United Kingdom	yes	yes	yes	yes	yes	?

### 3.2.4 Criminalising child prostitution

States	Recruiting a child into prostitution or causing a child to participate in prostitution	Coercing a child into prostitution	Profiting from or otherwise exploiting a child for such purposes	Having recourse to child prostitution	Attempt, aiding or abetting of such conduct
1. Albania	yes	yes	yes	no	yes
2. Armenia	yes	yes	yes	no	yes
3. Austria	yes	yes	yes	no	?
4. Azerbaijan	yes	yes	yes	p	yes
5. Belarus	p	p	no	no	?
6. Belgium	yes	yes	yes	yes	yes
7. Bosnia and Herzegovina	yes	yes	yes	no	?
8. Bulgaria	yes	yes	p	yes	yes
9. Costa Rica	yes	yes	yes	no	yes
10. Croatia	yes	yes	yes	yes	yes
11. Cyprus	yes	yes	yes	yes	yes
12. Czech Republic	yes	yes	yes	yes	yes
13. Denmark	yes	p	p	yes	yes
14. Dominican Republic	yes	yes	yes	yes	yes
15. Estonia	Yes	Yes	Yes	Yes	Yes
16. Finland	yes	yes	yes	yes	yes
17. Georgia	yes	yes	p	no	yes
18. Germany	yes	yes	yes	yes	yes
19. Hungary	yes	yes	yes	yes	yes
20. India	?	?	?	?	-
21. Ireland	p	p	p	p	yes
22. Japan	yes	p	no	no	-
23. Latvia	yes	yes	yes	?	-
24. Liechtenstein	?	?	?	?	-
25. Lithuania	yes	yes	yes	yes	yes
26. Luxembourg	yes	p	yes	?	yes
27. Mexico	yes	yes	yes	yes	yes
28. Moldova	yes	yes	yes	no	no
29. Monaco	yes	yes	yes	yes	no

30. Montenegro	yes	yes	yes	yes	yes
31. Netherlands	yes	yes	yes	yes	yes
32. Norway	yes	yes	yes	p	yes
33. Philippines	yes	yes	yes	yes	yes
34. Poland	p	p	yes	no	yes
35. Portugal	yes	yes	yes	yes	yes
36. Romania	yes	yes	yes	yes	yes
37. Serbia	yes	yes	yes	yes	yes
38. Slovak Republic	yes	yes	yes	yes	yes
39. Slovenia	yes	yes	yes	yes	yes
40. Spain	yes	yes	yes	yes	yes
41. Switzerland	yes	yes	yes	p	yes
42. "The Former Yugoslav Republic of Macedonia"	p	?	?	?	?
43. Turkey	yes	yes	?	?	?
44. Ukraine	yes	yes	yes	no	?
45. United Kingdom	yes	yes	yes	yes	yes

### 3.2.5 Criminalising the corruption of children

States	The intentional causing, for sexual purposes, of a child who has not reached the age below which it is prohibited to engage in sexual activities with a child, to witness sexual abuse or sexual activities, even without having to participate	Attempt, aiding or abetting of such conduct
1. Albania	yes	yes
2. Armenia	yes	yes
3. Austria	yes	?
4. Azerbaijan	yes	yes
5. Belarus	no	no
6. Belgium	yes	yes
7. Bosnia and Herzegovina	no	no
8. Bulgaria	yes	yes
9. Costa Rica	yes	yes
10. Croatia	yes	yes
11. Cyprus	p	p
12. Czech Republic	yes	yes
13. Denmark	p	yes
14. Dominican Republic	no	no
15. Estonia	yes	yes
16. Finland	yes	yes
17. Georgia	yes	yes
18. Germany	yes	yes
19. Hungary	yes	yes
20. India	yes	yes
21. Ireland	no	no
22. Japan	p	?
23. Latvia	yes	yes
24. Liechtenstein	no	no
25. Lithuania	yes	yes
26. Luxembourg	yes	yes
27. Mexico	yes	yes
28. Moldova	no	no
29. Monaco	yes	no
30. Montenegro	yes	yes

31. Netherlands	yes	yes
32. Norway	yes	yes
33. Philippines	yes	yes
34. Poland	yes	yes
35. Portugal	yes	p
36. Romania	yes	yes
37. Serbia	yes	yes
38. Spain	yes	yes
39. Slovak Republic	no	no
40. Slovenia	yes	yes
41. Switzerland	yes	yes
42. The Former Yugoslav Republic of Macedonia	p	no
43. Turkey	?	?
44. Ukraine	yes	?
45. United Kingdom	yes	yes

### 3.2.6 Criminalising the solicitation of children for sexual purposes (grooming)

States	The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purpose of committing any of the following offences and where this proposal has been followed by material acts leading to such a meeting: - 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;	The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purpose of committing any of the following offences and where this proposal has been followed by material acts leading to such a meeting: - producing child pornography	Other	Attempt, aiding or abetting of such conduct
1. Albania	no	no	-	-
2. Armenia	no	no	-	-
3. Austria	no	no	-	-
4. Azerbaijan	no	no	-	-
5. Belarus	no	no	-	-
6. Belgium	p	p	-	-
7. Bosnia and Herzegovina	no	no	-	-
8. Bulgaria	yes	yes	no	yes
9. Costa Rica	no	no	-	-
10. Croatia	yes	yes	yes	yes
11. Cyprus	?	?	-	-
12. Czech Republic	no	no	-	-
13. Denmark	no	no	-	-
14. Dominican Republic	no	no	-	-
15. Estonia	Yes	Yes	Yes	Yes
16. Finland	yes	yes	yes	yes
17. Georgia	no	no	no	-
18. Germany	yes	yes	yes	reservation made
19. Hungary	yes	yes	-	-
20. India	yes	yes	yes	yes

21. Ireland	yes	yes	yes	yes
22. Japan	no	no	-	-
23. Latvia	yes	?	no	-
24. Liechtenstein	no	no	-	-
25. Lithuania	no	no	-	-
26. Luxembourg	no	no	-	-
27. Mexico	no	no	-	-
28. Moldova	no	no	-	-
29. Monaco	yes	yes	yes	yes
30. Montenegro	p	p	-	-
31. Netherlands	yes	yes	no	yes
32. Norway	yes	yes	no	yes
33. Philippines	?	?	-	-
34. Poland	yes	yes	yes	yes
35. Portugal	p	P	no	yes
36. Romania	yes	yes	p	yes
37. Serbia	yes	yes	yes	yes
38. Slovak Republic	no	no	no	no
39. Slovenia	yes	yes	yes	yes
40. Spain	yes	yes	yes	yes
41. Switzerland	no	no	-	-
42. The Former Yugoslav Republic of Macedonia	yes	yes	no	?
43. Turkey	no	no	-	-
44. Ukraine	no	no	-	-
45. United Kingdom	yes	yes	yes	yes



### 3.3 Definition of child pornography in different States

States	States' legal provisions determine that "child pornography" comprises 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	Other elements
1. Albania	n/d	n/d	n/d	n/d	-
2. Armenia	n/d	n/d	n/d	n/d	-
3. Austria	p	No	yes	p	
4. Azerbaijan	yes	no	no	p	-
5. Belarus	n/d	n/d	n/d	n/d	-
6. Belgium	n/d	n/d	n/d	n/d	-
7. Bosnia and Herzegovina	partial (territorial) definition (RS)	p/d	p/d	p/d	yes
8. Bulgaria	yes	Yes	p	yes	yes
9. Costa Rica	yes	no	yes	yes	no
10. Croatia	yes	yes	yes	yes	yes
11. Cyprus	yes	yes	yes	p	no
12. Czech Republic	yes	No	yes	yes	no
13. Denmark	n/d	n/d	n/d	n/d	no
14. Dominican Republic	yes	?	yes	yes	no
15. Estonia	Yes	No	Yes	Yes	no
16. Finland	yes	yes	yes	yes	no
17. Georgia	yes	?	yes	yes	yes
18. Germany	n/d	yes	yes	n/d	yes
19. Hungary	yes	no	no	yes	no
20. India	yes	?	yes	yes	yes
21. Ireland	yes	yes	yes	yes	yes
22. Japan	yes	no	no	yes	no
23. Latvia	yes	yes	yes	yes	yes
24. Liechtenstein	n/d	n/d	n/d	n/d	-
25. Lithuania	p	yes	p	p	-
26. Luxembourg	n/d	n/d	n/d	n/d	-

27. Mexico	n/d	no	yes	n/d	
28. Moldova	yes	no	yes	yes	yes
29. Monaco	yes	yes	yes	p	no
30. Montenegro	n/d	n/d	n/d	n/d	-
31. Netherlands	n/d	n/d	n/d	n/d	-
32. Norway	n/d	yes	n/d	n/d	-
33. Philippines	yes	yes	yes	yes	yes
34. Poland	n/d	n/d	yes	n/d	-
35. Portugal	n/d	n/d	Yes	n/d	-
36. Romania	Yes	no	Yes	yes	no
37. Serbia	n/d	n/d	n/d	n/d	-
38. Slovak Republic	yes	No	?	?	No
39. Slovenia	n/d	n/d	yes	n/d	no
40. Spain	n/d	no	no	no	-
41. Switzerland	n/d	n/d	n/d	n/d	-
42. The Former Yugoslav Republic of Macedonia	n/d	n/d	n/d	n/d	-
43. Turkey	n/d	n/d	n/d	n/d	-
44. Ukraine	n/d	n/d	n/d	n/d	-
45. United Kingdom	yes	no (reservation)	yes (reservation)	yes	yes

Yes	implemented
No definition	n/d
?	unclear

### 3.4 Who is a child/minor under different legislation

States	"Minor"	"Child"	"Juvenile"	Others	Age limit for the term minor/child etc. with regard to child pornography
1. Albania	x	X			18 years
2. Armenia	X	X			18 years
3. Austria	x				18 years
4. Azerbaijan	X (under 14)	X (under 18)	X (between 14-18)		18 years
5. Belarus	x		x		18 years
6. Belgium	x				18 years
7. Bosnia and Herzegovina	x	x	x		16 years
8. Bulgaria	X				18 years
9. Costa Rica	x				18 years
10. Croatia		Below 18			18 years
11. Cyprus		X			18 years
12. Czech Republic		<i>Below 18 unless the Criminal Code states something else</i>			
13. Denmark	x	x			18 years
14. Dominican Republic				Niño: 12 Adolescente: 13-18	18 years
15. Estonia	X	X	x		18 years
16. Finland		x			18 years
17. Georgia	x				18 years
18. Germany	X	X	x		18 years
19. Hungary	X	X			18 years
20. India	x				18 years
21. Ireland		x			17 years
22. Japan	X				18 years
23. Latvia	x	below 18 unless under the law applicable to the child, majority is attained earlier.			18 years
24. Liechtenstein	x				18 years
25. Lithuania	X	X			
26. Luxembourg	x				18 years
27. Mexico	x				18 years
28. Moldova	X	X			18 years
29. Monaco	x				18 years
30. Montenegro		<i>Below 14</i>	<i>Between 14-18</i>	An underage person is a person who has not yet reached the age of eighteen	

<b>31.</b>	Netherlands	x				<i>18 years</i>
<b>32.</b>	Norway		x			<i>18 years</i>
<b>33.</b>	Philippines	x			<i>emancipation (by the attainment of majority)</i>	<i>18 years (unless otherwise provided)</i>
<b>34.</b>	Poland	x				<i>18 years</i>
<b>35.</b>	Portugal	X	X			<i>18 years</i>
<b>36.</b>	Romania	<i>Below 18</i>	<i>Below 18</i>			<i>18 years</i>
<b>37.</b>	Serbia	<i>Between 14-18</i>	<i>Below 14</i>	<i>Below 18</i>		<i>18 years</i>
<b>38.</b>	Slovak Republic	X	X			<i>18 years</i>
<b>39.</b>	Slovenia	x		X	<i>Between 14-18</i>	<i>18 years</i>
<b>40.</b>	Spain					
<b>41.</b>	Switzerland		x			<i>16 years</i>
<b>42.</b>	"The former Yugoslav Republic of Macedonia"	X	X			<i>?</i>
<b>43.</b>	Turkey	X	X			<i>18 years</i>
<b>44.</b>	Ukraine	x	x			<i>18 years</i>
<b>45.</b>	United Kingdom	X	X			<i>18 years</i>

## 4 Overview, findings and conclusions

### 4.1 Overview of implementation

The objective of this study was to demonstrate how the provisions of the Lanzarote and Budapest Conventions can be used as benchmarks for substantive criminal law measures to be taken by States. A number of States were analysed against these benchmarks, that is, against the following specific provisions:

- Budapest Convention on Cybercrime
  - Article 9 – Child pornography (including its definitions)
  
- Lanzarote Convention
  - Article 3 – Definitions
  - Article 18 – Sexual abuse
  - Article 19 – Offences concerning child prostitution
  - Article 20 – Child pornography
  - Article 21 – Participation of a child in pornographic performances
  - Article 22 – Corruption of children
  - Article 23 – Solicitation of children for sexual purposes.

The study shows that many States have indeed undertaken legal reforms in line with the Budapest and Lanzarote Conventions or EU Directive 2011/92. Many of these reforms were adopted recently and in some States they are still on-going.

Comprehensive legislation that includes the conduct to be criminalised under the two Council of Europe conventions was adopted, for example, in Croatia, Philippines, Slovenia and the United Kingdom.

Some States include as child pornographic material audio-material and/or text e.g. Bosnia and Herzegovina, Croatia, Georgia, Germany, India, Ireland, Montenegro, Slovenia, Switzerland, 'the former Yugoslav Republic of Macedonia, Turkey.

The present study shows that most of the States analysed cover the basic elements related to child sexual abuse, child pornography or child prostitution. However, some elements are yet to be addressed by a number of States:

<b>45 States analysed:</b> Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom		
<b>Sexual abuse: 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</b>		
yes	41	Albania, Austria, Belarus, Belgium, Bulgaria, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine, United Kingdom

p (partial)	3	Armenia, Azerbaijan, Cyprus
? (unclear/ not implem.)	1	Bosnia and Herzegovina
<p><b>Sexual abuse: engaging in sexual activities with a child where:</b></p> <ul style="list-style-type: none"> <li>▪ use is made of coercion, force or threats; or abuse is made of a recognised position of trust, authority or</li> <li>▪ influence over the child, including within the family; or</li> <li>▪ abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence</li> </ul>		
yes	34	Albania, Austria, Belgium, Bulgaria, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Finland, Germany, Hungary, India, Ireland, Liechtenstein, Lithuania, Luxembourg, Mexico, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Turkey, Ukraine, United Kingdom
p	10	Armenia, Azerbaijan, Belarus, Cyprus, Estonia, Georgia, Japan, Latvia, Moldova, "the former Yugoslav Republic of Macedonia"
?	1	Bosnia and Herzegovina
<p><b>Other elements:</b> Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Hungary, India, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Monaco, Montenegro, Netherlands, Norway, Philippines, Portugal, Romania, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom</p>		
<p><b>Attempt, aiding or abetting of such conduct</b></p>		
yes	39	Albania, Armenia, Azerbaijan, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Turkey, and United Kingdom
?	6	Austria, Belarus, Bosnia and Herzegovina, Japan, "the former Yugoslav Republic of Macedonia", Ukraine
<p><b>Child pornography: producing child pornography/producing child pornography for the purpose of its distribution through a computer system</b></p>		
yes	40	Armenia, Albania, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and United Kingdom
p	5	Bosnia and Herzegovina, Denmark, Montenegro, Serbia, Turkey
<p><b>Child pornography: offering child pornography/ offering child pornography through a computer system</b></p>		
yes	37	Albania, Austria, Azerbaijan, Belgium, Costa Rica, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine, United Kingdom
p	7	Armenia, Bosnia and Herzegovina, Bulgaria, Denmark, Montenegro, Serbia, Turkey
?	1	Belarus

<b>Child pornography: making available child pornography/ making available child pornography through a computer system</b>		
yes	37	Albania, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, and United Kingdom
P	5	Armenia, Belarus, Bosnia and Herzegovina, Costa Rica, Luxembourg, Mexico
?	2	Denmark, Ukraine
<b>Child pornography: distributing child pornography/ distributing child pornography through a computer system</b>		
yes	42	Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine, United Kingdom
P	2	Bosnia and Herzegovina, Mexico
?	1	Denmark
<b>Child pornography: transmitting child pornography / transmitting child pornography through a computer system</b>		
yes	36	Albania, Austria, Azerbaijan, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Liechtenstein, Lithuania, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", United Kingdom
P	3	Armenia, Bosnia and Herzegovina, Luxembourg
?	6	Belarus, Denmark, Latvia, Mexico, Turkey, Ukraine
<b>Child pornography: procuring child pornography for oneself or for another person/ procuring child pornography through a computer system for oneself or for another person</b>		
yes	31	Austria, Azerbaijan, Belgium, Costa Rica, Croatia, Cyprus, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Latvia, Liechtenstein, Lithuania, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", United Kingdom
P	1	Denmark
?	13	Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, Ireland, Japan, Luxembourg, Mexico, Moldova, Turkey, Ukraine
<b>Child pornography: possessing child pornography/ possessing child pornography in a computer system or on a computer-data storage medium</b>		
yes	38	Austria, Azerbaijan, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, United Kingdom
P	4	Armenia, Turkey, Bosnia and Herzegovina, Belarus
?	3	Ukraine, "the former Yugoslav Republic of Macedonia", Albania

<b>Child pornography: knowingly obtaining access, through information and communication technologies, to child pornography</b>		
Yes	18	Belgium, Croatia, Cyprus, Finland, Germany, India, Japan, Latvia, Luxembourg, Monaco, Netherlands, Norway, Philippines, Poland, Romania, Slovenia, Switzerland, United Kingdom
P	7	Azerbaijan, Bosnia and Herzegovina, Denmark, Hungary, Lithuania, Serbia, "the former Yugoslav Republic of Macedonia"
?	20	Albania, Armenia, Austria, Belarus, Bulgaria, Costa Rica, Czech Republic, Dominican Republic, Estonia, Georgia, Ireland, Liechtenstein, Mexico, Moldova, Montenegro, Portugal, Slovak Republic, Spain, Turkey, Ukraine
<b>Other elements:</b> Albania, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom		
<b>Attempt, aiding or abetting of such conduct</b>		
yes	39	Albania, Armenia, Azerbaijan, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Ireland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey
?	5	Austria, Belarus, Bosnia and Herzegovina, Mexico, Ukraine, United Kingdom
<b>Participation in child pornographic performances: recruiting a child into participating in pornographic performances or causing a child to participate in such performances</b>		
yes	30	Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Philippines, Portugal, Romania, Serbia, Slovenia, Spain, Turkey, United Kingdom
p	7	Albania, Belarus, Bosnia and Herzegovina, Latvia, Montenegro, Poland, "the former Yugoslav Republic of Macedonia"
?	8	Czech Republic, Ireland, Japan, Liechtenstein, Moldova, Slovak Republic, Switzerland, Ukraine
<b>Participation in child pornographic performances: coercing a child into participating in pornographic performances</b>		
yes	25	Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Dominican Republic, Estonia, Finland, Germany, Hungary, Lithuania, Mexico, Monaco, Montenegro, Netherlands, Norway, Philippines, Romania, Serbia, Slovenia, Spain, Switzerland, United Kingdom
P	11	Albania, Belarus, Bosnia and Herzegovina, Denmark, Georgia, India, Latvia, Luxembourg, Portugal, "the former Yugoslav Republic of Macedonia", Turkey
?	8	Czech Republic, Ireland, Japan, Liechtenstein, Moldova, Poland, Slovak Republic, Ukraine
<b>Participation in child pornographic performances: profiting from or otherwise exploiting a child for such purposes</b>		
yes	20	Austria, Belgium, Bulgaria, Costa Rica, Dominican Republic, Croatia, Cyprus, Estonia, Finland, Germany, Lithuania, Monaco, Netherlands, Norway, Philippines, Serbia, Slovenia, Spain, Switzerland, United Kingdom
p	7	Albania, Denmark, Latvia, Mexico, Romania
?	20	Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Czech Republic, Georgia, Hungary, India, Ireland, Japan, Liechtenstein, Luxembourg, Moldova, Montenegro, Poland, Portugal, Slovak Republic, "the former Yugoslav Republic of



		Macedonia", Turkey, Ukraine
<b>Participation in child pornographic performances: knowingly attending pornographic performances involving the participation of children</b>		
yes	13	Belgium, Bulgaria, Croatia, Finland, Denmark, Dominican Republic, Hungary Monaco, Montenegro, Netherlands, Slovenia, "the former Yugoslav Republic of Macedonia", United Kingdom
p	4	India, Lithuania, Philippines, Spain
?	28	Albania, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Costa Rica, Cyprus, Czech Republic, Estonia, Georgia, Germany, Ireland, Japan, Latvia, Liechtenstein, Luxembourg, Mexico, Moldova, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Switzerland, Turkey, Ukraine
<b>Other elements:</b> Austria, Azerbaijan, Belgium, Costa Rica, Croatia, Cyprus, Denmark, Dominican Republic, Germany, Hungary, Philippines, Slovenia, Spain, 'The Former Republic of Macedonia', United Kingdom		
<b>Attempt, aiding or abetting of such conduct</b>		
yes	27	Armenia, Azerbaijan, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Japan, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, Norway, Philippines, Portugal, Romania, Serbia, Slovenia, Spain, Switzerland
?	16	Albania, Austria, Belarus, Bosnia and Herzegovina, Costa Rica, Ireland, Latvia, Liechtenstein, Moldova, Monaco, Poland, Slovak Republic, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom
<b>Child prostitution: recruiting a child into prostitution or causing a child to participate in prostitution</b>		
yes	32	Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Philippines, Portugal, Romania, Serbia, Slovenia, Spain, Turkey, United Kingdom
P	6	Belarus, Ireland, Latvia, Montenegro, Poland, "the former Yugoslav Republic of Macedonia"
?	7	India, Japan, Liechtenstein, Moldova, Slovak Republic, Switzerland, Ukraine
<b>Child prostitution: coercing a child into prostitution</b>		
yes	35	Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, Turkey, Ukraine, United Kingdom
P	7	Belarus, Denmark, Georgia, Ireland, Japan, Luxembourg, Poland
?	3	India, Liechtenstein, "the former Yugoslav Republic of Macedonia"
<b>Child prostitution: profiting from or otherwise exploiting a child for such purposes</b>		
yes	35	Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Costa Rica, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovenia, Slovak Republic, Spain, Switzerland, Ukraine, United Kingdom
P	4	Bulgaria, Denmark, Georgia, Ireland
?	6	Belarus, India, Japan, Liechtenstein, "the former Yugoslav Republic of Macedonia", Turkey

<b>Child prostitution: having recourse to child prostitution</b>		
yes	24	Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Germany, Hungary, Lithuania, Mexico, Monaco, Montenegro, Netherlands, Philippines, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, United Kingdom
P	4	Azerbaijan, Ireland, Norway, Switzerland
?	17	Albania, Armenia, Austria, Belarus, Bosnia and Herzegovina, Costa Rica, Georgia, India, Japan, Latvia, Liechtenstein, Luxembourg, Moldova, Poland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine
<b>Attempt, aiding or abetting of such conduct</b>		
yes	33	Albania, Armenia, Azerbaijan, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, United Kingdom
?	12	Austria, Belarus, Bosnia and Herzegovina, India, Japan, Latvia, Liechtenstein, Moldova, Monaco, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine
<b>Corruption of children: the intentional causing, for sexual purposes, of a child who has not reached the age below which it is prohibited to engage in sexual activities with a child, to witness sexual abuse or sexual activities, even without having to participate</b>		
Yes	33	Azerbaijan, Albania, Armenia, Austria, Belgium, Bulgaria, Costa Rica, Croatia, Czech Republic, Estonia, Finland, Georgia, Germany, Hungary, India, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Montenegro, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Switzerland, Ukraine, United Kingdom
P	4	Cyprus, Denmark, Japan, "the former Yugoslav Republic of Macedonia"
?	8	Belarus, Bosnia and Herzegovina, Dominican Republic, Ireland, Liechtenstein, Moldova, Slovak Republic, Turkey
<b>Attempt, aiding or abetting of such conduct</b>		
Yes	31	Albania, Armenia, Azerbaijan,, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, India, Latvia, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, Norway, Philippines, Poland, Romania, Serbia, Slovenia, Spain, Switzerland, United Kingdom
?	14	Austria, Belarus, Bosnia and Herzegovina, Dominican Republic, Hungary, Ireland, Japan, Liechtenstein, Moldova, Monaco, Portugal, Slovak Republic, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine
<b>The intentional proposal, through information and communication technologies, of an adult to meet a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities for the purpose of engaging in sexual activities (grooming)</b>		
Yes	18	Bulgaria, Croatia, Estonia, Finland, Hungary, India, Ireland, Latvia, Monaco, Netherlands, Norway, Poland, Romania, Serbia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", United Kingdom
P	3	Belgium, Montenegro, Portugal
?	24	Albania, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Georgia, Germany, Japan, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Philippines, Slovak Republic, Switzerland, Turkey, Ukraine

<b>The intentional proposal, through information and communication technologies, of an adult to meet a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities for the purpose of producing child pornography (grooming)</b>		
Yes	17	Bulgaria, Croatia, Estonia, Finland, Hungary, India, Ireland, Monaco, Netherlands, Norway, Poland, Romania, Serbia, Slovenia, Spain, "the former Yugoslav Republic of Macedonia", United Kingdom
P	3	Belgium, Montenegro, Portugal
?	25	Albania, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Georgia, Germany, Japan, Liechtenstein, Latvia, Lithuania, Luxembourg, Mexico, Moldova, Philippines, Slovak Republic, Switzerland, Turkey, Ukraine
<b>Other elements:</b> Croatia, Estonia, Finland, India, Ireland, Monaco, Poland, Spain, United Kingdom		
<b>Attempt, aiding or abetting of such conduct</b>		
yes	15	Bulgaria, Croatia, Finland, India, Ireland, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovak Republic, Spain, United Kingdom
<b>No definition of the term 'child pornography':</b> Albania, Armenia, Belarus, Belgium, Bosnia and Herzegovina, Denmark, Liechtenstein, Luxembourg, Mexico, Montenegro, Netherlands, Norway, Poland, Portugal, Serbia, Slovenia, Spain, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine		
<b>Age limit for the term minor/child etc. with regard to child pornography</b> Czech Republic (not clear) , Bosnia and Herzegovina and Switzerland (16 years) , Ireland (17 years)		

## 4.2 Findings

The key findings of the study are the following:

1. Harmonisation of legislation:
  - While progress has been made in recent years, there is a clear need for sustained efforts to achieve an acceptable level of harmonisation of the legislation of different States in line with international standards. Such harmonisation will facilitate international cooperation for the protection of children and the prosecution of offenders.
  - A number of States have laws on the protection of children against sexual violence that cover only partially the conduct to be criminalised under the Lanzarote and Budapest Conventions. Some of the provisions adopted are susceptible to criticism regarding the consistency of terms, coherence and the level of compliance with these treaties.
2. Scope of provisions:
  - The scope of provisions is limited in some States by requirements such as the victim to be a "female" juvenile; "against the will of the minor"; the offender has attained the "age of majority"; the act is committed through "assault, intimidation or using force"; involvement of a real person to produce child pornography that excludes realistic images or persons appearing to be minors.
3. Sexual abuse:
  - States should consider the criminalisation and effective prosecution of any non-consensual sexual act, regardless of physical resistance by the victim. Sexual abuse of a minor (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) should always be criminalised.

- An important distinction has to be made concerning the implementation of Article 18 of the Lanzarote Convention. Under paragraph 1 a) the engaging in sexual activities with a child, in order to be qualified as an offence, is subject to the legal age for sexual activities. However, the acts provided by paragraph 1 b) (use is made of coercion, force or threats; 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 because of a mental or physical disability or a situation of dependence) should be criminalised regardless of the age of the victim.
- Most of the States analysed criminalise sexual abuse, including by using coercion, force or threats, and such acts are being criminalised as rape. Attempt, aiding or abetting of such conduct is also often an offence. However, despite the fact that in many cases the offenders are persons in close contact with children, most of the legislation analysed lack provisions to specifically (and perhaps more severe) criminalise abuse of a recognised position of trust, authority or influence over the child, including within the family.

#### 4. Child pornography:

- The acts of production (with or without the intent to distribute) , distributing, offering or possessing child pornography seem to be more often included among the acts criminalised whilst making available (online) , transmitting (by email) or procuring (regardless of financial benefit) are concepts less often reflected. Obviously the conduct of knowingly obtaining access through information technologies to child pornography, which has been introduced more recently (2007) shows a low level of implementation.

#### 5. Age limit in relation to child pornography or other forms of exploitation and abuse:

- Children can never consent to be exploited and abused. However, the age limit for a person to be considered a child varies from country to country. In this context, it is important to define the age of consent to sexual activity that is different from the age related to child pornography offences, namely 18 years.
- Some States require a lower age to be in the remit of the offences on child pornography e.g. Bosnia and Herzegovina and Switzerland (16 years), Ireland (17 years) or the age limit is unclear (Czech Republic).
- As long as laws are not harmonised, "legal" child pornography with minors can be produced in one country and distributed via Internet in States where this is illegal.

#### 6. Definition of the term child pornography:

- Legislation on this matter should include a legal definition of the term "child pornography", which needs to be objective and expressed in terms that allow for proper application of due process.
- The wording used in some of the provisions analysed is too general or vague and could lead in practice to broad interpretation and over-criminalisation. No definitions are provided in a number of States analysed (Albania, Armenia, Belarus, Belgium, Bosnia and Herzegovina, Denmark, Liechtenstein, Luxembourg, Mexico, Montenegro, Netherlands, Norway, Poland, Portugal, Serbia, Slovenia, Spain, Switzerland, "The Former Republic of Macedonia", Turkey, Ukraine) .

7. Virtual child pornography:
  - In a number of States the legislation does not criminalise virtual child pornography or pornographic images that depict a person “appearing to be a minor” engaged in sexually explicit conduct. It is clear that the protected legal interest is different. In one case it focuses directly on the protection against child abuse, that is, of a specific physical child, while in the other case it aims at providing protection against and prevention of behaviour which although not necessarily creating harm to the “child” depicted in the material (as there might not be a real child) , can be used to encourage or seduce children into participating in such acts and promote the desire for sex with real children.
8. Protected legal interest:
  - The approach to criminalise child pornography without making a distinction to adult pornography is clearly not recommended. The legal interest protected is different: in the first case there is the right to life and dignity of children, while in the second case there is a wish to protect public morals by considering obscenity as an affront to community standards posed by pornographic material involving adult people. In many States the latter is legal.
9. Offences related to child pornographic performances:
  - Such offences are not specifically introduced in criminal law although they might be covered under other offences. However, specific acts of recruiting, coercing, profiting should be criminalised as distinct offences and sanction accordingly. Attending of child pornographic performances is less criminalised in the States analysed.
10. Offences related to child prostitution:
  - These acts are more often included in the criminal law as a result of United Nations related instruments. Therefore, more States criminalise the act of having recourse to prostitution than attending child pornographic performances.
11. Corruption of children:
  - This offence (witness sexual abuse or sexual activities) is provided by the Lanzarote Convention and is usually covered under other offences. However, its criminalisation remains unclear in some of the legislation analysed or it might have additional requirements attached that limit its scope.
12. The offences related to “grooming” (for the purpose to engage in sexual activities or to produce child pornography)
  - These acts have a lower level of implementation and it seems that the concept was not fully understood (at least by some of the respondents to the questionnaire) .
13. Offline vs. online offences:
  - Laws do not always specifically address offences when committed through computer systems, but address this conduct through general provisions that cover also acts committed via computer systems. This approach may be appropriate. However, one should bear in mind the different methods of investigation (and thus different needs for training, establishing specialised units and other measures) , as well as the difference in

the impact on society. Thus, States might want to consider making a distinction in the sanctioning regime based on risks, dimension and consequences when such offences are committed via computer systems.

14. Reservations:

- Finally, it should be noted that both Conventions provide for the possibility of reservations to certain elements of provisions, including production or possession of images that consist entirely of simulated representations or realistic images of a child who does not exist in reality. However, when making such reservations, State Parties should be aware of the rapid developments in technology, which allow producing of extremely lifelike images of child pornography where in reality no child was involved; they should avoid permitting such productions through their reservations.

### **4.3 Conclusion**

Criminal law is one important element of the response to the sexual exploitation and sexual abuse of children. The Internet and ICT in general facilitate such offences and at the same time pose major challenges to law enforcement.

Online sexual violence against children is very much a transnational phenomenon. Comprehensive domestic legislation harmonised with international standards is a prerequisite for effective law enforcement cooperation to protect children and investigate and prosecute offenders.

The study shows that the provisions of the Lanzarote and Budapest Convention can indeed serve as benchmarks for substantive criminal law and offer guidance to any State in any part of the world in the development of legislation that is harmonised internationally.

## 5 Appendix (I)

### 5.1 Appendix 1: The Lanzarote Convention (CETS 201) - A holistic approach

In the preparation of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>88</sup>, the most relevant provisions and implementation of the commitments and international instruments dealing with sexual exploitation of children were reviewed, namely:

- The United Nations Convention on the Rights of the Child;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- International Labour Organisation Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- The European Social Charter (Revised) ;
- The Convention on Cybercrime;
- The Council of Europe Convention on Action against Trafficking in Human Beings;
- The Council of the European Union Framework Decision on combating the sexual exploitation of children and child pornography;
- The Council of the European Union Framework Decision on the standing of victims in criminal procedures;
- The Stockholm Declaration and Agenda for Action;
- The Yokohama Global Commitment;
- The Budapest Commitment and Plan of Action;
- Recommendation Rec (2001) 16 on the protection of children against sexual exploitation.

The conclusion was that there is a need to develop a new binding instrument building on what have been achieved and filling the existing gaps<sup>89</sup>. The result of negotiations<sup>90</sup> – the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – was recognised by several organisations as the most advanced and comprehensive standard in this field<sup>91</sup>.

The added value of this instrument to the existing standards includes the followings:

- It groups various forms of sexual crimes against children under a single umbrella;
- It requires for the first time the criminalisation of sexual abuse of children, including when it is committed in the family;
- It addresses the issue of “grooming” (soliciting children for sexual purposes) by criminalising conduct that makes use of new technologies, in particular the Internet, to sexually harm children;

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<sup>88</sup> The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse entered into force on 1 July 2010

<sup>89</sup> For example, the United Nations’ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) criminalises certain acts in relation to the sale of children, child prostitution and child pornography, including ancillary liability (i.e. attempt, complicity and participation) and lays down minimum standards on the protection of the child victim in criminal justice processes. However, it does not cover comprehensively and in detail issues such as child-friendly judicial procedures. It provides for the right of victims to seek compensation, encourages the strengthening of international cooperation and the adoption of extra-territorial legislation but without requiring the exemption from the dual criminality principle.

<sup>90</sup> The drafting procedure of the new instrument began in September 2006 and meetings of the Committee were held, in May, September, October, December 2006, February and March 2007, to draw up the text.

<sup>91</sup> The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents welcome the adoption of the new regional instruments including the Council of Europe Conventions on Action against Trafficking in Human Beings, on the Protection of Children against Sexual Exploitation and Sexual Abuse and on Cybercrime and calls for its ratification

- It includes provisions designed to prevent repeat offences against children by means of intervention programmes or measures targeting sex offenders (e.g. the need for a broad, flexible approach focusing on the medical and psycho-social aspects of such intervention programmes and measures, which are non-obligatory) ;
- It requires the adoption of specific investigation and criminal procedure measures ensuring that the needs of the child are taken into account (e.g. protection of privacy, hearings with children) ;
- It requires that limitation periods for certain offences should continue to run for a sufficient period of time to allow prosecutions to be effectively initiated after the child has reached the age of majority;
- It eliminates, in relation to the most serious offences, the rule of dual criminality (when acts must be criminal offences in the place where they are performed) with aim to combat the sex tourism by preventing offenders go abroad and commit acts that are classified as criminal offences in their country of nationality<sup>92</sup>;
- It requires to ensure training for staff responsible for judicial procedures (specialisation in the services or individuals responsible for investigations and proceedings in the field of sexual exploitation and abuse of children) ;
- It requires protection of children by ensuring that they are shielded from risks of reprisals and repeat victimisation.

The set of measures foreseen under the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse comprises the following:

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<sup>92</sup> Explanatory Report to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Exp. Rep. CPC ) , 171

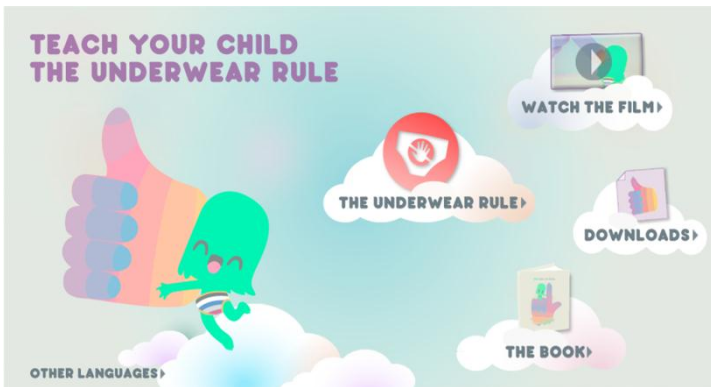


**5.1.1 Preventive measures**



**Recruitment, training and awareness raising**

- encourage awareness of the protection and rights of children among persons who have regular contacts with children
- ensure that they have adequate knowledge of sexual exploitation and sexual abuse of children and of the means to identify them
- ensure they have the possibility to report suspicion of sexual exploitation or sexual abuse
- ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children.



**Education**

- ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. See Council of Europe campaign ONE IN FIVE at: [http://www.coe.int/t/dg3/children/1in5/default\\_en.asp](http://www.coe.int/t/dg3/children/1in5/default_en.asp)
- information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new ICTs.



**Participation**

- participation in the development and the implementation of state policies, programmes or others initiatives concerning the fight against sexual exploitation and sexual abuse of children.



**Preventive intervention programmes or measures**

- ensure that persons who fear that they might commit offences of a sexual nature against children may have access to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed.

**Awareness raising**

- awareness raising campaigns providing information on the phenomenon of sexual exploitation and sexual abuse of children and on the preventive measures which can be taken

- legislative or other measures to prevent or prohibit the dissemination of materials advertising such offences



**Participation**

- the **private sector**, in particular the ICT sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation.

- the **media** to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press.

- the **financing**, including, where appropriate, by the creation of funds, of the projects and programmes carried out by civil society aiming at preventing and protecting children from sexual exploitation and sexual abuse

### 5.1.2 Specialised authorities and co-ordinating bodies<sup>93</sup>



**Legislative or other  
measure to:**

- ensure the co-ordination at national or local level between the different agencies in charge of the protection, prevention and combating sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities.

- establish:

a) independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they are provided with specific resources and responsibilities;

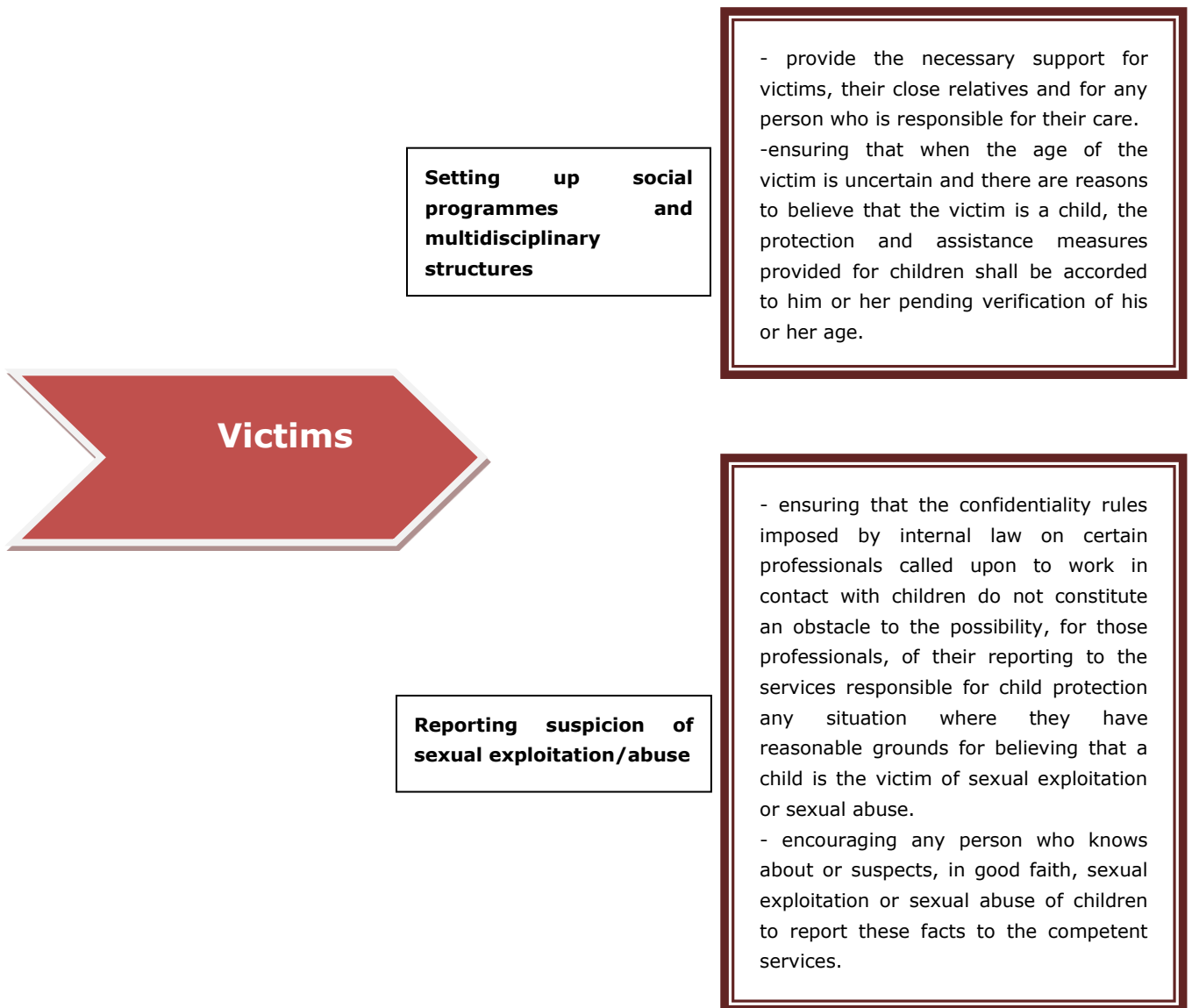
b) mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection.

- encourage co-operation between the competent state authorities, civil society and the private sector, in order to better prevent and combat sexual exploitation and sexual abuse of children.

<sup>93</sup> In addition to the designation of independent authorities, at the European level, the Parliamentary Assembly of the Council of Europe suggested in 2000 that the appointment of a European Ombudsman for Children would be a powerful resource in promoting awareness about the situation of many children and in co-ordinating policies to better enhance their lives and life experiences (Recommendation N° 1460 (2000) of the Parliamentary Assembly:  
<http://assembly.coe.int/Mainf.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FAdoptedText%2Fta00%2FEREC1460.htm>

### 5.1.3 Protective measures and assistance to victims

The ultimate aim in the fight against sexual abuse and sexual exploitation should be to prevent these actions from taking place. However, it is also essential to ensure that children who have already been victims of such offences receive the best possible support, protection and assistance by:





## Victims

### Helplines

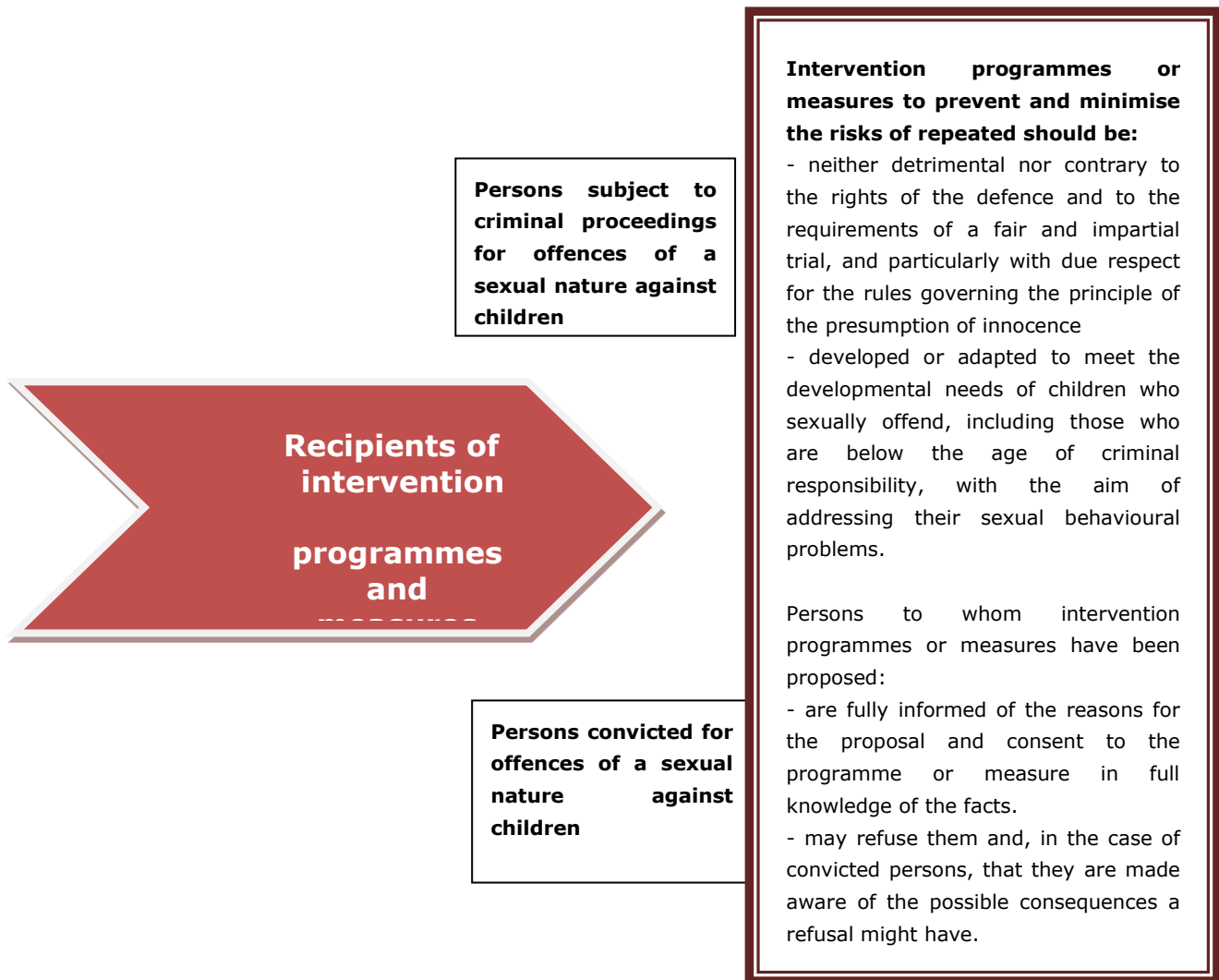
- legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity

### Assistance to victims

- assist victims, in the short and long term, in their physical and psycho-social recovery taking due account of the child's views, needs and concerns.
- co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
- when the parents or persons who have care of the child are involved in sexual exploitation or sexual abuse, the intervention procedures shall include the possibility of removing the alleged perpetrator and removing the victim from his or her family environment in accordance with the best interests of the child.
- ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.

#### 5.1.4 Intervention programmes or measures

In order to prevent and minimise the risks of repeated offences of a sexual nature against children effective intervention programmes or measures destined for persons subject to criminal proceedings for any of the offences shall be accessible at any time during the proceedings, inside and outside prison, according to the conditions laid down in internal law. The assessment of the effectiveness of the programmes and measures implemented should be considered.



### 5.1.5 Substantive law

See body of the study.

### 5.1.6 Investigation, prosecution and procedural law

The legislative or other measures taken by States need to ensure that investigation of offences of a sexual nature against children and criminal proceedings are carried out in the best interests and respecting the rights of the child. The approach towards victims will consider that the process must not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance.

The legislative and other measures should:

- ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay.
- ensure that the procedural law measures are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>94</sup>.
- ensure an effective investigation and prosecution of such offences, allowing for the possibility of covert operations and enable units or investigative services to identify the victims.
- protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings.
- ensure that victims have access from their first contact with the competent authorities to information on relevant judicial and administrative proceedings.
- ensure that victims have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings.
- provide for the possibility for the judicial authorities to appoint a special representative for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim.
- provide the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings.
- ensure that the information given to victims is provided in a manner adapted to their age and maturity and in a language that they can understand.

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<sup>94</sup> ECHR: Article 6 – Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the following minimum rights:

to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

to have adequate time and facilities for the preparation of his defence;

to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

- ensure that investigations or prosecution of offences of a sexual nature against children shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements.
- ensure that the statute of limitation for initiating proceedings with regard such offences shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.
- ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources.
- ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.
- ensure that interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities in premises designed or adapted for this purpose by professionals trained for this purpose in adequate conditions.
- training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.
- ensure that the judge may order the hearing to take place without the presence of the public and the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.
- collect and store, in accordance with the relevant provisions on the protection of personal data and other appropriate rules and guarantees as prescribed by domestic law, data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences of a sexual nature against children.

The above-mentioned measures need to be considered in connection with the procedural law provisions of the Budapest Convention, which provide important tools for law enforcement to investigate cybercrime and any crime committed via computer systems, including offences related to sexual violence against children.

### **5.1.7 International cooperation**

Criminalising child pornography and sexual abuse in any form is of utmost importance. An investigation cannot even start without a legal basis and States that fail to adopt legislation are safe haven for offenders to commit these crimes. The measures to criminalise specific conduct of a sexual nature against children alone are not sufficient. In order to investigate and prosecute such offences international cooperation is essential.

Chapter IX of the Lanzarote Convention sets out the provisions on international cooperation between Parties, which are not confined to judicial cooperation in criminal matters, considering that the Council of Europe already has a substantial body of standard-setting instruments. Therefore, Chapter IX includes only provisions that add something over and above the existing conventions<sup>95</sup>.

Article 38 sets out the general principles that should govern international cooperation by obliging the Parties to cooperate widely with one another and in particular to reduce, as far as possible, the obstacles to the rapid circulation of information and evidence. It makes clear that the obligation to cooperate is general in scope: it covers preventing and combating sexual exploitation and sexual abuse of children, protecting and providing assistance to victims and investigations or procedures

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<sup>95</sup> Lanzarote Convention, Exp. Rep. 251-253



concerning criminal offences established in accordance with the Convention. The Convention authorises a Party that makes mutual assistance in criminal matters or extradition conditional on the existence of a treaty to consider the Convention as the legal basis for judicial cooperation with a Party with which it has not concluded such a treaty<sup>96</sup>.

The international cooperation provisions of the Lanzarote Convention may be applied in connection with the relevant provisions of Chapter 3 of the Budapest Convention when investigating offences committed via computer systems or securing electronic evidence.

One of the aims of the Budapest Convention is to set up a fast and effective regime of international cooperation. Chapter 3 of the Convention provides the legal basis for international law enforcement and judicial cooperation with other Parties and obliges them to provide extensive cooperation to each other and eliminate the obstacles for a rapid flow of information and evidence internationally. Cooperation will cover all criminal offences related to computer systems and data, including offences related to sexual exploitation and sexual abuse against children committed through the computer systems as well as the collection of evidence in electronic form of a criminal offence, which means that either where the crime is committed by use of a computer system, or an ordinary crime, which was not committed by use of a computer system but involves electronic evidence, the terms of Chapter III are applicable.

Cooperation will be provided in accordance with the provisions of the Chapter III and applying the relevant international agreements on international cooperation in criminal matters, arrangements agreed to on the basis of uniform or reciprocal legislation, and domestic laws.

To enhance cooperation there are many relevant initiatives. For example, information management and international collaboration have been facilitated by the deployment of the Child Exploitation Tracking System (CETS)<sup>97</sup>, which already has played a role in several investigations across geographic boundaries, creating links that have helped identify online offenders and lead to the rescue of children in States around the world<sup>98</sup>.

Full implementation of principles and obligations established by the Budapest Convention and the Lanzarote Convention will enable States to cooperate with each other within a common legal framework to the widest extent possible, for the purpose of:

- preventing and combating sexual exploitation and sexual abuse of children;
- protecting and providing assistance to victims;
- investigations or proceedings concerning these offences.

#### **5.1.8 Monitoring implementation of the Lanzarote Convention**

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse provides for the establishment of a Committee of the Parties to monitor its implementation. The systematic monitoring of the Convention is one of its major strengths. Chapter X of the Lanzarote

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<sup>96</sup> Lanzarote Convention, Exp. Rep. 255, 256, 260

<sup>97</sup> CETS is a unique software tool developed by Canadian police, international law enforcement officials, and Microsoft to help battle child exploitation online. This tool helps law enforcement officials collaborate and share information with other police services based on legal agreements in place. CETS was created to increase the effectiveness of investigators and teams by providing them with software to store, search, share, and analyze large volumes of evidence and match cases across police agencies.

<sup>98</sup> Two men were arrested in early 2005 for their involvement in the sexual abuse of children of 18 months. Close cooperation between the Interpol General Secretariat and the police and National Central Bureaux in Spain and Canada uncovered a network of child sexual abusers operating throughout Spain. The case started in February 2005, when a Canadian police officer discovered images of child abuse and liaised with Interpol for further analysis. A Spanish officer working at the Interpol General Secretariat was able to confirm the location of the crime as Spain, based on the computer keyboard visible in the video. Analysis of the images yielded other clues, resulting in the arrest of the abusers and the identification of seven victims aged 2–4 years. The chief abuser worked as a babysitter, which provided him with easy access to children.

Convention contains provisions which aim at ensuring the effective implementation of the Convention by the Parties.

The monitoring system foreseen by the Convention is based essentially on a body, the Committee of the Parties ("the Lanzarote Committee") composed of representatives of the Parties to the Convention, including representatives of Parties that may accede to the Convention<sup>99</sup>.

During the 2nd meeting held in Strasbourg on 29-30 March 2012 the Lanzarote Committee decided to start the monitoring of the Lanzarote Convention "by taking stock of existing child protection legislation, measures and institutional set-up in the field of sexual abuse and sexual exploitation of children at the national, regional and local levels". The first monitoring theme would be "sexual abuse of children in the circle of trust"<sup>100</sup>. The Lanzarote Committee intends to work together with the Cybercrime Convention Committee (T-CY)<sup>101</sup> with regard to the theme "sexual abuse of children in the virtual world".

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<sup>99</sup> More information at: [http://www.coe.int/t/dghl/standardsetting/children/Committee\\_en.asp](http://www.coe.int/t/dghl/standardsetting/children/Committee_en.asp)

<sup>100</sup> [http://www.coe.int/t/dghl/standardsetting/children/Meetings\\_of\\_Committee\\_en.asp](http://www.coe.int/t/dghl/standardsetting/children/Meetings_of_Committee_en.asp)

<sup>101</sup> More information about T-CY at: [www.coe.int/tcy](http://www.coe.int/tcy)

## 5.2 Appendix 2: Examples of initiatives against the sexual exploitation and abuse of children

The main international existing instrument in the field of protection of children's rights developed by the **United Nations** is the UN Convention on the Rights of the Child (1989) . Regarding sexual exploitation of children, the universal treaty specifically addressing this topic is the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) . The Protocol criminalises certain acts in relation to the sale of children, child prostitution and child pornography, including ancillary liability (i.e. attempt, complicity and participation) . The Protocol provides for the right of victims to seek compensation, encourages the strengthening of international cooperation and the adoption of extra-territorial legislation.

The Council of the European Union adopted, in 2003, the Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA) , which laid down a set of common minimum rules for EU Member States. It established common provisions on criminalisation, sanctions, aggravating circumstances, assistance to victims and jurisdiction stating that extra-territorial jurisdiction shall be put in place by virtue of the principle of "aut dedere aut judicare", and the victims shall be considered particularly vulnerable in the criminal proceedings. In 2001 the Council of the European Union adopted a Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA) where special protective measures for victims of crimes are set up. Furthermore, the European Union adopted in 2011 the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

On 29 March 2010 the European Commission submitted a proposal for a new Directive on combating sexual abuse, sexual exploitation of children and child pornography (to replace the 2004 Framework Decision) on which the European Parliament and the Council reached an agreement in June 2011. In this proposal the main cause of this phenomenon identified is vulnerability resulting from a variety of factors, such as:

- Insufficient response by law enforcement mechanisms.
- Certain forms of offences transcend national borders.
- Victims are reluctant to report abuse.
- Variations in national criminal law and procedure.
- Convicted offenders may continue to be dangerous after serving their sentences.
- Developments in information technology make easier production and distribution of child sexual abuse images.
- Ease of travel and income differences fuel so-called child sex tourism.

It States that the Council of Europe Convention CETS No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse arguably constitutes the highest international standard for protecting children against sexual abuse and exploitation.

The Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA<sup>102</sup> is intended to harmonise around twenty relevant criminal offences, at the same time setting high level of penalties.

It is also stated in the proposal that *"by incorporating provisions from the Lanzarote Convention into EU law will facilitate faster adoption of national measures compared to national procedures for*

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<sup>102</sup> Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

*ratification, and ensure better monitoring of implementation*<sup>103</sup>. Furthermore, this will contribute to speeding up the ratification process of the Lanzarote Convention by the EU Member States.

The European Commission proposed to establish a European Cybercrime Centre to help protect European citizens and businesses against cyber-threats. The centre will be established within the European Police Office, Europol in The Hague (The Netherlands) . The centre will be the European focal point in fighting cybercrime and will focus on illegal online activities carried out by organised crime groups, particularly those generating large criminal profits, such as online fraud involving credit cards and bank credentials. It will also focus on cybercrimes which cause serious harm to their victims, such as online child sexual exploitation and cyber-attacks affecting critical infrastructure and information systems in the Union.

The Council of the European Union adopted in October 2009 conclusions on **the European Financial Coalition** and national financial coalitions against child pornography on the internet (11456/2/09) . The conclusions call on member states:

- to join the European financial coalition launched in March 2009;
- to establish national financial coalitions; and
- to exchange best practices in the field.

The European Financial Coalition (EFC) <sup>104</sup> brings together organisations from across all key sectors to track, disrupt and look to ultimately confiscate commercial gain made by those who deal in the distribution of child abuse images. The value of this initiative consist in bringing together major financial, internet and technology corporations in a joint effort with international policing agencies, the European Commission and specialist child protection NGO's to stop making money from the distribution of child sexual abuse images.

**The Virtual Global Task Force (VGT)** <sup>105</sup> is aimed at combating child online sexual abuse worldwide. It currently comprises nine dedicated law enforcement agencies (Australian Federal Police, Child Exploitation and Online Protection Centre of the United Kingdom, Europol, INTERPOL, Italian Postal and Communication Police Service, National Child Exploitation Co-ordination Centre, as part of the Royal Canadian Mounted Police, New Zealand Police, Ministry of Interior for the United Arab Emirates, U.S. Immigration and Customs Enforcement) as well as a number of private sector partners. Since its establishment in 2003, VGT co-operation has helped to rescue hundreds of children from sexual abuse, to conduct numerous targeted law enforcement operations and to hold to account hundreds of child sex offenders worldwide.

Utilising the Council of Europe existing standards the VGT has been able to submit a Resolution in the 80th INTERPOL General Assembly in Hanoi, Vietnam in November 2011. Within the effort to assist and guide States wishing to enhance their child protection legislation, the VGT recommends use of existing frameworks, in particular the standards developed by the Council of Europe such as the Budapest Convention on Cybercrime (CETS 185) and the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201) . These Conventions provide a reference point and framework for States that are developing or enhancing existing legislation, not only from the point of view of prevention and prosecution, but also victim's protection. On 1 November 2011, the INTERPOL General Assembly adopted the "Combating Online Sexual Exploitation of Children through a Legislative Global Engagement Strategy" resolution.

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<sup>103</sup> Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA  
<http://eur-lex.europa.eu/Notice.do?val=510356:cs&lang=en&list=525713:cs,510356:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=>

<sup>104</sup> <http://www.ceop.police.uk/efc/>

<sup>105</sup> For more information see: <http://www.virtualglobaltaskforce.com/>

The Council of Europe formed a strategic partnership with the VGT by signing in 2011 a declaration of intent to cooperate with each other in creating awareness of these standards and in promoting their implementation worldwide.

Model Legislation & Global Review undertaken in 2008 by **International Centre for Missing & Exploited Children (ICMEC)** remains very useful. ICMEC's groundbreaking report, *Child Pornography: Model Legislation & Global Review*, was first released in April 2006. In addition to the legislative review, the report offers a "menu of concepts" to be considered when drafting anti-child pornography legislation<sup>106</sup>.

**The OECD Working Party on Information Security and Privacy (WPISP)** started a project on the protection of children online in 2009. Objectives include enhancing mutual understanding of existing and planned policy approaches for the protection of children online and exploring how international cooperation could enhance the protection of minors on the Internet. This work stems from the 2008 Seoul Ministerial Declaration on the Future of the Internet Economy.

A study (OECD (2011) , "The Protection of Children Online: Risks Faced by Children Online and Policies to Protect Them", OECD Digital Economy Papers, No. 179, OECD Publishing<sup>107</sup>) has been carried out by OECD that focused on risks faced by children online and on policies to protect them, including regional and national policy frameworks, technical, legal, awareness raising and educational measures, and international cooperation. One section dealt with issues related to the measurement of the size of the problem and of the efficiency of the policies.

**ECPAT International** (ECPAT) <sup>108</sup> started 20 years ago as a campaign against child sex tourism and has grown into a network that now represents over 82 local organisations from 75 States. The objectives are to fight against child prostitution, child trafficking for sexual purposes and child pornography.

ECPAT International and ECPAT country groups encourage the world community to ensure that children everywhere enjoy their fundamental rights, free from all forms of Commercial Sexual Exploitation of Children. Through collaborations, ECPAT pledges governments to adopt measures to strengthen child protection policies in compliance with their international obligations. This includes advocating for policy changes to address gaps in legislation, formulation of national plans of action, as well as effective bilateral and multi-lateral agreements.

ECPAT:

- implements capacity-building initiatives for law enforcement, caregivers, policy makers and legislators, disseminates training manuals widely, develops and provides research methodologies to ensure that programming initiatives and campaigns to protect children are evidence-based and appropriate.
- leads the global discussion on commercial sexual exploitation of children among UN agencies and International NGOs having Special Consultative Status with the Economic and Social Council of the United Nations.
- played a leading role in the World Congress III (Rio de Janeiro) , where 4,300 participants, representing all key stakeholders, committed to a "Call for Action" to end commercial sexual exploitation of children.
- is at the forefront of innovative advocacy practices at global and regional levels and, for example, at the Internet Governance Forum ECPAT leads the dynamic coalition on Child Online Safety (a coalition of 30 child rights organisations) and an active member of the Child Online Protection (COP) initiative and collaborate with international organisations, such as the Council of Europe and others.

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<sup>106</sup> For more information see:

[http://www.icmec.org/missingkids/servlet/PageServlet?LanguageCountry=en\\_X1&PageId=4346](http://www.icmec.org/missingkids/servlet/PageServlet?LanguageCountry=en_X1&PageId=4346)

<sup>107</sup> Available at: <http://dx.doi.org/10.1787/5kgcjf71pl28-en>

<sup>108</sup> <http://www.ecpat.net/EI/index.asp>

- builds local capacity for NGO groups and grassroots coalitions to fight against commercial sexual exploitation of children, and provide training resources and advocacy support.
- is actively promoting international instruments such as the Council of Europe conventions and is conducting research and publishing country reports that detail the progress and challenges in meeting the international Call to Action set out at the Stockholm Agenda (1996) and the Rio Declaration (2008) .
- works closely with law enforcement in terms of sharing intelligence, working on referrals and advising law enforcement on child protection issues and also training with forensic tools and applications.
- is part of the virtual global taskforce (VGT) and collaborates with law enforcement, global agencies and private sector.

Among the values and principles promoted by **the Council of Europe**<sup>109</sup> the well-being and best interests of children are fundamental values shared by all member States. The Council of Europe work is addressing also threats such as cybercrime and the sexual exploitation and abuse of children through ICTs by setting common standards and policies, by supporting educational, preventive and other measures to empower children, by promoting criminal justice action and by strengthening multi-stakeholder and international cooperation. The standards related to the protection of children and promotion of their rights developed by the Council of Europe<sup>110</sup> include numerous treaties and recommendations.

- [Convention for the Protection of Human Rights and Fundamental Freedoms](#) (CETS 005)
- [European Social Charter](#) (CETS 035)
- [European Convention on the Adoption of Children](#) (CETS 202 as revised)
- [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CETS 126)
- [European Convention on the Exercise of Children's Rights](#) (CETS 160)
- [Convention on Cybercrime](#) (CETS 185)
- [Council of Europe Convention on Action against Trafficking in Human Beings](#) (CETS 197)
- [Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#) (CETS 201)
- [Recommendation Rec\(2006\)](#)<sup>111</sup> of the Committee of Ministers to member States on empowering children in the new information and communications environment
- [Declaration on protecting the dignity, security and privacy of children on the Internet](#)<sup>112</sup>, adopted by the Committee of Ministers on 20 February 2008
- [Recommendation CM/Rec\(2009\) 5](#) of the Committee of Ministers to member States on measures to protect children against harmful content and behaviour and to promote their active

<sup>109</sup> The Council of Europe, established in 1949, is a regional organisation with currently 47 member States and is aimed at promoting human rights, democracy and the rule of law. Crime risks to undermine these common values and therefore the CoE has been developing common responses for more than sixty years. It has been pursuing an approach combining the setting of standards with the monitoring of compliance and technical assistance.

<sup>110</sup> See also the contribution of the Secretary General of the Council of Europe to the UN Crime Congress available at: [http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/SG%20Inf%20\\_2010\\_4%20-%20UN%20Crime%20congress\\_160210.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/SG%20Inf%20_2010_4%20-%20UN%20Crime%20congress_160210.pdf)

<sup>111</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2006\)\\_12&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2006)_12&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

<sup>112</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=Decl\(20.02.2008\)&Language=lanEnglish&Ver=0001&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Decl(20.02.2008)&Language=lanEnglish&Ver=0001&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

participation in the new information and communications environment, adopted on 8 July 2009<sup>113</sup>.

- Recommendation CM/Rec(2009) 10 of the Committee of Ministers to member States on integrated national strategies for the protection of children from violence<sup>114</sup>
- Parliamentary Assembly Recommendation 1882 (2009) on the promotion of Internet and online media services appropriate for minors.<sup>115</sup>

Among the preventive measures related to the new media are the Council of Europe's online Internet safety game for children ("Through the Wild Web Woods")<sup>116</sup> and an Internet Literacy Handbook.<sup>117</sup> Available in 24 languages, the game has been played by over 2.5 million children and adults across Europe. The game is accompanied by a Teachers' Guide offering model lessons on issues, such as online identity, addiction, privacy, and children's rights in real and virtual worlds.

On 29 and 30 November 2010, the programme "Building a Europe for and with children" launched in Rome a campaign to stop sexual violence against children<sup>118</sup>. The main goals of the ONE IN FIVE campaign are to:

- Achieve further signature, ratification and implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- Equip children, their families/carers and societies at large with knowledge and tools to prevent and report sexual violence against children, thereby raising awareness of its extent.

Through the global Programme on Cybercrime, as well as two joint European Union and Council of Europe regional projects (CyberCrime@IPA and CyberCrime@EAP)<sup>119</sup> the Council of Europe supports States worldwide in their efforts against cybercrime. The programme is aimed at ensuring the implementation of the Convention on Cybercrime working on different components that range from the strengthening of cybercrime legislation to law enforcement-service provider cooperation, financial investigations, data protection and international cooperation. One component is focusing on the protection of children against sexual exploitation and abuse in line with the two Council of Europe instruments (CETS 185 on cybercrime and CETS 201 on the protection of children) .

<sup>113</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2009\)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2009)5&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

<sup>114</sup> <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1407961&SecMode=1&DocId=1497848&Usage=2>

<sup>115</sup> <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/EREC1882.htm>

<sup>116</sup> [http://www.wildwebwoods.org/popup\\_langSelection.php](http://www.wildwebwoods.org/popup_langSelection.php)

<sup>117</sup> [http://www.coe.int/t/transversalprojects/children/publications/Internetliteracy\\_en.asp](http://www.coe.int/t/transversalprojects/children/publications/Internetliteracy_en.asp)

<sup>118</sup> For more information about the campaign see [www.coe.int/oneinfive](http://www.coe.int/oneinfive)

<sup>119</sup> For more information about these projects see [www.coe.int/cybercrime](http://www.coe.int/cybercrime)

## 5.3 Appendix 3: Questionnaire on substantive law provisions

### Global study on protecting children against sexual exploitation and sexual abuse

#### Corresponding to Article 9 of the Convention on Cybercrime and of Articles 18-24 of the Convention on the Sexual Exploitation and Sexual Abuse of Children

##### Background

Fostering children's trust and confidence in the Internet together with the protection of their dignity, security and privacy is a priority for the Council of Europe. The Internet is a space of freedom to express and communicate, to search for information and to learn, to work and to play. Access to the Internet thus offers great potential for children to exercise and enjoy their rights and values through the Internet.

At the same time, threats such as cybercrime and the sexual exploitation and abuse of children through information and communication technologies pose particular challenges. The Council of Europe is addressing these by setting common standards and policies, by supporting educational, preventive and other measures to empower children, by promoting criminal justice action and by strengthening multi-stakeholder and international cooperation.

Within the context of the Project on Cybercrime, the Council of Europe is undertaking a global study on the measures taken by States to criminalise conduct related to the sexual exploitation and abuse of children, including child pornography. The standards of reference are relevant provisions of the Convention on Cybercrime – CETS 185 (article 9 on child pornography) and the substantive law provisions of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201) . Extracts from these treaties are attached as an appendix.

The study will allow for the sharing of good practices, encourage implementation of these treaties and facilitate technical cooperation activities and support to States with the aim of protecting children against sexual exploitation and sexual abuse in the online environment.

##### Questions

Please reply by marking or filling the boxes under each of the following questions. Please attach extracts or relevant articles of your national legislation as an appendix.

1. Which laws regulate offences on sexual exploitation and sexual abuse of children including child pornography in your country?

Special law/s	
Criminal code	
Others	
Please specify	



2. In addition to general provisions, does your country have specific provisions on protecting children against sexual exploitation and sexual abuse?

Yes	
No	
If yes, please specify	

3. In addition to general provisions, does your country have specific provisions on protecting children against sexual exploitation and sexual abuse on the Internet?

Yes	
No	
If yes, please specify	

4. Does your country plan to amend the legislation in this field?

Yes	
No	
If yes, please provide information on reforms planned or underway	

5. Is "sexual abuse" a criminal offence in your country, including the following conduct:

	Yes/ No	If yes, please specify the relevant articles in your legislation
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: 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 types of conduct		
Are attempt, aiding or abetting of such conduct criminal		

offences in your country?		
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Reference: Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 18

6. Is "child pornography" a criminal offence in your country, including the following conduct:

	Yes/ No	If yes, please specify the relevant articles in your legislation
producing child pornography		
producing child pornography for the purpose of its distribution through a computer system		
offering child pornography		
offering child pornography through a computer system		
making available child pornography		
making available child pornography through a computer system		
distributing child pornography		
distributing child pornography through a computer system		
transmitting child pornography		
transmitting child pornography through a computer system		
procuring child pornography for oneself or for another person		
procuring child pornography through a computer system for oneself or for another person		
possessing child pornography		
possessing child pornography in a computer system or on a computer-data storage medium		
knowingly obtaining access, through information and communication technologies, to child pornography		
Other		
Are attempt, aiding or abetting of such conduct criminal offences in your country?		

Reference:

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 20

Council of Europe Convention on cybercrime, Article 9

7. Is "the participation of a child in pornographic performances" a criminal offence in your country, including the following conduct:

	Yes/ No	If yes, please specify the relevant articles in your legislation
recruiting a child into participating in pornographic performances or causing a child to participate in such performances		
coercing a child into participating in pornographic performances		
profiting from or otherwise exploiting a child for such purposes		
knowingly attending pornographic performances involving the participation of children		
Other		
Are attempt, aiding or abetting of such conduct criminal offences in your country?		

Reference:

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Article 21)

8. Is "child prostitution" a criminal offence in your country, including the following conduct:

	Yes/ No	If yes, please specify the relevant articles in your legislation
recruiting a child into prostitution or causing a child to participate in prostitution		
coercing a child into prostitution		
profiting from or otherwise exploiting a child for such purposes		
having recourse to child prostitution		
Are attempt, aiding or abetting of such conduct criminal offences in your country?		

Reference:

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 19

9. Is "the corruption of children" a criminal offence in your country, including the following conduct:

	Yes/ No	If yes, please specify the relevant articles in your legislation
the intentional causing, for sexual purposes, of a child who has not reached the age below which it is prohibited to engage in sexual activities with a child, to witness sexual abuse or sexual activities, even without having to participate		

Are attempt, aiding or abetting of such conduct criminal offences in your country?		
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Reference:

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 22

10. Is "solicitation of children for sexual purposes" (grooming) a criminal offence in your country, including the following conduct:

	Yes/ No	If yes, please specify the relevant articles in your legislation
the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purpose of committing any of the following offences and where this proposal has been followed by material acts leading to such a meeting:		
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;		
producing child pornography		
Other		
Are attempt, aiding or abetting of such conduct criminal offences in your country?		

Reference:

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Article 23

11. Does the term "child pornography" include the following:

	Yes/ No	If yes, please specify the relevant articles in your legislation
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		
Other elements		

12. What is the age limit for the term minor/child etc. with regard to child pornography?

	Yes/ No	Please specify the relevant articles in your legislation
18 years		
16 years		
Other (please specify		

13. Do specific provisions on the obligations of Internet Service Providers with regard to child pornography exist in your country?

	Yes/ No	If yes, please specify the relevant articles in your legislation, regulation or agreement
yes, by voluntary commitment		
yes, by contract		
yes, by legal regulation		
No		

Important: Please attach the relevant articles of your legislation to your replies (preferably in English)

## **6 Appendix (II) : Domestic legislation - extracts<sup>120</sup>**

### **6.1 Albania**

#### Extract:

**Law no. 7895, dated 27.01.1995 "the Criminal Code of the Republic of Albania", as amended**

#### **SECTION VI - SEXUAL CRIMES**

##### **Article 100 - Sexual or homosexual relations/intercourse with minors/children**

Having sexual or homosexual relations with children that are less than 14 years old, or with a female child, who is not sexually matured, is punished by imprisonment from seven to fifteen years.

When the sexual or homosexual intercourse was committed with accomplices, more than once or by violence, or when the child victim had serious health consequences; this is punished by imprisonment from fifteen to twenty five years.

When that act brought as a consequence the minor's death or suicide, this is punished by imprisonment not less than twenty years.

##### **Article 101 - Sexual or homosexual intercourse by violence with a minor who is fourteen-eighteen years old**

Having sexual or homosexual relations by violence with children that are fourteen to eighteen years old, or with a female child, who is sexually matured, is punished by imprisonment from five to fifteen years.

When the sexual or homosexual intercourse by violence was done with accomplices, more than once, or when the child victim had serious health consequences; this is punishable by imprisonment from ten to twenty years.

When that act brought as a consequence the minor's death or suicide, this is sentenced by imprisonment not less than twenty years.

##### **Article 103 - Sexual or homosexual intercourse with persons who are unable to defend themselves**

Having sexual or homosexual intercourse, by taking advantage of physical or mental inability of the person, or, from placing the person under unconscious condition, is punished by imprisonment from five to ten years.

When the sexual or homosexual intercourse is done with accomplices, or more than once, or when the victim had serious health consequences; this is sentenced by imprisonment from seven to fifteen years.

When that act resulted in the person's death or suicide, this is punishable by imprisonment from ten to twenty years

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<sup>120</sup> Disclaimer: Extracts have been provided by countries or taken from public sources. In some cases, the translation into English was made for the purpose of this analysis or for general information and thus it is not official.

**Article 105 - Sexual or homosexual relations by abuse of power job/position misappropriation**

Sexual or homosexual relations by misappropriating the relations of dependence and job position, is punishable by imprisonment up to three years.

**Article 106 - Sexual or homosexual intercourse with persons that are related (of the same blood) or persons under custody**

Having sexual or homosexual intercourse between parents and children, brother and sister, between brothers, sisters, between persons that are related in a straight line or with persons that are under custody or adoption, is sentenced by imprisonment up to seven years

**Article 108 - Serious immoral acts**

Serious immoral acts conducted with minors under the age of fourteen are punishable by up to five years of imprisonment.

**SECTION VIII - CRIMINAL ACTS AGAINST MORALITY AND DIGNITY**

**Article 113 - Prostitution**

Prostitution is punishable by a fine or up to three years of imprisonment.

**Article 114 - Exploitation of prostitution**

Inducing prostitution, mediating or gaining from it is punishable by a fine or up to five years of imprisonment.

**Article 114/a - Exploitation of prostitution with aggravated circumstances**

When exploitation of prostitution is committed:

1. with minors;
2. against some persons;
3. with persons within close consanguinity, in-laws or custodial relations or by taking advantage of an official rapport;
4. with deception, coercion, violence or by taking advantage of the physical or mental incapability of the person;
5. against a person that has been forced or coerced to exercise prostitution out of the territory of the Republic of Albania;
6. It is committed with accomplices or more than once or by persons who have state and public functions/duties; is punished from seven up to fifteen years of imprisonment.

**Article 117 - Pornography**

Producing, delivery, advertising, import, selling and publication of pornographic materials in minors' premises constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

Making use of children for producing pornographic materials, and their distribution or publication through internet or in other ways is punishable by imprisonment from one up to five years and by fine from one million up to five million Lek.

## **SECTION IX - CRIMINAL ACTS AGAINST CHILDREN, MARRIAGE AND FAMILY**

### **Article 124/b - Maltreatment of minors**

Physical or psychological maltreatment of a minor by the person obliged to take care of him is punishable by imprisonment from three months up to two years.

Coercing the minor to work, to obtain income, to beg or to perform actions that damage his development are punishable by imprisonment up to four years and by fine from 50 000 up to one million Lek.

When severe health damage or death of the minor has resulted, it is punishable of ten to twenty years of imprisonment.

### **Article 128/b - Trafficking of Minors**

The recruitment, sale, transport, transfer, hiding or reception of minors with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of from seven to fifteen years and with a fine of from four million to six million Lek.

The organization, management and financing of the trafficking of minors is punished with imprisonment of from ten to twenty years and with a fine of from six to eight million Lek.

When this crime is committed in collaboration or more than once, or is accompanied by maltreatment and making (coercing) the victim to commit various actions through physical or psychological force, or brings serious consequences to health, it is punished with imprisonment of no less than fifteen years and with a fine of from six to eight million Lek.

When the crime has brought about the death of the victim as a consequence it is punished with imprisonment of no less than twenty years or with life imprisonment, as well as with a fine of from eight to ten million Lek.

When the criminal crime is committed through the utilization of a state function or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.

### **Article 24 of law no. 10347/2010 provides that:**

The child is protected from trafficking, induce and any other form of sexual exploitation and ill-treatment, while being guaranteed protection from the following:

- a) unlawful sexual activity;
- b) prostitution or other unlawful sexual practices;
- c) the appearance or involvement in pornographic materials;
- ç) the sale of children



## 6.2 Armenia

Extract:

### **Article 132 - Human trafficking or exploitation**

1. Human trafficking is recruitment, transportation, transfer, concealment or receipt, as well as the exploitation of man or put/keep human into condition of exploitation with exploitation purposes, by means of violence not dangerous to life or health, or by threat to use such violence, or by other forms of coercion, abduction, deception or trust abuse, by using power or position of vulnerability, or by giving or taking or promising material benefit with purpose to have agreement with his/her supervisor.

is punished with imprisonment from five to eight years with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

2. The same act committed:

- 1) against 2 or more persons;
- 2) by a group of persons with prior agreement;
- 3) using official position(post);
- 4) with violence dangerous for life or health, or threat thereof;
- 5) against obviously pregnant woman;
- 6) by organization of transportation of person with crossing border of Republic of Armenia.

is punished with imprisonment from 7 to 12 years with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

3. Actions envisaged in parts 1 or 2 of this Article, which:

- 1) were done by an organized group;
- 2) caused the death of the aggrieved by negligence or other grave consequences.

is punished with imprisonment from 10 to 14 years with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

4. In this article, also in article 132<sup>2</sup> of this code as exploitation are considered prostitute exploitation or other types of sexual exploitation, forced labor or services, enslavement or putting into position similar to enslavement, sale or purchase, taking parts of the body or tissues of other man.

5. Victim of crimes envisaged by this article, also by article 132<sup>2</sup> of this code are set free from responsibility for committing not grave or middle grave crime, into which he/she was involved during his/her trafficking or exploitation and committed that action under force.

### **Article 132<sup>2</sup>: Trafficking or exploitation of child or mentally ill person, who is not realizing type or meaning of his actions or not able to control them.**

"Exploitation or putting in or maintaining in exploited state, as well as recruitment, transportation, transfer, harbouring, receiving of a child or a mentally ill person, who is not realizing type or meaning of his actions or not able to control them for the purpose of exploitation.

Punished with imprisonment from 7 to 10 years with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

2. The same act committed:

- 1) against 2 or more persons;
- 2) by a group of persons with prior agreement;
- 3) using official position(post);
- 4) with violence, or threat thereof;
- 5) with abduction;
- 6) against obviously pregnant woman;

7) by organization of transportation of person with crossing border of Republic of Armenia. punished with imprisonment from 10 to 12 years with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

3. Actions envisaged in parts 1 or 2 of this Article, which:

1) were done by an organized group;

2) caused the death of the aggrieved by negligence or other grave consequences.

Punished with imprisonment from 12 to 15 years with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

#### **Article 138 - Rape**

1. Rape - sexual intercourse of a man with a woman against her will, using violence against her or some other person, or with threat thereof, or taking advantage of the woman's helpless situation is punished with imprisonment from 3 to 6 years.

2. The rape which:

1) was done by a group of persons;

2) was done against the aggrieved or other person with particular cruelty;

3) was done against a minor,

4) caused the death of the aggrieved or heavy consequences, by negligence;

is punished with imprisonment from 4 to 10 years.

3. The actions mentioned in part 1 or 2 of this Article, against an aggrieved under 14 years of age is punished with an imprisonment from 8 to 15 years.

#### **Article 139 - Violent sexual actions**

1. Homosexual, lesbian or other sexual actions against the aggrieved, by using force against him/her or other persons, or threat of using force, or by taking advantage of the aggrieved person's helplessness is punished with an imprisonment from 3 to 6 years.

2. The same actions:

1) done by a group of persons;

2) done against the aggrieved or other person with particular cruelty;

3) done against a minor,

4) caused the death of the aggrieved or heavy consequences, by negligence;

is punished with an imprisonment from 4 to 10 years.

3. The actions mentioned in part 1 or 2 of this Article done against an aggrieved under 14 years of age is punished with an imprisonment from 8 to 15 years.

#### **Article 141 - Sexual acts with a person under 16**

Sexual intercourse or other sexual acts with a person obviously under 16, by a person who reached 18 years of age, in the absence of elements of crime envisaged in Articles 138, 139 or 140 of this Code is punished with a fine in the amount of 100 to 250 minimum salaries, or with imprisonment for up to 2 years.

#### **Article 142 - Lecherous acts**

1. Lecherous acts with a person obviously under 16, in the absence of elements of crime envisaged in Article 140 or 141 is punished with a fine in the amount of 200 to 400 minimum salaries, or with imprisonment for up to 2 years.

2. The acts envisaged in part 1 of this Article committed with violence or threat thereof is punished with imprisonment for up to 3 years.

#### **Article 166 - Involving a child in committing actions related to prostitution or creation of pornographic materials or items.**

1. Involving a child in committing acts related to prostitution or creation of pornographic materials or items by a person older than 18 years age, in the absence of elements of crime envisaged in Article 132<sup>2</sup> of this Code.

Punished with a fine in the amount of 200 to 400 minimum salaries, or with imprisonment for up to 2 years.

2. The same action which was committed by a parent, teacher or other person in charge of rearing the child is punished with imprisonment from 2 to 6 years, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

Actions envisaged in parts 1 and 2 of this Article, which:

- 1) were committed in relation to 2 or more persons;
- 2) were accompanied with violence or threat thereof.

#### **Article 262 - Assisting to prostitution.**

1. Creating, administrating or maintaining facility for prostitution, or using any public facility for prostitution, or periodically providing apartment or other facility for prostitution or assisting to prostitution any other way with obtaining profit. in the absence of elements of crime envisaged in Article 132<sup>2</sup> of this Code.

Punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment from 1 to 4 years.

2. The same act committed:

- 1) by a group of persons with prior agreement;;
- 2) using official position(post);
- 3) by organization of transportation of person with crossing border of Republic of Armenia;
- 4) against obviously pregnant woman; with violence dangerous for life or health, or threat thereof;
- 5) by using 2 or more persons;
- 6) by using minor;
- 7) by using person, who is not fully realizing the meaning or type of his actions and not able to fully control them because of mental disease;

is punished with imprisonment from 3 to 6 years, with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it.

Actions envisaged in parts 1 or 2 of this Article, committed by organized group.

3. Punished with imprisonment from 4 to 8 years, with confiscation of property or without it, with deprivation of right to hold certain posts or practice certain activities for up to three years, or without it

#### **Article 263 - Dissemination of pornographic materials or items**

1. Dissemination, advertisement, manufacturing of pornographic materials or items, including printed publications, films and video materials, images or other pornographic items, also creation of such materials for above mentioned purposes is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment up to 2 years.

2. Distribution of child pornography via computer system or keeping/saving them in computer data storage system is punished with a fine in the amount of 400 to 800 minimal salaries, or with imprisonment up to 3 years

3. Same act committed by an organized group is punished with imprisonment for 2-4 years.

## 6.3 Austria

### Extract:

Section 207a of the Austrian Penal Code  
Austrian Criminal Law

Offences committed abroad which are punishable without consideration for the laws of the place where the crime was committed

### **Article 64**

(1) The Austrian criminal laws apply, irrespective of the criminal laws of the place where the crime was committed, to the following crimes committed abroad;

1. Misappropriation of a business or trade secret on behalf of a foreign power (Article 124) , high treason (Article 242) , preparation of high treason (Article 244) , subversive links (Article 246) , attacks on the highest institutions of the State (Articles 249-251) , treason (Articles 252-258) and punishable offences against the federal army (Articles 259 and 260)

2. Punishable offences committed by someone against an Austrian official (Article 74 line 4) during or on account of the performance of his tasks and by someone as an Austrian official;

3. Giving false statements to the court (Article 288) and giving false statements under oath or under confirmation by oath to an administrative authority (Article 289) in a case pending before an Austrian court or an Austrian administrative authority;

4. Abduction with blackmail (Article 102) , surrender of persons to a foreign power (Article 103) , trafficking in slaves (Article 104) , trafficking in human beings (Article 104a) , cross-border trafficking in prostitution (Article 217) , counterfeiting of money (Article 232) , counterfeiting punishable under Article 232 of specially protected securities (Article 237) , criminal organisation (Article 278a(1) ) and the offences punishable under Articles 28(2) -(5) , 31(2) and 32(2) of the Addictive Drugs Act if such offence has prejudiced Austrian interests or the perpetrator cannot be extradited;

4a. Serious sexual abuse of minors below the age of 14 (Article 206) , sexual abuse of minors below the age of 14 (Article 204) , pornographic representation of minors in accordance with Article 207a (1) and (2) , sexual abuse of juveniles in pornographic performances of minors (Article 215a) if the perpetrator is Austrian and is habitually resident in Austria;

### **Article 104 - Trafficking in slaves**

(1) Any person trafficking in slaves shall be liable to a term of imprisonment of between 10 and 20 years.

(2) The same sentence shall apply to any person who causes another person to be enslaved or to be brought into a situation similar to slavery or who causes another person to place himself into slavery or into a situation similar to slavery.

### Article 104a - Trafficking in human beings

(1) Any person who enlists, accommodates or enrolls in any other way, transports or offers or passes on to another person

1. a person under age or

2. a person of full age using unfair means (paragraph 2) against the person with the intention of that person being exploited sexually, through organ removal or as labour, shall be liable to a term of imprisonment not exceeding three years.

(2) Unfair means are the misrepresentation of facts, the abuse of a position of authority, of a position of constraint, of a mental illness or of a situation rendering the person defenceless, intimidation and the granting or acceptance of a gain for the transfer of control over the person.

(3) Any person who commits the crime using violence or the threat of violence shall be liable to a term of imprisonment of between six months and five years.

(4) Any person who commits the crime against a minor as part of a criminal association, using severe violence or in such a way that the crime endangers the life of the person intentionally or through gross negligence or the crime is particularly detrimental to the person, shall be liable to a term of imprisonment of between one and 10 years.

### **Article 215 - Leading to prostitution**

Any person who leads another person to prostitution shall be liable to a term of imprisonment not exceeding two years.

Article 215a - Promotion of prostitution and pornographic performances of minors

(1) Any person who recruits a minor, regardless of whether the minor is already engaged in prostitution, to perform prostitution or to participate in a pornographic performance or who offers or procures the minor to another person for that purpose shall be liable to a term of imprisonment not exceeding three years. The same sentence shall apply to any person who exploits a minor who is engaged in prostitution or participating in a pornographic performance for financial gain for himself or a third party.

(2) Any person who commits the crime as part of a criminal association, using severe violence or in such a way that the crime endangers the life of the person intentionally or through gross negligence or the crime is particularly detrimental to the person, shall be liable to a term of imprisonment of between six months and five years. Any person who commits the crime against a minor below the age of 14 shall be liable to a term of imprisonment of between one and 10 years.

(3) A person shall be deemed to participate in a pornographic performance if he performs a sexual act which is reduced to itself, removed of other expressions of life and for the sexual arousal of the viewer, on himself, on another person or with an animal, allows such a sexual act to be performed on himself or who displays his genitals or pubic region in such a manner.

### **Article 216 – Procuring**

(1) Any person who, with the intention of obtaining for himself a regular income by prostituting another person, takes advantage of that person, shall be liable to a term of imprisonment not exceeding one year.

(2) Any person who, with the intention of obtaining for himself a regular income by prostituting another person, exploits or intimidates that person or lays down the conditions to him for engaging in prostitution or takes advantage of several such persons simultaneously, shall be liable to a term of imprisonment not exceeding two years.

(3) Any person who commits the crime (paragraphs 1 and 2) as a member of a criminal association shall be liable to a term of imprisonment not exceeding three years.

(4) Any person who, through intimidation, prevents another person from abandoning prostitution, shall also be liable to a term of imprisonment not exceeding three years.

### **Article 217 - Cross-border trafficking in prostitution**

(1) Any person who leads or recruits another person, regardless of whether the latter is already engaged in prostitution, to prostitution in a country other than that of which he is a national or in which he is habitually resident, shall be liable to a term of imprisonment of between six months and five years, or to a term of imprisonment of between one and 10 years if the crime is committed for financial gain.

(2) Any person who, with the intention of making another person (paragraph 1) engage in prostitution in a country other than that of which he is a national or in which he is habitually resident, through deception as to this intention entices or using violence or the threat of violence forces that person to go to another country or who transports this person to another country using violence or exploiting his confusion regarding this intention, shall be liable to a term of imprisonment of between one and 10 years.

### **Article 206 - Grievous sexual abuse of minors**

(1) Anyone who has sexual intercourse, or a sexual act equivalent to intercourse, with a minor will be sentenced to 1-10 years' imprisonment.

(2) Anyone who incites a minor to perform or endure sexual intercourse, or a sexual act equivalent to intercourse, with another person, or, in order sexually to arouse or satisfy himself or a third party, incites a minor to perform a sexual act equivalent to intercourse on him, shall also be punished.

(3) If the act results in grievous bodily harm (under Section 84(1) ) or pregnancy of the minor, the perpetrator shall be sentenced to 5-15 years' imprisonment. If the act results in the death of the minor, the perpetrator shall be sentenced to 10-20 years' imprisonment or to life imprisonment.

(4) If the perpetrator is not more than three years older than the minor, the sexual act does not involve penetration with an object and the act does not result either in grievous bodily harm (under Section 84(1) ) or the death of the minor, then the perpetrator under paragraphs 1 and 2 shall not be punished, unless the minor is under 13 years of age.

#### **Article 207 - Sexual abuse of minors**

(1) Anyone who, except for the case provided in Section 206, performs a sexual act on a minor or has a sexual act performed on him by a minor, will be sentenced to six months' to five years' imprisonment.

(2) Anyone who incites a minor to perform a sexual act (under paragraph 1) with another person or, in order sexually to arouse or satisfy himself or a third party, incites a minor to perform a sexual act on him, shall also be punished.

(3) If the act results in grievous bodily harm (under Section 84(1) ) , the perpetrator shall be sentenced to 1-10 years' imprisonment. If the act results in the death of the minor, the perpetrator shall be sentenced to 5-15 years' imprisonment.

(4) If the perpetrator is not more than four years older than the minor, and if none of the consequences provided in paragraph 3 apply, then the perpetrator under paragraphs 1 and 2 shall not be punished, unless the minor is under 12 years of age.

#### **Article 207a - Pornographic depictions of minors**

(1) Anyone who

1. produces or
2. imports, transports or exports for the purpose of dissemination or
3. offers, procures, transfers, presents or makes available in any other manner to another person a pornographic depiction of a minor (under paragraph 4) will be sentenced to up to three years' imprisonment.

(2) Anyone who commits the offence for financial gain will be sentenced to six months' to five years' imprisonment. Anyone who commits the offence as a member of a criminal organisation, or in such a way that the minor sustains particularly grievous harm, will be sentenced to 1-10 years' imprisonment; anyone who produces a pornographic depiction of a minor (under paragraph 4) using severe violence or who, in producing such pornographic depiction, endangers the life of the depicted minor either intentionally or as a result of gross negligence, will also be punished.

(3) Anyone who obtains, or is in possession of, a pornographic depiction of a minor over 14 years of age (under paragraph 4, subparagraphs 3 and 4) will be sentenced to up to one year's imprisonment. Anyone who obtains, or is in possession of, a pornographic depiction of a minor (under paragraph 4) will be sentenced to up to two years' imprisonment.

(4) Pornographic depictions of minors are:

1. realistic depictions of a sexual act performed on a minor under 14 years of age or by such minor on himself, on another person or with an animal,
2. realistic depictions of an event performed with a minor under 14 years of age, examination of which creates the impression, according to the circumstances of the case, that it involves a sexual act performed on such minor or by the minor on himself, on another person or with an animal,
3. realistic depictions
  - a) of a sexual act within the meaning of subparagraph 1 or of an event within the meaning of subparagraph 2, though with minors over 14 years of age, or

b) of the genitals or pubic region of minors, provided such depictions are distorted in a sensational manner, focus on the genitals or pubic region or are devoid of other manifestations of life in order sexually to arouse the observer,

4. pictorial representations, an examination of which – following alteration of a depiction or without use of such alteration – creates the impression, according to the circumstances of the case, that it is a depiction within the meaning of subparagraphs 1-3.

(5) In accordance with paragraph 1, subparagraph 1, and paragraph 3, anyone who: 1. produces, or is in possession of, a pornographic depiction of a minor over 14 years of age with the latter's consent or for the latter's own private use, or

2. produces, or is in possession of, a pornographic depiction of a minor over 14 years of age, within the meaning of paragraph 4, subparagraph 4, for his own private use, provided no risk of dissemination of the depiction is associated with the act, shall not be punished.

#### **Article 208 Endangering the moral development of persons under 16 years of age**

(1) Anyone who performs an act likely to endanger the moral or psychological development or health of persons under 16 years of age in front of a minor or a person under 16 years of age with whose upbringing, education or supervision he is charged, in order sexually to arouse or satisfy himself or a third party, will be sentenced to up to one year's imprisonment, unless, according to the circumstances of the case, an endangering of the development of the minor or person under 16 years of age can be ruled out.

(2) If the perpetrator in the first case in paragraph 1 is not more than four years older than the minor, then the perpetrator shall not be punished, unless the minor is under 12 years of age.

## 6.4 Azerbaijan

Extract:

CRIMINAL CODE OF THE REPUBLIC OF AZERBAIJAN

Article 29 - Attempt to a crime

As attempt at a crime shall be deliberate act (action or inaction) by a persons, directly directed on committing of a crime, if thus the crime was not completed by circumstances not dependent on will of this person.

### Article 32 - Kinds of complicity

Alongside with the perpetrator as accomplice of a crime shall be admitted also organizer, instigator and aider.

The person, who has directly committed a crime or has directly participated in its committing together with other persons (joint committing) , and also the person who has committed a crime by use of other persons, not determined to the criminal liability by virtue of the circumstances provided by the present Code, shall be admitted as the perpetrator.

The person, who has organized the commission of a crime or has supervised its commission, or has created an organized group or a criminal community (criminal organization) or has supervised them as well, shall be admitted as the organizer.

The person, who has abbetted other person in committing a crime by persuasion, arrangement, threat or by other ways, shall be admitted as the instigator.

The person who has assisted by advice, instructions, granting of the information, means or instruments in committing a crime or by removal of obstacles, and also the person, beforehand promised to hide a criminal, means or instruments of commission of the crime, traces of the crime or the property and subjects extracted in the criminal way, and person beforehand promised to get or sell such subjects as well, shall be admitted as the aider.

### Article 144-1 - Human Trafficking

144-1.1. Human trafficking, i.e. purchase and sale of human being or making other agreement with regard to ownership over the person or his/her involvement, obtaining, storage, concealment, transportation, giving or receiving with an aim to exploit for transferring through the state border of the Republic of Azerbaijan or for giving to other individuals with the same aim – shall be punished with five to ten years of deprivation of liberty with the confiscation of the property.

144-1.2. The same deeds committed:

144-1.2.1. against two or more persons

144-1.2.2. repeatedly;

144-1.2.3. against minors;

144-1.2.4. against a pregnant woman whose pregnancy is apparent to the accused person;

144-1.2.5. by a group of persons with a premeditated conspiracy or by an organized group;

144-1.2.6. by the person by abusing his duty position;

144-1.2.7. by applying force that endangers the life and health or when threatening to apply this force;

144-1.2.8 by means of tortures to victims or cruel, inhumane, or degrading treatment;

144-1.2.9. with the purpose to use the organs or tissues of the victim –

shall be punished with ten to twelve years of deprivation of liberty with the confiscation of the property.

Note:

1. "Exploitation of human being" in this Article means forced labour (service) , sexual exploitation, slavery, traditions similar to slavery and dependence caused by them, illegal transplantation of human organs and tissues, conducting unlawful biomedical research on persons, involvement in illegal as well as criminal activity.



2. The consent of a victim of human trafficking to the exploitation, life style, as well as immoral behaviour shall not be considered as mitigating circumstances with regard to the punishment of the accused person in human trafficking.

#### **Article 149 - Rape**

149.1. Rape, is the sexual relations with the use of violence or with threat of its use against a victim or other persons, or with use of a helpless condition of the victim – shall be punished by imprisonment for the term of four to eight years.

149.2. The same deeds:

149.2.1. committed by a group of persons, by a group with a premeditated conspiracy or by an organized group;

149.2.2. which resulted in a victims infection of a venereal disease;

149.2.3. committed against the person, who is wittingly known as a juvenile to the guilty;

149.2.4. committed with a threat of murder or serious health damage of the victim or other persons, and also with cruelty;

149.2.5. committed repeatedly –

shall be punished by imprisonment for the term of five to ten years.

149.3. The same deeds:

149.3.1. entailing, by negligence, the death of the victim;

149.3.2. entailing, by negligence, the infection of the victim with a virus HIV or other serious consequences;

149.3.3. committed wittingly against a person under age of 14 –

shall be punished by imprisonment for the term of eight to fifteen years.

#### **Article 150- Violent actions of sexual nature**

150.1. Buggery or other actions of sexual nature, with the use of violence or with the threat of its use against the victim or against other persons, or with use of a helpless condition of the victim – shall be punished by imprisonment for the term of three to five years.

150.2. The same deeds:

150.2.1. committed by a group of persons, by a group with a premeditated conspiracy or by an organized group;

150.2.2. which resulted in a victim's infection with venereal disease;

150.2.3. committed against the person, who is wittingly known as a juvenile to the guilty;

150.2.4. carried out with a particular cruelty against the victim or against other individuals;

150.2.5. committed repeatedly –

shall be punished by imprisonment for the term of five to eight years.

150.3. The same deeds:

150.3.1. entailing, by negligence, the death of the victim;

150.3.2. entailing, by negligence, the infection of the victim with a virus HIV or other serious consequences;

150.3.3. committed wittingly against a person under age of 14 -

shall be punished by imprisonment for the term of eight to fifteen years.

#### **Article 151 - Coercion into actions of sexual nature**

Coercion of the person to the sexual relations, buggery or the commission of other actions of sexual nature by threat of destruction, damage or withdrawal of property or with use of material or other dependency of the victim –

shall be punished by fine of five hundred manats to one thousand manats, or by corrective work for the term of up to two years, or by imprisonment for the term of up to three years.

#### **Article 152 - Sexual relations and other actions of sexual nature with the person who has not reached age of 16**

The sexual relations or other actions of sexual nature, committed by a person who has reached age of 18 with the person who obviously has not reached age of 16 –

shall be punished by restriction of freedom for the term of up to three years or imprisonment for the same term.

#### **Article 153 - Depraving actions**

Depraving actions, carried out without the use of violence against the person who obviously has not reached age of 14 –

shall be punished by fine of five hundred manats to one thousand manats, or by corrective works for the term of up to two years, or restriction of freedom for the term of up to two years, or imprisonment for the term of up to two years.

#### **Article 171 - Involvement of a minor in the prostitution or in the commission of immoral actions**

171.1. Involvement of a minor in the prostitution or in the commission of other immoral actions – shall be punished by imprisonment for the term from three up to six years.

171.2. The same deeds committed:

171.2.1. with use of violence or with threat of its use;

171.2.2. by organized group –

shall be punished by imprisonment for the term from four up to eight years.

#### **Article 171-1 -Distributing of child pornography**

171-1.1. Willingly producing, procuring, possessing, selling, distributing, offering, advertising, presenting child pornography, i.e. pornographic materials or objects that depicts minors – shall be punished by fine of seven thousand manats to ten thousand manats, or by imprisonment for the term of three to seven years.

171-1.2. The same deeds:

171-1.2.1. committed by a parent or other person which is obliged under laws to bring up a minor, as well as by a pedagogue or other employee working for an educational, pedagogical, medical or other institution who is obliged to exercise supervision over a minor;

171-1.2.2. committed by a group with a premeditated conspiracy or by an organized group;

171-1.2.3. committed willingly against a person under age of 14;

171-1.2.4. committed with extraction of income in the significant size

shall be punished by imprisonment for the term of five to ten years.

Note:

1. "Child Pornography" stands for any material or item that visually depicts a minor engaged in sexually explicit conduct or a child's sexual organs for sexual purpose.

2. "the significant size" in the Article 242-1.2.4 of the present Code will be understood as the sum over one thousand manats.

#### **Article 242 - Illegal distribution of pornographic materials or objects**

Illegal producing for the purpose of distribution or advertising, distributing, advertising of pornographic materials or subjects, as well as illegal trade in printed editions, movies or videos, images or other objects of pornographic nature –

shall be punished by the penalty at a rate from one up to three thousand of nominal financial unit, or restriction of freedom for the term up to two years, or corrective works for the term up to two years.

## 6.5 Belarus

### Extract:

The Criminal Code

The Law on the Rights of the Child (article 9) guarantees the right to personal immunity, protection from exploitation and violence.

Every child shall have the right to the protection of his/her person from any form of exploitation and violence. The State shall ensure personal immunity of the child, implement his/her protection from all forms of exploitation, including sexual exploitation, from physical and/or mental violence, cruel, abusive or degrading treatment, sexual harassment, including harassment by the parents or persons who have the care of the child, or relatives, from being drawn into criminal activities, from being introduced to alcohol, non-medical use of narcotic, toxic, psychotropic and other potent, intoxicating substances, from being forced to engage in prostitution, begging, gaming or to perform acts relating to the production of materials or articles of a pornographic character.

### **Article 166 - Rape**

1. Sexual intercourse against the will of the victim through the use of violence or a threat to use violence against a woman or her relations, or through taking advantage of the helpless condition of the victim (rape) , -

shall be punishable with restraint of liberty for up to 4 years or with imprisonment for 3 to 7 years.

2. Repeated rape or rape committed by a group of persons, or by a person who earlier committed acts specified in article 167 of this Code, or rape of a person known to be a minor – shall be punishable with imprisonment for 5 to 13 years.

3. Rape of a person known to be a juvenile<sup>121</sup>, or rape entailing, through negligence, the death of the victim or infliction of severe injuries or infection with HIV or other grave consequences, - shall be punishable with imprisonment for 8 to 15 years.

### **Article 167 - Violent acts of a sexual nature**

1. Sodomy, lesbianism or other acts of a sexual nature committed against the will of the victim (male or female) , involving the use of violence or a threat to use violence, or taking advantage of the victim's helpless condition, -

shall be punishable with restraint of liberty for up to 4 years or with imprisonment for 3 to 7 years.

2. The same acts committed repeatedly, or by a person who earlier committed rape, or by a group of persons, or against a person known to be a minor (male or female) – shall be punishable with imprisonment for 5 to 13 years.

3. Acts specified in parts 1 or 2 of this article, committed against a person known to be a juvenile, or entailing, through negligence, the death of the victim or infliction of severe injuries or infection with HIV or other grave consequences, – shall be punishable with imprisonment for 8 to 15 years.

### **Article 168 - Sexual intercourse or other acts of a sexual nature with a person under sixteen years of age**

Sexual intercourse, sodomy, lesbianism or other acts of a sexual nature committed by a person who has attained the age of eighteen years with a person known to be under the age of sixteen, in the absence of the attributes of the crime specified in articles 166 and 167 of this Code, - shall be punishable with restraint of liberty for 2 to 4 years or with imprisonment for 2 to 5 years.

### **Article 169 - Lecherous acts**

1. Lecherous acts performed by a person who has attained the age of eighteen years in respect of a person known to be under the age of sixteen, in the absence of the attributes of crimes specified in articles 166, 167 and 168 of this Code, -

shall be punishable with arrest for up to six months or imprisonment for 1 to 3 years.

2. The same acts committed through the use of violence or a threat to use violence, - shall be punishable with imprisonment for 3 to 6 years.

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<sup>121</sup> Translator's note: under the Belarusian law, a juvenile [maloletnij] is a person under 14 years of age

**Article 170 - Coercion into acts of a sexual nature**

1. Coercion of a person into sexual intercourse, sodomy, lesbianism, or into other acts of a sexual nature through blackmail, a threat to destroy, damage or seize property, or through the use of the victim's dependence in the workplace or financial or other forms of dependence, - shall be punishable with restraint of liberty for up to 3 years or with imprisonment for the same term.
2. The same act committed in respect of a person known to be a minor (male or female) , - shall be punishable with imprisonment for 3 to 6 years.

**Article 1711 - Drawing into prostitution or coercion into continued prostitution**

1. Drawing into prostitution or coercion into continued prostitution - shall be punishable with imprisonment for 1 to 3 years.
2. The same acts committed repeatedly or through the use of violence or a threat to use violence, or by a person who earlier committed the crimes specified in articles 171, 181 or 1811, or by a person who has attained the age of eighteen years, in respect of a person known to be a minor, - shall be punishable with imprisonment for 3 to 5 years.
3. Acts specified in parts 1 or 2 of this article, committed by a parent, a teacher or another person charged with the upbringing of a minor, or by an organized group in respect of a person known to be a minor, - shall be punishable with imprisonment for 7 to 10 years.

**Article 343 - Production and dissemination of pornographic materials or articles of a pornographic character**

1. Production or storage for the purpose of dissemination or advertising, or dissemination and advertising of pornographic materials or printed publications, images, other articles of a pornographic character, or a public show of films or videos with pornographic contents, - shall be punishable with community service, or a fine, or correctional work for up to 2 years, or arrest for up to 6 months.
2. The same acts committed by a group of persons through a prior collusion, or by an organized group, or through the use of the global computer network Internet, or another public telecommunication network or a dedicated telecommunication network, as well as dissemination or advertising of pornographic materials or printed publications, images, other articles of a pornographic character to a person known to be a minor, committed by a person who has attained the age of eighteen years, or the showing by this person of films or videos with pornographic contents to a person known to be a minor, - shall be punishable with imprisonment for 2 to 4 years.

**Article 3431 - Production and dissemination of pornographic materials or articles of a pornographic character depicting a minor**

1. Production or storage for the purpose of dissemination or advertising, or dissemination and advertising of pornographic materials or printed publications, other articles of a pornographic character depicting a person known to be a minor, or a public show of films or videos with pornographic contents having such a depiction, shall be punishable with correctional work for up to 2 years, or arrest for up to 6 months, or restraint of liberty for up to 4 years, or imprisonment for the same term.
2. The same acts committed by a person who earlier committed the crimes specified in this article or in part 2 of article 343 of this Code, or by a group of persons through a prior collusion or through the use of the global computer network Internet, or another public telecommunication network or a dedicated telecommunication network, as well as the use of a person known to be a minor to produce pornographic materials, printed publications or other articles of a pornographic character depicting this person, - shall be punishable with imprisonment for 3 to 8 years, with or without confiscation of property.
3. Acts specified in parts 1 or 2 of this article committed by an organized group, as well as the use of a person known to be a juvenile to produce pornographic materials, printed publications or other articles of a pornographic character depicting this person, - shall be punishable with imprisonment for 5 to 13 years, with or without confiscation of property.

## 6.6 Belgium

Extract:

### CHAPITRE V. - DE L'ATTENTAT A LA PUDEUR ET DU VIOL

Art. 376. Si le viol ou l'attentat à la pudeur a causé la mort de la personne sur laquelle il a été commis, le coupable sera puni (de la réclusion de vingt ans à trente ans. Si le viol ou l'attentat à la pudeur a été précédé ou accompagné des actes visés à l'article 417ter, alinéa premier, ou de séquestration, le coupable sera puni de la réclusion de quinze ans à vingt ans.

Si le viol ou l'attentat à la pudeur a été commis soit sur une personne [1 dont la situation de vulnérabilité en raison de l'âge, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale était apparente ou connue de l'auteur des faits]<sup>1</sup>, soit sous la menace d'une arme ou d'un objet qui y ressemble, le coupable sera puni (de la réclusion) de dix à quinze ans.

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(1) <L [2011-11-26/19](#), art. 5, 084; En vigueur : 02-02-2012

Art. 377. [1 Les peines seront fixées comme prévu aux alinéas 2 à 6:

- si le coupable est l'ascendant ou l'adoptant de la victime, un descendant en ligne directe de la victime ou un descendant en ligne directe d'un frère ou d'une soeur de la victime;
- si le coupable est soit le frère ou la soeur de la victime mineure ou toute personne qui occupe une position similaire au sein de la famille, soit toute personne cohabitant habituellement ou occasionnellement avec elle et qui a autorité sur elle;

- si le coupable est de ceux qui ont autorité sur la victime; s'il a abusé de l'autorité ou des facilités que lui confèrent ses fonctions; s'il est médecin, chirurgien, accoucheur ou officier de santé et que l'enfant ou toute autre personne vulnérable visée à l'article 376, alinéa 3, fut confié à ses soins;

- si dans le cas des articles 373, 375 et 376, le coupable, quel qu'il soit, a été aidé dans l'exécution du crime ou du délit, par une ou plusieurs personnes.]<sup>1</sup>

Dans les cas prévus par le § 1 de l'article 372 et par le § 2 de l'article 373, la peine sera celle de la réclusion de dix ans à quinze ans.

Dans le cas prévu par le paragraphe 1 de l'article 373, le minimum de l'emprisonnement sera doublé.

Dans les cas prévus par l'alinéa 3 de l'article 373, par l'alinéa 4 de l'article 375 et par l'alinéa 3 de l'article 376, la peine de la réclusion sera de douze ans au moins;

Dans le cas prévu par le paragraphe 1 de l'article 375, la peine de la réclusion sera de sept ans au moins.

Dans les cas prévus par les alinéas 5 et 6 de l'article 375 et par l'alinéa 2 de l'article 376, la peine de la réclusion sera de dix-sept ans au moins

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(1) <L [2011-11-26/19](#), art. 6, 084; En vigueur : 02-02-2012

Art. 377bis. Dans les cas prévus par le présent chapitre, le minimum des peines portées par ces articles peut être doublé s'il s'agit d'un emprisonnement, et augmenté de deux ans s'il s'agit de la réclusion, lorsqu'un des mobiles du crime ou du délit est la haine, le mépris ou l'hostilité à l'égard d'une personne en raison de sa prétendue race, de sa couleur de peau, de son ascendance, de son origine nationale ou ethnique, de sa nationalité, de son sexe, de son orientation sexuelle, de son état civil, de sa naissance, de son âge, de sa fortune, de sa conviction religieuse ou philosophique, de son état de santé actuel ou futur, d'un handicap, de sa langue, de sa conviction politique, [1 de sa conviction syndicale,]<sup>1</sup> d'une caractéristique physique ou génétique ou de son origine sociale.

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(1) <L [2009-12-30/01](#), art. 109, 074; En vigueur : 31-12-2009

Art. 378. Dans les cas prévus par le présent chapitre, les coupables seront condamnés à l'interdiction des droits énoncés à [1 l'article 31, alinéa 1er]<sup>1</sup>.

[2 Les tribunaux pourront en outre interdire au condamné, à terme ou à titre perpétuel, d'exploiter directement ou indirectement une maison de repos, un home, une seigneurie ou toute structure d'hébergement collectif de personnes visées à l'article 376, alinéa 3, ou de faire partie, comme membre bénévole, membre du personnel statutaire ou contractuel ou comme membre des organes d'administration et de gestion, de toute institution ou association dont l'activité concerne à titre principal des personnes vulnérables telles que visées à l'article 376, alinéa 3. L'application de cette interdiction se fera conformément à l'article 389.]2

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(1) <L [2009-04-14/01](#), art. 16, 073; En vigueur: 15-04-2009

(2) <L [2011-11-26/19](#), art. 7, 084; En vigueur : 02-02-2012>

Note : [Art. 31](#). Tous arrêts de condamnation à la réclusion ou à la détention à perpétuité ou à la réclusion pour un terme de dix à quinze ans ou un terme supérieur) prononceront, contre les condamnés, l'interdiction à perpétuité du droit :

1° De remplir des fonctions, emplois ou offices publics;

2° (...) d'éligibilité;

3° De porter aucune décoration, aucun titre de noblesse;

4° D'être juré, expert, témoin instrumentaire ou certificateur dans les actes; de déposer en justice autrement que pour y donner de simples renseignements;

5° D'être appelé aux fonctions de tuteur, subrogé tuteur ou curateur, si ce n'est de leurs enfants; comme aussi de remplir les fonctions de conseil judiciaire (, d'administrateur judiciaire des biens d'un présumé absent) ou d'administrateur provisoire.

6° de fabriquer, de modifier, de réparer, de céder, de détenir, de porter, de transporter, d'importer, d'exporter ou de faire transiter une arme ou des munitions, ou de servir dans les Forces armées.

[1 Les arrêts de condamnation visés à l'alinéa précédent peuvent en outre prononcer contre les condamnés l'interdiction du droit de vote, à perpétuité ou pour vingt ans à trente ans.]1

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(1) <L [2009-04-14/01](#), art. 2, 073; En vigueur : 15-04-2009

## **CHAPITRE VI. - DE LA CORRUPTION DE LA JEUNESSE ET DE LA PROSTITUTION**

[Art. 380](#). § 1. Sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de cinq cents [euros] à vingt-cinq mille [euros] :

1° quiconque, pour satisfaire les passions d'autrui, aura embauché, entraîné, détourné ou retenu, en vue de la débauche ou de la prostitution, même de son consentement, une personne majeure;

2° quiconque aura tenu une maison de débauche ou de prostitution;

3° quiconque aura vendu, loué ou mis à disposition aux fins de la prostitution des chambres ou tout autre local dans le but de réaliser un profit anormal;

4° quiconque aura, de quelque manière que ce soit, exploité la débauche ou la prostitution d'autrui.

§ 2. La tentative de commettre les infractions visées au § 1er sera punie d'un emprisonnement de six mois à trois ans et d'une amende de cent [euros] à cinq mille [euros].

§ 3. Seront punies (de la réclusion) de dix ans à quinze ans et d'une amende de cinq cents [euros] à cinquante mille [euros], les infractions visées au § 1er, dans la mesure où leur auteur:

1° fait usage, de façon directe ou indirecte, de manoeuvres frauduleuses, de violence, de menaces ou d'une forme quelconque de contrainte;

2° ou abuse de la [1 situation de vulnérabilité dans laquelle se trouve une personne en raison de sa situation administrative illégale ou précaire, de son âge, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale]1.

§ 4. Sera puni (de la réclusion) de dix ans à quinze ans et d'une amende de mille [euros] à cent mille [euros] :

1° quiconque, pour satisfaire les passions d'autrui, aura embauché, entraîné, détourné ou retenu, soit directement soit par un intermédiaire, un mineur (...), même de son consentement, en vue de la débauche ou de la prostitution ;

2° quiconque aura tenu, soit directement soit par un intermédiaire, une maison de débauche ou de prostitution où des mineurs se livrent à la prostitution ou à la débauche;

3° quiconque aura vendu, loué ou mis à disposition d'un mineur, aux fins de la débauche ou de la prostitution, des chambres ou tout autre local dans le but de réaliser un profit anormal;

4° quiconque aura exploité, de quelque manière que ce soit, la débauche ou la prostitution d'un mineur (...).

5° quiconque aura obtenu par la remise, l'offre ou la promesse d'un avantage matériel ou financier, la débauche ou la prostitution d'un mineur.

§ 6. Quiconque aura assisté à la débauche ou à la prostitution d'un mineur sera puni d'un emprisonnement de un mois à deux ans et d'une amende de cent [euros] à deux mille [euros].

§ 5. Les infractions visées au § 4 seront punies de la réclusion de quinze ans à vingt ans et d'une amende de mille [euros] à cent mille [euros] si elles sont commises à l'égard d'un mineur de moins de seize ans.

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(1) <L [2011-11-26/19](#), art. 8, 084; En vigueur : 02-02-2012>

[Art. 382](#). § 1er. Dans les cas visés aux articles 379 et 380, les coupables seront, en outre, condamnés à l'interdiction des droits énoncés à [1 l'article 31, alinéa 1er]1.

§ 2. Les tribunaux pourront interdire aux personnes condamnées pour une infraction prévue à l'article 380, §§ 1er à 3, pour un terme de un an à trois ans, d'exploiter, soit par eux-mêmes, soit par personne interposée, un débit de boissons, un bureau de placement, une entreprise de spectacles, une agence de location ou de vente de supports visuels, un hôtel, une agence de location de meublés, une agence de voyage, une entreprise de courtage matrimonial, une institution d'adoption, un établissement à qui l'on confie la garde des mineurs, une entreprise qui assure le transport d'élèves et de groupements de jeunesse, un établissement de loisirs ou de vacances, ou tout établissement proposant des soins corporels ou psychologiques, ou d'y être employés à quelque titre que ce soit.

En cas de seconde condamnation pour une infraction prévue à l'article 380, §§ 1er à 3, l'interdiction pourra être prononcée pour un terme de un an à vingt ans.

En cas de condamnation pour une infraction prévue aux articles 379 et 380, §§ 4 et 5, l'interdiction pourra être prononcée pour un terme de un à vingt ans.

§ 3. Sans avoir égard à la qualité de la personne physique ou morale de l'exploitant, propriétaire, locataire ou gérant, le tribunal peut ordonner la fermeture de l'établissement dans lequel les infractions ont été commises, pour une durée d'un mois à trois ans.

Lorsque le condamné n'est ni propriétaire, ni exploitant, ni locataire, ni gérant de l'établissement, la fermeture ne peut être ordonnée que si la gravité des circonstances concrètes l'exige, et ce, pour une durée de deux ans au plus, après citation sur requête du ministère public, du propriétaire, de l'exploitant, du locataire ou du gérant de l'établissement.

La citation devant le tribunal est transcrite à la conservation des hypothèques de la situation des biens à la diligence de l'huissier auteur de l'exploit.

La citation doit contenir la désignation cadastrale de l'immeuble concerné et en identifier le propriétaire dans la forme et sous la sanction prévues à l'article 12 de la loi du 10 octobre 1913 portant des modifications à la loi hypothécaire et à la loi sur l'expropriation forcée et réglant à nouveau l'organisation de la conservation des hypothèques.

Toute décision rendue en la cause est mentionnée en marge de la transcription de la citation selon la procédure prévue par l'article 84 de la loi hypothécaire. Le greffier fait parvenir au conservateur des hypothèques les extraits et la déclaration selon laquelle aucun recours n'est introduit.

§ 4. L'article 389 est applicable à la présente disposition.

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(1) <L [2009-04-14/01](#), art. 17, 073; En vigueur : 15-04-2009>

[Art. 382ter](#). La confiscation spéciale visée à l'article 42, 1°, peut être appliquée, même si la propriété des choses sur lesquelles elle porte n'appartient pas au condamné.

Note: [Art. 42](#). La confiscation spéciale s'applique:

1° Aux choses formant l'objet de l'infraction et à celles qui ont servi ou qui ont été destinées à la commettre, quand la propriété en appartient au condamné;

2° Aux choses qui ont été produites par l'infraction.

3° Aux avantages patrimoniaux tirés directement de l'infraction, aux biens et valeurs qui leur ont été substitués et aux revenus de ces avantages investis.

## **CHAPITRE VII. - DES OUTRAGES PUBLICS AUX BONNES MOEURS.**

**Art. 383bis.** § 1. Sans préjudice de l'application des articles 379 et 380, quiconque aura exposé, vendu, loué, distribué, diffusé ou remis des emblèmes, objets, films, photos, diapositives ou autres supports visuels qui représentent des positions ou des actes sexuels à caractère pornographique, impliquant ou présentant des mineurs ou les aura, en vue du commerce ou de la distribution, fabriqués ou détenus, importés ou fait importer, remis à un agent de transport ou de distribution, sera puni de la réclusion de cinq ans à dix ans et d'une amende de cinq cents [euros] à dix mille [euros].)

§ 2. Quiconque aura sciemment possédé les emblèmes, objets, films, photos, diapositives ou autres supports visuels visés sous le § 1er [1 ou y aura, en connaissance de cause, accédé par un système informatique ou par tout moyen technologique]1, sera puni d'un emprisonnement d'un mois à un an et d'une amende de cent [euros] à mille [euros].

§ 3. L'infraction visée sous le § 1er, sera punie (de la réclusion) de dix ans à quinze ans et d'une amende de cinq cents [euros] à cinquante mille [euros], si elle constitue un acte de participation à l'activité principale ou accessoire d'une association, et ce, que le coupable ait ou non la qualité de dirigeant.

§ 4. La confiscation spéciale prévue à l'article 42, 1°, peut être appliquée à l'égard des infractions visées aux §§ 1er et 2, même lorsque la propriété des choses sur lesquelles elle porte n'appartient pas au condamné.

§ 5. (Les articles 382 et 389 sont applicables) aux infractions visées aux §§ 1er et 3.

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(1) <L [2011-11-30/28](#), art. 7, 083; En vigueur : 30-01-2012>

**Art. 388.** Dans les cas prévus au présent chapitre, les coupables pourront de plus être condamnés à l'interdiction des droits énoncés à [1 l'article 31, alinéa 1er]1

En cas de condamnation par application des articles 386, alinéa 1er, ou 387 et si l'infraction a été commise dans l'exploitation d'un commerce de librairie, de bouquinerie ou de produits photographiques ou de matériel nécessaire à la réalisation de tout type de support visuel, ou d'une entreprise de spectacles, la fermeture de l'établissement pourra être ordonnée pour une durée d'un mois à trois mois.

En cas de deuxième condamnation du chef de l'un des faits visés à l'alinéa 2, commis dans le délai de trois ans à compter de la première condamnation, la fermeture pourra être ordonnée pour une durée de trois mois à six mois.

En cas de troisième condamnation du chef des mêmes faits, commis dans le délai de cinq ans à dater de la deuxième condamnation, la fermeture définitive pourra être ordonnée. Dans ce dernier cas, les cours et tribunaux pourront en outre interdire aux condamnés d'exploiter, soit par eux-mêmes, soit par personne interposée, une librairie, une bouquinerie, un commerce de produits photographiques ou de matériel nécessaire à la réalisation de tout type de support visuel, une entreprise de spectacles ou un ou plusieurs de ces commerces ou entreprises ou d'y être employés à quelque titre que ce soit.

Lorsque le condamné n'est ni propriétaire, ni exploitant, ni locataire, ni gérant de l'établissement, la fermeture ne peut être ordonnée que si la gravité des circonstances concrètes l'exige. Dans ce cas, l'article 382, § 3, alinéas 2 à 5, est applicable.

L'article 389 est applicable à la présente disposition.

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(1) <L [2009-04-14/01](#), art. 18, 073; En vigueur : 15-04-2009>

**Art. 389.** § 1er. La durée de l'interdiction prononcée en application des articles 378, 382, § 1er, 382bis et 388, alinéa 1er, courra du jour de la condamnation avec sursis ou du jour où le condamné aura subi ou prescrit sa peine d'emprisonnement non assortie du sursis et, en cas de libération anticipée, à partir du jour de sa mise en liberté pour autant que celle-ci ne soit pas révoquée.

Toutefois, l'interdiction prononcée en application de l'article 382, § 2, produira ses effets à compter du jour où la condamnation contradictoire ou par défaut sera devenue irrévocable.

§ 2. Toute infraction à la disposition du jugement ou de l'arrêt qui prononce une interdiction en application des articles visés au § 1er sera punie d'un emprisonnement d'un mois à six mois et d'une amende de cent [euros] à mille [euros] ou d'une de ces peines seulement.



§ 3. La fermeture prononcée en application des articles 382, § 3, et 388 produira ses effets à compter du jour où la condamnation contradictoire ou par défaut sera devenue irrévocable.

§ 4. Toute infraction à la disposition du jugement ou de l'arrêt qui ordonne la fermeture d'un établissement en application des articles visés au § 3 sera punie d'un emprisonnement de trois mois à trois ans et d'une amende de mille [euros] à cinq mille [euros] ou d'une de ces peines seulement.

#### **CHAPITRE IV. - DE LA TENTATIVE DE CRIME OU DE DELIT.**

[Art. 53.](#) La loi détermine dans quels cas et de quelles peines sont punies les tentatives de délits.

#### **DISPOSITION GENERALES.**

[Art. 100ter.](#) Lorsqu'il est fait usage du terme " mineur " dans les dispositions du livre II, cette notion désigne la personne n'ayant pas encore atteint l'âge de dix-huit ans.

#### **Law of 13 June 2005 on electronic communication**

##### **Section 145**

§1. Is punished with a fine of 50 to 50.000 EUR the person who violates the sections 32, 33, 35, 41, 42, 114, 124, 127 and the decisions taken in execution of the sections 32, 39, §3, 47 and 127.

§2. Is punished with a fine of 200 to 2.000 EUR and with an imprisonment of eight days to one year or with one of these punishments only the person who violates section 39, §1, and the decisions taken in execution of section 16.

§3. Is punished with a fine of 500 to 50.000 EUR and an imprisonment of one year to four years or one of these punishments only:

1° the person who, with fraudulent intent, makes an electronic communication by means of an electronic communications network, in order to unlawfully take an advantage for himself or for any other person;

2° (cancelled)

3° the person who sets up any appliance which is destined to commit one of the above infringements, as well as an attempt to commit these.

§ 3bis. Any person who uses an electronic communications network or service or any other electronic means of communication to cause inconvenience to his correspondent or to cause damage as well as any person who sets up any appliance destined to commit the infringement mentioned above, as well as an attempt to commit this infringement, is punished with a fine of 50 EUR to 300 EUR and with an imprisonment of 15 days to two years or with one of these punishments only.

§4. The confiscation of appliances which do not satisfy the conditions stipulated in the sections 32, 33, 35 and 37 is always pronounced.

#### **Loi du 13 juin 2005 relative aux communications électroniques**

##### **Art. 145**

§ 1er 1[Est punie d'une amende de 50 à 50.000 EUR, la personne qui enfreint les [articles 32](#), [33](#), [35](#), [41](#), [42](#), [114](#), [124](#), [127](#) et les arrêtés pris en exécution des [articles 32](#), [39](#), § 3, [47](#) et [127](#).]1

§ 2 Est punie d'une amende de 200 à 2000 EUR et d'une peine d'emprisonnement de huit jours à un an ou d'une de ces peines seulement, la personne qui enfreint l'[article 39](#), § 1er, et les arrêtés pris en exécution de l'[article 16](#).

§ 3 Est punie d'une amende de 500 à 50.000 EUR et d'une peine d'emprisonnement d'un à quatre ans ou d'une de ces peines seulement:

1° la personne qui réalise frauduleusement des communications électroniques au moyen d'un réseau de communications électroniques afin de se procurer ou de procurer à autrui un avantage illicite;

2° 1[...];

3° la personne qui installe un appareil quelconque destiné à commettre une des infractions susmentionnées, ainsi que la tentative de commettre celles-ci.

1[§ 3bis

Est punie d'une amende de 20 EUR à 300 EUR et d'un emprisonnement de quinze jours à deux ans ou d'une de ces peines seulement la personne qui utilise un réseau ou un service de

communications électroniques ou d'autres moyens de communications électroniques afin d'importuner son correspondant ou de provoquer des dommages ainsi que la personne qui installe un appareil quelconque destiné à commettre l'infraction susmentionnée, ainsi que la tentative de commettre celle-ci.]]1

§ 4 La confiscation d'appareils ne satisfaisant pas aux conditions prévues aux [articles 32, 33, 35](#) et [37](#) est toujours prononcée.

## **11 MARS 2003. - Loi sur certains aspects juridiques des services de la société de l'information.**

### **CHAPITRE VI. - Responsabilité des prestataires intermédiaires.**

#### **Section 1. - Activité de simple transport.**

[Art. 18.](#) En cas de fourniture d'un service de la société de l'information consistant à transmettre, sur un réseau de communication, des informations fournies par le destinataire du service ou à fournir un accès au réseau de communication, le prestataire de services n'est pas responsable des informations transmises, s'il est satisfait à chacune des conditions suivantes:

1° il n'est pas à l'origine de la transmission;

2° il ne sélectionne pas le destinataire de la transmission;

3° il ne sélectionne, ni ne modifie, les informations faisant l'objet de la transmission.

Les activités de transmission et de fourniture d'accès visées à l'alinéa 1er englobent le stockage automatique, intermédiaire et transitoire des informations transmises, pour autant que ce stockage serve exclusivement à l'exécution de la transmission sur le réseau de communication et que sa durée n'excède pas le temps raisonnablement nécessaire à la transmission.

#### **Section 2. - Activité de stockage sous forme de copie temporaire de données.**

[Art. 19.](#) En cas de fourniture d'un service de la société de l'information consistant à transmettre, sur un réseau de communication, des informations fournies par un destinataire du service, le prestataire n'est pas responsable au titre du stockage automatique, intermédiaire et temporaire de cette information fait dans le seul but de rendre plus efficace la transmission ultérieure de l'information à la demande d'autres destinataires du service, pour autant que chacune des conditions suivantes soit remplie :

1° le prestataire ne modifie pas l'information;

2° le prestataire se conforme aux conditions d'accès à l'information;

3° le prestataire se conforme aux règles concernant la mise à jour de l'information, indiquées d'une manière largement reconnue et utilisée par les entreprises;

4° le prestataire n'entrave pas l'utilisation licite de la technologie, largement reconnue et utilisée par l'industrie, dans le but d'obtenir des données sur l'utilisation de l'information;

5° le prestataire agit promptement pour retirer l'information qu'il a stockée ou pour rendre l'accès à celle-ci impossible dès qu'il a effectivement connaissance du fait que l'information à l'origine de la transmission a été retirée du réseau ou du fait que l'accès à l'information a été rendu impossible, ou du fait qu'une autorité administrative ou judiciaire a ordonné de retirer l'information ou de rendre l'accès à cette dernière impossible et pour autant qu'il agisse conformément à la procédure prévue à l'article 20, § 3.

#### **Section 3. - Activité d'hébergement.**

[Art. 20.](#) § 1er. En cas de fourniture d'un service de la société de l'information consistant à stocker des informations fournies par un destinataire du service, le prestataire n'est pas responsable des informations stockées à la demande d'un destinataire du service à condition:

1° qu'il n'ait pas une connaissance effective de l'activité ou de l'information illicite, ou, en ce qui concerne une action civile en réparation, qu'il n'ait pas connaissance de faits ou de circonstances laissant apparaître le caractère illicite de l'activité ou de l'information; ou

2° qu'il agisse promptement, dès le moment où il a de telles connaissances, pour retirer les informations ou rendre l'accès à celles-ci impossible et pour autant qu'il agisse conformément à la procédure prévue au § 3

§ 2. Le § 1er ne s'applique pas lorsque le destinataire du service agit sous l'autorité ou le contrôle du prestataire.

§ 3. Lorsque le prestataire a une connaissance effective d'une activité ou d'une information illicite, il les communique sur le champ au procureur du Roi qui prend les mesures utiles conformément à l'article 39bis du Code d'instruction criminelle.

Aussi longtemps que le procureur du Roi n'a pris aucune décision concernant le copiage, l'inaccessibilité et le retrait des documents stockés dans un système informatique, le prestataire peut uniquement prendre des mesures visant à empêcher l'accès aux informations.

#### **Section 4. - Obligations en matière de surveillance.**

**Art. 21.** § 1er. Pour la fourniture des services visés aux articles 18, 19 et 20, les prestataires n'ont aucune obligation générale de surveiller les informations qu'ils transmettent ou stockent, ni aucune obligation générale de rechercher activement des faits ou des circonstances révélant des activités illicites.

Le principe énoncé à l'alinéa 1er ne vaut que pour les obligations à caractère général. Il n'empêche pas les autorités judiciaires compétentes d'imposer une obligation temporaire de surveillance dans un cas spécifique, lorsque cette possibilité est prévue par une loi.

§ 2. (Les prestataires visés au § 1er ont l'obligation d'informer sans délai les autorités judiciaires ou administratives compétentes des activités illicites alléguées qu'exerceraient les destinataires de leurs services, ou des informations illicites alléguées que ces derniers fourniraient.

Sans préjudice d'autres dispositions légales ou réglementaires, les mêmes prestataires sont tenus de communiquer aux autorités judiciaires ou administratives compétentes, à leur demande, toutes les informations dont ils disposent et utiles à la recherche et à la constatation des infractions commises par leur intermédiaire.) <L 2005-07-20/41, art. 59, 003; En vigueur : 08-08-2005>

### **CHAPITRE VII. - Mesures de contrôle et sanctions.**

#### **Section 1. - Procédure d'avertissement.**

**Art. 22.** Lorsqu'il est constaté qu'un acte constitue une infraction à la présente loi ou à l'un des ses arrêtés d'exécution, le Ministre qui a les Affaires économiques dans ses attributions ou l'agent qu'il désigne en application de l'article 23, peut adresser au contrevenant un avertissement le mettant en demeure de mettre fin à cet acte.

L'avertissement est notifié au contrevenant dans un délai de trois semaines à dater de la constatation des faits, par lettre recommandée avec accusé de réception ou par la remise d'une copie du procès-verbal de constatation des faits. L'avertissement peut également être communiqué par télécopie ou par courrier électronique.

L'avertissement mentionne :

1° les faits imputés et la ou les dispositions légales enfreintes;

2° le délai dans lequel il doit y être mis fin;

3° qu'en l'absence de suite donnée à l'avertissement, soit le Ministre qui a les Affaires économiques dans ses attributions peut intenter une action en cessation, soit les agents visés à l'article 23, peuvent aviser le procureur du Roi ou appliquer le règlement par voie de transaction prévu à l'article 24.

#### **Section 2. - Recherche et constatation des actes interdits par la présente loi**

**Art. 23.** Sans préjudice des attributions des officiers de police judiciaire, les agents désignés par le Ministre qui a les Affaires économiques dans ses attributions sont compétents pour rechercher et constater les infractions visées à l'article 26 de la présente loi.

Les procès-verbaux dressés par ces agents font foi jusqu'à preuve du contraire. Une copie en est adressée au contrevenant, par lettre recommandée avec accusé de réception, dans les trente jours de la date des constatations.

Outre les dispositions prévues à l'article 113, § 2, de la loi du 14 juillet 1991 sur les pratiques du commerce et sur l'information et la protection du consommateur, le Roi fixe, par arrêté délibéré en Conseil des Ministres, les pouvoirs pour rechercher et constater les infractions dont les agents visés à l'alinéa 1er disposent dans l'exercice de leurs fonctions.

Sans préjudice de leur subordination à l'égard de leurs supérieurs dans l'administration, les agents visés à l'alinéa 1er exercent les pouvoirs qui leur sont conférés en vertu de l'alinéa 2 sous la

surveillance du procureur général et du procureur fédéral pour ce qui concerne les tâches de recherche et de constatation de délits visés par la présente loi.

En cas d'application de l'article 22, le procès-verbal visé à l'alinéa 1er n'est transmis au procureur du Roi que lorsqu'il n'a pas été donné suite à l'avertissement. En cas d'application de l'article 24, le procès-verbal n'est transmis au procureur du Roi que lorsque le contrevenant n'a pas accepté la proposition de transaction.

#### **Section 4. - Sanctions pénales.**

**Art. 26.** § 1er. Sont punis d'une amende de 1.000 à 20.000 euros les prestataires qui ne respectent pas les ordonnances motivées visées à l'article 2, § 6, alinéa 1er, de la loi du 11 mars 2003 sur certains aspects juridiques des services de la société de l'information visés à l'article 77 de la Constitution.

§ 2. Sont punis d'une amende de 250 à 10.000 euros, ceux qui commettent une infraction aux dispositions des articles 7 à 10 et 13.

§ 3. Sont punis d'une amende de 250 à 25.000 euros, ceux qui envoient des publicités par courrier électronique en infraction aux dispositions de l'article 14.

§ 4. Sont punis d'une amende de 500 à 50.000 euros, ceux qui, de mauvaise foi, commettent une infraction aux dispositions des articles 7 à 10, 13 et 14.

§ 5. Sont punis d'une amende de 1.000 à 20.000 euros :

1° ceux qui ne se conforment pas à ce que dispose un jugement ou un arrêt rendu en vertu de l'article 3 de la loi du 11 mars 2003 sur certains aspects juridiques des services de la société de l'information visés à l'article 77 de la Constitution à la suite d'une action en cessation;

2° ceux qui, volontairement, empêchent ou entravent l'exécution, par les personnes mentionnées à l'article 23, de leur mission visant à rechercher et constater les infractions ou les manquements aux dispositions de la présente loi;

3° les prestataires qui refusent de fournir la collaboration requise sur la base de l'article 21, § 1er, alinéa 2, ou de l'article 21, § 2.

Lorsque les faits soumis au tribunal font l'objet d'une action en cessation, il ne peut être statué sur l'action pénale qu'après qu'une décision coulée en force de chose jugée a été rendue relativement à l'action en cessation.

§ 6. Les sociétés et associations ayant la personnalité civile sont civilement responsables des condamnations aux dommages-intérêts, amendes, frais, confiscations, restitutions et sanctions pécuniaires quelconques prononcées pour infraction aux dispositions de la présente loi contre leurs organes ou préposés.

Il en est de même des membres de toutes associations commerciales dépourvues de la personnalité civile, lorsque l'infraction a été commise par un associé, gérant ou préposé, à l'occasion d'une opération entrant dans le cadre de l'activité de l'association. L'associé civilement responsable n'est toutefois personnellement tenu qu'à concurrence des sommes ou valeurs qu'ils a retirées de l'opération.

Ces sociétés, associations et membres pourront être cités directement devant la juridiction répressive par le ministère public ou la partie civile.

§ 7. Les dispositions du livre 1er du Code pénal, en ce compris le chapitre VII et l'article 85, sont applicables aux infractions visées par le présent article.

Sans préjudice de l'application des règles habituelles en matière de récidive, les peines prévues au § 4 sont doublées en cas d'infraction intervenant dans les cinq ans à dater d'une condamnation coulée en force de chose jugée prononcée du chef de la même infraction.

Par dérogation à l'article 43 du Code pénal, le tribunal apprécie, lorsqu'il prononce une condamnation pour l'une des infractions visées par le présent article, s'il y a lieu d'ordonner la confiscation spéciale. La présente disposition n'est pas d'application dans le cas de récidive visé par l'alinéa 2 du présent paragraphe.

A l'expiration d'un délai de dix jours à compter du prononcé, le greffier du tribunal ou de la cour est tenu de porter à la connaissance du Ministre qui a les Affaires économiques dans ses attributions, par lettre ordinaire, tout jugement ou arrêt relatif à une infraction visée par le présent article.

Le greffier est également tenu d'aviser sans délai le ministre précité de tout recours introduit contre pareille décision.

## 6.7 Bulgaria

Extract:

### **Bulgarian Penal Code (PC) :**

#### **I. Chapter Two „Crime”, General Provisions, Section II „Preparation and Attempt” and Section III “Complicity”:**

##### **„Section II „Preparation and Attempt”**

##### **Article 18**

(1) An attempt shall be the commenced perpetration of intentional crime, whereas the act has not been completed or, although completed, the consequences dangerous to society provided by the law and desired by the perpetrator have not occurred.

(2) For an attempt, the perpetrator shall be punished by the punishment provided for completed crime, with due consideration taken of the degree of implementation of the intent and the reasons because of which the crime remained unaccomplished.

.....

##### **Section III “Complicity”**

##### **Article 20**

(1) Accomplices in the perpetration of intentional crime shall be: perpetrators, abettors and accessories.

(2) A perpetrator shall be a person who took part in the perpetration itself of the crime.

(3) An abettor shall be a person who intentionally incited another to commit a crime.

(4) An accessory shall be a person who intentionally facilitated the perpetration of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way.

##### **Article 21**

(1) All accomplices shall be punished by the punishment provided for the perpetrated crime, with due consideration of the nature and degree of their participation.

(2) Abettors and accessories shall be held responsible only for what they have intentionally abetted or by what they have assisted the perpetrator.

(3) Where because of certain personal characteristics or attitude of the perpetrator the law treats the perpetrated act as a crime, liable for this crime shall be both the abettor and the accessory with respect of whom such circumstances do not exist.

(4) The special circumstances, due to which the law excludes, reduces or increases the punishment for some of the accomplices, shall not be taken into account for the remaining accomplices with respect to whom such circumstances do not exist.”

**II. Article 93, point 28:** “28. (New, SG No. 38/2007) "Pornographic material" is an indecent, unacceptable or incompatible with the public moral material which depicts in an open manner a sexual conduct. Such a conduct shall be a conduct which expresses real or simulated sexual intercourses between persons from the same or the opposite sex, sodomy, masturbation, sexual sadism or masochism, or lascivious demonstration of the sexual organs of a person.”.

##### **III. Chapter Two “Crimes against the person”, Section VIII “Debauchery”:**

##### **Article 149**

(Supplemented, SG No. 28/1982, amended, SG No. 89/1986)

(1) (Amended, SG No. 107/1996, No. 75/2006) A person who performs an act for the purpose of arousing or satisfying sexual desire, without copulation, with a person under 14 years of age, shall be punished for lewdness by deprivation of liberty for up one to six years.

(2) (Amended, SG No. 107/1996, supplemented, No. 27/2009) Where the lewdness has been performed through the use of force or threat, through taking advantage of the helpless condition of the victim or by reducing the victim to such condition or by taking advantage of a state of dependence or supervision, the punishment shall be deprivation of liberty from two (2) up to eight (8) years.

(3) (Amended, SG No. 107/1996, SG No. 38/2007) Where the act under the preceding paragraphs has been done for a second time, the punishment shall be deprivation of liberty from three (3) to ten (10) years.

(4) (New, SG, No. 107/1996) Lewdness shall be penalised by deprivation of liberty from three (3) to fifteen (15) years:

1. if committed by two or more persons;
2. (repealed, SG No. 62/1997) ;
3. (repealed, SG No. 62/1997) ;
4. (repealed, SG No. 62/1997) .

(5) (New, SG No. 62/1997) Lewdness shall be penalised by deprivation of liberty from five to twenty years:

1. if committed with two or more minors;
2. if a severe bodily injury has been inflicted or a suicide has been attempted.
3. if it constitutes a dangerous recidivism.
4. (new, SG No. 38/2007) if it constitutes a particularly grave case.

#### **Article 150**

(Supplemented, SG No. 28/1982, amended, SG No. 89/1986, SG No. 107/1996, 75/2006)

(1) (Previous text of Article 150, amended and supplemented, SG, No. 27/2009) A person who performs an act for the purpose of arousing or satisfying sexual desire, without copulation, with regard to a person who has completed 14 years of age, by using force or threat, by taking advantage of the helpless condition of that person or by reducing the person to such condition or by taking advantage of a state of dependence or supervision, shall be punished by deprivation of liberty for up to six years.

(2) (New SG, No. 27/2009) In particularly grave cases the punishment shall be deprivation of liberty from two to eight years.

#### **Article 151**

(1) (Amended, SG No. 75/2006) A person who has sexual intercourse with a person who has not completed the age of 14 years, insofar as the act does not constitute a crime under Article 152, shall be punished by deprivation of liberty for two to six years.

(2) (New SG, No. 27/2009) Where the act under paragraph 1 was committed against an underage person by taking advantage of a state of dependence or supervision, the punishment shall be deprivation of liberty of up to five years.

(3) (Previous paragraph 2, SG, No. 27/2009) A person who has sexual intercourse with a person who has completed the age of 14 years, who does not understand the essence and meaning of the act, shall be punished by deprivation of liberty for up to three years.

#### **Article 152**

(1) A person who has sexual intercourse with a person of the female sex:

1. who is deprived of the possibility of self-defence, and without her consent;
2. by compelling her thereto by force or threat;
3. by reducing her to a state of helplessness shall be punished for rape by deprivation of liberty for two to eight years.

shall be punished for rape by deprivation of liberty for two to eight years.

(2) For rape the punishment shall be deprivation of liberty for three to ten years:

1. (amended, SG No. 92/2002) if the raped woman has not completed eighteen years of age;
2. if she is a relative of descending line;
3. (new, SG No. 28/1982) if it was committed for a second time.

(3) (Amended, SG No. 28/1982) For rape the punishment shall be deprivation of liberty for three to fifteen years:

1. if it has been performed by two or more persons;
2. if medium bodily injury has been caused;
3. if an attempt at suicide has followed;
4. (new, SG No. 92/2002) if it has been committed in view of forceful involvement in further acts of debauchery or prostitution;
5. (renumbered from Item 4, SG No. 92/2002) if it constitutes a case of dangerous recidivism.

(4) (Amended, SG No. 28/1982, SG No. 92/2002) The punishment for rape shall be of ten to twenty years, where:

1. the victim has not turned fourteen years of age;
2. severe bodily injury has been caused;
3. suicide has ensued;
4. it qualifies as a particularly serious case.

Article 153

(Amended, SG No. 75/2006)

A person who copulates with another, by compulsion using the other's material or official dependency upon him, shall be punished by deprivation of liberty for up to three years.

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#### **Article 154a**

(New SG, No. 27/2009)

A person who gives or promises a benefit, performs acts of fornication or copulation with an underage person, who deals with prostitution, shall be punished by deprivation of liberty for up to three years.

#### **Article 155**

(1) (Amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 26/2004, SG No. 75/2006) A person who persuades an individual to practise prostitution or acts as procurer or procuress for the performance of indecent touching or copulation, shall be punished by deprivation of liberty of up to three years and by a fine of BGN 1,000 to BGN 3,000.

(2) (Amended, SG No. 10/1993, SG No. 62/1997, No. 75/2006) A person who systematically places at the disposal of different persons premises for sexual intercourse or for acts of lewdness shall be punished by deprivation of liberty for up to five years and by a fine of BGN 1,000 to BGN 5,000.

(3) (New, SG No. 62/1997; amended, SG No. 92/2002, No. 75/2006) Where acts under Paragraphs 1 and 2 above have been committed with a venal goal in mind, punishment shall be deprivation of liberty from one to six years and a fine of BGN 5,000 to BGN 15,000.

(4) (New - SG No. 21/2000, amended, SG No. 75/2006) A person who persuades or forces another person to using drugs or analogues thereof for the purposes of practising prostitution, to performing copulation, indecent assault, intercourse or any other acts of sexual gratification with a person of the same sex, shall be punished by deprivation of liberty for five to fifteen years and by a fine from BGN 10,000 to BGN 50,000.

(5) (New, SG No. 21/2000, amended, SG No. 92/2002, supplemented, SG No. 75/2006, amended, SG No. 38/2007) Where the act under Paragraphs 1 - 4 has been committed:

1. by an individual acting at the orders or in implementing a decision of an organized criminal group;
2. with regard to a person under 18 years of age or insane person;
3. with regard to two or more persons;
4. repeatedly;
5. at the conditions of a dangerous recidivism,

the punishment under pars. 1 and 2 shall be deprivation of liberty from two to eight years and a fine from BGN five thousand to fifteen thousand, under par.3 - deprivation of liberty from three to ten years and a fine from BGN ten thousand to twenty five thousand, and under par. 4 - deprivation of liberty from ten to twenty years and a fine from BGN hundred thousand to three thousand.

(6) (Renumbered from Paragraph 3, SG 62/1997, renumbered from Paragraph 4, SG No. 21/2000, repealed, SG No. 75/2006) .

(7) (Renumbered from Paragraph 4, SG 62/1997, renumbered from Paragraph 5, SG No. 21/2000, amended, SG 92/2002, effective 1.01.2005 in respect of the punishment of probation - amended, SG No. 26/2004, effective 1.01.2004, repealed, SG No. 103/2004)

#### **Article 155a**

(New, SG No. 38/2007)

(1) (Amended and supplemented, SG, No. 27/2009) Anyone, who for the purpose of establishing a contact with a person who is under 18 years of age, in order to perform fornication, copulation, sexual intercourse, prostitution or for creation of pornographic material, provides in Internet or in

another manner information about him/her, shall be punished by deprivation of liberty of up to five years and by a fine from BGN five thousand to BGN ten thousand.

(2) The same punishment shall be imposed also on that person, who for the purpose of performing a fornication, copulation or sexual intercourse, establishes a contact with a person who is under 14 years of age, by using information provided in Internet or in another manner.

#### **Article 155b**

(New SG, No. 27/2009)

A person who persuades a person who is under the age of 14 to observe actual, virtual or simulated sexual intercourse between persons of the same or different sex or lascivious demonstration of human sexual organs, sodomy, masturbation, sexual sadism or masochism shall be punished by deprivation of liberty for up to three years or probation.

#### **Article 156**

(Amended, SG No. 10/1993)

(1) (Previous Article 156, amended, SG No. 62/1997, No. 75/2006) A person who abducts another person for the purpose of her being placed at the disposal for acts of debauchery shall be punished by deprivation of liberty for three to ten years and by a fine of up to BGN 1,000.

(2) (New, SG No. 62/1997, amended, SG No. 75/2006) The punishment shall be deprivation of liberty for five to twelve years, if:

1. the abducted person is under 18 years of age;
2. the abducted person has been placed at disposal for acts of debauchery, or
3. the abduction has been carried out for the purpose of placing the person at disposal for acts of debauchery beyond the borders of this country.

(3) (New, SG No. 75/2006) The punishment shall be deprivation of liberty from five to fifteen years and a fine of BGN 5,000 to BGN 20,000 where:

1. the act was committed by an individual acting on the orders or in execution of a decision of an organised criminal group;
2. the abducted person was handed over for sexual activities outside the borders of the country;
3. the act constitutes dangerous recidivism.

#### **Article 157**

(1) (Supplemented, SG No. 28/1982, amended, SG No. 92/2002, No. 75/2006) A person who performs sexual intercourse or acts of sexual satisfaction with a person of the same sex, by using for that purpose force or threat, or by taking advantage of a position of dependency or supervision, as well as with a person deprived of the possibility of self-defence, shall be punished by deprivation of liberty for two to eight years.

(2) (New, SG No. 75/2006) Where the act under para 1 was committed in respect to a person below the age of 14, the punishment shall be deprivation of liberty of three to twelve years.

(3) (Supplemented, SG No. 28/1982, amended, SG No. 89/1986, SG No. 62/1997, SG No. 92/2002, SG No. 26/2004, renumbered from Paragraph 2, amended, SG No. 75/2006) A person who performs sexual intercourse or acts of sexual gratification with a person of the same sex below the age of 14, shall be punished by deprivation of liberty from two to six years.

(4) (New, SG No. 89/1986, amended, SG No. 26/2004 renumbered from Paragraph 3, amended, SG No. 75/2006) A person who performs sexual intercourse or acts of sexual gratification with a person of the same sex below the age of 14 who does not understand the nature or implications of his/her acts, shall be punished by deprivation of liberty from two to six years.

(5) (Amended, SG No. 28/1982, renumbered from Paragraph (4) , SG No. 89/1986, amended, SG No. 10/1993, SG No. 92/2002, SG No. 103/2004, repealed, SG No. 75/2006) .

.....

#### **Article 158a**

(New SG, No. 27/2009)

(1) A person who in any manner whatsoever recruits or forces individual underage persons or groups of such persons to perform sexual intercourse, acts of fornication, sodomy, masturbation, sexual sadism, masochism or lascivious demonstration of human sexual organs shall be punished by deprivation of liberty for up to six years.

(2) If a material benefit was gained from the act under paragraph 1, the punishment shall be deprivation of liberty for up to eight years and a fine of up to BGN ten thousand.



(3) A person who observes sexual intercourse, acts of fornication, sodomy, masturbation, sexual sadism, masochism or lascivious demonstration of human sexual organs in the perpetration of which a person participates, who the perpetrator knows or suspects was recruited or forced under the conditions of paragraph 1 shall be punished by deprivation of liberty of up to three years.

#### **Article 159**

(Amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002)

(1) (Amended, SG No. 38/2007) A person who produces, displays, presents, broadcasts, distributes, sells, rents or otherwise circulates a pornographic material, shall be punished by deprivation of liberty of up to one year and a fine of BGN one thousand (1,000) to three thousand (3,000) .

(2) (New, SG No. 38/2007, supplemented, No. 27/2009) A person who distributes through Internet or in another similar manner a pornographic material, shall be punished by deprivation of liberty of up to two years and a fine of BGN one thousand to three thousand.

(3) (Renumbered from paragraph 2 and amended, SG No. 38/2007) An individual who displays, presents, offers, sells, rents or distributes in another manner a pornographic material to a person who has not turned 16 years of age, shall be punished by deprivation of liberty of up to three years and a fine of up to BGN five thousand (5,000) .

(4) (Amended, SG No. 75/2006, renumbered from Paragraph 3 and amended, SG No. 38/2007) Regarding acts under paras. 1-3, where a person who has not turned 18 years of age, or a person who looks like such a person, has been used in the creation of a pornographic material, the punishment shall be deprivation of liberty of up to six years and a fine of up to BGN eight thousand (8,000) .

(5) (Renumbered from paragraph 4 and amended, SG No. 38/2007) Where acts under paras. 1 - 4 have been committed at the orders or in implementing a decision of an organized criminal group, punishment shall be deprivation of liberty from two to eight years and a fine of up to BGN ten thousand (10,000) , the court being also competent to impose confiscation of some or all the possessions of the perpetrator.

(6) (Renumbered from paragraph 5 and amended, SG No. 38/2007) A person who possesses or provides for himself or for another person through a computer system or in another manner a pornographic material in whose creation a person who has not turned 18 years of age has been used or a person who looks like such a person, shall be punished by deprivation of liberty of up to one year or a fine of up to BGN two thousand.

(7) (Renumbered from paragraph 6, SG No. 38/2007) The object of criminal activity shall be expropriated to the benefit of the State, and where it is not found or has been disposed of, its money equivalent shall be awarded.”.

#### **IV. Chapter Four “Crimes against marriage, the family and youth”, Section II “Crimes Against Youth”:**

“Article 188

(1) A person who compels a minor or an underage person to commit a crime or to engage in prostitution, shall be punished by deprivation of liberty for up to five years and by public censure.

(2) Where as the result from the above harmful consequences have set in for the physical, the psychic or the moral development of the victim, the punishment shall be deprivation of liberty for one to six years and public censure, provided the act does not constitute a graver crime.”

## **6.8 Croatia**

Extract:

### **Article 34: Attempt**

(1) Whoever, with the intent to commit a criminal offence, performs an act which spatially and temporally directly precedes the realisation of the statutory definition of the criminal offence shall be punished for the attempt, provided that a sentence of imprisonment of five years or a more severe punishment may be imposed or that the law expressly provides for the punishment of an attempt as well.

(2) The perpetrator of an attempt may be punished less severely.

(3) The punishment of a perpetrator who through gross unreasonableness attempts to commit a criminal offence by unsuitable means or towards an unsuitable object may be remitted.

### **Article 87: MEANING OF TERMS USED IN THIS ACT**

(7) A child shall mean a person who has not attained the age of eighteen years.

(17) A computer system shall mean any device or a group of inter-connected or inter-linked devices, one or more of which process data automatically on the basis of a computer programme, as well as computer data stored or processed in, read or transferred into it for the purpose of its operation, use, protection and maintenance.

(18) Computer data shall mean any denotation of facts, information or ideas in a form suitable for computer processing.

(19) A computer programme shall mean a set of computer data that are capable of prompting the computer system to perform a certain function.

## **TITLE XVII**

### **CRIMINAL OFFENCES OF SEXUAL ABUSE AND SEXUAL EXPLOITATION OF CHILDREN**

#### **Article 158: Sexual Abuse of a Child under the Age of Fifteen**

(1) Whoever engages in sexual intercourse or performs a sexual act equated with sexual intercourse with a child under the age of fifteen, or induces a child under the age of fifteen to engage in sexual intercourse or perform a sexual act equated with sexual intercourse with a third party or to perform upon himself/herself a sexual act equated with sexual intercourse shall be sentenced to imprisonment for a term of between one and ten years.

(2) Whoever commits a lewd act against a child under the age of fifteen, or induces a child to commit a lewd act with a third party or upon himself/herself shall be sentenced to imprisonment for a term of between six months and five years.

(3) There shall be no criminal offence referred to in paragraphs 1 and 2 of this Article if the age difference between the persons engaging in sexual intercourse or performing a sexual act equated with sexual intercourse or a lewd act does not exceed three years.

(4) A perpetrator who was avoidably mistaken that the child referred to in paragraph 1 of this Article was at least fifteen years old shall be sentenced to imprisonment of between six months and five years. If he/she was avoidably mistaken that the child referred to in paragraph 2 of this Article was at least fifteen years old, he/she shall be sentenced to imprisonment of up to three years.

(5) Whoever engages in sexual intercourse or performs a sexual act equated with sexual intercourse with a child under the age of fifteen by means of the use of force or threats, of deception, of fraud, of abuse of authority or of a situation of hardship or dependence of the child on him/her shall be sentenced to imprisonment for a term of between three and fifteen years.

(6) Whoever under the conditions referred to in paragraph 5 of this Article commits a lewd act against a child under the age of fifteen shall be sentenced to imprisonment for a term of between one and eight years.

#### **Article 159: Sexual Abuse of a Child over the Age of Fifteen**

(1) Whoever engages in sexual intercourse or performs a sexual act equated with sexual intercourse with a child over the age of fifteen with whose upbringing, education, minding, spiritual guidance or care he/she has been entrusted, or whoever induces a child over the age of fifteen with whose upbringing, education, minding, spiritual guidance or care he/she has been

entrusted to engage in sexual intercourse or perform a sexual act equated with sexual intercourse with a third party or to perform upon himself/herself a sexual act equated with sexual intercourse shall be sentenced to imprisonment for a term of between six months and five years.

(2) The sentence referred to in paragraph 1 of this Article shall be imposed on a lineal relative by blood or by adoption, a step-father or step-mother who engages in sexual intercourse or performs a sexual act equated with sexual intercourse with a child over the age of fifteen or who induces a child over the age of fifteen to engage in sexual intercourse or perform a sexual act equated with sexual intercourse with a third party or to perform upon himself/herself a sexual act equated with sexual intercourse.

#### **Article 160: Satisfying Lust in the Presence of a Child under the Age of Fifteen**

(1) Whoever in the presence of a child under the age of fifteen commits sexual acts intended to satisfy his/her own or another person's lust shall be sentenced to imprisonment for a term of up to one year.

(2) Whoever in the presence of a child under the age of fifteen commits any of the criminal offences referred to in Articles 152 through 155, Articles 158 and 159 of this Act shall be sentenced to imprisonment for a term of up to three years.

(3) A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 or 2 of this Article shall be punished.

#### **Article 161: Child Enticement for the Purpose of Satisfying Sexual Needs**

(1) An adult who, with the intention that he/she or a third party commit the criminal offence referred to in Article 158 of this Act against a person under the age of fifteen, proposes to this person, through information and communication technologies or in some other way, to meet up with him/her or a third party, where this proposal is followed by material acts leading to such a meeting, shall be sentenced to imprisonment for a term of up to three years.

(2) Whoever collects, gives or transfers data on a person under the age of fifteen for the purpose of committing the criminal offence referred to in paragraph 1 of this Article shall be sentenced to imprisonment for a term of up to one year.

(3) A perpetrator who attempts to commit the criminal offence referred to in paragraph 1 of this Article shall be punished.

#### **Article 162: Child Pandering**

(1) Whoever for the purpose of making a profit or gaining some other benefit entices, recruits or incites a child to provide sexual services, or organises or makes possible the provision of child sexual services, where he/she knows or should and could have known that the person in question was a child, shall be sentenced to imprisonment for a term of between one and ten years.

(2) Whoever uses the sexual services of a child who has attained the age of fifteen years in exchange for any form of remuneration or consideration, where he/she knows or should and could have known that the person in question is a child, shall be sentenced to imprisonment for a term of between six months and five years.

(3) Whoever for the purpose of making a profit coerces or induces by means of the use of force or threats, of deception, of fraud, of abuse of authority or of a situation of hardship or dependence a person he/she knows or could and should have known is a child to provide sexual services, or uses the sexual services of this child in exchange for payment, where he/she knows or should and could have known about the said circumstances, shall be sentenced to imprisonment for a term of between three and fifteen years.

(4) Whoever advertises the exploitation of sexual services of a child shall be sentenced to imprisonment for a term of between six months and five years.

#### **Article 163: Exploitation of Children for Pornography**

(1) Whoever entices, recruits or incites a child to participate in the taking of child pornography pictures or whoever organises or makes possible the taking of child pornography pictures shall be sentenced to imprisonment for a term of between one and eight years.

(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever takes child pornography pictures or produces, offers, makes available, distributes, transmits, imports, exports, procures for himself/herself or for another person, sells, gives, exhibits or possesses child

pornography or knowingly obtains access, through information and communication technologies, to child pornography.

(3) Whoever by means of the use of force or threats, of deception, of fraud, of abuse of authority or of a situation of hardship or dependence coerces or induces a child to participate in the taking of child pornography pictures shall be sentenced to imprisonment for a term of between three and twelve years.

(4) Special devices, means, computer programmes or data intended for, adapted to or used for committing or facilitating the commission of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be seized, while the pornographic material which was created by the commission of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be destroyed.

(5) A child shall not be punished for producing and possessing pornographic material depicting him/her alone or him/her and another child, where this material is produced and possessed by them with their consent and solely for their own private use.

(6) Child pornography shall mean any material that visually or otherwise depicts a real child or a realistic image of a non-existent child or a person appearing to be a child, involved or engaged in real or simulated sexually explicit conduct, or any depiction of a child's sexual organs for sexual purposes. For the purpose of this Article, any material that is artistic, medical, scientific, informative or similar in character shall not be deemed pornography.

#### **Article 164: Exploitation of Children for Pornographic Performances**

(1) Whoever entices, recruits or incites a child to participate in pornographic performances shall be sentenced to imprisonment for a term of between one and eight years.

(2) Whoever profits from pornographic performances involving the participation of a child or otherwise exploits a child for pornographic performances shall be sentenced to imprisonment for a term of between one and ten years.

(3) Whoever by means of the use of force or threats, of deception, of fraud, of abuse of authority or of a situation of hardship or dependence coerces or induces a child to participate in a pornographic performance shall be sentenced to imprisonment for a term of between three and twelve years.

(4) The sentence of imprisonment referred to in paragraph 1 of this Article shall be imposed on whoever watches a pornographic performance that is transmitted live or via communication means, where he/she knows or should and could have known that it involved the participation of a child.

(5) Special devices, means, computer programmes or data intended, adapted or used for committing or facilitating the commission of the criminal offences referred to in paragraphs 1, 2 and 3 of this Article shall be seized, while the pornographic material which was created by the commission of the criminal offences referred to in paragraphs 1 and 2 of this Article shall also be destroyed.

#### **Article 165: Acquainting Children with Pornography**

(1) Whoever sells, gives a gift, exhibits or by public display, by means of a computer system, network or media for the storage of computer data or in some other way makes accessible to a child under the age of fifteen files, pictures, audio-visual content or other objects of pornographic content or shows him/her a pornographic performance shall be sentenced to imprisonment for a term of up to three years.

(2) Objects, special devices, means, computer programmes or data intended for, adapted to or used for committing or facilitating the commission of a criminal offence referred to in paragraph 1 of this Article shall be seized, while the pornographic material shall also be destroyed.

(3) For the purpose of this Article, pornography shall mean any material that visually or otherwise depicts a person in real or simulated sexually explicit conduct or any depiction of a person's sexual organs for sexual purposes. For the purpose of this Article, any material that is artistic, medical, or scientific in character shall not be deemed pornography.

#### **Article 166: Serious Criminal Offence of Child Sexual Abuse and Exploitation**

(1) If as a result of the criminal offence referred to in Article 158, paragraph 1, Article 162, paragraph 1 or 2, Article 163, paragraph 1 or 2, or Article 164, paragraph 1, of this Act a child suffers severe bodily injury or his/her physical or emotional development is compromised or

becomes pregnant, where a number of perpetrators participate in the offence, or the offence is committed against an especially vulnerable child, or is committed by a family member or a person the child lives with in a joint household, or is committed in an especially cruel or degrading manner,

the perpetrator shall be sentenced to imprisonment for a term of between three and fifteen years.

(2) If as a result of the criminal offence referred to in Article 158, paragraph 5, Article 162, paragraph 3, Article 163, paragraph 3, or Article 164, paragraph 2, of this Act a child suffers severe bodily injury or his/her physical or emotional development is compromised or becomes pregnant, where a number of perpetrators participate in the offence, or the offence is committed against an especially vulnerable child, or is committed by a family member or a person the child lives with in a joint household, or is committed in an especially cruel or degrading manner,

the perpetrator shall be sentenced to imprisonment for a term of at least five years.

(3) If as a result of the criminal offence referred to in Article 158, 162, 163 or 164 of this Act a child dies, the perpetrator shall be sentenced to imprisonment for a term of at least ten years or long-term imprisonment.

## 6.9 Czech Republic

Extract:

### **General Part**

Section 25-Age

Whoever has not attained fifteen years of age at the time of commission of a crime shall not be criminally liable.

### **Section 126-Child**

A child is any person under the age of eighteen years, unless the Criminal Code states something else.

Special Part

### **Section 168-Trafficking in Human Beings**

(1) Whoever makes, procures, hires, allures, transports, hides, retains or exposes a child to be exploited by another

- a) for sexual intercourse or other forms of sexual harassment or abuse or production of pornography,
  - b) for taking of tissues, cells or organs from his body,
  - c) for military service,
  - d) for slavery or servitude, or
  - e) for forced labour or other forms of exploitation, or
- whoever preys from such behaviour,

shall be sentenced to a term of imprisonment of two years to ten years.

(2) The same sentence shall be imposed to a person who makes, procures, hires, allures, transports, hides, retains or exposes other person than specified in paragraph (1) by using violence, threat of violence or by elusion or by abusing another's mistake, distress or dependence, to be exploited by another

- a) for sexual intercourse or other forms of sexual harassment or abuse or production of pornography,
  - b) for taking of tissues, cells or organs from his body,
  - c) for military service,
  - d) for slavery or servitude, or
  - e) for forced labour or other forms of exploitation, or
- whoever preys from such behaviour.

(3) An offender shall be sentenced to a term of imprisonment of five years to twelve years or forfeiture of property if

- a) he/she commits an act given in paragraphs (1) and (2) as a member of organised group,
- b) he/she exposes another person to the danger to sustain grave physical injury or death,
- c) he/she commits such act with the intent to acquire a substantial benefit, or
- d) he/she commits such act in connection with an organised group operating in more states.

(4) An offender shall be sentenced to a term of imprisonment of ten years to sixteen years or forfeiture of property if he/she causes death through act given in paragraph (1) and (2) .

(5) Preparation is punishable.

### **Section 169-Fostering a Child to other Person's Power**

(1) Whoever fosters a child for remuneration to other person's power for the purpose of adoption or other similar purpose shall be sentenced to a term of imprisonment of up to three years or prohibition of activity.

(2) An offender shall be sentenced to a term of imprisonment of two years to eight years or forfeiture of property if

- a) he/she commits such act as a member of organised group,
- b) he/she causes severe injury to health,
- c) he/she commits such act repeatedly, or

d) he/she commits such act with the intent to acquire a substantial benefit for him-/herself or another.

(3) An offender shall be sentenced to a term of imprisonment of three years to ten years or forfeiture of property if

a) he/she causes death through the act given in paragraph (1) ,

b) he/she commits such act with the intention to acquire large scale benefit for him-/herself or another,

c) he/she commits such act in connection with an organised group operating in more states.

### **Section 172-Abduction**

(1) Whoever abducts other person to a foreign country by elusion or by using violence or the thread of violence or other injury, or makes other person to leave for the foreign country or averts other to return from foreign country, shall be sentenced to a term of imprisonment of two years to eight years.

(2) The same sentence shall be imposed on a person who abducts other person from foreign country to Czech Republic by elusion or by using violence or the thread of violence or other injury, or makes other person to come to Czech Republic or averts other to leave Czech Republic.

(3) An offender shall be sentenced to a term of imprisonment of five years to twelve years if

a) he/she commits the act given in paragraph (1) or (2) as a member of organised group,

b) he/she commits such act to another due to his/her real or assumed race, ethnicity, nationality, politics, faith or due to the fact that the other person real or assumed atheism,

c) he/she causes through such act physical or mental anguish,

d) he/she causes through such act severe injury to health, or

e) he/she commits such act with the intent to acquire a substantial benefit for him-/herself or another.

(4) An offender shall be sentenced to a term of imprisonment of eight years to fifteen years if

a) he/she causes death through an act given in paragraph (1) or (2) ,

b) he/she commits such act with the intention to acquire large scale benefit for him-/herself or another.

(5) Preparation is punishable.

### **Section 185-Rape**

(1) Whoever forces other person by violence or threat of immediate violence or threat of other serious injury to health to take part in sexual intercourse, or whoever abuses his/her defencelessness for such purpose, shall be sentenced to a term of imprisonment of six months to five years.

(2) An offender shall be sentenced to a term of imprisonment of two years to ten years if he/she commits an act given in paragraph (1)

a) through coitus or other carnal knowledge done in a way comparable to coitus,

b) against a child, or

c) with a weapon.

(3) An offender shall be sentenced to a term of imprisonment of five years to twelve years if

a) he/she commits an act given in paragraph (1) against a person under the age of fifteen years,

b) he/she commits such act against a person taken into custody, being imprisoned, undergoing preventive treatment, being in protective detention, being placed into protective or institutional training or in similar institution where individual freedom is restricted, or

c) he/she causes through such act severe injury to health.

(4) An offender shall be sentenced to a term of imprisonment of ten years to sixteen years if he/she causes death through an act given in paragraph (1) .

(5) Preparation is punishable

### **Section 186-Sexual Duress**

(1) Whoever forces other person by violence or threat of immediate violence or threat of other serious injury to health to self-gratification, denudation or other similar behaviour, shall be sentenced to a term of imprisonment of six months to four years or prohibition of activity.

(2) The same sentence shall be imposed on a person who shames another to sexual intercourse, self-gratification, denudation or other similar behaviour while abusing another's dependence, defencelessness or his/her own status and credibility and authority arising there from.

(3) An offender shall be sentenced to a term of imprisonment of one year to five years if he/she commits an act given in paragraph (1) and (2)

a) against a child, or

b) at least with two persons.

(4) An offender shall be sentenced to a term of imprisonment of two years to eight years if

a) he/she commits an act given in paragraph (1) with a weapon,

b) he/she commits an act given in paragraph (1) or (2) against a person taken into custody, being imprisoned, undergoing preventive treatment, being in protective detention, being placed into protective or institutional training or in similar institution where individual freedom is restricted, or

c) he/she commits such act as a member of organised group.

(5) An offender shall be sentenced to a term of imprisonment of five years to twelve years if

a) he/she commits an act given in paragraph (1) against a child under the age of fifteen years, or

b) he/she causes through such act severe injury to health.

(6) An offender shall be sentenced to a term of imprisonment of ten years to fifteen years if he/she causes death through an act given in paragraph (1) or (2) .

(7) Preparation is punishable.

### **Section 187-Sexual Abuse**

(1) Whoever has sexual intercourse with a person under the age of fifteen years, or who sexually abuses such person in any other way, shall be sentenced to a term of imprisonment of one year to eight years.

(2) An offender shall be sentenced to a term of imprisonment of two years to ten years if he/she commits an act given in paragraph (1) against a child under the age of fifteen years under his/her supervision, thereby abusing such person's dependence or his/her own status and credibility and authority arising there from.

(3) An offender shall be sentenced to a term of imprisonment of five years to twelve years if he/she causes severe injury to health through an act given in paragraph (1) .

(4) An offender shall be sentenced to a term of imprisonment of ten years to sixteen years if he/she causes death through an act given in paragraph (1) .

(5) Preparation is punishable.

### **Section 189-Pandering**

(1) Whoever makes, procures, hires, allures or seduces another for the purpose of involving that person in prostitution, or who preys from prostitution of another person, shall be sentenced to a term of imprisonment of six months to four years, prohibition of activity or forfeiture of a thing or other property value.

(2) An offender shall be sentenced to a term of imprisonment of two years to eight years if he/she commits the act given paragraph (1)

a) to acquire substantial benefit for him/her or another, or

b) as a member of organised group.

(3) An offender shall be sentenced to a term of imprisonment of five years to twelve years or forfeiture of property if he/she causes severe injury to health through an act given in paragraph (1) .

(4) An offender shall be sentenced to a term of imprisonment of eight years to fifteen years or forfeiture of property if he/she causes death through an act given in paragraph (1) .

### **Section 190-Prostitution Endangering the Morale of Children**

(1) Whoever practices prostitution near to school, educational or other similar institution or a place which is reserved to or intended for stay or visits of children, shall be sentenced to a term of imprisonment of up to two years.

(2) Whoever organises, guards or provides prostitution near to school, educational or other similar institution or a place which is reserved to or intended for stay or visits of children, shall be sentenced to a term of imprisonment of up to three years, prohibition of activity or forfeiture of a thing or other property value.

(3) An offender shall be sentenced to a term of imprisonment of six months to five years or forfeiture of property if he/she commits an act given in paragraph (1) or (2)

a) at two such places, or

b) repeatedly.



### **Section 191-Dissemination of Pornography**

(1) Whoever produces, imports, exports, offers, makes publicly accessible, transmits, puts into circulation, sells or otherwise provides to other a photographic, film, computerized, electronic or other pornographic work depicting violence or disrespect to human being, or which describes, depicts or otherwise represents sexual intercourse with an animal, shall be sentenced to a term of imprisonment of up to one year, prohibition of activity, forfeiture of a thing or other property value.

(2) Whoever

a) offers, passes or makes accessible to a child, or

b) displays or otherwise makes accessible in a place accessible to children, a pornographic work or other such product in a written, photographic, cinematographic, computerised, electronic form, shall be sentenced to a term of imprisonment up to two years, prohibition of activity or forfeiture of a thing or other property value.

(3) An offender shall be sentenced to a term of imprisonment of six months to three years if he/she commits an act given in paragraph (1) or (2)

a) as a member of organized group,

b) through press, film, radio or television broadcasting, publicly accessible computer network or other similarly effective method, or

c) with the intention to acquire substantial benefit for him-/herself or another.

(4) An offender shall be sentenced to a term of imprisonment of one year to five years if he/she commits an act given in paragraph (1) or (2)

a) as a member of organized group operating in more states, or

b) with the intention to acquire large scale benefit for him-/herself or another.

### **Section 192-Production of and Other Disposal with Child Pornography**

(1) Whoever possesses photographic, film, computer, electronic or other pornographic work depicting or otherwise exploiting a child shall be sentenced to a term of imprisonment of up to two years.

(2) Whoever produces, imports, exports, offers, makes publicly accessible, transmits, puts into circulation, sells or otherwise provides to other a photographic, film, computerized, electronic or other pornographic work depicting or otherwise exploiting a child, or whoever preys from such pornographic work, shall be sentenced to a term of imprisonment of six months to three years, prohibition of activity, forfeiture of a thing or other property value.

(3) An offender shall be sentenced to a term of imprisonment of two years to six years or forfeiture of property if he/she commits an act given in paragraph (2)

a) as a member of organized group,

b) through press, film, radio or television broadcasting, publicly accessible computer network or other similarly effective method, or

c) with the intention to acquire substantial benefit for him-/herself or another.

(4) An offender shall be sentenced to a term of imprisonment of three years to eight years or forfeiture of property if he/she commits an act given in paragraph (2)

a) as a member of organized group operating in more states, or

b) with the intention to acquire large scale benefit for him-/herself or another.

### **Section 193-Abuse of a Child for Pornography Production**

(1) Whoever makes, procures, hires, allures, seduces or abuses a child to produce pornographic material, or whoever preys from the participation of child in such pornographic material, shall be sentenced to a term of imprisonment of one year to five years.

(2) An offender shall be sentenced to a term of imprisonment of two years to six years, if he/she commits an act given in paragraph (1)

a) as a member of organized group, or

b) with the intention to acquire substantial benefit for him-/herself or another.

(3) An offender shall be sentenced to a term of imprisonment of three years to eight years, if he/she commits an act given in paragraph (1)

a) as a member of organized group operating in more states, or

b) with the intention to acquire large scale benefit for him-/herself or another.

### **Section 200-Abduction of a Child and of a Person with Mental Disorder**

(1) Whoever takes away a child or a person with mental disorder from the care of a person who according to other legal act or an official decision is bound to take care of such child or person, shall be sentenced to a term of imprisonment of up to three years or by a pecuniary penalty.

(2) An offender shall be sentenced to a term of imprisonment of one year to five years if

a) he/she commits an act given in paragraph (1) with the intent to obtain material benefit for him-/herself or another; or

b) he/she endangers the moral development of the abducted person through such act.

(3) An offender shall be sentenced to a term of imprisonment of two years to eight years if

a) he/she commits an act given in paragraph (1) as a member of organized group,

b) he/she causes severe injury to health through an act given in paragraph (1) , or

c) he/she acquires substantial benefit for him-/herself or another through such act.

(4) An offender shall be sentenced to a term of imprisonment of three years to ten years if

a) he/she causes death through an act given in paragraph (1) , or

b) he/she acquires large scale benefit for him-/herself or another through such act.

(5) Preparation is punishable.

### **Section 201-Corrupting the Morals of Children**

(1) Whoever, even through negligence, threatens intellectual, emotional or moral development of a child by

a) trepanning such person into living an idle or immoral life,

b) enabling such a person to live an idle or immoral life,

c) enabling such person to acquire resources for him-/herself or another through criminal activity or other contemptible means, or

d) seriously violating his/her duty to take care of such person or seriously violating any other important duty arising from his/her parental responsibility,

shall be sentenced to a term of imprisonment of up to two years.

(2) Whoever who, even through negligence, enables a child to gamble on gaming machine equipped with a technical device which influences the result of the game and offers pecuniary winnings, shall be sentenced to a term of imprisonment of up to one year, by a pecuniary penalty or by prohibition of activity.

(3) An offender shall be sentenced to a term of imprisonment of six months to five years if

a) he/she commits the act given in paragraph (1) or (2) for a particularly contemptible motive,

b) he/she continues committing such act for a longer period,

c) he/she commits such act repeatedly, or

d) he/she acquires substantial benefit through commitment of such act.

### **Section 202-Seduction to Sexual Intercourse (Incitement)**

(1) Whoever offers, promises or provides to a child a consideration or another advantage or benefit for sexual intercourse with him/her or for self-gratification, denudation or other similar behaviour leading to sexual gratification, shall be sentenced to a term of imprisonment of up to two years or a pecuniary penalty.

(2) An offender shall be sentenced to a term of imprisonment of six months to five years if

a) he/she commits an act given in paragraph (1) to child under the age of fifteen years,

b) he/she commits such act being driven by a condemnable motive,

b) he/she continues committing such act for a longer period, or

c) he/she commits such act repeatedly.

### **Section 203-Impunity of a Child**

A child who requires or accepts consideration or another advantage or benefit for sexual intercourse with him/her, or for his/her self-gratification, denudation or other similar behaviour, shall not be criminally liable for such act, neither as instigator or aider and abettor.

## 6.10 Denmark

Extract

The Danish Criminal Code

### Part 4 (Attempt and complicity)

21.-(1) Acts that are aimed to promote or accomplish an offence shall when the offence is not completed be punished as an attempt.

(2) The penalty prescribed for the offence may be reduced in the case of attempt, particularly where the attempt bears evidence of little strength of or persistence in the criminal intention.

(3) Unless otherwise provided, an attempt shall only be punished when the offence carries a penalty that exceeds imprisonment for four months.

22. An attempt shall not be punished if, voluntarily and not because of fortuitous obstacles to the completion of the offence or the fulfilment of its intended purpose, the perpetrator has desisted from carrying out his intention or prevented the completion of the offence or has taken steps which would have prevented its completion had it not, without his knowledge, already been unsuccessful or averted in some other way.

23.-(1) The penalty provisions laid down for an offence shall apply to all persons who have aided, abetted, counselled or procured the commission of the offence. The penalty may be reduced in the case of a person who has only intended to lend assistance of minor importance or strengthen a determined intent and in case the crime has not been completed or an intended contribution has failed.

(2) The penalty may moreover be reduced in the case of a person who has contributed to the breach of a duty in a special relationship in which he himself had no part.

(3) Unless otherwise provided, the penalty for aiding and abetting offences that do not carry sentences more severe than simple detention may be rescinded where the accomplice only intended to lend assistance of minor importance or strengthen a determined intent or where his complicity was due to negligence.

24. An accomplice shall not be punished if, under the conditions laid down in section 22 of this Act, he prevents the completion of the offence or takes steps which would have prevented its completion had it not, without his knowledge, already been unsuccessful or averted in some other way.

### Part 24 (Sexual offences)

216.-(1) A person who enforces sexual intercourse on another by violence or under threatened violence shall be punished for rape and liable to imprisonment for any term not exceeding eight years. Putting a person in such a condition that the person concerned is unable to resist the act shall be equivalent to violence.

(2) If the rape has been of a particularly dangerous nature or committed in other particularly aggravating circumstances, the penalty may be increased to imprisonment for any term not exceeding 12 years.

217. A person who uses other unlawful coercion (as described in section 260 of this Act) than violence or threatened violence to obtain sexual intercourse shall be liable to imprisonment for any term not exceeding four years.

218.-(1) A person who exploits another person's mental illness or mental disability to obtain extra-marital sexual intercourse with that person shall be liable to imprisonment for any term not exceeding four years.

(2) A person who obtains extra-marital intercourse with a person who is in a condition in which that person is unable to resist the act shall be liable to imprisonment for any term not exceeding four years, unless the act is covered by the provisions of section 216 of this Act.

219. Where a person who is an employee of or has a supervisory function at a prison, rehabilitation centre, children's home, youth home, hospital for the mentally ill, institution for persons with extensive mental disabilities or a similar institution, has sexual intercourse with an inmate or resident of the institution, that person shall be liable to imprisonment for any term not exceeding four years.

220. A person who has extra-marital intercourse with another person obtained by grave abuse of the other person's subordinate position or financial dependency, shall be liable to imprisonment for any term not exceeding one year or, where the other person is under 21 years of age, imprisonment for any term not exceeding three years.

221. A person who tricks himself into having sexual intercourse with another person who wrongly believes it to be marital intercourse or mistakes the perpetrator for someone else shall be liable to imprisonment for any term not exceeding six years.

222.-(1) A person who has sexual intercourse with a child under 15 shall be liable to imprisonment for any term not exceeding eight years.

(2) If the child is under 12 or the perpetrator has procured sexual intercourse by coercion or intimidation, the penalty may be increased to imprisonment for any term not exceeding twelve years.

(3) When determining the penalty under subsection (1) and the first element of subsection (2) above, the court shall consider it an aggravating circumstance that the perpetrator has procured intercourse by exploiting physical or psychological superiority.

223. (1) A person who has sexual intercourse with a person under 18 who is his adoptive child, step-child or foster child or has been entrusted to him for instruction or education, shall be liable to imprisonment for any term not exceeding four years.

(2) The same penalty shall apply to a person who gravely abuses his superiority due to age and experience to procure sexual intercourse with a person under 18.

223A. A person who has intercourse with a person under 18 as a client and against payment or promised payment shall be liable to a fine or imprisonment for any term not exceeding two years.

224. The provisions of sections 216-223A of this Act shall apply correspondingly in connection with sexual acts other than intercourse.

225. The provisions of sections 216-220 and sections 222-223A of this Act shall apply correspondingly to sexual relations with a person of the same sex.

226. If, in the cases where, under the provisions set out above, the punishability of an act depends on any abnormal mental or physical condition or the age of the person who is the object of the act, the perpetrator has acted without knowledge of such a condition or the age of the person concerned and if, for that reason, the act shall not be considered wilful on his part, the penalty to be imposed, if he has still acted negligently, shall be proportionally reduced.

227. The punishment to be imposed under sections 216-226 of this Act may be reduced or rescinded if the persons between whom a sexual act has taken place have since married each other or registered their partnership.

228.-(1) A person who

1) induces another to seek a profit from indecent sexual activity with others; or

2) induces another, for the sake of gain, to seek indecent sexual activity with others or prevents another who engages in such activity as a profession from giving it up; or

3) keeps a brothel;

shall be guilty of procuring and liable to imprisonment for any term not exceeding four years.

(2) The same penalty shall apply to a person who aids or abets a person under the age of 21 in engaging in sexual activity as a profession and to a person who takes part in bringing another person out of the country to make that person provide sexual services abroad or let that person

be used for such purposes where the person concerned is less than 21 years old or uninformed of the intention.

229.-(1) A person who assists indecent sexual activity by acting as an intermediary, for the sake of gain or in frequently repeated cases, or makes a profit from another person's professional sexual services, shall be liable to imprisonment for any term not exceeding three years or, in mitigating circumstances, a fine.

(2) A person who lets out a room at a hotel or an inn for professional sexual services shall be liable to imprisonment for any term not exceeding one year or, in mitigating circumstances, a fine.

230. A person who takes or records indecent photographs, films or similar of a person who is under 18 with the intention to sell or otherwise disseminate the material, shall be liable to a fine or imprisonment for any term not exceeding two years or, in particularly aggravating circumstances, imprisonment for any term not exceeding six years. The circumstances that are considered particularly aggravating are especially situations in which the life of the child is endangered, where gross violence is used, where the child suffers serious harm, or where the recording is of a more systematic or organised character. In addition, section 226 of this Act shall apply.

231. If a person who is to be sentenced under sections 228 or 229 of this Act has previously been convicted of any of the offences described in these provisions, or if he has been sentenced to imprisonment for an acquisitive offence, the maximum penalty may be raised by up to half.

232. A person who violates public decency or causes public offence by obscene behaviour shall be liable to a fine or imprisonment for any term not exceeding four years.

233. A person who incites or invites another to indecent sexual activity or exhibits an indecent lifestyle in a manner capable of violating other persons' sense of decency or cause public offence, shall be liable to a fine or imprisonment for any term not exceeding one year.

234. A person who sells indecent pictures or objects to a person under 16 shall be liable to a fine.

235.-(1) A person who disseminates indecent photographs or films or other indecent visual reproductions of persons under 18, shall be liable to a fine or imprisonment for any term not exceeding two years or in particularly aggravating circumstances imprisonment for any term not exceeding six years. The circumstances that are considered particularly aggravating are especially situations in which the life of the child is endangered, where gross violence is used, where the child suffers serious harm, or where the dissemination is of a more systematic or organised character.

(2) A person who possesses or in return for payment acquires access to or knowledge of indecent photographs, films or other indecent visual reproductions etc. of persons under 18, shall be liable to a fine or imprisonment for any term not exceeding one year.

(3) The provision in subsection (2) does not include possession of indecent pictures of a person who has reached the age of 15, if that person has consented to the possession.

236.-(1) Where a person is convicted under sections 216, 217, 218(1) , 222 or 223(2) or under sections 224, 225 or 226 (in combination with any of the provisions above) or under section 232 of this Act, he may be ordered by the court not to visit public parks, gardens or commons or turn up in the neighbourhood of schools, playgrounds, children's homes, mental hospitals or institutions for persons with extensive mental disabilities or in specified woods or bathing establishments or on specified beaches.

(2) Besides, persons who are convicted under the sections referred to in subsection (1) above or under sections 228 or 229 of this Act may be ordered by the court not to allow children under 18 to live in their home or not, without the permission of the police, to stay in the home of persons who live with children under the mentioned age. Such an order shall not apply, however, in respect of children who are dependents of the convicted person.

(3) When three years have passed after an offender has finished serving his sentence, he may demand that a request for revocation of an order under subsection (1) or (2) be put before the

court. The application shall be filed with the prosecuting authority, which must bring the question before the court as soon as possible. Section 59(2) of this Act shall apply correspondingly, and the decision shall be made by an order of the court. Where a request is not granted, the convicted person may not file another application until three years have passed after the date of the order. In special circumstances that make it advisable, the Minister of Justice may allow that an application be put before the court before the expiry of this period.

(4) A contravention of an order made under subsection (1) or (2) above shall be punished with imprisonment for any term not exceeding four months.

**Part 26 (Offences against personal liberty)**

260.-(1) A person who forces another to do, suffer or omit something

1) by violence or by threats of violence, substantial damage to property, deprivation of liberty, false accusations of a punishable act or dishonourable conduct or revelation of matters relating to the other's private affairs;

2) by threats of reporting or revealing a punishable act or making a true accusation of dishonourable conduct, in a situation where such coercion is not deemed to be duly justified by the circumstance to which the threat relates;

commits the offence of unlawful coercion and shall be liable to a fine or imprisonment for any term not exceeding two years.

(2) If anyone is coerced to contract marriage, the penalty may be raised to imprisonment for any term not exceeding four years.

261.-(1) A person who deprives another person of his liberty shall be liable to a fine or imprisonment for any term not exceeding four years.

(2) If the deprivation of liberty has been effected for the sake of gain or been of long duration, or if it consisted in wrongfully keeping a person detained as insane or mentally disabled or putting a person into foreign military service or into captivity or another state of dependency in a foreign state, the penalty shall be imprisonment for any term not exceeding twelve years.

(3) A person who acts with gross negligence in causing deprivation of liberty of the nature referred to in subsection (2) above, shall be liable to a fine or imprisonment for any term not exceeding six months.

## **6.11 Dominican Republic**

### **Ley No. 136-03 Código para la protección de los derechos de los Niños, Niñas y Adolescentes.**

#### **Art. 25.- PROHIBICIÓN DE LA COMERCIALIZACIÓN, PROSTITUCIÓN Y PORNOGRAFÍA.**

Se prohíbe la comercialización, la prostitución y la utilización en pornografía de niños, niñas y adolescentes.

Párrafo I.- Se entiende por comercialización de niños, niñas y adolescentes todo acto o transacción en virtud del cual un niño, niña y adolescente es transferido por una persona o grupo de personas a otra, a cambio de remuneración o cualquier otra retribución.

A estos fines, se sancionará ofrecer, entregar o aceptar por cualquier medio un niño, niña o adolescente, con el objeto de explotación sexual, venta y/o uso de sus órganos, trabajo forzoso o cualquier otro destino que denigre a la persona del niño, niña o adolescente.

Párrafo II.- Se entiende por prostitución de niños, niñas y adolescentes la utilización de cualquiera de éstos o éstas en actividades sexuales a cambio de remuneración o de cualquier otra retribución.

Párrafo III.- Se entiende por utilización de niños, niñas y adolescentes en pornografía, toda representación, por cualquier medio, de niños, niñas y adolescentes, dedicados a actividades sexuales explícitas, reales o simuladas o toda representación de las partes genitales de niños, niñas y adolescentes con fines primordialmente sexuales.

#### **Art. 396.- SANCIÓN AL ABUSO CONTRA NIÑOS, NIÑAS Y ADOLESCENTES.**

Se considera:

a) Abuso físico: Cualquier daño físico que reciba el niño, niña o adolescente, de forma no accidental y en que la persona que le ocasione esta lesión se encuentre en condiciones de superioridad o poder;

b) Abuso psicológico: Cuando un adulto ataca de manera sistemática el desarrollo personal del niño, niña o adolescente y su competencia social;

c) Abuso sexual: Es la práctica sexual con un niño, niña o adolescente por un adulto, o persona cinco (5) años mayor, para su propia gratificación sexual, sin consideración del desarrollo sicossexual del niño, niña o adolescente y que puede ocurrir aún sin contacto físico.

Será castigado con penas de dos (2) a cinco (5) años de prisión y multa de tres (3) a diez (10) salario mínimo establecido oficialmente, vigente al momento de cometer la infracción, si el autor o autora del hecho mantiene una relación de autoridad, guarda o vigilancia (maestro, guardianes, funcionarios, policías etc.) sobre el niño, niña o adolescente y se producen lesiones severas, comprobadas por especialistas en el área, se aplicará el máximo de la pena indicada anteriormente. Cuando los infractores sean extranjeros o nacionales que en la comisión del hecho negocien, trafiquen o se hayan vinculado para la comisión del hecho con traficantes o comerciantes de niños, niñas y adolescentes, serán castigados con el doble del máximo de la pena.

#### **Art. 397.- SANCIÓN AL ABUSO POR SUS RESPONSABLES.**

Si el abuso es cometido por el padre, la madre y otros familiares, tutores o guardianes, responsables del o de niño, niña o adolescente, en contra de sus hijos, hijas o puestos bajo su guarda o autoridad, serán sancionados con privación de libertad de dos (2) a cinco (5) años y multa de uno (1) a cinco (5) salario mínimo establecido oficialmente. En todo caso, la pena debe ir acompañada de tratamiento sicoterapéutico.

### **Ley 53-07 Contra Crímenes y Delitos de Alta Tecnología**

#### **SECCIÓN II DEFINICIONES**

##### **Artículo 4.- Definiciones. Para los fines de esta ley, se entenderá por:**

Pornografía Infantil: Toda representación, por cualquier medio, de niños, niñas y adolescentes, dedicados a actividades sexuales explícitas, reales o simuladas o toda representación de las partes genitales de niños, niñas y adolescentes con fines primordialmente sexuales. Se considera niño o niña, a toda persona desde su nacimiento hasta los doce años, inclusive, y adolescente, a toda persona desde los trece años hasta alcanzar la mayoría de edad.

**Artículo 23.- Atentado Sexual.**

El hecho de ejercer un atentado sexual contra un niño, niña, adolescente, incapacitado o enajenado mental, mediante la utilización de un sistema de información o cualquiera de sus componentes, se sancionará con las penas de tres a diez años de prisión y multa desde cinco a doscientas veces el salario mínimo.

**Artículo 24.- Pornografía Infantil.**

La producción, difusión, venta y cualquier tipo de comercialización de imágenes y representaciones de un niño, niña o adolescente con carácter pornográfico en los términos definidos en la presente ley, se sancionará con penas de dos a cuatro años de prisión y multa de diez a quinientas veces el salario mínimo.

Párrafo.- Adquisición y Posesión de Pornografía Infantil. La adquisición de pornografía infantil por medio de un sistema de información para uno mismo u otra persona, y la posesión intencional de pornografía infantil en un sistema de información o cualquiera de sus componentes, se sancionará con la pena de tres meses a un año de prisión y multa de dos a doscientas veces el salario mínimo.



## 6.12 Estonia

Penal Code

Relevant provisions:

### **§ 133. Trafficking in human beings**

(1) Placing a person in a situation where he or she is forced to work under unusual conditions, engage in prostitution, beg, commit a criminal offence or perform other disagreeable duties, or keeping a person in such situation, if such act is performed through deprivation of liberty, violence, deceit, threatening to cause damage, by taking advantage of dependence on another person, helpless or vulnerable situation of the person, is punishable by 1 to 7 years' imprisonment.

(2) The same act, if:

- 1) committed against two or more persons;
  - 2) committed against a person of less than 18 years of age;
  - 3) committed against a person in a helpless situation;
  - 4) committed in a torturous or cruel manner;
  - 5) serious health damage is caused thereby;
  - 6) danger to life is caused thereby;
  - 7) committed by two or more persons;
  - 8) committed by taking advantage of official position,
  - 9) serious consequences are caused thereby;
- is punishable by 3 to 15 years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

(4) For criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 832 of this Code.

(5) For the purposes of this section, vulnerable situation is a situation where a person lacks an actual or acceptable opportunity not to commit any of the acts specified in subsection (1) of this section.

[[RT I, 04.04.2012, 1](#) - entry into force 14.04.2012]

### **§ 1331. Support to human trafficking**

(1) Transportation, delivery, escorting, acceptance, concealment or accommodation without prior authorisation of a person placed in any situation specified in subsection 133 (1) of this Code, or aiding without prior authorisation his or her forced acts in any other way, is punishable by up to 5 years' imprisonment.

(2) The same act, if:

- 1) committed against two or more persons;
  - 2) committed against a person of less than 18 years of age;
  - 3) committed against a person in a helpless situation;
  - 4) committed by taking advantage of official position,
- shall be punished by 2 to 10 years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

(4) For criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 832 of this Code.

[[RT I, 04.04.2012, 1](#) - entry into force 14.04.2012]

### **§ 1332. Pimping**

(1) A person who organises meeting of a person engaged in prostitution with a client, owns, manages a brothel, aids prostitution or rents premises for keeping a brothel, or influences a person to cause him or her to commence or continue prostitution but the act does not have the necessary elements of an offence provided for §§ 133 or 1331 of this Code, shall be punished by a pecuniary punishment or up to 5 years' imprisonment.

(2) The same act, if:

- 1) committed by a person who has previously committed an offence provided for in this section or §§ 133, 1331, 1333 or 175;
- 2) committed for the purpose of large proprietary gain, is punishable by 1 to 5 years' imprisonment.
- (3) The same act, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.
- (4) For criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 832 of this Code.
- (5) For the purposes of this section, a brothel denotes any premises or limited area where a third party mediates engagement of two or more people in prostitution or aids engagement of two or more people in prostitution.

[[RT I, 04.04.2012, 1](#) - entry into force 14.04.2012]

#### **§ 1333. Aiding prostitution**

- (1) A person knowingly aiding prostitution if the act does not have the necessary elements of an offence provided for §§ 133, 1331 or 1332 of this Code, shall be punished by a pecuniary punishment or up to 3 years' imprisonment.
- (2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[[RT I, 04.04.2012, 1](#) - entry into force 14.04.2012]

#### **§ 141. Rape**

- (1) Sexual intercourse with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation is punishable by 1 to 5 years' imprisonment.
- (2) The same act, if:
  - 1) committed against a person of less than 18 years of age;
  - 2) committed by two or more persons;
  - 3) serious damage is thereby caused to the health of the victim;
  - 4) it causes the death of the victim;
  - 5) it leads the victim to suicide or a suicide attempt; or
  - 6) it was committed by a person who has previously committed a criminal offence provided in this Division,is punishable by 6 to 15 years' imprisonment.

[[RT I 2006, 31, 233](#) - entry into force 16.07.2006]

#### **§ 142. Satisfaction of sexual desire by violence**

- (1) Involving a person against his or her will in satisfaction of sexual desire in a manner other than sexual intercourse by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation is punishable by up to 5 years' imprisonment.
- (2) The same act, if committed:
  - 1) against a person of less than 18 years of age,
  - 2) by a person who has previously committed a criminal offence provided in this Division,is punishable by 1 to 10 years' imprisonment.

[[RT I 2009, 59, 388](#) - entry into force 20.12.2009]

#### **§ 143. Compelling person to engage in sexual intercourse**

- (1) Sexual intercourse with a person against his or her will by taking advantage of the dependency of the victim from the offender but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in § 141 of this Code, is punishable by up to 3 years' imprisonment.
- (2) The same act, if committed:
  - 1) against a person of less than 18 years of age,
  - 2) by a person who has previously committed a criminal offence provided in this Division,is punishable by up to 5 years' imprisonment.

[[RT I 2006, 31, 233](#) - entry into force 16.07.2006]

**§ 1431. Compelling person to satisfy sexual desire**

(1) Involving a person against his or her will in satisfaction of sexual desire in a manner other than sexual intercourse by taking advantage of the dependency of the victim from the offender but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in § 142 of this Code, is punishable by up to 2 years' imprisonment.

(2) The same act, if committed:

- 1) against a person of less than 18 years of age,
- 2) by a person who has previously committed a criminal offence provided in this Division, is punishable by up to 5 years' imprisonment.

[[RT I 2006, 31, 233](#) - entry into force 16.07.2006]

**§ 144. Sexual intercourse with descendant**

A parent, a person with the rights of a parent, or a grandparent, who engages in sexual intercourse with his or her child or grandchild shall be punished by up to 5 years' imprisonment.

[[RT I 2006, 31, 233](#) - entry into force 16.07.2006]

**§ 145. Sexual intercourse with child**

An adult person who engages in sexual intercourse with a person of less than 14 years of age shall be punished by up to 5 years' imprisonment.

[[RT I 2006, 31, 233](#) - entry into force 16.07.2006]

**§ 146. Satisfaction of sexual desire with child**

An adult person who involves a person of less than 14 years of age in satisfaction of sexual desire in a manner other than sexual intercourse shall be punished by up to 5 years' imprisonment.

[[RT I 2006, 31, 233](#) - entry into force 16.07.2006]

**§ 147. Inability of person of less than 10 years to comprehend**

Within the meaning of the offences provided for in this Division, a person is deemed to be incapable to comprehend if he or she is less than 10 years of age.

**§ 175. Human trafficking in order to take advantage of minors**

(1) A person who influences a person of less than 18 years of age in order to cause him or her to commence or continue commission of a criminal offence, begging, engagement in prostitution or working under unusual conditions or to appear as a model or actor in the manufacture of a pornographic or erotic performance or work, but it does not contain the necessary elements of an offence provided for in § 133 of this Code, and a person aiding the above-mentioned activities of a person of less than 18 years of age, shall be punished by 2 to 10 years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

(3) For the criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of 832of this Code.”;

**§ 178. Manufacture of works involving child pornography or making child pornography available**

(1) A person who manufactures, stores, hands over, displays or makes available in any other manner pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in a pornographic situation, or a person of less than 18 years of age in a pornographic or erotic situation shall be punished by a pecuniary punishment or up to 3 years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

[\[RT I, 04.04.2012, 1](#) - entry into force 14.04.2012]

**§ 1781. Agreement of sexual purpose for meeting with child (grooming)**

(1) Making a proposal for meeting a person of less than 18 years of age who was not capable of comprehending the situation, or a person of less than 14 years of age, or concluding an agreement to meet him or her, and performance of an act preparing the meeting, if the aim of the meeting is to commit an offence provided for in §§ 133, 1331, 141–146, 175, 178 or 179 of this Code with respect to the specified person, shall be punished by a pecuniary punishment or up to 3 years' imprisonment.

[\[RT I, 04.04.2012, 1](#) - entry into force 14.04.2012]

**§ 179. Sexual enticement of children**

(1) A person who hands over, displays or makes otherwise knowingly available pornographic works or reproductions thereof to a person of less than 14 years of age, engages in sexual intercourse in the presence of such person or knowingly sexually entices such person in any other manner shall be punished by a pecuniary punishment or up to 3 years' imprisonment.

[\[RT I 2010, 10, 44](#) - entry into force 15.03.2010]

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

**§ 1791. Employment of person prohibited, based on law, from working with children**

(1) An employer who employs a person for work or service related to children if it is prohibited based on law, or a person authorised to issue activity licences who issues an activity licence for provision of services to children if this is prohibited by law shall be punished by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3200 euros.

[\[RT I 2010, 22, 108](#) - entry into force 01.01.2011]

**§ 180. Exhibiting violence to minors**

(1) A person who hands over, displays or makes otherwise knowingly available works or reproductions of works promoting violence or cruelty to a person of less than 18 years of age, kills or tortures an animal in the presence of such person without due cause or knowingly exhibits violence to him or her in any other manner shall be punished by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

## 6.13 Finland

The Criminal Code of Finland

### Chapter 17 - Offences against public order

#### Section 18 - Distribution of a sexually offensive picture (650/2004)

(1) A person who manufactures, offers for sale or for rent or otherwise offers or makes available, keeps available, exports, imports to or transports through Finland to another country, or otherwise distributes pictures or visual recordings that factually or realistically depict

- (1) a child,
- (2) violence or
- (3) bestiality

shall be sentenced for distribution of a sexually offensive picture to a fine or imprisonment for at most two years. (540/2011)

(2) An attempt is punishable.

(3) The provisions in section 17, subsection 2 apply also to the pictures and visual recordings referred to in this section.

(4) A person under 18 years of age and a person whose age cannot be determined but who can be justifiably assumed to be under 18 years of age is regarded as a child. The picture or visual recording is deemed factual in the manner referred to in subsection 1, paragraph 1, if it has been manufactured in a situation in which a child has actually been the object of sexually offensive conduct and realistic, if it resembles in a misleading manner a picture or visual recording manufactured through photography or in another corresponding manner of a situation in which a child has been the object of sexually offensive conduct. The definitions of the terms factual and realistic apply correspondingly in the cases referred to in subsection 1, paragraphs 2 and 3. (540/2011)

#### Section 18 (a) - Aggravated distribution of a sexually offensive picture depicting a child (650/2004)

(1) If, in the distribution of a sexually offensive picture depicting a child

- (1) the child is particularly young,
- (2) the picture also depicts severe violence or particularly humiliating treatment of the child,
- (3) the offence is committed in a particularly methodical manner or
- (4) the offence has been committed within the framework of a criminal organisation referred to in section 1a, subsection 4

and the offence is aggravated also when assessed as whole, the offender shall be sentenced for aggravated distribution of a sexually offensive picture depicting a child to imprisonment for at least four months and at most six years.

(2) An attempt is punishable.

#### Section 19 - Possession of a sexually offensive picture depicting a child (540/2011)

(1) A person who unlawfully has in his or her possession a picture or visual recording which depicts a child in the sexually offensive manner referred to in section 18, shall be sentenced for possession of a sexually offensive picture depicting a child to a fine or to imprisonment for at most one year.

(2) A person who in return for payment or otherwise by agreement has obtained access to a picture or visual recording referred to in subsection 1 so that it is available to him or her on a computer or another technical device without being recorded on the device shall also be sentenced for possession of a sexually offensive picture depicting a child.

### Chapter 20 - Sex offences

#### Section 1 - Rape (563/1998)

(1) A person who forces another into sexual intercourse by the use or threat of violence shall be sentenced for rape to imprisonment for at least one year and at most six years.

(2) Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, incapacity, state of fear or other state of helplessness, is unable to

defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape. (495/2011)

(3) An attempt is punishable.

### **Section 2 - Aggravated rape (563/1998)**

(1) If, in the rape,

(1) grievous bodily injury, serious illness or a state of mortal danger is intentionally inflicted on another,

(2) the offence is committed by several people, or especially hard mental or physical suffering is caused,

(3) the offence is committed in a particularly brutal, cruel or humiliating manner, or

(4) a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made,

and the rape is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated rape to imprisonment for at least two years and at most ten years.

(2) An attempt is punishable.

### **Section 3 - Coercion into sexual intercourse (563/1998)**

(1) If the rape, in view of the slight degree of the violence or threat and the other particulars of the offence, is deemed to have been committed under mitigating circumstances when assessed as a whole, the offender shall be sentenced for coercion into sexual intercourse to imprisonment for at most three years.

(2) Also a person who coerces another into sexual intercourse by a threat other than that referred to in section 1, subsection 1 shall be sentenced for coercion into sexual intercourse.

(3) An attempt is punishable.

### **Section 4 - Coercion into a sexual act (563/1998)**

(1) A person who by violence or threat coerces another into a sexual act other than that referred to in section 1 or into submission to such an act, thus essentially violating his or her right of sexual self-determination, shall be sentenced for coercion into a sexual act to a fine or to imprisonment for at most three years.

(2) Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, incapacity, state of fear or other state of helplessness, is unable to defend himself or herself or to formulate or express his or her will, causes him or her to engage in or submit to the sexual act referred to in subsection 1, essentially violating his or her right of sexual self-determination, shall be sentenced for coercion into a sexual act. (495/2011)

(3) An attempt is punishable.

### **Section 5 - Sexual abuse (563/1998)**

(1) A person who abuses his or her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his or her right of sexual self-determination, or into submission to such an act,

(1) a person younger than eighteen years of age, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender,

(2) a person younger than eighteen years of age, whose capacity of independent sexual self-determination, owing to his or her immaturity and the age difference of the persons involved, is essentially inferior to that of the offender, where the offender blatantly takes advantage of this immaturity,

(3) a patient in a hospital or other institution, whose capacity to defend himself or herself is essentially impaired owing to illness, handicap or other infirmity, or

(4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of this dependence,

shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.

Subsection 2 has been repealed by the Act of 495/2011

(3) An attempt is punishable.

**Section 6 - Sexual abuse of a child (540/2011)**

(1) A person who by touching or otherwise performs a sexual act on a child younger than sixteen years of age, said act being conducive to impairing his or her development, or induces him or her to perform such an act, shall be sentenced for sexual abuse of a child to imprisonment for at least four months and at most four years.

(2) Also a person who has sexual intercourse with a child younger than sixteen years of age, if the offence when assessed as a whole is not aggravated in the manner referred to in section 7, subsection 1, shall be sentenced for sexual abuse of a child. In addition, a person who acts in the manner referred to in subsection 1 or above in the present subsection with a child who has reached the age of sixteen but is younger than eighteen years of age, if the offender is the parent of the child or is in a position comparable to that of a parent and lives in the same household with the child, shall be sentenced for sexual abuse of a child.

(3) An attempt is punishable.

**Section 7 - Aggravated sexual abuse of a child (540/2011)**

(1) If

(1) a person has sexual intercourse with a child below the age of sixteen or in the cases referred to in section 6, subsection 2 with a child who has reached the age of sixteen but is younger than eighteen years of age, or

(2) in sexual abuse of a child

(a) the victim is a child whose age or stage of development is such that the offence is conducive to causing special injury to him or her,

(b) the offence is committed in an especially humiliating manner, or

(3) the offence is conducive to causing special injury to the child due to the special trust he or she has placed in the offender or the special dependence of the child on the offender,

and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated sexual abuse of a child to imprisonment for at least one year and at most ten years.

(2) An attempt is punishable.

**Section 7(a) – Restrictive provision (540/2011)**

An act that does not violate the sexual autonomy of the subject and where there is no great difference in the mental and physical maturity of the parties shall not be deemed sexual abuse of a child, or the aggravated sexual abuse of a child referred to in section 7, subsection 1, paragraph 1.

**Section 8 – Abuse of a victim of prostitution (743/2006)**

(1) A person who, by promising or giving remuneration involving direct economic benefit induces a person referred to as victim in section 9 or 9a or in chapter 25, section 3 or 3a to engage in sexual intercourse or in a comparable sexual act shall be sentenced, unless the act is punishable pursuant to section 8a, for abuse of a victim of prostitution to a fine or imprisonment for at most six months.

(2) Also a person who takes advantage of the remuneration referred to in subsection 1 promised or given by a third person, by engaging in sexual intercourse or a comparable sexual act with the victim referred to in said subsection, shall be sentenced for abuse of a victim of prostitution.

(3) An attempt is punishable.

**Section 8(a) – Purchase of sexual services from a young person (743/2006)**

(1) A person who, by promising or giving remuneration, induces a person younger than 18 years of age to engage in sexual intercourse or to perform another sexual act shall be sentenced for purchase of sexual services from a young person to a fine or imprisonment for at most two years. (540/2011)

(2) Also a person who uses the sexual services referred to in subsection 1 for which another person has promised or given remuneration shall be sentenced for purchase of sexual services from a young person.

(3) An attempt is punishable.

**Section 8(b) – Solicitation of a child for sexual purposes (540/2011)**

(1) A person who suggests a meeting or other contact with a child so that it is apparent from the contents of the suggestion or otherwise from the circumstances that the intent of the person is to prepare sexually offensive pictures or visual recordings of the child in the manner referred to in chapter 17, section 18, subsection 1, or to subject the child to the offence referred to in section 6 or 7 of this chapter, shall be sentenced for solicitation of a child for sexual purposes to a fine or to imprisonment for at most one year.

(2) Unless a more severe sentence is provided in law for the act, also a person who entices a person under the age of eighteen years to engage in sexual intercourse or in another sexual act in the manner referred to in section 8(a) or to perform in a sexually offensive organized performance shall be sentenced for solicitation of a child for sexual purposes.

(3) Attempt of the offence referred to above in subsection 2 is punishable.

**Section 8(c) – Attending of a sexually offensive performance of a child (540/2011)**

(1) A person who follows a performance in which a person under the age of eighteen years performs in a sexually offensive manner, shall be sentenced for attending a sexually offensive performance of a child to a fine or to imprisonment for at most two years.

(2) An attempt is punishable.

**Section 9 - Pandering (563/1998)**

(1) A person who, in order to seek financial benefit for himself or herself or for another person,

(1) provides a room or other facilities where sexual intercourse or a comparable sexual act or a manifestly sexually offensive act performed by a child younger than 18 years of age are offered for remuneration,

(2) as an established part of his or her business harbours a person engaging in such an act and thereby substantially promotes such an act,

(3) provides contact information of or otherwise markets another person engaging in such an act knowing that his or her actions substantially promote the performance of such an act,

(4) otherwise takes advantage of the fact that another person engages in such an act or

(5) tempts or coerces another person to engage in such an act,

shall be sentenced for pandering to a fine or imprisonment for at most three years. (650/2004)

(2) An attempt is punishable.

**Section 9(a) - Aggravated pandering (650/2004)**

(1) If, in pandering,

(1) considerable financial benefit is sought,

(2) the offence is committed in a particularly methodical manner,

(3) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is inflicted intentionally or through gross negligence on another person or

(4) the object is a child younger than 18 years of age

and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated pandering to imprisonment for at least four months and at most six years.

(2) An attempt is punishable.

**Section 10 - Definitions (563/1998)**

(1) For the purposes of this chapter, sexual intercourse refers to the sexual penetration, by a sex organ or directed at a sex organ, of the body of another.

(2) For the purposes of this chapter, a sexual act refers to an act which, with consideration to the offender, the person at whom the act was directed and the circumstances of commission, is sexually significant. (540/2011)

**Section 11 - Right to bring charges (540/2011)**

The public prosecutor may not bring charges for the offences referred to in sections 3 or 4 or section 5(1) (4) committed against a person over the age of eighteen years, unless the injured party reports the offence for the bringing of charges or unless a very important public interest requires that charges be brought.



### **Section 12 - Waiver of measures (540/2011)**

Where the injured party in an offence referred to in section 1 who has reached the age of eighteen years, on his or her own considered free will requests that charges not be brought, the public prosecutor may waive the bringing of charges, unless an important private or public interest requires that charges be brought.

### **Section 13 – Corporate criminal liability (540/2011)**

The provisions on corporate criminal liability apply to pandering and aggravated pandering. The same applies to the offence referred to in section 8(b) , subsection 1, in which a meeting or other contact is proposed with a child with the intent to prepare pictures or visual recordings that present a child in an obscene manner.

## **Chapter 25 - Offences against personal liberty**

### **Section 3 - Trafficking in human beings (650/2004)**

(1) A person who

- (1) by abusing the dependent status or vulnerable state of another person,
- (2) by deceiving another person or by abusing a mistake made by that person,
- (3) by paying remuneration to a person who has control over another person, or
- (4) by accepting such remuneration

takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20, section 9, subsection 1(1) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial benefit shall be sentenced for trafficking in human beings to imprisonment for at least four months and at most six years.

(2) Also a person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1) –(4) have been used.

(3) An attempt is punishable.

### **Section 3 (a) - Aggravated trafficking in human beings (650/2004)**

(1) If, in trafficking in human beings,

(1) violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3,

(2) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is intentionally or through gross negligence inflicted on another person,

(3) the offence has been committed against a child younger than 18 years of age or against a person whose capacity to defend himself or herself has been substantially diminished, or

(4) the offence has been committed within the framework of a criminal organisation referred to in chapter 17, section 1a, subsection 4

and the offence is aggravated also when considered as whole, the offender shall be sentenced for aggravated trafficking in human beings to imprisonment for at least two years and at most ten years.

(2) Also a person who enslaves or keeps another person in servitude, transports or trades in slaves shall be sentenced for aggravated trafficking in human beings if the act is aggravated when assessed as whole.

(3) An attempt is punishable.

## 6.14 Georgia

### Extract:

Relevant articles of Criminal Code of Georgia

#### **Article 19. Attempted Crime**

1. Attempted crime is a deliberate action that was designed to commit a crime, but the crime was not completed.
2. Criminal responsibility for attempted crime shall be determined under the relevant Article of this Code which envisages responsibility for completed crimes, by giving reference to this article.

#### **Article 23. Complicity**

Complicity in the crime is an intentional joint participation of two or more persons in the perpetration of a crime.

#### **Article 24. Types of Complicity**

1. The organizer is the one who organized or supervised the perpetration of a crime, as well as the one who established or supervised an organized group.
2. The instigator is the one who persuaded the other person into committing a crime.
3. The accomplice is the one who aided the perpetration of a crime.

#### **Article 137. Rape**

Rape is sexual intercourse through violence, threat of violence or abusing the vulnerable position of the victim, -

shall be punishable by deprivation of liberty extending from four to six years in length.

The same act:

committed by using one's official position;

resulted in serious damage to health or other grave consequences,-

shall be punishable by deprivation of liberty extending from six to nine years in length.

3. The same act committed:

repeatedly;

by the one who had previously perpetrated one of the crimes set forth in Articles 138-141 of this Code;

by an organized group;

against a pregnant woman or a minor at the previous knowledge of the offender,-

shall be punishable by deprivation of liberty extending from nine to twelve years in length.

4. The same act:

committed under extreme violence against a victim or other person;

that resulted in death of a victim, -

shall be punishable by deprivation of liberty extending from twelve to fifteen years in length.

5. Raping of a minor under fourteen years, -

shall be punishable by deprivation of liberty for the term extending from fifteen to twenty years.

#### **Article 138. Sexual Abuse under Violence**

Homosexuality, lesbianism or other distorted sexual intercourse committed under violence, threat of violence or abusing the vulnerable position of the victim,-

shall be punishable by deprivation of liberty extending from four to six years in length.

The same act:

committed by using one's official position;

that resulted in serious damage to health or other grave consequences,-

shall be punishable by imprisonment extending from six to nine years in length.

3. The same act committed:

a) repeatedly;

b) by the one who had previously committed one of the crimes set forth in Articles 138-141 of this Code;

c) by an organized group;

d) against a pregnant woman or a minor at the previous knowledge of the offender,-

shall be punishable by deprivation of liberty extending from nine to twelve years in length.

4. The same act:

committed under extreme violence against a victim or other person;

that resulted in death of a victim, -

shall be punishable by deprivation of liberty extending from twelve to fifteen years in length.

5. Sexual abuse under violence of a minor under fourteen years, -

shall be punishable by deprivation of liberty for the term extending from fifteen to twenty years.

#### **Article 139. Coercion into Sexual Intercourse or Other Action of Sexual Character**

Coercion into sexual intercourse, homosexuality, lesbianism or other sexual contact under the threat of disclosing defamatory information or damaging property or by using one's material, official or other dependence, -

shall be punishable by fine or by corrective labour for the term not in excess of one year and/or by deprivation of liberty for up to two years in length.

2. The same act committed against a minor, -

shall be punishable by corrective labour for up to two years or by deprivation of liberty for the term extending from one to three years.

#### **Article 140. Sexual Intercourse or Other Action of Sexual Character with One under Sixteen**

Major's sexual intercourse, homosexuality, lesbianism or other distorted sexual contact at the previous knowledge of the offender with one under sixteen years, -

shall be punishable by restriction of freedom for the term up to three years or by deprivation of liberty for the term extending from one to three years in length.

Article 141. Perversion

Perversion without violence at the previous knowledge of the offender with one under sixteen years, -

shall be punishable by fine or by corrective labour for up to one year in length and/or by deprivation of liberty for the term not exceeding of two years.

#### **Article 1432. Trafficking Against a Minor**

Buying or selling a minor or subjecting him/her to other forms of illegal deals, as well as enticing, conveying, hiding, hiring, transporting, handing over, harboring and/or receiving a minor for the purpose of exploitation,-

shall be punishable by deprivation of liberty for the term extending from eight to twelve years in length, by deprivation of the right to occupy a position or pursue a particular activity for one year.

The same act committed:

by using official position;

against a person being in vulnerable position or one being materially and/or otherwise dependent on the perpetrator,-

shall be punishable by deprivation of liberty for the term extending from twelve to fifteen years in length, by deprivation of the right to occupy a position or pursue a particular activity for two years.

The same act committed:

repeatedly;

by using coercion, blackmail or fraud;

against two or more minors;

by taking a victim abroad;

under violence and/or threat of violence dangerous for life or health, -

shall be punishable by deprivation of liberty for the term extending from fourteen to seventeen years in length, by deprivation of the right to occupy a position or pursue a particular activity for three years.

4. The act stipulated in Paragraphs 1, 2 and 3 of this Article, committed:

a) by an organized group;

2) that resulted in death of a minor or other grave consequences, -

shall be punishable by deprivation of liberty for the term extending from seventeen to twenty years in length, by deprivation of the right to occupy a position or pursue a particular activity for three years and/or life sentence.

Note: For the act prescribed by this Article, a legal person shall be punishable by deprivation of the right to pursue its activity or by liquidation and fine.

**Article 171. Involving Minor into Anti-Social Activity**

Persuading a minor on beggary or other anti-social acts , - shall be punishable by socially useful labour for the term extending from one hundred and seventy to two hundred and forty hours or by corrective labour for the term not in excess of two years and/or by restriction of liberty for three months term or by deprivation of liberty for up to two years in length.

Involving a minor into abuse of intoxicant or any other medical substance,- shall be punishable by restriction of freedom for up to three years in length or by deprivation of liberty for the same term.

3. Recruiting a minor into prostitution without violence, threat of violence or deception,- shall be punishable by deprivation of liberty for the term extending from two to five years in length.

**Article 253. Engaging Someone in Prostitution**

Recruiting someone in prostitution under violence, threat of violence or to destroy property, by blackmail or deception,-

shall be punishable by fine or by deprivation of liberty for up to two years in length.

The same act committed by an organized group or against a minor at the previous knowledge of the offender , -

shall be punishable by deprivation of liberty for the term extending from five to seven years.

**Article 255. Illicit Production or Sale of Pornographic Material or Other Object**

Illicit production, distribution or promotion of a pornographic material, printed material, image or other object pornographic in character, as well as trafficking and/or keeping of such object with the intent to sell or distribute it,-

shall be punishable by fine or by corrective labour for up to two years and/or by deprivation of liberty similar in length.

Intentional procuring, keeping, offer, dissemination, transfer, , promotion or otherwise making available of pornographic material involving image of minor,-

shall be punishable by fine or correctional labour up to two years and/or deprivation of liberty for up to three years in length.

Note: Visual or audio material produced in any manner, involving minor in real or simulated sexual scenes through any means, as well as using his/her voice or displaying minor's genitals for the purpose of satisfying consumer's sexual needs shall be considered as pornographic material involving image of minor.

Intentional production or distribution of the pornographic material involving image of minor,-

shall be punishable by fine or deprivation of liberty for the term extending from three to five years.

Note:

Visual or audio material produced in any manner, involving minor or a person appearing to be a minor involving in sexually explicit, simulated or computer generated sexual scenes, displaying minor's genitals for the purpose of satisfying consumer's sexual needs shall be considered as pornographic material. Material created for the medical, scientific, cultural or other legal purposes shall not be considered as pornographic.

For the act stipulated in this article, a legal person shall be punishable by fine, by deprivation of the right to pursue its activity or by liquidation and fine.

**Article 255 1 Involving a minor into illicit production and distribution of pornographic material**

Involving a minor into illicit production, distribution, promotion or trade of pornographic material or other object of pornographic character,-

shall be punishable by deprivation of liberty extending from two to five years.

Note: For the act prescribed by this Article, a legal person shall be punishable by fine, deprivation of right to pursue its activity or by liquidation and fine.

## 6.15 Germany

### Extract:

GERMAN CRIMINAL CODE- Unofficial Translation -  
TERMINOLOGY

### **Section 11-Terms Relating to Persons and Subject Matter**

(1) Within the meaning of this law:

1. a relative is whoever belongs among the following persons:

(a) relations by blood or marriage in direct line, the spouse, the same sex partner, the fiancé also within the meaning of the Same Sex Partnership Act, siblings, the spouses or same sex partners of siblings, siblings of spouses or same sex partners, even if the marriage or same sex partnership upon which the relationship was based no longer exists, or when the relationship by blood or marriage has ceased to exist;

(b) foster parents and foster children;

2. a public official is whoever, under German law:

(a) is a civil servant or judge;

(b) otherwise has an official relationship with public law functions or;

(c) has been appointed to a public authority or other agency or has been commissioned to perform duties of public administration without prejudice to the organizational form chosen to fulfill such duties;

3. a judge is, whoever under German law is a professional or honorary judge;

4. a person with special public service obligations is whoever, without being a public official, is employed by, or is active for:

(a) a public authority or other agency, which performs duties of public administration; or (b) an association or other union, business or enterprise, which carries out duties of public administration for a public authority or other agency, and is formally obligated by law to fulfil duties in a conscientious manner;

5. an unlawful act is only one which fulfils all the elements of a penal norm;

6. the undertaking of an act is its attempt and completion;

7. a public authority is also a court;

8. a measure is every measure of reform and prevention, forfeiture, confiscation and rendering unusable;

9. compensation is every consideration consisting of a material benefit;

(2) An act is also intentional within the meaning of this law, if it fulfils the statutory elements of an offense, which requires intent in relation to the conduct, even if only negligence is required as to the specific result caused thereby.

(3) Audio and visual recording media, data storage media, illustrations and other images shall be the equivalent of writings in those provisions which refer to this subsection.

### Section 12 - Serious Criminal Offenses and Less Serious Criminal Offenses

(1) Serious criminal offenses are unlawful acts that are punishable by a minimum of imprisonment for one year or more.

(2) Less serious criminal offenses are unlawful acts that are punishable by a minimum of a lesser term of imprisonment or a fine.

(3) Aggravation or mitigation, which are provided under the provisions of the General Part or for especially serious or less serious cases, shall be irrelevant to this classification.

## **CHAPTER TWO**

### **THE ACT**

#### **TITLE TWO**

#### **ATTEMPT**

### **Section 22 - Definition of Terms**

Whoever, in accordance with his understanding of the act, takes an immediate step towards the realization of the elements of the offense, attempts to commit a crime.

### **Section 23 - Punishability for an Attempt**

(1) An attempt to commit a serious criminal offense is always punishable, while an attempt to commit a less serious criminal offense is only punishable if expressly provided by law.

(2) An attempt may be punished more leniently than the completed act (Section 49a subsection (1) ) .

(3) If the perpetrator, due to a gross lack of understanding, fails to recognize that the attempt could not possibly lead to completion due to the nature of the object on which, or the means with which it was to be committed, the court may withhold punishment or in its own discretion mitigate the punishment (Section 49 subsection(2) ) .

## **TITLE THREE**

### **PERPETRATION AND INCITEMENT OR ACCESSORYSHIP**

#### **Section 25 - Perpetration**

(1) Whoever commits the crime himself or through another shall be punished as a perpetrator.

(2) If more than one person commit the crime jointly, each shall be punished as a perpetrator (co-perpetrator) .

#### **Section 26 - Incitement**

Whoever intentionally induces another to intentionally commit an unlawful act, shall, as an inciter, be punished the same as a perpetrator.

#### **Section 27 - Accessoryship**

(1) Whoever intentionally renders aid to another in that person's intentional commission of an unlawful act shall be punished as an accessory.

(2) The punishment for the accessory corresponds to the punishment threatened for the perpetrator. It shall be mitigated pursuant to Section 49 subsection (1) .

## **CHAPTER THIRTEEN**

### **CRIMES AGAINST SEXUAL SELF-DETERMINATION**

#### **Section 174 - Abuse of position of trust**

(1) Whoever engages in sexual activity

1. with a person under sixteen years of age who is entrusted to him for upbringing, education or care;

2. with a person under eighteen years of age who is entrusted to him for upbringing, education or care or who is his subordinate within an employment or a work relationship, by abusing the dependence associated with the upbringing, educational, care, employment or work relationship; or

3. with his biological or adopted child not yet eighteen years of age, or allows them to engage in sexual activities with himself, shall be liable to imprisonment from three months to five years.

(2) Whoever, under the conditions of subsection (1) Nos. 1 to 3 above

1. engages in sexual activity in the presence of the person; or

2. induces the person to engage in sexual activity in his presence, in order to obtain sexual gratification for himself or the person shall be liable to imprisonment of not more than three years or a fine.

(3) The attempt shall be punishable.

(4) In cases under subsection (1) No. 1 above, or subsection (2) above in conjunction with subsection (1) No. 1, the court may order a discharge under this provision if taking into consideration the conduct of the person the harm of the offence is of a minor nature.

#### **Section 176 - Child abuse**

(1) Whoever engages in sexual activity with a person under fourteen years of age (child) or allows the child to engage in sexual activity with himself shall be liable to imprisonment from six months to ten years.

(2) Whoever induces a child to engage in sexual activity with a third person or to allow third persons to engage in sexual activity with the child shall incur the same penalty.

(3) In especially serious cases the penalty shall be imprisonment of not less than one year.

(4) Whoever

1. engages in sexual activity in the presence of a child;

2. induces the child to engage in sexual activity, unless the act is punishable under subsection (1) or subsection (2) above;

3. presents a child with written materials (section 11 (3) ) to induce him to engage in sexual activity with or in the presence of the offender or a third person or allow the offender or a third person to engage in sexual activity with him; or

4. presents a child with pornographic illustrations or images, audio recording media with pornographic content or pornographic speech, shall be liable to imprisonment from three months to five years.

(5) Whoever supplies or promises to supply a child for an offence under subsections (1) to (4) above or who agrees with another to commit such an offence shall be liable to imprisonment from three months to five years.

(6) The attempt shall be punishable; this shall not apply to offences under subsection (4) Nos. 3 and 4 and subsection (5) above.

#### **Section 176a - Aggravated child abuse**

(1) The sexual abuse of children under section 176 (1) and (2) shall entail a sentence of imprisonment of not less than one year if the offender was convicted of such an offence by final judgment within the previous five years.

(2) The sexual abuse of children under section 176 (1) and (2) shall entail a sentence of imprisonment of not less than two years if

1. a person over eighteen years of age performs sexual intercourse or similar sexual acts with the child which include a penetration of the body, or allows them to be performed on himself by the child;

2. the offence is committed jointly by more than one person; or

3. the offender by the offence places the child in danger of serious injury or substantial impairment of his physical or emotional development.

(3) Whoever under section 176 (1) to (3) , (4) Nos. 1 or 2 or section 176 (6) acts as a principal or secondary participant with the intent of making the act the object of a pornographic medium (section 11 (3) ) which is to be disseminated pursuant to section 184b (1) to (3) shall be liable to imprisonment of not less than two years.

(4) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsection (2) above imprisonment from one to ten years.

(5) Whoever under section 176 (1) to (3) seriously physically abuses the child or places the child in danger of death shall be liable to imprisonment of not less than five years.

(6) Any period during which the offender was detained in an institution pursuant to an order of a public authority shall not be credited to the term indicated in subsection (1) above. An offence resulting in a conviction abroad shall be equivalent, under subsection (1) above, to an offence resulting in a domestic conviction if under German criminal law it would have been an offence under section 176 (1) or (2) .

#### **Section 176b - Child abuse causing death**

If the offender in cases under section 176 and section 176a causes the death of the child at least by gross negligence the penalty shall be imprisonment for life or not less than ten years.

#### **Section 177 - Sexual assault by use of force or threats; rape**

(1) Whoever coerces another person

1. by force;

2. by threat of imminent danger to life or limb; or

3. by exploiting a situation in which the victim is unprotected and at the mercy of the offender, to suffer sexual acts by the offender or a third person on their own person or to engage actively in sexual activity with the offender or a third person, shall be liable to imprisonment of not less than one year.

(2) In especially serious cases the penalty shall be imprisonment of not less than two years. An especially serious case typically occurs if

1. the offender performs sexual intercourse with the victim or performs similar sexual acts with the victim, or allows them to be performed on himself by the victim, especially if they degrade the victim or if they entail penetration of the body (rape) ; or
2. the offence is committed jointly by more than one person.

(3) The penalty shall be imprisonment of not less than three years if the offender

1. carries a weapon or another dangerous instrument;
2. otherwise carries an instrument or other means for the purpose of preventing or overcoming the resistance of another person through force or threat of force; or
3. by the offence places the victim in danger of serious injury.

(4) The penalty shall be imprisonment of not less than five years if

1. the offender uses a weapon or another dangerous instrument during the commission of the offence; or if
2. the offender

(a) seriously physically abuses the victim during the offence; or

(b) by the offence places the victim in danger of death.

(5) In less serious cases under subsection (1) above the penalty shall be imprisonment from six months to five years, in less serious cases under subsections (3) and (4) above imprisonment from one to ten years.

#### **Section 178 - Sexual assault by use of force or threat of force and rape causing death**

If the offender through sexual assault or rape (section 177) causes the death of the victim at least by gross negligence the penalty shall be imprisonment for life or not less than ten years.

#### **Section 179 - Abuse of persons who are incapable of resistance**

(1) Whoever abuses another person who is incapable of resistance

1. because of a mental illness or disability including an addiction or because of a profound consciousness disorder; or
2. is physically incapable,

and by exploiting the incapability to resist engages in sexual activity with the person or allows them actively to engage in sexual activity on his person shall be liable to imprisonment from six months to ten years.

(2) Whoever abuses a person incapable of resistance (subsection (1) above) , by inducing the person, under exploitation of the incapability of resistance, to engage actively in sexual activity with a third person or to allow a third person to engage in sexual activity with them, shall incur the same penalty.

(3) In especially serious cases the penalty shall be imprisonment of not less than one year.

(4) The attempt shall be punishable.

(5) The penalty shall be imprisonment of not less than two years if

1. the offender performs sexual intercourse or similar sexual acts with the victim which include penetration of the body, or allows them to be committed on himself by the victim;
2. the offence is committed jointly by more than one person; or
3. by the offence the offender places the victim in danger of serious injury or substantial impairment of his physical or emotional development.

(6) In less serious cases under subsection (5) above the penalty shall be imprisonment from one to ten years.

#### **(7) Section 177 (4) No. 2 and section 178 shall apply mutatis mutandis.**

#### **Section 180 - Causing minors to engage in sexual activity**

(1) Whoever encourages a person under sixteen years of age to engage in sexual activity with or in the presence of a third person or whoever encourages sexual acts of a third person on a person under sixteen years of age

1. by acting as an intermediary; or
2. by creating an opportunity,

shall be liable to imprisonment of not more than three years or a fine. The 1st sentence No. 2 above shall not apply if the offender is the person responsible for the care of the minor unless the offender, if responsible for the care of the minor, grossly violates his duty of education.



(2) Whoever induces a person under eighteen years of age to engage in sexual activity with or in the presence of a third person or to suffer sexual acts by a third person for a financial reward, or whoever encourages such acts by acting as an intermediary, shall be liable to imprisonment of not more than five years or a fine.

(3) Whoever induces a person under eighteen years of age who is entrusted to him for upbringing, education or care or who is his subordinate within an employment or a work relationship, by abusing the dependence associated with the upbringing, educational, care, employment or work relationship to engage in sexual activity with or in the presence of a third person or to suffer sexual acts by a third person shall be liable to imprisonment of not more than five years or a fine.

(4) In cases under subsections (2) and (3) above the attempt shall be punishable.

### **Section 182 - Abuse of juveniles**

(1) Whoever abuses a person under eighteen years of age by taking advantage of an exploitative situation by

1. engaging in sexual activity with the person or suffering the person to engage actively in sexual activity with him or

2. inducing the person to engage in sexual activity with a third person or to suffer sexual acts committed on their own body by a third person,

shall be liable to imprisonment of not more than five years.

(2) The same penalty shall apply to a person over eighteen years of age who abuses a person under eighteen years of age by engaging in sexual activity with him or to by inducing the person to suffer sexual acts committed by him on their own body for a financial reward.

(3) A person over twenty-one years of age who abuses a person under sixteen years of age by

1. engaging in sexual activity with the person or causing the person to engage actively in sexual activity with him or

2. inducing the person to engage in sexual activity with a third person or to suffer sexual acts committed on their own body by a third person, and thereby exploits the victims lack of capacity for sexual self-determination shall be liable to imprisonment of not more than three years or a fine.

(4) The attempt shall be punishable.

(5) In cases under subsection (3) above the offence may only be prosecuted upon request unless the prosecuting authority considers proprio motu that prosecution is required out of special public interest.

(6) In cases under subsections (1) to (3) above the court may order a discharge under these provisions if in consideration of the conduct of the person against whom the offence was committed the harm of the offence is of a minor nature.

### **Section 184b - Distribution, acquisition and possession of child pornography**

(1) Whoever

1. disseminates;

2. publicly displays, presents, or otherwise makes accessible; or

3. produces, obtains, supplies, stocks, offers, announces, commends, or undertakes to import or export in order to use them or copies made from them within the meaning of Nos. 1 or 2 above or facilitates such use by another pornographic written materials (section 11 (3) ) related to sexual activities performed by, on or in the presence of children (section 176 (1) ) (child pornography) shall be liable to imprisonment from three months to five years.

(2) Whoever undertakes to obtain possession for another of child pornography reproducing an actual or realistic activity shall incur the same penalty.

(3) In cases under subsection (1) or subsection (2) above the penalty shall be imprisonment of six months to ten years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and the child pornography reproduces an actual or realistic activity.

(4) Whoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity shall be liable to imprisonment of not more than two years or a fine. Whoever possesses the written materials set forth in the 1st sentence shall incur the same penalty.

(5) Subsections (2) and (4) above shall not apply to acts that exclusively serve the fulfilment of lawful official or professional duties.

(6) In cases under subsection (3) above section 73d shall apply. Objects to which an offence under subsection (2) or (4) above relates shall be subject to a deprivation order. section 74a shall apply.

#### **Section 184c - Distribution, acquisition and possession of juvenile pornography**

(1) Whoever

1. disseminates;
2. publicly displays, presents, or otherwise makes accessible; or
3. produces, obtains, supplies, stocks, offers, announces, commends, or undertakes to import or export in order to use them or copies made from them within the meaning of

Nos. 1 or 2 above or facilitates such use by another pornographic written materials (section 11 (3) ) related to sexual activities performed by, on or in the presence of persons between the ages of fourteen to eighteen years (juvenile pornography) shall be liable to imprisonment of not more than three years or a fine.

(2) Whoever undertakes to obtain possession for another of juvenile pornography reproducing an actual or realistic activity shall incur the same penalty.

(3) In cases under subsection (1) or subsection (2) above the penalty shall be imprisonment of three months to five years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and the juvenile pornography reproduces an actual or realistic activity.

(4) Whoever undertakes to obtain possession of child pornography reproducing an actual activity shall be liable to imprisonment of not more than one year or a fine. The 1st sentence shall not apply to acts of persons related to juvenile pornography produced by them while under eighteen years of age and with the consent of the persons therein depicted.

(5) Section 184b (5) and (6) shall apply mutatis mutandis.

#### **Section 184d - Distribution of pornographic performances by broadcasting, media services or telecommunications services**

Whoever disseminates pornographic performances via broadcast, media services, or telecommunications services shall be liable pursuant to sections 184 to 184c. In cases under section 184 (1) the 1st sentence above shall not apply to dissemination via media services or telecommunications services if it is ensured by technical or other measures that the pornographic performance is not accessible to persons under eighteen years of age.

### **CHAPTER EIGHTEEN**

#### **OFFENCES AGAINST PERSONAL FREEDOM**

#### **Section 232 - Human trafficking for the purpose of sexual exploitation**

(1) Whoever exploits another persons predicament or helplessness arising from being in a foreign country in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on his own person by the offender or a third person shall be liable to imprisonment from six months to ten years. Whoever induces a person under twenty-one years of age to engage in or continue to engage in prostitution or any of the sexual activity mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) The penalty shall be imprisonment from one to ten years if

1. the victim is a child [section 176 (1) ];
2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(4) The penalty under subsection (3) above shall be imposed on any person who 1. induces another person by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above or

2. gains physical control of another person by force, threat of serious harm or deception to induce them to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above.

(5) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsections (3) and (4) above imprisonment from six months to five years.

**Section 233a - Assisting in human trafficking**

(1) Whoever assists in human trafficking under section 232 or section 233 by recruiting, transporting, referring, harbouring or sheltering another person shall be liable to imprisonment from three months to five years.

(2) The penalty shall be imprisonment from six months to ten years if

1. the victim is a child [section 176 (1) ];
2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(3) The attempt shall be punishable.

## 6.16 Hungary

Extract:

### **Act C of 2012 on the Criminal Code GENERAL PART**

#### **Attempt - Section 10**

- (1) Any person who commences the perpetration of a premeditated crime, but does not finish it, shall be punishable for attempt.
- (2) The sentence applicable to a consummated offense shall also be applied for attempt.
- (3) The punishment may be reduced without limitation or dismissed altogether if the attempt has been perpetrated on an unsuitable subject, with an unsuitable instrument or in an unsuitable matter.
- (4) Prosecution for attempts shall not apply against any person who
  - a) voluntarily withdraws from the criminal activity before it is committed,
  - b) deliberately attempts to prevent the crime.
- (5) If in the case of Subsections (4), the attempt in itself constitutes another crime, the perpetrator shall be liable for prosecution for that crime.

#### **Preparation - Section 11**

- (1) If it is expressly prescribed by law, any person who provides for the perpetration of a crime the conditions required therefor or facilitating that, who invites, offers for, undertakes its perpetration, or agrees on joint perpetration, shall be punishable for preparation.
- (2) Prosecution for preparation shall not apply against a person:
  - a) who voluntarily discontinues his participation in the preparation before the act is committed;
  - b) who withdraws his invitation, offer, undertaking with the aim of the prevention of the perpetration, or attempts to pursue other contributors to withdraw from the criminal activity, provided that the commencement of the perpetration does not take place for any reason whatsoever;
  - c) who informs the authority about the preparation before the start of the perpetration of the crime.
- (3) In the cases of Subsection (2), if the preparation constitutes another crime in itself, the perpetrator shall be liable for prosecution for that crime.

#### **Perpetrators - Section 14**

- (1) Abettor is a person who intentionally persuades another person to commit a crime.
- (2) Accomplice is a person who knowingly and voluntarily helps another person commit a crime.
- (3) The sentence applicable to parties to a crime shall also be applied for conspirators.

#### **Trafficking in Human Beings - Section 192**

- (1) Any person who
  - a) sells, purchases, exchanges, conveys or receives another person,
  - b) transports, houses, hides or appropriates people for such purposes for another party with the purpose of carrying out the crime defined in a)is guilty of a felony punishable by imprisonment for up to three years.
- (2) Any person who sells, purchases, exchanges, conveys, receives, recruits, transports, houses, hides or appropriates people for another party for the purposes of exploitation shall be punishable by one to five years of imprisonment.
- (3) The punishment shall be imprisonment between one to five years if the criminal act is committed:
  - a) to the detriment of a person deprived of his or her personal liberty,
  - b) by force or by threat,
  - c) by deception,
  - d) by the torment of the injured party,
  - e) against a person under the education, supervision, care or medical treatment of the offender, or by abusing any other relationship of power or influence over the victim;

- f) with the purpose of the unlawful use of the human body,
- g) as a public official, acting in such an official capacity,
- h) as a criminal conspiracy or
- i) in the manner of a business operation.

(4) The punishment shall be five to ten years of imprisonment if

- a) the crime defined in (2) is committed against a person under the age of eighteen;
- b) a crime defined in (2) and committed against a person stripped of his or her personal liberty is carried out as set forth in (3) b)-i); or
- c) the crime defined in (2) causes particularly great damage or danger to life.

(5) The punishment shall be five to fifteen years of imprisonment if

- a) the crime defined in (2) is committed against a person under the age of fourteen,
- b) the crime defined in (2) and committed against a person under the age of eighteen is carried out as set forth in one of the points of (3),
- c) the crime defined in (2) and committed against a person under the age of eighteen caused particularly great damage or danger to life or
- d) the crime defined in (2) and committed against a person under the age of eighteen is carried out with the purpose of child pornography.

(6) The punishment shall be five to twenty years of imprisonment or life imprisonment if:

- a) the crime defined in (2) and committed against a person under the age of fourteen is carried out as set forth in one of the points of (3);
- b) the crime defined in (2) and committed against a person under the age of fourteen caused particularly great damage or danger to life; or
- c) the crime defined in (2) is committed against a person under the age of fourteen or with the purpose of child pornography.

(7) Any person who engages in preparations for trafficking in human beings is guilty of a misdemeanor punishable by up to two years of imprisonment.

#### **Sexual Coercion - Section 196**

(1) Any person who coerces another person to carry out or submit to a sexual act is guilty of a felony punishable by one to five years of imprisonment.

(2) The punishment for sexual coercion shall be two to eight years of imprisonment if it is committed:

- a) against a person under the age of eighteen or
- b) against a relative or person under the education, supervision, care or medical treatment of the offender, or by abusing any other relationship of power or influence over the victim.

(3) The punishment shall be five to ten years of imprisonment if the sexual coercion is committed against a person under the age of fourteen.

#### **Sexual Violence - Section 197**

(1) Any person who commits the following acts is guilty of the felony of sexual assault punishable by two to eight years of imprisonment:

- a) sexual coercion committed with violence, or with a direct threat against life or physical integrity; or
- b) using the incapacity of another person for defense or for the manifestation of her/his will for sexual act.

(2) Engaging in a sexual act with a child under the age of twelve or compelling one to do so shall also be deemed sexual assault, and shall be punishable by five to ten years of imprisonment.

(3) The punishment shall be five to ten years of imprisonment if the criminal act described in (1) is committed:

- a) against a person under the age of eighteen;
- b) against a relative or a person under the education, supervision, care or medical treatment of the offender, or by abusing any other relationship of power or influence over the victim; or
- c) by several persons on the same occasion, knowing about each other's acts.

(4) The following acts shall be punishable by five to fifteen years of imprisonment:

- a) committing the crimes listed in (1) a), (3) b) or (3) c) against children under the age of twelve; or
- b) committing the crimes listed in (3) a), if (3) b) or (3) c) applies.

(5) Any person who provides the conditions necessary for or facilitates sexual assault is guilty of a felony punishable by up to three years of imprisonment.

### **Sexual Abuse - Section 198**

(1) Any person over the age of eighteen who engages in sexual acts with a person under the age of fourteen or persuades or coerces such a person to engage in sexual acts with others is guilty of a felony punishable by one to five years.

(2) Any person over the age of eighteen who attempts to persuade a person under the age of fourteen to engage in sexual acts with him or her or someone else shall be punishable up to three years of imprisonment.

(3) If the victim is a relative of the offender or is under the offender's education, supervision, care or medical treatment of the offender, or the offender committed the sexual abuse by abusing any other relationship of power or influence over the victim, the crime shall be punishable

a) by two to eight years of imprisonment in the case defined in (1); and

b) by one to five years of imprisonment in the case defined in (2).

(4) Any person above the age of eighteen who abuses a relationship of power or influence over a person between the ages of fourteen and eighteen to carry out sexual acts shall be punishable by up to three years of imprisonment.

### **Pandering - Section 200**

(1) Any person who solicits a person for sexual act for another person for any financial gain is guilty of a felony punishable by imprisonment for up to three years.

(2) Any person who offers a person under the age of eighteen or calls upon such a person to prostitute themselves is guilty of pandering and shall be punishable as defined in (1).

(3) The punishment shall be imprisonment between one to five years if pandering is committed in a pattern of criminal business operation.

(4) The punishment shall be imprisonment between two to eight years if pandering described in (1) is committed:

a) against a person under the age of eighteen;

b) against relative of the perpetrator or of a person who is in the care, custody or supervision of or receives medical treatment from the perpetrator or by abusing any other relationship of power or influence over the victim

c) with deception, violence or direct threat against life or limb.

(5) The punishment shall be five to ten years of imprisonment if the pandering as defined in (4) a) or (4) b) also fulfils c).

(6) Any person who conspires to engage in the crime of pandering as defined in Subsection (2) is guilty of a felony punishable by imprisonment for up to three years.

### **Promotion of Prostitution - Section 201**

(1) Any person who

a) persuades another person to engage in prostitution,

b) makes available a building or another place for another person to engage in prostitution, or

c) assists a person under the age of eighteen in prostitution,

is guilty of a felony punishable by imprisonment for up to three years.

(2) Any person who persuades or coerces another person under the age of eighteen to prostitute himself or herself shall be punishable by one to five years of imprisonment.

(3) Any person who maintains or operates a brothel, or provides financial means for the operation of a brothel is guilty of a felony punishable by imprisonment for up to five years.

### **Living on Earnings of Prostitution - Section 202**

Any person who supports himself wholly or in part from the earnings of a person engaging in prostitution is guilty of a felony punishable by imprisonment for up to three years.

### **Exploitation of Child Prostitution - Section 203**

(1) Any person who attempts to profit from the prostitution of a person under the age of eighteen shall be punishable by up to three years of imprisonment.

(2) Any person who provides consideration in return for sexual acts to a person under the age of eighteen shall be punishable as laid out in (1).

(3) Any person who partly or fully lives off of money earned by another person under the age of eighteen through prostitution shall be punishable by one to five years of imprisonment.

(4) Any person who operates a brothel where a person under the age of eighteen is engaged in prostitution – or provides the financial means for the operation of such a brothel – shall be punishable by two to eight years of imprisonment.

#### **Child Pornography - Section 204**

(1) The punishments for crimes related to pornographic materials depicting a person or persons under the age of eighteen shall be as follows:

a) for the felony of obtaining or possessing such material, three years of imprisonment;

b) for making, offering, providing or making available such material, one to five years of imprisonment; and

c) for distributing or trading in such materials or making them available for large groups of the public, and for providing the means for the above; two to eight years of imprisonment;

(2) Any person who commits the crime defined in (1) b) against a person under the education, supervision, care or medical treatment of the offender, or by abusing any other relationship of power or influence over the victim shall be punishable by two to eight years of imprisonment.

(3) Any person who provides the financial means for the crime defined in (1) c) shall be punishable by one to five years of imprisonment.

(4) Any person who

a) invites a person or persons under the age of eighteen to participate in a pornographic show shall be punishable by up to three years of imprisonment;

b) has a person or persons under the age of eighteen participate in a pornographic show shall be punishable by one to five years of imprisonment.

(5) The following acts shall be punishable by up to three years of imprisonment:

a) inviting a person or persons under the age of eighteen to perform pornographic material;

b) participating in a pornographic show that a person under the age of eighteen is also participating in; and

c) providing the financial means for the participation of a person or persons under the age of eighteen in a pornographic show.

(6) Any person who provides the conditions necessary for or facilitates the making, distribution or trade of pornographic material of persons under the age of fourteen is guilty of a misdemeanor punishable by up to two years of imprisonment.

(7) For the purposes of this Section:

a) 'pornographic material' shall mean video, film, photos or other visual recordings that depict sexuality in a gravely indecent manner, designed specifically to arouse sexual desire;

b) 'pornographic show' shall mean an act or performance that displays sexuality in a gravely indecent manner, designed specifically arouse sexual desire.

#### **Indecent Exposure - Section 205**

(1) Any person who exposes himself or herself before another person in an indecent way for the arousal or satisfaction of his or her sexual desire is guilty of a misdemeanor punishable by up to two years of imprisonment.

(2) Any person above the age of eighteen who indecently exposes himself or herself to a person under the age of fourteen for the arousal or satisfaction of his or her own sexual desire is guilty of a felony punishable by up to three years of imprisonment, if no other more serious crime is committed.

(3) If no other, more serious crime is committed, any person who indecently exposes himself or herself to another person in a manner that offends their human dignity shall be punishable as defined in (1).

#### **Banishment - Section 206**

Banishment may be also applied against offenders who committed the following crimes: exploitation of child pornography, facilitating prostitution, living off of earnings from prostitution and indecent exposure.

#### **Private Motion - Section 207**

The offences defined in Section 196 (1), Section 197 (1) a) and Section 205 (3) may only be punished upon private motion, except if offences punishable not by private motion are also committed in connection with them.

**Abuse of a Minor - Section 208**

(1) A person who is given custody of a minor – including the domestic partner of the parent or guardian who has been granted custody, as well as the parent who has been deprived of the right of parental custody, if living in the same household or in the same dwelling with the minor – to maintain and care for the person in his charge, and who gravely violates the obligations arising from such duty and thereby endangers the physical, intellectual, moral or emotional development of the minor, is guilty of a felony punishable by imprisonment between one to five years.


(2) Any person above the age of eighteen shall be punishable in accordance with (1) – if such act does not result in a criminal act of greater gravity – for the following crimes:

- a) persuading or attempting to persuade a person under the age of eighteen to commit a crime or an infraction or to engage in immoral conduct; or
- b) offering a person under the age of eighteen for the commission of a crime.



## 6.17 India

रजिस्ट्री सं० डी० एल०—(एन)०४/०००७/२००३—०९ REGISTERED NO. DL—(N)04/0007/2003—09

  
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

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**MINISTRY OF LAW AND JUSTICE**  
(Legislative Department)

*New Delhi, the 5th February, 2009/Magha 16, 1930 (Saka)*

The following Act of Parliament received the assent of the President on the 5th February, 2009, and is hereby published for general information:—

**THE INFORMATION TECHNOLOGY (AMENDMENT) ACT, 2008**  
No. 10 OF 2009  
[5th February, 2009.]

An Act further to amend the Information Technology Act, 2000.  
BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

**PART I**  
**PRELIMINARY**

1. (1) This Act may be called the Information Technology (Amendment) Act, 2008. Short title and commencement.  
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:  
Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or

(iii) introducing or causing to introduce any computer contaminant,

and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under section 70; or

(B) knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise,

commits the offence of cyber terrorism.

(2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.

67. Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Punishment for publishing or transmitting obscene material in electronic form.

67A. Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

67B. Whoever,—

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or

Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or

(d) facilitates abusing children online; or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for *bona fide* heritage or religious purposes.

*Explanation.*— For the purposes of this section, “children” means a person who has not completed the age of 18 years.

Preservation and retention of information by intermediaries.

67C. (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.

(2) Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and shall also be liable to fine.

Amendment of section 68.

33. In section 68 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Any person who intentionally or knowingly fails to comply with any order under sub-section (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one lakh rupees or with both.”

Substitution of new sections for section 69.

34. For section 69 of the principal Act, the following sections shall be substituted, namely:—

Power to issue directions for interception or monitoring or decryption of any information through any computer resource.

69. (1) Where the Central Government or a State Government or any of its officers specially authorised by the Central Government or the State Government, as the case may be, in this behalf may, if satisfied that it is necessary or expedient so to do, in the interest of the sovereignty or integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence, it may subject to the provisions of sub-section (2), for reasons to be recorded in writing, by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource.

(2) The procedure and safeguards subject to which such interception or monitoring or decryption may be carried out, shall be such as may be prescribed.

(3) The subscriber or intermediary or any person in-charge of the computer resource shall, when called upon by any agency referred to in sub-section (1), extend all facilities and technical assistance to—

(a) provide access to or secure access to the computer resource generating, transmitting, receiving or storing such information; or

(b) intercept, monitor, or decrypt the information, as the case may be; or

(c) provide information stored in computer resource.



"84A. The Central Government may, for secure use of the electronic medium and for promotion of e-governance and e-commerce, prescribe the modes or methods for encryption. Modes or methods for encryption.

84B. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be punished with the punishment provided for the offence under this Act. Punishment for abetment of offences.

*Explanation.*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

84C. Whoever attempts to commit an offence punishable by this Act or causes such an offence to be committed, and in such an attempt does any act towards the commission of the offence, shall, where no express provision is made for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both. Punishment for attempt to commit offences.

46. In section 87 of the principal Act,— Amendment of section 87.

- (A) in sub-section (2),—
- (i) for clause (a), the following clauses shall be substituted, namely:—
- “(a) the conditions for considering reliability of electronic signature or electronic authentication technique under sub-section (2) of section 3A;
- (aa) the procedure for ascertaining electronic signature or authentication under sub-section (3) of section 3A;
- (ab) the manner in which any information or matter may be authenticated by means of electronic signature under section 5;”;
- (ii) after clause (c), the following clause shall be inserted, namely:—
- “(ca) the manner in which the authorised service provider may collect, retain and appropriate service charges under sub-section (2) of section 6A;”;
- (iii) for clause (e), the following clauses shall be substituted, namely:—
- “(e) the manner of storing and affixing electronic signature creation data under section 15;
- (ea) the security procedures and practices under section 16;”;
- (iv) in clause (f), for the words “and Assistant Controllers”, the words “, Assistant Controllers, other officers and employees” shall be substituted;
- (v) clause (g) shall be omitted;
- (vi) after clause (m), the following clause shall be inserted, namely:—
- “(ma) the form of application and fee for issue of Electronic Signature Certificate under section 35;”;
- (vii) after clause (o), the following clauses shall be inserted, namely:—
- “(oa) the duties of subscribers under section 40A;
- (ob) the reasonable security practices and procedures and sensitive personal data or information under section 43A;”;
- (viii) in clause (r), for the words “Presiding Officer”, the words “Chairperson and Members” shall be substituted;
- (ix) in clause (s), for the words “Presiding Officer”, the words “Chairperson and Members” shall be substituted;
- (x) for clause (w), the following clauses shall be substituted, namely:—
- “(w) the powers and functions of the Chairperson of the Cyber Appellate Tribunal under section 52A;

## Extracts

AS INTRODUCED IN THE RAJYA SABHA Bill No. XIV of 2011 THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES BILL, 2011 - draft  
ARRANGEMENT OF CLAUSES

### CHAPTER I – PRELIMINARY CLAUSES

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2. Definitions.

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#### B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

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#### C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR

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#### PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

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34. Procedure in case of commission of offence by child and determination of age by Special Court.
35. Period for recording of evidence of child and disposal of case.
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37. Trials to be conducted in camera.
38. Assistance of an interpreter or expert while recording evidence of child.

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39. Guidelines for child to take assistance of experts, etc.
40. Right of child to take assistance of legal practitioner.
41. Provisions of sections 3 to 13 not to apply in certain cases.
42. Alternative punishment.
43. Power to make rules.
44. Power to remove difficulties.

#### **THE SCHEDULE.**

##### **(ii)**

##### **CLAUSES THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES BILL, 2011**

A BILL to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State Parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

#### **CHAPTER I PRELIMINARY**

1. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2011.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. (1) In this Act, unless the context otherwise requires, —
- (a) "aggravated sexual assault" has the same meaning as assigned to it in section 9;
  - (b) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;
  - (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;
  - (d) "child" means any person below the age of eighteen years save as provided otherwise;
  - (e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005;
  - (f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;
  - (g) "sexual assault" has the same meaning as assigned to it in section 7;
  - (h) "sexual harassment" has the same meaning as assigned to it in section 11;
  - (i) "shared household" means a household where the person charged with the offence lives in a domestic relationship with the parent of the child and the child;
  - (j) "Special Court" means a court designated as such under section 28;
  - (k) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32;
- (2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts.

## **CHAPTER II SEXUAL OFFENCES AGAINST CHILDREN**

### **A.—PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR**

3. A person is said to commit "penetrative sexual assault" if—

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
  - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person;
- or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
  - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person:

Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such an act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it.

Explanation I.— For the purposes of this section,—

- (a) "consent" means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this section;
- (b) "unequivocal voluntary agreement" means willingness given for specific and be limited to the express act consented to under this section.

Explanation II.— A child, who does not offer actual physical resistance to penetrative sexual assault is not by reason only of that fact, to be regarded as consenting to the sexual activity.

4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

### **B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR**

5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child —

- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (b) Whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—
  - (i) within the limits of the area to which the person is deployed; or
  - (ii) in any areas under the command of the forces or armed forces; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution, commits penetrative sexual assault on a child in that institution; or
- (g) whoever commits gang penetrative sexual assault on a child; or
- (h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits penetrative sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or
- (j) whoever commits penetrative sexual assault on a child, which—
  - (i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or
  - (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;
  - (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or any where else; or
- (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or
- (s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force, is said to commit aggravated penetrative sexual assault.

6. Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.



**C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR**

7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault:

Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious, or where the child does not have the capacity to understand the nature of the act or to resist it.

Explanation I.— For the purposes of this section,—

(a) "consent" means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this section;

(b) "unequivocal voluntary agreement" means willingness given for specific and be limited to the express act consented to under this section.

Explanation II.— A child who does not offer actual physical resistance to sexual activity is not by reason only of that fact, to be regarded as consenting to the sexual assault.

Explanation III.— Any question which involves "sexual intent" shall be a question of fact.

8. Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

**D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR**

9. (a) Whoever, being a police officer, commits sexual assault on a child—

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) when the person is known or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child ; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

- (i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or
- (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
- (l) whoever commits sexual assault on the child more than once or repeatedly; or
- (m) whoever commits sexual assault on a child below twelve years; or
- (n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or
- (o) whoever being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
- (p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits sexual assault on a child and attempts to murder the child; or
- (s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force, is said to commit aggravated sexual assault.

10. Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

#### **E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFOR**

11. A person is said to commit sexual harassment upon a child when such person with sexual intent,—

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through any means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act.

Explanation.—Any question which involves "sexual intent" shall be a question of fact.

12. Whoever commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

#### **CHAPTER III USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR**

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution) , for the purposes of sexual gratification, which includes—

- (a) representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration) ;

(c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

14. (1) Whoever, uses a child or children for pornographic purposes shall be liable for rigorous imprisonment which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine.

(2) If the person using the child for pornographic purposes commits any offence referred to in section 3, or section 5, or section 7, or section 9, by directly participating in pornographic acts, he shall be punishable for life imprisonment and shall also be liable to fine.

15. Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

#### **CHAPTER IV ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE**

16. A person abets an offence, who—

First.— Instigates any person to do that offence; or

Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

17. Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation. — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

18. Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of either description which may extend to one year or with fine or with both.

#### **CHAPTER V PROCEDURE FOR REPORTING OF CASES**

19. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child) , who apprehends that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) Every report given under sub-section (1) shall be—

(a) ascribed an entry number and recorded in writing;

(b) be read over to the informant;

(c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be required.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

20. Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

21. (1) Any person, who fails to report an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

## 6.18 Ireland

Extract:

CRIMINAL LAW (SEXUAL OFFENCES) ACT 2006

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AN ACT TO PROVIDE FOR OFFENCES IN RELATION TO THE COMMISSION OF SEXUAL ACTS WITH CHILDREN UNDER THE AGE OF 17 YEARS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH [2nd June, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### **Definitions.**

1.— In this Act—

“ Act of 1981 ” means the [Criminal Law \(Rape\) Act 1981](#) ;

“ Act of 1990 ” means the [Criminal Law \(Rape\) \(Amendment\) Act 1990](#) ;

“ person in authority ” means—

- (a) a parent, step-parent, guardian, grandparent, uncle or aunt of the victim,
- (b) any person who is, for the time being, in loco parentis to the victim, or
- (c) any person who is, for the time being, responsible for the education, supervision or welfare of the victim;

“sexual act ” means—

(a) an act consisting of—

- (i) sexual intercourse, or
- (ii) buggery,

between persons who are not married to each other, or

(b) an act described in section 3(1) or 4(1) of the Act of 1990;

“sexual intercourse” shall be construed in accordance with section 1(2) of the Act of 1981.

Defilement of child under 15 years of age.

2.— (1) Any person who engages in a sexual act with a child who is under the age of 15 years shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(2) Any person who attempts to engage in a sexual act with a child who is under the age of 15 years shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 years.

(4) Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 years, the court shall have regard to the presence or absence of reasonable grounds for the defendant’s so believing and all other relevant circumstances.

(5) It shall not be a defence to proceedings for an offence under this section for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

Defilement of child under the age of 17 years.

3.— (1) Any person who engages in a sexual act with a child who is under the age of 17 years shall be guilty of an offence and shall, subject to subsection (3) , be liable on conviction on indictment—

- (a) to imprisonment for a term not exceeding 5 years, or

(b) if he or she is a person in authority, to imprisonment for a term not exceeding 10 years.

(2) Any person who attempts to engage in a sexual act with a child who is under the age of 17 years shall be guilty of an offence and shall, subject to subsection (4) be liable on conviction on indictment—

(a) to imprisonment for a term not exceeding 2 years, or

(b) if he or she is a person in authority, to imprisonment for a term not exceeding 4 years.

(3) A person who has been convicted of an offence under subsection (1) shall, in respect of any subsequent conviction of an offence under that subsection, be liable on conviction on indictment—

(a) to imprisonment for a term not exceeding 10 years, or

(b) if he or she is a person in authority, to imprisonment for a term not exceeding 15 years.

(4) A person who has been convicted of an offence under subsection (2) shall, in respect of any subsequent conviction of an offence under that subsection be liable on conviction on indictment—

(a) to imprisonment for a term not exceeding 4 years, or

(b) if he or she is a person in authority, to imprisonment for a term not exceeding 7 years.

(5) It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 17 years.

(6) Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 17 years, the court shall have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances.

(7) It shall not be a defence to proceedings for an offence under this section for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

(8) An offence under subsection (2) shall be an arrestable offence for the purposes of the [Criminal Law Act 1997](#) .

(9) No proceedings for an offence under this section against a child under the age of 17 years shall be brought except by, or with the consent of, the Director of Public Prosecutions.

(10) A person who—

(a) has been convicted of an offence under this section, and

(b) is not more than 24 months older than the child under the age of 17 years with whom he or she engaged or attempted to engage in a sexual act,

shall not be subject to the provisions of the [Sex Offenders Act 2001](#) .

Summary trial of offences.

4.— (1) The District Court may try summarily a person charged with an offence under [section 2](#) (2) or [3](#) (2) if—

(a) the court is of opinion that the facts alleged constitute a minor offence fit to be tried summarily,

(b) the accused, on being informed by the court of his or her right to be tried with a jury, does not object to being tried summarily for the offence, and

(c) the Director of Public Prosecutions consents to the accused being tried summarily for the offence.

(2) Upon conviction of a person by the District Court of an offence under this section, the person shall be liable to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both.

Female child under 17 years of age not guilty of offence.

5.— A female child under the age of 17 years shall not be guilty of an offence under this Act by reason only of her engaging in an act of sexual intercourse.

Application of certain enactments.

6.— (1) Sections 3 and 4 of the Act of 1981 shall apply in relation to an offence under this Act subject to the modification that references in those sections to “sexual assault offence” shall be construed as including references to an offence under this Act.

(2) Section 4A of the Act of 1981 is amended, in subsection (6), by the insertion after “rape offence” of “, an offence under the Criminal Law (Sexual Offences) Act 2006”.

(3) Sections 6, 7 and 8 of the Act of 1981 shall apply in relation to an offence under this Act subject to the modification that references in those sections to—

(a) “sexual assault offence” shall be construed as including references to an offence under this Act, and

(b) “rape offence” shall be construed as including references to an offence under this Act.

Amendment of certain enactments.

## **CRIMINAL LAW (HUMAN TRAFFICKING) ACT 2008**

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An Act To Give Effect To Council Framework Decision Of 19 July 2002 On Combating Trafficking In Human Beings; To Give Effect, In Part, To The United Nations Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organised Crime, Done At New York On 15 November 2000, And The Council Of Europe Convention On Action Against Trafficking In Human Beings Done At Warsaw On 16 May 2005; For Those Purposes To Amend Certain Enactments; To Amend Section 3 Of The Sex Offenders Act 2001; And To Provide For Matters Connected Therewith.

[7th May, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### **Interpretation.**

1.— In this Act—

“Act of 1998” means the [Child Trafficking and Pornography Act 1998](#) ;

“Act of 2001” means the [Sex Offenders Act 2001](#) ;

“child” means a person under the age of 18 years;

“exploitation” means—

(a) labour exploitation,

(b) sexual exploitation, or

(c) exploitation consisting of the removal of one or more of the organs of a person;

“labour exploitation” means, in relation to a person (including a child) —

(a) subjecting the person to forced labour,

(b) forcing him or her to render services to another, or

(c) enslavement of the person or subjecting him or her to servitude or a similar condition or state;

“sexual exploitation” means, in relation to a person—

(a) the production of pornography depicting the person either alone or with others,

(b) causing the person to engage in sexual activity for the purpose of the production of pornography,

(c) the prostitution of the person,

(d) the commission of an offence specified in the Schedule to the Act of 2001 against the person; causing another person to commit such an offence against the person; or causing the person to commit such an offence against another person, or

(e) otherwise causing the person to engage or participate in any sexual, indecent or obscene act;

“traffics” means, in relation to a person (including a child) —

(a) procures, recruits, transports or harbours the person, or

(i) transfers the person to,

(ii) places the person in the custody, care or charge, or under the control, of, or

(iii) otherwise delivers the person to,

another person,

(b) causes a person to enter or leave the State or to travel within the State,

(c) takes custody of a person or takes a person—

- (i) into one's care or charge, or
- (ii) under one's control,
- or
- (d) provides the person with accommodation or employment.

**Trafficking, etc., of children.**

- 2.— (1) A person who traffics a child for the purposes of the exploitation of the child shall be guilty of an offence.
- (2) A person who—
- (a) sells a child, offers or exposes a child for sale or invites the making of an offer to purchase a child, or
  - (b) purchases or makes an offer to purchase a child,
- shall be guilty of an offence.
- (3) A person who causes an offence under subsection (1) or (2) to be committed shall be guilty of an offence.
- (4) A person who attempts to commit an offence under subsection (1) , (2) or (3) shall be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable upon conviction on indictment—
- (a) to imprisonment for life or a lesser term, and
  - (b) at the discretion of the court, to a fine.
- (6) In this section "exploitation" does not include sexual exploitation.

**Trafficking, taking, etc., of child for purpose of sexual exploitation.**

- 3.— Section 3 (amended by [section 6](#) of the [Criminal Law \(Sexual Offences\) \(Amendment\) Act 2007](#) ) of the Act of 1998 is amended by—
- (a) the substitution of the following subsections for subsections (1) and (2) :
 

"(1) A person who trafficks a child for the purposes of the sexual exploitation of the child shall be guilty of an offence and shall be liable upon conviction on indictment—

    - (a) to imprisonment for life or a lesser term, and
    - (b) at the discretion of the court, to a fine.

(2) A person who—

    - (a) sexually exploits a child, or
    - (b) takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,

shall be guilty of an offence and shall be liable upon conviction on indictment—

    - (i) to imprisonment for life or a lesser term, and
    - (ii) at the discretion of the court, to a fine."

and
    - (b) the substitution of the following subsections for subsection (3) :
 

"(3) A person who causes another person to commit an offence under subsection (1) or (2) shall be guilty of an offence and shall be liable upon conviction on indictment—

      - (a) to imprisonment for life or a lesser term, and
      - (b) at the discretion of the court, to a fine.

(4) A person who attempts to commit an offence under subsection (1) , (2) or (3) shall be guilty of an offence and shall be liable upon conviction on indictment—

      - (a) to imprisonment for life or a lesser term, and
      - (b) at the discretion of the court, to a fine.

(5) In this section—

'child ' means a person under the age of 18 years;

'sexual exploitation ' means, in relation to a child—

      - (a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography,
      - (b) the prostitution of the child or the use of the child for the production of child pornography,



- (c) the commission of an offence specified in the Schedule to the [Sex Offenders Act 2001](#) against the child; causing another person to commit such an offence against the child; or inviting, inducing or coercing the child to commit such an offence against another person,
  - (d) inviting, inducing or coercing the child to engage or participate in any sexual, indecent or obscene act, or
  - (e) inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child,
- and 'sexually exploits' shall be construed accordingly;
- 'trafficks' means, in relation to a child—
- (a) procures, recruits, transports or harbours the child, or—
    - (i) transfers the child to,
    - (ii) places the child in the custody, care or charge, or under the control, of, or
    - (iii) otherwise delivers the child to,
 another person,
  - (b) causes the child to enter or leave the State or to travel within the State,
  - (c) takes custody of the child or takes the child—
    - (i) into one's care or charge, or
    - (ii) under one's control,
 or
  - (d) provides the child with accommodation or employment."

**Trafficking of persons other than children.**

- 4.— (1) A person (in this section referred to as the "trafficker") who trafficks another person (in this section referred to as the "trafficked person") , other than a child or a person to whom subsection (3) applies, for the purposes of the exploitation of the trafficked person shall be guilty of an offence if, in or for the purpose of trafficking the trafficked person, the trafficker—
- (a) coerced, threatened, abducted or otherwise used force against the trafficked person,
  - (b) deceived or committed a fraud against the trafficked person,
  - (c) abused his or her authority or took advantage of the vulnerability of the trafficked person to such extent as to cause the trafficked person to have had no real and acceptable alternative but to submit to being trafficked,
  - (d) coerced, threatened or otherwise used force against any person in whose care or charge, or under whose control, the trafficked person was for the time being, in order to compel that person to permit the trafficker to traffick the trafficked person, or
  - (e) made any payment to, or conferred any right, interest or other benefit on, any person in whose care or charge, or under whose control, the trafficked person was for the time being, in exchange for that person permitting the trafficker to traffick the trafficked person.
- (2) In proceedings for an offence under this section it shall not be a defence for the defendant to show that the person in respect of whom the offence was committed consented to the commission of any of the acts of which the offence consists.
- (3) A person who trafficks a person who is mentally impaired for the purposes of the exploitation of the person shall be guilty of an offence.
- (4) A person who—
- (a) sells another person, offers or exposes another person for sale or invites the making of an offer to purchase another person, or
  - (b) purchases or makes an offer to purchase another person,
- shall be guilty of an offence.
- (5) A person who causes an offence under subsection (1), (3) or (4) to be committed shall be guilty of an offence.
- (6) A person who attempts to commit an offence under subsection (1) , (3) , (4) or (5) shall be guilty of an offence.
- (7) A person guilty of an offence under this section shall be liable upon conviction on indictment—
- (a) to imprisonment for life or a lesser term, and

(b) at the discretion of the court, to a fine.

(8) In this section "mentally impaired" has the same meaning as it has in the [Criminal Law \(Sexual Offences\) Act 1993](#) .

#### **Soliciting or importuning for purposes of prostitution of trafficked person.**

5.— (1) Where, for the purposes of the prostitution of a trafficked person, a person (other than that trafficked person) solicits or importunes another person, including that trafficked person, in any place, he or she shall be guilty of an offence.

(2) A person (other than the trafficked person in respect of whom the offence under subsection (1) is committed) who accepts, or agrees to accept a payment, right, interest or other benefit from a person for a purpose mentioned in subsection (1) shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine not exceeding €5,000 or a term of imprisonment not exceeding 12 months, or both, or

(b) on conviction on indictment to a fine or a term of imprisonment not exceeding 5 years, or both.

(4) In proceedings for an offence under this section it shall be a defence for the defendant to prove that he or she did not know and had no reasonable grounds for believing, that the person in respect of whom the offence was committed was a trafficked person.

(5) This section is in addition to, and not in substitution for, section 7 of the Act of 1993 in so far as an offence under that section is committed by, or in respect of, a trafficked person.

(6) In this section—

" Act of 1993 " means the [Criminal Law \(Sexual Offences\) Act 1993](#) ;

" solicits or importunes " has the same meaning as it has in the Act of 1993;

" trafficked person " means—

(a) a person in respect of whom an offence under subsection (1) or (3) of [section 4](#) has been committed, or

(b) a child who has been trafficked for the purpose of his or her exploitation.

#### **Offences by bodies corporate.**

6.— Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Jurisdiction.

7.— (1) Where a person who is an Irish citizen or ordinarily resident in the State does an act in a place other than the State that, if done in the State, would constitute an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(2) Where a person does an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(3) Where a person conspires with, or incites, in the State, another person to do an act in a place other than the State that, if done in the State, would constitute an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(4) Where a person who is an Irish citizen or ordinarily resident in the State conspires with, or incites, in a place other than the State, another person to do an act in a place other than the State

that, if done in the State, would constitute an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(5) Where a person conspires with, or incites, in the State or in a place other than the State, another person to do an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(6) Where a person conspires with, or incites, in a place other than the State, a person who is an Irish citizen or ordinarily resident in the State to do an act in a place other than the State that, if done in the State, would constitute an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(7) Where a person attempts to commit an offence under subsection (1) , (2) , (3) , (4) , (5) or (6) , he or she shall be guilty of an offence and shall be liable on conviction on indictment to a fine, or imprisonment for life, or both.

(8) For the purposes of this section a person shall be deemed to be ordinarily resident in the State if—

(a) he or she has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence,

(b) it is a company registered under the Companies Acts, or

(c) in the case of any other body corporate, it is established under the law of the State.

Proceedings relating to offences committed outside State.

8.— Proceedings for an offence under [section 7](#) may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

Double jeopardy.

9.— (1) Where a person has been acquitted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under this Act consisting of the alleged act or acts constituting the first-mentioned offence.

(2) Where a person has been convicted of an offence in a place other than the State, he or she shall not be proceeded against for an offence under this Act consisting of the act or acts constituting the first-mentioned offence.

Exclusion of members of public from proceedings.

10.— (1) In proceedings for an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, or incitement or conspiracy to commit any such offence, all persons, other than officers of the court, persons directly concerned in the proceedings and such other persons (if any) as the judge of the court may determine, shall be excluded from the court during the proceedings.

(2) In proceedings to which this section applies the verdict or decision and the sentence (if any) shall be pronounced in public.

#### **Anonymity of victims of trafficking.**

11.— (1) Where a person is charged with an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, any person who publishes or broadcasts any information, including—

(a) any photograph of, or that includes a depiction of, the alleged victim of the offence, or

(b) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the alleged victim of the offence,

that is likely to enable the identification of the alleged victim of the offence, shall, subject to any direction under subsection (2) , be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for a term not exceeding 10 years, or both.

(2) The judge of the court in which proceedings for an offence under [section 2](#) or [4](#) , or section 3 (other than subsections (2A) and (2B) ) of the Act of 1998, are brought may, where he or she

considers that the interests of justice so require, direct that such information to which subsection (1) applies as he or she shall specify in the direction may be published or broadcast in such manner and subject to such conditions as he or she may specify in the direction.

(3) A direction under this section shall be in writing.

(4) A person who contravenes a direction under this section, including a condition in such a direction, shall be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for a term not exceeding 10 years, or both.

(5) In this section—

“ broadcasts ” means transmits, relays or distributes by wireless telegraphy or by any other means, or by wireless telegraphy in conjunction with any other means, of communications, sounds, signs, visual images or signals intended for reception by any person whether such communications, sounds, signs, visual images or signals are received by that person or not;

“ publishes ” means publishes to any person, and includes publishes on the internet.

#### **Amendment of Criminal Evidence Act 1992.**

12.— The [Criminal Evidence Act 1992](#) is amended—

(a) in the definition of “sexual offence” (inserted by [section 16](#) of the [Criminal Justice \(Miscellaneous Provisions\) Act 1997](#) ) in section 2, by—

(i) the deletion of paragraph (iv) (inserted by [section 7](#) (2) of the [Criminal Law \(Sexual Offences\) Act 2006](#) ) , and

(ii) the substitution of the following paragraph for paragraph (e) :

“(e) the [Criminal Law \(Sexual Offences\) Act 2006](#) ;”,

and

(b) by the substitution of the following section for section 12 (amended by section 10 of the Act of 1998) :

“12.— This Part applies to—

(a) a sexual offence,

(b) an offence involving violence or the threat of violence to a person,

(c) an offence under section 3, 4, 5 or 6 of the [Child Trafficking and Pornography Act 1998](#) ,

(d) an offence under [section 2](#) , [4](#) or [7](#) of the Criminal Law (Human Trafficking) Act 2008, or

(e) an offence consisting of attempting or conspiring to commit, or of aiding or abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a) , (b) ,

(c) or (d) .”.

Amendment of Act of 2001.

13.— The Act of 2001 is amended—

(a) in section 3, by—

(i) the substitution of the following paragraph for paragraph (a) of subsection (2) :

“(a) paragraph 2 of the Schedule (sexual assault or indecent assault) , other than an offence of sexual assault or indecent assault of a person who, at the time of the commission of the offence, was mentally impaired,”,

(ii) the substitution of the following paragraph for paragraph (ii) of subsection (2) :

“(ii) the person guilty of the offence—

(I) is, for the time being, the subject of an order of the court remanding him or her on bail or in custody pending the passing of sentence, or

(II) has not, in respect of the offence, been sentenced to any punishment involving deprivation of liberty for a limited or unlimited period of time or been made subject to any measure involving such deprivation of liberty.”, and

(iii) the insertion of the following subsection:

“(4) In this section ‘mentally impaired’ has the same meaning as it has in [section 5](#) of the [Criminal Law \(Sexual Offences\) Act 1993](#) .”,

(b) in section 12, by the substitution of the following subsection for subsection (3) :

“(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment to a fine not exceeding €10,000, or imprisonment for a term not exceeding 5 years, or both.”,
  - (c) in section 33, by the insertion of the following subsection:  
“(4) Proceedings for an offence under subsection (1) may be brought and prosecuted by a probation and welfare officer.”, and
  - (d) in the Schedule, by the insertion of the following paragraph:  
“16A. An offence under the Criminal Law (Human Trafficking) Act 2008 in so far as the offence is committed for the purposes of the sexual exploitation of a person.”.
- Amendment of Bail Act 1997.

14.— The Schedule to the [Bail Act 1997](#) is amended by the insertion of the following paragraph:  
“8A. An offence under the Criminal Law (Human Trafficking) Act 2008.”.

Short title and commencement.

- 15.— (1) This Act may be cited as the Criminal Law (Human Trafficking) Act 2008.
- (2) This Act shall come into operation one month after its passing.

## **CRIMINAL LAW (SEXUAL OFFENCES) (AMENDMENT) ACT 2007**

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An Act To Amend The Criminal Law (Sexual Offences) Act 1993, The Child Trafficking And Pornography Act 1998 And The Criminal Law (Sexual Offences) Act 2006; And To Provide For Matters Connected Therewith.

[7th March, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

1.— In this Act—

- “ Act of 1981 ” means Criminal Law (Rape) Act 1981;
  - “Act of 1990” means the [Criminal Law \(Rape\) \(Amendment\) Act 1990](#) ;
  - “ Act of 1993 ” means the [Criminal Law \(Sexual Offences\) Act 1993](#) ;
  - “ Act of 2006 ” means the [Criminal Law \(Sexual Offences\) Act 2006](#) .
- Soliciting or importuning for purposes of commission of sexual offence.

2.— The Act of 1993 is amended by the substitution of the following section for section 6 (inserted by [section 250](#) of the [Children Act 2001](#) ) :

“6.— (1) A person who solicits or importunes a child (whether or not for the purposes of prostitution) for the purposes of the commission of an act that would constitute an offence—

- (a) under [section 2](#) or [3](#) of the [Criminal Law \(Sexual Offences\) Act 2006](#) , or
  - (b) referred to in section 2 of the Act of 1990,
- shall be guilty of an offence.

(2) A person who solicits or importunes a person who is mentally impaired (whether or not for the purposes of prostitution) for the purposes of the commission of an act that would constitute an offence—

- (a) under section 5 of this Act, or
  - (b) referred to in section 2 of the Act of 1990,
- shall be guilty of an offence.

(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction to a fine not exceeding €5,000, or imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment to a fine, or imprisonment for a term not exceeding 5 years, or to both.

(4) In this section—

'Act of 1990' means the [Criminal Law \(Rape\) \(Amendment\) Act 1990](#) ;

' child ' means a person under the age of 17 years;

' mentally impaired ' has the same meaning as it has in section 5 of this Act."

Application of certain enactments.

3.— (1) Section 4A of the Act of 1981 is amended, in subsection (6) , by the insertion after "an offence under the [Criminal Law \(Sexual Offences\) Act 2006](#) " (inserted by section 6(2) of the Act of 2006) of "an offence under [section 6](#) of the [Criminal Law \(Sexual Offences\) Act 1993](#) ".

(2) References in section 3 of the Act of 1981 to jury shall, in the case of summary proceedings for an offence under section 6 (inserted by [section 2](#) ) , be construed as references to court.

(3) Sections 3, 4, 6, 7 and 8 of the Act of 1981 shall apply to an offence under section 6 of the Act of 1993 subject to the modification that references in any of those sections to—

(a) sexual assault offence shall be construed as including references to an offence under section 6 of the Act of 1993, and

(b) rape offence shall be construed as including references to an offence under section 6 of the Act of 1993.

(4) [Section 26](#) of the [Civil Legal Aid Act 1995](#) is amended, in subsection (3) (b) , by the substitution of "an offence under [section 6](#) (inserted by [section 2](#) of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the [Criminal Law \(Sexual Offences\) Act 1993](#) , or of an offence under the [Criminal Law \(Sexual Offences\) Act 2006](#) " for "unlawful carnal knowledge under section 1 or 2 of the [Criminal Law Amendment Act, 1935](#) ".

#### **Amendment of certain enactments.**

4.— (1) [Section 2](#) of the [Criminal Evidence Act 1992](#) is amended, in the definition of "sexual offence", by the insertion of the following paragraph:

"(aa) section 6 (inserted by [section 2](#) of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the [Criminal Law \(Sexual Offences\) Act 1993](#) ;".

(2) The Schedule to the [Sexual Offences \(Jurisdiction\) Act 1996](#) is amended by the insertion of the following paragraph:

"2. Section 6 (inserted by [section 2](#) of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the [Criminal Law \(Sexual Offences\) Act 1993](#) .".

(3) The Schedule to the [Bail Act 1997](#) is amended by the insertion of the following paragraph:

"12B. An offence under section 6 (inserted by [section 2](#) of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the [Criminal Law \(Sexual Offences\) Act 1993](#) .".

(4) The Schedule to the [Sex Offenders Act 2001](#) is amended by the insertion of the following paragraph:

"21. An offence under section 6 (inserted by [section 2](#) of the Criminal Law (Sexual Offences) (Amendment) Act 2007) of the [Criminal Law \(Sexual Offences\) Act 1993](#) .".

Amendment of Act of 2006.

5.— (1) Section 3 of the Act of 2006 is amended—

(a) in paragraph (a) of subsection (2) , by the substitution of "5 years" for "2 years",

(b) in paragraph (b) of subsection (2) , by the substitution of "10 years" for "4 years",

(c) in paragraph (a) of subsection (4) , by the substitution of "10 years" for "4 years", and

(d) in paragraph (b) of subsection (4) , by the substitution of "15 years" for "7 years".

(2) Section 6 of the Act of 2006 is amended by the insertion of the following subsection:

"(1A) References in section 3 of the Act of 1981 to jury shall, in the case of summary proceedings for an offence under this Act, be construed as references to court."

#### **Meeting child for purpose of sexual exploitation.**

6.— [Section 3](#) of the [Child Trafficking and Pornography Act 1998](#) is amended by—

(a) the insertion of the following subsections:

"(2A) Any person who within the State—

(a) intentionally meets, or travels with the intention of meeting, a child, having met or communicated with that child on 2 or more previous occasions, and

(b) does so for the purpose of doing anything that would constitute sexual exploitation of the child,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(2B) Any person, being a citizen of the State or being ordinarily resident in the State, who outside the State—

(a) intentionally meets, or travels with the intention of meeting, a child, having met or communicated with that child on 2 or more previous occasions, and

(b) does so for the purpose of doing anything that would constitute sexual exploitation of the child,

shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.”,

and

(b) the substitution of the following subsection for subsection (3) :

“(3) In this section ‘sexual exploitation’ means, in relation to a child—

(a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography,

(b) using the child for prostitution or the production of child pornography,

(c) inviting, inducing or coercing the child to participate in any sexual activity which is an offence under any enactment,

(d) the commission of any such offence against the child, or

(e) inviting, inducing or coercing the child to participate in or observe any activity of a sexual or indecent nature.”.

Short title.

7.— This Act may be cited as the [Criminal Law \(Sexual Offences\) \(Amendment\) Act 2007](#) .

### **CHILD TRAFFICKING AND PORNOGRAPHY ACT, 1998**

An Act To Prohibit Trafficking In, Or The Use Of, Children For The Purposes Of Their Sexual Exploitation And The Production, Dissemination, Handling Or Possession Of Child Pornography, And To Provide For Related Matters. [29th June, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Short title and commencement.

1.—(1) This Act may be cited as the Child Trafficking and Pornography Act, 1998.

(2) This Act shall come into operation one month after the date of its passing.

### **Interpretation.**

2.—(1) In this Act, except where the context otherwise requires—

“audio representation” includes—

(a) any such representation by means of tape, computer disk or other thing from which such a representation can be produced, and

(b) any tape, computer disk or other thing on which any such representation is recorded;

“child” means a person under the age of 17 years;

“child pornography” means—

(a) any visual representation—

(i) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity,

(ii) that shows or, in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or

(iii) whose dominant characteristic is the depiction, for a sexual purpose, of the genital or anal region of a child,

(b) any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,



(c) any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or

(d) any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of [section 3](#) ,

irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer-graphics or by any other electronic or mechanical means but does not include—

(I) any book or periodical publication which has been examined by the Censorship of Publications Board and in respect of which a prohibition order under the Censorship of Publications Acts, 1929 to 1967, is not for the time being in force,

(II) any film in respect of which a general certificate or a limited certificate under the Censorship of Films Acts, 1923 to 1992, is in force, or

(III) any video work in respect of which a supply certificate under the Video Recordings Acts, 1989 and 1992, is in force;

“document” includes—

(a) any book, periodical or pamphlet, and

(b) where appropriate, any tape, computer disk or other thing on which data capable of conversion into any such document is stored;

“photographic representation” includes the negative as well as the positive version;

“visual representation” includes—

(a) any photographic, film or video representation, any accompanying sound or any document,

(b) any copy of any such representation or document, and

(c) any tape, computer disk or other thing on which the visual representation and any accompanying sound are recorded.

(2) The reference in paragraph (a) of the definition of child pornography to a person shall be construed as including a reference to a figure resembling a person that has been generated or modified by computer-graphics or otherwise, and in such a case the fact, if it is a fact, that some of the principal characteristics shown are those of an adult shall be disregarded if the predominant impression conveyed is that the figure shown is a child.

(3) In any proceedings for an offence under [section 3](#) , [4](#) , [5](#) or [6](#) a person shall be deemed, unless the contrary is proved, to be or have been a child, or to be or have been depicted or represented as a child, at any time if the person appears to the court to be or have been a child, or to be or have been so depicted or represented, at that time.

(4) For the purposes of this Act, except where the context otherwise requires—

(a) a reference to a section is to a section of this Act,

(b) a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs,

(c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the passing of this Act, by or under any subsequent enactment.

### **Child trafficking and taking, etc., child for sexual exploitation.**

3.— (1) Any person who organises or knowingly facilitates—

(a) the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation, or

(b) the provision of accommodation for a child for such a purpose while in the State, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(2) Any person who—

(a) takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,



(b) uses a child for such a purpose, or  
(c) organises or knowingly facilitates such taking, detaining, restricting or use,  
shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(3) In this section "sexual exploitation" means—

- (a) inducing or coercing the child to engage in prostitution or the production of child pornography,
- (b) using the child for prostitution or the production of child pornography,
- (c) inducing or coercing the child to participate in any sexual activity which is an offence under any enactment, or
- (d) the commission of any such offence against the child.

**Allowing child to be used for child pornography.**

4.—(1) Without prejudice to [section 3](#) , any person who, having the custody, charge or care of a child, allows the child to be used for the production of child pornography shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £25,000 or to imprisonment for a term not exceeding 14 years or both.

(2) For the purposes of this section—

- (a) any person who is the parent or guardian of a child or who is liable to maintain a child shall be presumed to have the custody of the child and, as between parents, one parent shall not be deemed to have ceased to have the custody of the child by reason only that he or she has deserted, or does not reside with, the other parent and child,
- (b) any person to whose charge a child is committed by any person who has the custody of the child shall be presumed to have charge of the child, and
- (c) any person exercising authority over or having actual control of a child shall be presumed to have care of the child.

**Producing, distributing, etc., child pornography.**

5.—(1) Subject to [sections 6](#) (2) and [6](#) (3) , any person who—

- (a) knowingly produces, distributes, prints or publishes any child pornography,
  - (b) knowingly imports, exports, sells or shows any child pornography,
  - (c) knowingly publishes or distributes any advertisement likely to be understood as conveying that the advertiser or any other person produces, distributes, prints, publishes, imports, exports, sells or shows any child pornography,
  - (d) encourages or knowingly causes or facilitates any activity mentioned in paragraph (a) , (b) or (c) , or
  - (e) knowingly possesses any child pornography for the purpose of distributing, publishing, exporting, selling or showing it,
- shall be guilty of an offence and shall be liable—
- (i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
  - (ii) on conviction on indictment to a fine or to imprisonment for a term not exceeding 14 years or both.

(2) In this section "distributes", in relation to child pornography, includes parting with possession of it to, or exposing or offering it for acquisition by, another person, and the reference to "distributing" in that context shall be construed accordingly.

**Possession of child pornography.**

6.—(1) Without prejudice to [section 5](#) (1) (e) and subject to subsections (2) and (3) , any person who knowingly possesses any child pornography shall be guilty of an offence and shall be liable—

- (a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 5 years or both.

(2) [Section 5](#) (1) and subsection (1) shall not apply to a person who possesses child pornography—

(a) in the exercise of functions under the Censorship of Films Acts, 1923 to 1992, the Censorship of Publications Acts, 1929 to 1967, or the Video Recordings Acts, 1989 and 1992, or

(b) for the purpose of the prevention, investigation or prosecution of offences under this Act.

(3) Without prejudice to subsection (2) , it shall be a defence in a prosecution for an offence under [section 5](#) (1) or subsection (1) for the accused to prove that he or she possessed the child pornography concerned for the purposes of bona fide research.

#### **Entry, search and seizure.**

7.—(1) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under [section 3](#) , [4](#) , [5](#) or [6](#) is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

(2) A warrant issued under this section shall authorise a named member of the Garda Síochána, alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary—

(a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search it and any persons found there, and

(c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under [section 3](#) , [4](#) , [5](#) or [6](#) .

(3) A member of the Garda Síochána acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address.

(4) Any person who—

(a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under subsection (1) ,

(b) fails or refuses to comply with a requirement under this section, or

(c) gives a name or address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both.

(5) A member of the Garda Síochána may arrest without warrant any person whom the member suspects of having committed an offence under subsection (4) .

(6) In this section “place” includes any dwelling, any building or part of a building and any vehicle, vessel or structure.

Forfeiture.

8.—(1) The court by or before which a person is convicted of an offence under [section 3](#) , [4](#) , [5](#) or [6](#) may order—

(a) anything seized pursuant to [section 7](#) , or

(b) anything shown to the satisfaction of the court to relate to the offence,

to be forfeited and either destroyed or otherwise disposed of in such manner as the court may determine.

(2) A court shall not order anything to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless the opportunity has been given to him or her to show cause why the order should not be made.

(3) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

**Offences by bodies corporate.**

9.—(1) Where an offence under [section 3](#) , [4](#) , [5](#) or [6](#) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other similar officer of such body or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member of that body in connection with the member's functions of management as if he or she were a director or manager of it.

Amendment of Criminal Evidence Act, 1992.

## 6.19 Japan

Extract:

### **Penal Code**

Article 61 (1) A person who induces another to commit a crime shall be dealt with in sentencing as a principal.

(2) The same shall apply to a person who induces another to induce.

Article 62 (1) A person who aids a principal is an accessory.

(2) A person who induces an accessory shall be dealt with in sentencing as an accessory.

Article 176 A person who, through assault or intimidation, forcibly commits an indecent act upon a male or female of not less than thirteen years of age shall be punished by imprisonment with work for not less than 6 months but not more than 10 years. The same shall apply to a person who commits an indecent act upon a male or female under thirteen years of age.

Article 177 A person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age commits the crime of rape and shall be punished by imprisonment with work for a definite term of not less than 3 years. The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.

Penal Code

Article 223 (1) A person who, by intimidating another through a threat to another's life, body, freedom, reputation or property or by use of assault, causes the other to perform an act which the other person has no obligation to perform, or hinders the other from exercising his or her rights, shall be punished by imprisonment with work for not more than 3 years.

(2) The same shall apply to a person who, by intimidating another through a threat to the life, body, freedom, reputation or property of the relatives of, another causes the other to perform an act which the other person has no obligation to perform, or hinders the other from exercising his or her rights.

(3) An attempt of the crimes prescribed under the preceding two paragraphs shall be punished.

Article 224 A person who kidnaps a minor by force or enticement shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.

Article 225 A person who kidnaps another by force or enticement for the purpose of profit, indecency, marriage or threat to the life or body shall be punished by imprisonment with work for not less than 1 year but not more than 10 years.

Article 226 A person who kidnaps another by force or enticement for the purpose of transporting another from one country to another country shall be punished by imprisonment with work for a definite term of not less than 2 years.

Article 228 An attempt of the crimes prescribed under Articles 224, 225, paragraph (1) of Article 225-2, Articles 226 through 226-3 and paragraphs (1) through (3) and the first sentence of paragraph (4) of the preceding Article shall be punished.

### **Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and Protection of Children (Child Pornography Prohibiting Act)**

Article 4

Any person who commits child prostitution shall be sentenced to imprisonment with work for not more than five years or a fine of not more than three million yen.

Article 7 (1) Any person who provides child pornography shall be sentenced to imprisonment with work for not more than three years or a fine of not more than three million yen. The same shall apply to a person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, in a visible way through electric telecommunication lines.

(2) Any person who produces, possesses, transports, imports to or exports from Japan child pornography for the purpose of the activities prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to a person who retains the electromagnetic records prescribed in the preceding paragraph for the purpose of the same activities.

(3) In addition to the preceding paragraph, any person who produces child pornography by having a child pose in any way which falls under any of the items of paragraph 3 of Article 2, depicting such pose in photographs, recording media containing electromagnetic records or any other medium shall be punished by the same penalty prescribed in paragraph 1 of this article.

(4) Any person who provides child pornography to unspecified persons or a number of persons, or displays it in public shall be sentenced to imprisonment with work for not more than five years and/or a fine of not more than five million yen. The same shall apply to a person who provides electromagnetic records or any other record which depicts the pose of a child, which falls under any of the items of paragraph 3 of Article 2, to unspecified persons or a number of persons in a visible way through telecommunication lines.

(5) Any person who produces, possesses, transports, imports to or exports from Japan child pornography for the purpose of the activities prescribed in the preceding paragraph shall be punished by the same penalty as is prescribed in the said paragraph. The same shall apply to a person who retains the electromagnetic records prescribed in the preceding paragraph for the purpose of the same activities.

(6) Any Japanese national who imports or exports child pornography to or from a foreign country for the purpose of the activities prescribed in paragraph 4 of this article shall be punished by the same penalty prescribed in the said paragraph.

### **Child Welfare Act**

Article 34 (1) No person shall commit an act listed in any of the following items: (vi) Cause a child to commit an obscene act;

Article 60 (1) A person who violates the provision of Article 34 paragraph (1) item (vi) shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 3,000,000 yen, or by cumulative imposition of both of them.

## 6.20 Latvia

### Extract:

Criminal Law

#### **Section 159. Rape**

(1) For a person who commits an act of sexual intercourse by means of violence, threats or taking advantage of the state of helplessness of a female victim (rape) , the applicable sentence is deprivation of liberty for a term not exceeding seven years, with or without police supervision for a term not exceeding three years.

(2) For a person who commits rape where commission is by a person who has previously committed rape or commission is by a group of persons, or who commits rape of a female minor, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, with police supervision for a term not exceeding three years.

(3) For a person who commits rape, if serious consequences are caused thereby, or commits rape of a female juvenile, the applicable sentence is life imprisonment, or deprivation of liberty for a term of not less than ten years and not exceeding twenty years, with police supervision for a term not exceeding three years.

#### **Section 160. Forcible Sexual Assault**

(1) For a person who commits pederastic or lesbian or other unnatural sexual acts of gratification, if such acts have been committed using violence or threats or by taking advantage of the state of helplessness of a person, the applicable sentence is deprivation of liberty for a term not exceeding six years, or custodial arrest.

(2) For a person who commits the same acts, if commission thereof is on a minor, or is repeated, or by a person who has previously committed rape, or by a group of persons, the applicable sentence is deprivation of liberty for a term of not less than three years and not exceeding twelve years and with police supervision for a term not exceeding three years.

(3) For a person who commits acts provided for in Paragraphs one or two of this Section, if serious consequences are caused thereby, or if commission thereof is on a juvenile, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years and with police supervision for a term not exceeding three years.

#### **Section 161. Sexual Intercourse, Pederasty and Lesbianism with a Person who has not Attained the Age of Sixteen Years**

For a person who commits an act of sexual intercourse, or pederastic, lesbian or other unnatural sexual acts of gratification, with a person who has not attained the age of sixteen years and who is in financial or other dependence on the offender, or if such offence has been committed by a person who has attained the age of majority, the applicable sentence is deprivation of liberty for a term not exceeding four years, custodial arrest or community service.

#### **Section 162. Immoral Acts With a Minor**

(1) For a person who commits immoral acts with a minor against the will of the minor or if such have been committed by a person who has attained the age of majority, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest.

(2) For a person who commits immoral acts with a juvenile, the applicable sentence is deprivation of liberty for a term not exceeding six years.

#### **Section 162.1. Engaging in Sexual Activities**

(1) For a person who commits encourage of a minor to be engaged in sexual activities or to meet in order to commit sexual activities or sexual conduct irrespective of way the proposal was made, committed by a person who has attained the age of majority,

the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest or community service.

(2) For the same committed with a juvenile, the applicable sentence is deprivation of liberty for a term not exceeding five years.

**Section 163.1 Organization, maintenance, management and financing of brothel**

(1) For a person who organization, maintenance, management and financing of brothel (unlicensed place of prostitution service)

the applicable sentence is deprivation of liberty for a term not exceeding five years, or a fine not exceeding one hundred the minimum monthly wage.

**Section 164. Compelling Engaging in Prostitution**

(1) For a person who commits compelling the engaging in of prostitution, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage, with or without confiscation of property.

(2) For a person who commits forcing or procurement of persons for prostitution, using their trust in bad faith, or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, the applicable sentence is deprivation of liberty for a term not less than two years and not exceeding six years, or a fine not exceeding one hundred and twenty times the minimum monthly wage, with or without confiscation of property.

(3) For a person who commits inducing or compelling a minor to engage in prostitution, or commits providing premises to minors for purposes of prostitution, the applicable sentence is deprivation of liberty for a term not less than five years and not exceeding eight years, with or without confiscation of property.

(4) For a person who commits inducing or compelling a juvenile to engage in prostitution, the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding twelve years, with or without confiscation of property.

(5) For a person who commits the acts provided for in this Section, if commission thereof is by an organised group, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, with confiscation of property, and with police supervision for a term not exceeding three years.

**Section 165. Living on the Avails of Prostitution**

(1) For a person who commits taking advantage, for purposes of enrichment, of a person who is engaged in prostitution, the applicable sentence is deprivation of liberty for a term not exceeding six years, with confiscation of property or without confiscation of property.

(2) For a person who commits the same acts if commission thereof is by a group of persons pursuant to prior agreement, or with respect to minors, the applicable sentence is deprivation of liberty for a term not exceeding eight years, with confiscation of property.

(3) For a person who commits the same acts if commission thereof is by an organised group or if commission thereof is with respect to juveniles, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, with confiscation of property, and with police supervision for a term not exceeding three years.

**Section 166. Violation of Provisions Regarding Importation, Production and Distribution of Pornographic or Erotic Materials**

(1) For a person who commits violation of provisions regarding importation, production, distribution, public demonstration, playing or advertising of pornographic writings, printed publications, pictures, films, video and audio recordings or other pornographic materials, if commission thereof is repeated within a one year period, the applicable sentence is deprivation of liberty for a term not exceeding one year, or custodial arrest, or community service, or a fine not exceeding thirty times the minimum monthly wage.

(2) For a person who commits the downloading, acquisition, importation, production, public demonstration, advertising or other distribution of such pornographic or erotic materials as relate or portray the sexual abuse of children, bestiality, necrophilia or violence of a pornographic nature, or the keeping of such materials,

the applicable sentence is deprivation of liberty for a term not exceeding three years, or community service, or a fine not exceeding fifty times the minimum monthly wage, with or without confiscation of property.

(3) For a person who commits procurement or utilisation of minors in the production (manufacturing) of pornographic or erotic materials,

the applicable sentence is deprivation of liberty for a term not exceeding six years, or a fine not exceeding eighty times the minimum monthly wage, with or without confiscation of property.

(4) For a person who commits procurement or utilisation of juveniles in the production (manufacturing) of pornographic or erotic materials,

the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding twelve years, with or without confiscation of property.

(5) For a person who commits the acts provided for in Paragraphs three or four of this Section, if commission thereof is by an organised group,

the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, with confiscation of property, and with police supervision for a term not exceeding three years.

### **Section 315. Failing to Inform of Crimes**

For a person who commits failing to inform, where it is known with certainty that preparation for or commission of a serious or especially serious crime is taking place,

the applicable sentence is deprivation of liberty for a term not exceeding four years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage.

### **Section 15. Completed and Uncompleted Criminal Offences**

(1) A criminal offence shall be considered completed if it has all the constituent elements of a criminal offence set out in this Law.

(2) Preparation for a crime and an attempted crime are uncompleted criminal offences.

(3) The locating of, or adaptation of, means or tools, or the intentional creation of circumstances conducive for the commission of an intentional offence, shall be considered to be preparation for a crime if, in addition, it has not been continued for reasons independent of the will of the guilty party. Criminal liability shall result only for preparation for serious or especially serious crimes.

(4) A conscious act (failure to act) , which is directly dedicated to intentional commission of a crime, shall be considered to be an attempted crime if the crime has not been completed for reasons independent of the will of the guilty party.

(5) Liability for preparation for a crime or an attempted crime shall apply in accordance with the same Section of this Law as sets out liability for a specific offence.

A person shall not be held criminally liable for an attempt to commit a criminal violation.

## **Law on Pornography Restrictions**

### **Section 1. Terms used in this Law**

The following terms are used in this Law:

1) material of a pornographic nature – composition, printed matter, image, computer programme, film, video or sound recording, television programme, or radio programme, other material in any form or type, that does not have publicly educational or informative, scientific or artistic value and in which directly, specifically and openly naturalistically:

a) genitals are completely or partially represented, sexual acts of gratification by masturbation are represented or described, as well as the describing of sexual acts or sexual acts of gratification in an unnatural way, including imitation of the specified activities,

b) sexual acts or sexual acts of gratification in an unnatural way are represented, as well as imitation of the specified activities; or,



c) sexual acts of gratification in a violent manner, brutality in sexual activities (sadistic and masochistic activities) , sexual acts of gratification with animals or necrophilia are represented or described;

2) child pornography – material of a pornographic nature, in which a child is represented or described, or any other material in which:

a) a child who is involved in sexual activities, a child completely or partially without clothing in a sexual pose or in clothing of an obscene nature is represented or described, children's genitals or pubic region are represented in a stimulating way,

b) a person having the appearance of a child who is involved in the activities specified in Sub-clause "a" of this Clause is represented or described or presented in a manner specified in Sub-clause "a",

c) there are realistic images with an actually non-existent child who is involved in the activities specified in Sub-clause "a" of this Clause or presented in a manner specified in Sub-clause "a";

3) circulation of material of pornographic nature – material of a pornographic nature or child pornography:

a) purchasing (acquiring into ownership, possession or use) ,

b) manufacture (creation, production, reproduction in any way with any technical resources) ,

c) importation (physical movement in any way across the borders of Latvia from foreign countries)

d) distribution (trade, the putting into service for a fee or without a fee, demonstration in a public place or ensuring of access in a different manner) ,

e) distribution in an electronic environment (the trading of material of a pornographic nature prepared in an electronic way, the transmission of the material itself or information prepared thereof, including downloading, communicating to the public, also uploading, utilising electronic communication networks or automated data processing systems or making material accessible in a different manner in any information circulation phase) ,

f) advertising (any form or any type of communication or event with an aim to promote the popularity of material of a pornographic nature or demand thereof, associated with economic activities performed with the purpose of acquiring profit) ,

g) propagation, distributing information regarding these materials (forwarding, transmission or offer of information independent of the type of device for the transmission of information or the ensuring of accessibility to information in any other way) ; or,

h) storage;

4) public place – within the meaning of this Law: any location that, independent of the actual utilisation or type of ownership thereof, serves the common requirements of the community and ensuring of interests thereof and that is accessible for a fee or without a fee to any natural person who is not the owner, possessor or holder of the relevant location, salaried employee or other person whose presence in the relevant location is associated with the fulfilment of work duties.

## **Section 7. Restrictions on Dissemination in an Electronic Environment**

(1) It shall be prohibited to disseminate material of a pornographic nature or information regarding accessibility to such material in an electronic environment to an indeterminate circle of recipients or in cases when the consent of the addressee has not been received.

(2) In disseminating materials of a pornographic nature or information regarding accessibility to such material, the distributor thereof, observing the regulations in Paragraph three of this Section, shall ensure the option of declining dispatches thereafter and the notifying of the recipient that the relevant material is of a pornographic nature.

(3) In cases when information society services are provided, the duties of an intermediary service provider and liability regarding obligations for the dissemination of material of a pornographic nature shall be determined by the Law on Information Society Services.

## 6.21 Lithuania

### Extract:

Criminal Code of the Republic of Lithuania (Official Gazette Valstybės Žinios, 2000, 89-2741)

#### **Article 21. Preparation for Commission of a Crime**

1. Preparation for the commission of a crime shall be a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime. A person shall be held liable solely for preparation to commit a serious or grave crime.

2. A person shall be held liable for preparation to commit a crime according to paragraph 1 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.

#### **Article 22. Attempt to Commit a Criminal Act**

1. An attempt to commit a criminal act shall be an intentional act or omission which marks the direct commencement of a crime or misdemeanour where the act has not been completed by reason of the circumstances beyond the control of the offender.

2. An attempt to commit a criminal act shall also occur when the offender is not aware that his act cannot be completed, because his attempt is directed at an inappropriate target or he is applying improper means.

3. A person shall be held liable for an attempt to commit a criminal act according to paragraph 1 or 2 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.

#### **Article 26. Criminal Liability of Accomplices**

1. Accomplices shall be held liable solely for the criminal acts as committed by the perpetrator which are covered by their intent.

2. Where a perpetrator's criminal act was discontinued at the stage of preparation for commission of or an attempt to commit it, an organiser, an abettor and an accessory shall be held liable for complicity in preparation or attempt to commit the criminal act.

3. Where there are the circumstances eliminating, mitigating or aggravating the liability of one of accomplices, they shall not be taken into account when determining the criminal liability of other accomplices

4. An organiser, an abettor or an accessory shall be held liable under an article of the Code which provides for liability for an act committed by a perpetrator and under paragraph 4, 5 or 6 of Article 24 of this Code.

5. Members of a criminal association shall be held liable under Article 249 of this Code as perpetrators regardless of their roles in the commission of a criminal act which is covered by their intent.

#### **Article 149. Rape**

1. A person who has sexual intercourse with a person against his will by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim shall be punished by imprisonment for a term of up to seven years.

2. A person who rapes another person with a group of accomplices shall be punished by imprisonment for a term of up to ten years.

3. A person who rapes a minor shall be punished by imprisonment for a term of three up to ten years.

4. A person who raped a young child shall be punished by imprisonment for a term of three up to fifteen years.

5. A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request.

6. A legal entity shall also be held liable for an act provided for in paragraphs 3 and 4 of this Article.

#### **Article 150. Sexual Assault**

1. A person who, against a person's will, satisfies his sexual desires through anal, oral or interfeemoral intercourse by using physical violence or by threatening the immediate use thereof or by otherwise depriving the victim of a possibility of resistance or by taking advantage of the helpless state of the victim shall be punished by arrest or by imprisonment for a term of up to seven years.

2. A person who carries out the actions provided for in paragraph 1 of this Article together with a group of accomplices shall be punished by imprisonment for a term of up to eight years.

3. A person who carries out the actions provided for in paragraph 1 of this Article in respect of a minor shall be punished by imprisonment for a term of two up to ten years.

4. A person who carries out the actions provided for in paragraph 1 of this Article in respect of a young child shall be punished with imprisonment for a term of three up to thirteen years.

5. A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request.

6. A legal entity shall also be held liable for an act provided for in paragraphs 3 and 4 of this Article.

#### **Article 151. Sexual Abuse**

1. A person who, by threatening to resort to violence, using other mental coercion or by taking advantage of a person's dependency, compels the person to have sexual intercourse with or otherwise satisfy sexual desires of the offender or a third person shall be punished by arrest or by imprisonment for a term of up to three years.

2. A person who carries out the actions provided for in paragraph 1 of this Article in respect of a minor shall be punished by imprisonment for a term of up to five years.

3. A person shall be held liable for an act provided for in paragraph 1 of this Article only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request.

4. A legal entity shall also be held liable for an act provided for in paragraph 2 of this Article.

#### **Article 151(1) . Satisfaction of Sexual Desires by Violating a Minor's Freedom of Sexual Self-Determination and/or Inviolability**

1. An adult person who has sexual intercourse or otherwise satisfied his sexual desires with a minor who had not attained the age of sixteen years, in the absence of characteristics of a rape, sexual assault or sexual abuse, shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

2. A person who has sexual intercourse or otherwise satisfied his sexual desires with a minor upon offering, promising to provide or upon providing to him in consideration money or a consideration of another form, in the absence of characteristics of a rape, sexual assault or sexual abuse, shall be punished by community service or by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

3. A father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of a minor who has sexual intercourse or otherwise satisfied his sexual desires with that minor, in the absence of characteristics of a rape, sexual assault or sexual abuse, shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to four years.

4. A legal entity shall also be held liable for the acts provided for in this Article.

5. The actions indicated in the Paragraph 1 of this Article shall not be considered a crime if there is no significant difference between age, mental and physical maturity of participants of the actions.

Amendment of the Article 151(1) adopted by Law No. [XI-989](#) as of 2 July, 2010, published in the Official Gazette, No. 86-4540, 2010, entered into force since 20 July, 2010

#### **Article 153. Sexual Molestation of a Child**

A person who molests a child shall be by restriction of liberty or by arrest or by imprisonment for a term of up to five years.

(amendment of the Article 153 adopted by Law No. [XI-989](#) as of 2 July, 2010, published in the Official Gazette, No. 86-4540, 2010, entered into force since 20 July, 2010)

**Article 162. Use of a Child for Pornography**

1. A person who involves a child in pornographic events or uses a child for the production of pornographic material or gains profit from such activities of the child shall be punished by a fine or by arrest or by imprisonment for a term of up to five years.

2. A legal entity shall also be held liable for an act provided for in this Article.

**Article 307. Gaining Profit from Another Person's Prostitution**

1. A person who gained profit from another person's prostitution or from procuration for prostitution

shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to four years.

2. A person who organises or is in charge of prostitution or transports a person with his consent for prostitution to the Republic of Lithuania or from the Republic of Lithuania shall be punished by imprisonment for a term of up to six years.

3. A person who gains profit from the prostitution of a minor or organises or is in charge of the prostitution of the minor or transports the minor with his consent for prostitution to the Republic of Lithuania or from the Republic of Lithuania shall be punished by imprisonment for a term of two up to eight years.

4. A legal entity shall also be held liable for the acts provided for in this Article.

**Article 308. Involvement in Prostitution**

1. A person who involves a person in prostitution shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to three years.

2. A person who involves in prostitution a person dependent on him financially, subordinate in office or otherwise or involves a person in prostitution by using physical or mental coercion or by deceit or who, in any manner, involves in prostitution a minor shall be punished by imprisonment for a term of two up to seven years.

3. A legal entity shall also be held liable for the acts provided for in this Article.

**Article 309. Possession of Pornographic Material**

1. A person who, for the purpose of distribution, produces or acquires pornographic material or distributes such material shall be punished by community service or by a fine or by restriction of liberty or by imprisonment for a term of up to one year.

2. A person who produces, acquires, stores, demonstrates, advertises or distributes pornographic material displaying a child or presenting a person as a child shall be punished by a fine or by imprisonment for a term of up to two years.

3. A person who, for the purpose of distribution, produces or acquires or distributes a large quantity of pornographic material displaying a young child shall be punished by imprisonment for a term of up to five years.

4. A person who demonstrates or advertises pornographic material shall be considered to have committed a misdemeanour and shall be punished by community service or by a fine or by restriction of liberty or by arrest.

5. A legal entity shall also be held liable for the acts provided for in paragraphs 1, 2 and 3 of this Article.

**The Law of the Republic of Lithuania on the Fundamentals of Protection of the Rights of the Child (Official Gazette Valstybės Žinios, 1996, No 33-807) :**

**Article 2. Concept of the child**

A child is a person under 18 years, unless the law provides otherwise.

**Article 43. General provisions of child protection from the influence of a negative social environment**

1. State and local authorities as well as other natural and legal persons must protect children from negative social environment influence. Promotion of a healthy lifestyle and legal education of children constitute the fundamental directions of state social policy and activities.
2. Demonstration of physical or mental violence to children and their involvement in criminal or other illegal acts shall result in administrative or criminal liability, as specified in laws.
3. A child victim of a criminal act, violence or other ill-treatment shall be rendered necessary assistance to enable the child to restore his health following the physical or psychological trauma and reintegrate into the social environment.
4. Upon becoming aware of a child in need of assistance, a natural or legal person must report this to the police, an institution for the protection of the rights of the child or another competent institution.

**Article 47. Child protection from sexual abuse**

1. Encouragement or coercion of a child to engage in sexual activity, use of a child for prostitution or involvement of a child in prostitution, use of a child for pornography as well as in production or dissemination of pornographic publications or other materials of a pornographic or erotic nature shall result in administrative or criminal liability, as specified in laws.
2. Children must be taught to avoid sexual coercion and abuse.

**Law of the Republic of Lithuania on Provision of Information to the Public (Official Gazette Valstybės Žinios, 1996, No 71-1706)**

**Article 2. Main definitions used in this Law**

38. Information of a pornographic nature means information where real or performed sexual intercourse, sex organs, emptying of the bowels, masturbation or sexual perversion (paedophilia, sadism, masochism, bestiality, necrophilia, etc.) is demonstrated openly and in detail, which is the main purpose of such information.

**Article 13. Protection of personal rights, honour and dignity**

1. In order not to violate personal rights and protect personal honour and dignity, when collecting and publishing information, it shall be prohibited to:
  - 1) film and photograph a person or to make audio and video recordings of a person at the place of residence of a natural person, a private household of a natural person and an enclosed or otherwise clearly marked territory belonging to the household without the consent of that person, irrespective of whether or not that person is present in the abovementioned places;
  - 2) film, photograph or make audio and video recordings during non-public events without the consent of organisers entitled to organise such events;
  - 3) film and photograph a person and use his images for advertising in the media without the consent of that person;
  - 4) film and photograph a person with obvious physical deficiencies without the consent of that person or to film and photograph a person in a helpless state due to health problems;
  - 5) film and photograph a child or to make audio and video recordings of a child without the consent of at least one of the parents, guardians or curators and that child himself. It shall be prohibited to use photographs, audio and video recordings of children in information of an erotic, pornographic and violent nature;
  - 6) film and photograph a person who has died a natural or unnatural death from a short distance or make video recordings of such a person without the consent of family members of that person.
2. The prohibitions set out in paragraph 1 of this Article shall not apply when recording breached of law and in the cases specified in Article 14(3) of this Law.

#### **Article 19. Information not to be published**

1. It shall be prohibited in the media to publish information which:

- 1) urges to change the constitutional system of the Republic of Lithuania using violence;
- 2) encourages to make an attempt on the sovereignty of the Republic of Lithuania, its territorial integrity and political independence;
- 3) incites a war or hatred, taunting, disdain, discrimination, violence, physical violence against a group of persons or a person belonging to such a group because of sex, sexual orientation, race, nationality, language, origin, social status, religion, beliefs or attitudes;
- 4) disseminates, promotes or advertises pornography as well as promotes and/or advertises sexual services and sexual perversion;
- 5) promotes and/or advertises addictions and narcotic or psychotropic substances.

2. It shall be prohibited to disseminate disinformation and information slandering, insulting a person and diminishing his honour and dignity.

3. It shall be prohibited to disseminate information violating the presumption of innocence and hindering the impartiality of the judicial branch.

4. The procedure for dissemination of publications, audio and audiovisual works, broadcasting of radio and television programmes, information disseminated in the media and other public information classified as information of an erotic, pornographic or violent nature or other restricted public information shall be established by the Government.

#### **Law Amending the Law of the Republic of Lithuania on the Protection of Minors against the Detrimental Effect of Public Information (Official Gazette Valstybės Žinios, 2009, No 86-3637) .**

Article 6. Prohibition to disseminate public information having a detrimental effect on the development of minors related to the making of personal data available to the public

It shall be prohibited to disseminate in the media information having a detrimental effect on the development of minors related to personal data:

- 1) which, in relation to a criminal act or other violations of law, makes available to the public the personal data of a minor suspected, charged with or convicted of a criminal act, who is not hiding from law enforcement institutions or court, or a minor who has fallen victim to a criminal act or other violations of law, on the basis whereof his personal identity can be established;
- 2) which makes available to the public the personal data of a minor who has mutilated himself or has attempted to do this, has committed suicide or has attempted to commit suicide, on the basis whereof his personal identity can be established;
- 3) whereby, in providing data about a minor, his dignity is degraded and/or his interests are violated;
- 4) in which, abusing the trust and inexperience of minors, opinions and assessments by minors are presented in the context of negative social phenomena;
- 5) in which photos of minors or filmed material about them are presented in the context of negative social phenomena where their personal identity can be established on the basis thereof.

## 6.22 Luxembourg

TITRE VII. - Des crimes et des délits contre l'ordre des familles et contre la moralité publique.  
Chapitre Ier. - De l'avortement.(L. 15 novembre 1978)

Art. 348. (L. 15 novembre 1978) Celui qui, par aliments, breuvages, médicaments, violences, manoeuvres ou par tout autre moyen aura, à dessein, fait avorter ou tenté de faire avorter une femme enceinte ou supposée enceinte qui n'y a pas consenti sera puni de la réclusion de cinq à dix ans.

Art. 349. (L. 15 novembre 1978) Lorsque l'avortement a été causé par des violences exercées volontairement, mais sans intention de le produire le coupable sera puni d'un emprisonnement de trois mois à deux ans et d'une amende de 251 euros à 3.000 euros.

Si les violences ont été commises avec préméditation ou avec connaissance de l'état de la femme, l'emprisonnement sera de six mois à trois ans, et l'amende de 500 euros à 5.000 euros.

- Voir C. pén., art. 483.

Art. 350. (L. 15 novembre 1978) Celui qui, par aliments, breuvages, médicaments ou par tout autre moyen aura avorté ou tenté d'avorter une femme enceinte ou supposée enceinte qui y a consenti, sera condamné à un emprisonnement de deux ans à cinq ans et à une amende de 251 euros à 25.000 euros.

Art. 351. (L. 15 novembre 1978) La femme qui volontairement se sera fait avorter sera punie d'une amende de 251 euros à 2.000 euros.

Il n'y aura pas infraction lorsqu'elle agit sous l'empire d'une situation de détresse particulière.

Art. 352. (L. 15 novembre 1978) Lorsque les moyens employés dans le but de faire avorter une femme auront causé la mort, celui qui les aura administrés ou indiqués dans ce but sera condamné à la réclusion de cinq à dix ans, si la femme a consenti à l'avortement, et à la réclusion de dix à quinze ans, si elle n'y a point consenti.

Art. 353. (L. 15 novembre 1978) (1) Toutefois, l'interruption volontaire de la grossesse pratiquée dans les douze premières semaines de celle-ci, ne sera pas punissable:

a) lorsque la poursuite de la grossesse, ou les conditions de vie que pourraient entraîner la naissance, risquent de mettre en danger la santé physique ou psychique de la femme enceinte;

b) lorsqu'il existe un risque sérieux que l'enfant à naître sera atteint d'une maladie grave, de malformations physiques ou d'altérations psychiques importantes;

c) lorsque la grossesse peut être considérée comme étant la conséquence d'un viol;

d) à condition que la femme enceinte:

1° ait consulté un médecin gynécologue ou obstétricien, qui doit l'informer des risques médicaux que comporte l'intervention;

2° marque son accord par écrit à l'intervention; l'accord n'est pas requis si la vie de la femme enceinte est en danger; lorsqu'elle est mineure ou hors d'état de manifester sa volonté l'accord du représentant légal ad hoc est requis.

(2) Sauf danger imminent pour la vie de la femme enceinte, l'interruption de la grossesse a) ne pourra être pratiquée que sur des femmes ayant depuis trois mois leur domicile légal au Grand-Duché de Luxembourg

b) à l'expiration d'un délai d'une semaine après la consultation visée sub (1) d 1°

c) par un médecin autorisé à pratiquer l'art de guérir au Grand-Duché de Luxembourg, ayant constaté personnellement par écrit ou suivant attestation écrite d'un autre médecin qualifié, l'existence

d'un des cas visés sub (1) a, b, c

d) dans un établissement hospitalier ou tout autre établissement agréé à cette fin par arrêté du ministre de la Santé publique.

(3) Après ce délai l'interruption de la grossesse ne pourra être pratiquée que si deux médecins qualifiés attestent par écrit qu'il existe une menace très grave pour la santé ou la vie de la femme enceinte ou de l'enfant à naître.

Art. 353-1. (L. 15 novembre 1978) Aucun médecin ne sera tenu d'émettre l'avis prévu par l'article précédent, ni de pratiquer une interruption volontaire de la grossesse, sauf en cas de danger imminent pour la vie de la femme enceinte.

De même, aucun auxiliaire médical ne sera tenu de concourir à une telle intervention, sauf en cas de danger imminent pour la vie de la femme enceinte.

Chapitre II. - De l'exposition et du délaissement d'enfants.

Art. 354. Seront punis d'un emprisonnement d'un mois à un an et d'une amende de 251 euros à

1.000 euros ceux qui auront exposé ou fait exposer, et ceux qui auront délaissé ou fait délaissé, en un lieu non solitaire, un enfant au-dessous de l'âge de sept ans accomplis.

- Voir C. pén., art. 362.

Pour qu'il y ait exposition d'enfant dans le sens de l'article 354 du Code pénal, il faut que l'enfant ait été déposé dans un lieu autre que celui où se trouve habituellement les personnes qui sont obligées de le soigner, ou dans un endroit autre que celui où il doit recevoir les soins que son état réclame.

Il n'y a délaissement d'enfant punissable que si l'enfant a été laissé seul et que par suite de cet abandon il y a eu cessation, quelque courte qu'elle soit, ou interruption des soins ou de la surveillance dus à l'enfant. Ne se rend dès lors pas coupable du délit de délaissement d'enfant la mère qui, sans que son enfant ait été un instant à l'abandon, le laisse, même en ayant recours à un artifice, entre les mains d'une personne qui, à son défaut ou concurremment avec elle, lui doit des soins. Cour 11 novembre 1957, P. 17, 189.

Art. 355. Les délits prévus par le précédent article seront punis d'un emprisonnement de trois mois à deux ans et d'une amende de 251 euros à 2.000 euros, s'ils ont été commis par les père et mère légitimes ou naturels, ou par les personnes à qui l'enfant était confié.

Art. 356. Si, par suite du délaissement, l'enfant est demeuré mutilé ou estropié, les coupables seront punis:

Dans le cas prévu par l'article 354, d'un emprisonnement de six mois à deux ans et d'une amende de 251 euros à 2.000 euros;

Dans le cas de l'article 355, d'un emprisonnement d'un an à trois ans et d'une amende de 500 euros à 3.000 euros.

Art. 357. Si le délaissement a causé la mort de l'enfant, la peine sera:

Dans le cas de l'article 354, un emprisonnement d'un an à trois ans et une amende de 500 euros à 3.000 euros;

Dans le cas exprimé à l'article 355, un emprisonnement de deux ans à cinq ans et une amende de 500 euros à 3.000 euros.

Art. 358. Seront punis d'un emprisonnement de six mois à trois ans et d'une amende de 500 euros à 3.000 euros, ceux qui auront délaissé ou fait délaissé dans un lieu solitaire un enfant au-dessous de l'âge de sept ans accomplis.

Art. 359. L'emprisonnement sera d'un an à cinq ans et l'amende de 500 euros à 5.000 euros, si les coupables du délaissement sont les père et mère légitimes ou naturels ou des personnes à qui l'enfant était confié.

Art. 360. Si, par suite du délaissement prévu par les deux articles précédents, l'enfant est demeuré mutilé ou estropié, les coupables seront punis de la réclusion de cinq ans à dix ans.

Si le délaissement a causé la mort, ils seront condamnés à la réclusion de dix ans à quinze ans.

Chapitre III. - Des crimes et délits tendant à empêcher ou à détruire la preuve de l'état civil de l'enfant.

Art. 361. Toute personne qui, ayant assisté à un accouchement, n'aura pas fait la déclaration prescrite par les articles 55, 56 et 57 du Code civil, sera punie d'un emprisonnement de huit jours à trois mois et d'une amende de 251 euros à 2.000 euros ou d'une de ces peines seulement.

1° L'article 56 du Code civil, en disposant que, lorsque la mère sera accouchée hors de son domicile, la naissance doit être déclarée par la personne chez qui elle sera accouchée, vise le domicile légal, qui, pour la femme mariée, est celui de son mari.

Lorsque le déclarant entend faire insérer dans l'acte de naissance des mentions prohibées par la loi et refuser la signature d'un acte ne contenant pas ces mentions, il incombe à l'officier de l'état civil de dresser un acte conforme aux prescriptions de la loi en relatant la cause qui l'empêchait de recueillir la signature du comparant.

Même si l'officier de l'état civil omet de dresser l'acte à raison du refus du déclarant de signer, celui-ci ne s'est pas rendu coupable de l'infraction réprimée par l'article 361 du Code pénal. Cour 31 octobre 1931, P. 13, 52.

2° Les peines prévues par le Code pénal pour défaut de déclaration de la naissance d'un enfant ne sont applicables qu'à ceux qui ont assisté à l'accouchement.

En conséquence, le père de l'enfant n'est pas passible de poursuites correctionnelles pour défaut de déclaration de la naissance, lorsque l'accouchement a eu lieu en son absence.

Trib. Luxembourg 5 janvier 1952, P. 15, 256.

Art. 362. Sera punie des peines portées à l'article précédent, toute personne qui, ayant trouvé un enfant nouveau-né, ne l'aura pas remis, dans les trois jours, à l'officier de l'état civil, ainsi qu'il est prescrit par l'article 58 du Code civil.

La présente disposition n'est point applicable à celui qui aurait consenti à se charger de l'enfant et qui aurait fait sa déclaration à cet égard devant l'autorité communale du lieu où l'enfant a été trouvé.



Art. 363. Seront punis de la réclusion de cinq à dix ans, les coupables de suppression d'un enfant, de substitution d'un enfant à un autre, ou de supposition d'un enfant à une femme qui ne sera pas accouchée.

La même peine sera appliquée à ceux qui auront donné la mission de commettre les faits mentionnés au paragraphe précédent, si cette mission a reçu son exécution.

Si l'action publique pour suppression ou pour supposition d'enfant ne peut commencer, en principe, qu'après le jugement définitif sur la question d'état et si les tribunaux civils sont seuls compétents pour statuer sur les réclamations d'état, la question d'état n'est cependant préjudicielle à l'action publique qu'au cas où la filiation est contestée et que la poursuite peut exercer une influence directe sur l'état de l'enfant. Il s'ensuit que l'action publique n'est pas entravée toutes les fois que la décision qui serait rendue au pénal ne saurait avoir pour effet de préjuger l'état de l'enfant. A fortiori l'action publique doit-elle avoir libre cours s'il n'existe plus de question d'état à trancher, ce qui a notamment lieu si l'enfant est mort sans héritiers.

L'élément essentiel de la supposition d'enfant réside dans l'introduction d'un enfant dans une famille à laquelle il n'appartient pas, alors que la suppression d'enfant consiste dans le fait criminel de supprimer la preuve de l'état civil d'un enfant, sans qu'il y ait attentat à la vie de cet enfant. Cour 11 novembre 1957, P. 17, 189.

Art. 364. Quiconque aura enlevé ou fait enlever un enfant âgé de moins de sept ans accomplis sera puni de la réclusion de cinq à dix ans, quand même l'enfant aurait suivi volontairement le ravisseur.

- Voir C. pén., art. 368 à 371-1.

Art. 365. Quiconque aura recelé ou fait receler un enfant au-dessous de cet âge sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de 500 euros à 5.000 euros.

- Voir C. pén., art. 367.

Art. 366. Ceux qui auront porté ou fait porter à un hospice un enfant au-dessous de l'âge de sept ans accomplis, qui leur était confié, seront punis d'un emprisonnement d'un mois à six mois et d'une amende de 251 euros à 1.000 euros.

Toutefois, aucune peine ne sera prononcée, s'ils n'étaient pas tenus ou ne s'étaient pas obligés de pourvoir gratuitement à la nourriture et à l'entretien de l'enfant, et si personne n'y avait pourvu.

- Voir C. pén., art. 72.

Dispositions particulières.

Art. 367. Seront punis d'un emprisonnement de huit jours à un an et d'une amende de 251 euros à 1.000 euros, ceux qui, étant chargés d'un enfant au-dessous de sept ans accomplis, ne le représenteront point aux personnes qui ont le droit de le réclamer.

Art. 367-1. (L. 20 mars 1990) Sera puni d'un emprisonnement de huit jours à un an et d'une amende de 251 euros à 10.000 euros:

1° Quiconque aura, dans un esprit de lucre, provoqué les parents ou l'un d'eux à abandonner leur enfant né ou à naître;

2° Toute personne qui aura fait souscrire ou tenté de faire souscrire, par les futurs parents ou l'un d'eux, un acte aux termes duquel ils s'engagent à abandonner l'enfant à naître, qui aura détenu un tel acte, en aura fait usage ou tenté d'en faire usage;

3° Quiconque aura, dans un esprit de lucre, apporté ou tenté d'apporter son entremise pour faire recueillir ou adopter un enfant.

Art. 367-2. (L. 14 avril 2002) Sera puni d'un emprisonnement de huit jours à un an et d'une amende de 251 euros à 10.000 euros ou d'une de ces peines seulement:

Quiconque aura tiré un gain matériel indu en raison d'une intervention à l'occasion d'une adoption. Chapitre IV. - De l'enlèvement des mineurs.

Art. 368. (L. 29 novembre 1982) Sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de 251 euros à 5.000 euros, celui qui par violence, menace ou ruse aura enlevé ou fait enlever des mineurs.

Le coupable pourra être condamné, en outre, à l'interdiction conformément à l'article 24.

Art. 369. (L. 29 novembre 1982) Si le mineur ainsi enlevé est âgé de moins de seize ans accomplis au moment des faits, la peine sera la réclusion de cinq à dix ans.

Art. 369-1. (L. 29 novembre 1982) La peine sera celle de la réclusion à vie, quel que soit l'âge du mineur, si celui-ci a été enlevé pour répondre du versement d'une rançon ou de l'exécution d'un ordre ou d'une condition.

Toutefois, dans le cas prévu à l'alinéa précédent, la peine sera celle de la réclusion de quinze à vingt ans si le mineur est libéré volontairement avant le cinquième jour accompli depuis celui de l'enlèvement sans que la rançon ait été versée ou que l'ordre ou la condition ait été exécuté.

Art. 370. (L. 29 novembre 1982) Celui qui aura enlevé ou fait enlever un mineur au-dessous de seize ans accomplis, qui aura consenti à son enlèvement ou qui aura suivi volontairement le ravisseur, sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 251 euros à 2.000 euros.

Art. 371. (L. 29 novembre 1982) Le ravisseur qui aura épousé le mineur qu'il a enlevé ou fait enlever, et ceux qui auront participé à l'enlèvement ne pourront être poursuivis qu'après que la nullité du mariage aura été définitivement prononcée. Dans ce cas une nouvelle plainte n'est pas nécessaire.

Art. 371-1. (L. 10 août 1992) Seront punis d'un emprisonnement de huit jours à deux ans et d'une amende de 251 euros à 2.000 euros ou d'une de ces peines seulement, les père, mère et autres personnes qui soustrairont ou tenteront de soustraire un mineur aux mesures qui doivent être prises à son égard par application des dispositions de la loi sur la protection de la jeunesse, ou en vertu d'une décision, même provisoire, d'une autorité judiciaire, qui le soustrairont ou tenteront de le soustraire à la garde de ceux auxquels il a été confié, qui ne le représenteront pas à ceux qui ont le droit de le réclamer, l'enlèveront ou le feront enlever, même de son consentement. Si le coupable avait encouru la déchéance totale ou partielle de l'autorité parentale sur l'enfant, l'emprisonnement pourra être élevé jusqu'à trois ans.

La résistance des enfants ou leur aversion à l'égard de la personne qui les réclame ne saurait constituer, pour celui qui a l'obligation de les représenter, ni une excuse légale, ni un fait justificatif. Il n'en est autrement que lorsque le prévenu a en vain usé de son autorité et que seules des circonstances, telles que la situation de fait des enfants, leur âge ou leur état de santé, l'ont empêché d'exécuter son obligation. Cour 21 avril 1986, P. 26, 384.

Chapitre V. - De l'attentat à la pudeur et du viol.

Art. 372. (L. 10 août 1992) Tout attentat à la pudeur commis sans violence ni menaces, sur la personne ou à l'aide de la personne d'un enfant de l'un ou de l'autre sexe, âgé de moins de seize ans accomplis, sera puni d'un emprisonnement d'un an à cinq ans.

La peine sera la réclusion de cinq à dix ans, si l'enfant était âgé de moins de onze ans accomplis.  
- Voir C. pén., art. 374; 377; 378.

Art. 372bis. Abrogé (L. 10 août 1992) .

Art. 373. L'attentat à la pudeur, commis avec violence ou menaces, sur des personnes de l'un ou de l'autre sexe, ou bien commis sur des personnes hors d'état de donner un consentement libre ou d'opposer de la résistance, sera puni d'un emprisonnement de six mois à cinq ans.

Si l'attentat a été commis sur la personne d'un enfant au-dessous de l'âge de quatorze ans accomplis, le coupable subira la réclusion de cinq à dix ans.

- Voir C. pén., art. 377; 378; 483.

L'article 373 du Code pénal punit l'attentat à la pudeur commis avec violence ou menaces sur des personnes de l'un ou de l'autre sexe, ou bien commis sur des personnes hors d'état de donner un consentement libre ou d'opposer de la résistance.

Si la loi mentionne spécialement, à la différence du Code pénal belge, le cas de la victime hors d'état de donner un consentement libre ou d'opposer de la résistance, il en ressort que le législateur luxembourgeois a admis qu'en dehors des cas où la victime n'est pas en état de donner un consentement libre à la suite des violences ou des menaces employées par l'auteur de l'attentat, il peut exister des cas où la victime est mise hors d'état de donner un consentement libre ou d'opposer de la résistance par d'autres causes non autrement indiquées par la loi.

Spécialement, l'attentat à la pudeur est retenu à juste titre par les juges du fond, lorsque l'attentat a été commis sur des personnes qui, à la suite des machinations et manoeuvres employées par l'auteur de l'attentat, étaient hors d'état de donner un consentement libre. Cass. 11 juillet 1963, P. 19, 155.

Art. 374. L'attentat existe dès qu'il y a commencement d'exécution.

Art. 375. (L. 10 août 1992) Tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'autrui, soit à l'aide de violences ou de menaces graves, soit par ruse ou artifice, soit en abusant d'une personne hors d'état de donner un consentement libre ou d'opposer la résistance, constitue un viol et sera puni de la réclusion de cinq à dix ans.

Est réputé viol commis en abusant d'une personne hors d'état de donner un consentement libre tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur

la personne d'un enfant qui n'a pas atteint l'âge de quatorze ans accomplis. Dans ce cas, le coupable sera puni de la réclusion de dix à quinze ans.

- Voir C. pén., art. 377; 378; 483.

Si un viol a été commis sur la personne d'une enfant âgée de moins de 14 ans accomplis, il n'est pas nécessaire de constater spécialement, en tant qu'élément constitutif de l'infraction, que l'enfant a été hors d'état de donner un consentement libre ou d'opposer de la résistance, alors que, dans le cas de viol consommé sur la personne d'une enfant âgée de moins de quatorze ans accomplis, la loi présume d'une façon irréfragable que la victime a été incapable d'émettre un consentement libre à l'acte sexuel qu'on exigeait d'elle. Cour 10 juin 1967, P. 20, 348.

Art. 376. (L. 7 juillet 2003) Si le viol a causé la mort de la personne sur laquelle il a été commis, le coupable sera puni de la réclusion de quinze à vingt ans.

Le meurtre commis pour faciliter le viol ou pour en assurer l'impunité sera puni de la réclusion à vie.

La peine portée par l'alinéa précédent sera appliquée, lors même que la consommation du viol aura été empêchée par des circonstances indépendantes de la volonté du coupable.

- Voir C. pén., art. 378; 393.

Art. 377. Le minimum des peines portées par les articles précédents sera élevé conformément à l'article 266:

Si les coupables sont les ascendants de la personne sur laquelle ou à l'aide de laquelle l'attentat a été commis;

S'ils sont de la classe de ceux qui ont autorité sur elle;

S'ils sont ses instituteurs ou ses serviteurs à gages, ou les serviteurs des personnes ci-dessus désignées;

Si l'attentat a été commis, soit par des fonctionnaires publics ou des ministres d'un culte qui ont abusé de leur position pour le commettre, soit par des médecins, chirurgiens, accoucheurs ou officiers de santé, envers des personnes confiées à leurs soins;

(L. 8 septembre 2003) Si la victime est 1° le conjoint ou le conjoint divorcé, la personne avec laquelle le coupable vit ou a vécu habituellement,

2° un ascendant légitime, naturel ou adoptif du coupable;

3° un frère ou une soeur;

4° un ascendant légitime ou naturel, les père ou mère adoptifs, un descendant, un frère ou une soeur d'une personne visée sub 1°.

Enfin, si, dans les cas des articles 373, 375 et 376, le coupable, quel qu'il soit, a été aidé, dans l'exécution du crime ou du délit, par une ou plusieurs personnes.

- Voir C. pén., art. 378.

Art. 378. Dans les cas prévus par le présent chapitre, les coupables seront condamnés à l'interdiction des droits énoncés aux numéros 1, 3, 4, 5 et 7 de l'article 11.

(L. 10 août 1992) Dans les cas prévus aux articles 372, alinéa 1er et 373, alinéa 1er, ils pourront, de plus, être condamnés à l'interdiction des droits de vote, d'élection et d'éligibilité pour un terme de cinq à dix ans.

(L. 9 juin 1989) Si l'attentat a été commis par le père ou la mère, le coupable sera, en outre, privé des droits et avantages à lui accordés sur la personne et sur les biens de l'enfant par le Code civil, Livre 1er, Titre IX, «De l'autorité parentale».

Chapitre VI. - De l'exploitation de la prostitution et du proxénétisme.

(L. 31 mai 1999 ; L. 13 mars 2009) )

Art. 379. (L. 31 mai 1999) Sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de 251 euros à 50.000 euros:

1° Quiconque aura attenté aux moeurs en excitant, facilitant ou favorisant, pour satisfaire les passions d'autrui, la débauche, la corruption ou la prostitution d'un mineur âgé de moins de 18 ans.

2° Quiconque aura exploité un mineur âgé de moins de 18 ans à des fins de prostitution ou aux fins de la production de spectacles ou de matériel à caractère pornographique.

3° Alinéa abrogé (L. 13 mars 2009)

La tentative sera punie d'un emprisonnement de six mois à trois ans.

Le fait sera puni d'un emprisonnement de deux ans à cinq ans s'il a été commis envers un mineur âgé de moins de quatorze ans, et de la réclusion de cinq à dix ans s'il a été commis envers un mineur de moins de onze ans.

La tentative sera punie d'un emprisonnement de six mois à quatre ans, si le fait a été commis envers un mineur âgé de moins de quatorze ans et d'un emprisonnement de six mois à cinq ans, s'il a été commis envers un mineur de moins de onze ans.

Art. 379bis. (L. 31 mai 1999) Sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 251 euros à 50.000 euros:

1° et 2° abrogés (L.13 mars 2009)

3° Quiconque détient, directement ou par personne interposée, qui gère, dirige ou fait fonctionner une maison de débauche ou de prostitution.

4° Tout propriétaire, hôtelier, logeur, cabaretier, en général toute personne qui cède, loue ou met à la disposition d'autrui ou tolère l'utilisation de tout ou partie d'un immeuble, sachant que les lieux cédés,

loués ou mis à la disposition servent à l'exploitation de la prostitution d'autrui.

5° Le proxénète.

Est proxénète celui ou celle

a) qui d'une manière quelconque aide, assiste ou protège sciemment la prostitution d'autrui ou le racolage en vue de la prostitution;

b) qui, sous forme quelconque, partage les produits de la prostitution d'autrui ou reçoit des subsides d'une personne se livrant à la prostitution;

c) qui embauche, entraîne ou entretient, même avec son consentement, une personne même majeure en vue de la prostitution ou la livre à la prostitution ou à la débauche;

d) qui fait office d'intermédiaire, à un titre quelconque, entre les personnes se livrant à la prostitution ou à la débauche et les individus qui exploitent ou rémunèrent la prostitution ou la débauche d'autrui;

e) qui, par menace, pression, manoeuvre ou par tout autre moyen entrave l'action de prévention de contrôle, d'assistance ou de rééducation entreprise par les organismes qualifiés en faveur de personnes se livrant à la prostitution.

(L. 13 mars 2009) La tentative des faits énoncés au numéro 5° sera punie d'un emprisonnement de trois mois à deux ans.

(L. 13 mars 2009) Les faits énoncés aux numéros 3°, 4° et 5° du présent article seront punis chacun d'un emprisonnement de un an à cinq ans et d'une amende de 251 euros à 50.000 euros s'ils ont été commis envers un mineur âgé de moins de 18 ans, d'un emprisonnement de deux ans à cinq ans, s'ils ont été commis envers un mineur âgé de moins de quatorze ans, et de la réclusion de cinq ans à dix ans, s'ils ont été commis envers un mineur de moins de onze ans.

La tentative sera punie d'un emprisonnement qui sera de six mois à trois ans, si le fait a été commis envers un mineur de moins de 18 ans, de six mois à quatre ans, si le fait a été commis envers un mineur de moins de quatorze ans, de six mois à cinq ans, si le fait a été commis envers un mineur de moins de onze ans.

Art. 379ter. (L. 10 novembre 1984) Après l'ouverture d'une information, le juge d'instruction pourra ordonner, sur requête du procureur d'Etat, à titre provisoire pour une durée de trois mois au plus, la fermeture de tout établissement ou lieu quelconque ouvert au public ou utilisé par le public, s'il existe des indices graves que l'une des infractions visées à l'article 379bis y a été commise par l'inculpé ayant participé, soit comme auteur, soit comme complice, à un titre quelconque, à la gestion, à la direction ou au financement de l'établissement.

Cette fermeture pourra, quelle qu'en ait été la durée, faire l'objet de renouvellements dans les mêmes formes pour une durée de trois mois au plus chacun.

1° La mesure de fermeture provisoire d'un établissement, susceptible d'être ordonnée par le juge d'instruction dans le cadre d'une information ouverte pour infraction à l'article 379bis du Code pénal, affecte l'entreprise trouvée en délit, en quelque main qu'elle soit. Elle a le caractère d'une mesure de sécurité et de police indépendante de la responsabilité pénale ou civile du propriétaire du débit. C. E. 7 avril 1987, P. 27, 42.

2° Est partant fondé le refus de l'autorisation d'ouvrir un débit de boissons fortes à consommer sur place, au motif que dans le cadre d'une information ouverte pour infraction à l'article 379bis du Code pénal, le juge d'instruction a décrété la fermeture provisoire de l'établissement, même si la fermeture provisoire n'a pas été décrétée à l'égard du propriétaire, demandeur de l'autorisation refusée. C. E. 7 avril 1987, P. 27, 42.

3° En introduisant la mesure de la fermeture de l'établissement, le législateur n'a pour autant pas entendu modifier les dispositions régissant l'acquisition et la conservation du privilège de cabaretage qui continuent à être régis par les dispositions de la loi sur le régime des cabarets. C. E. 7 avril 1987, P. 27, 42.

Art. 379quater. (L. 10 novembre 1984) La mainlevée de l'ordonnance de fermeture pourra être demandée en tout état de cause par l'inculpé ou par le ministère public, à savoir:

1) à la chambre du conseil pendant la période de l'instruction;

2) Abrogé implicitement (L. 17 juin 1987) .

3) au tribunal correctionnel siégeant en chambre du conseil si l'affaire y a été renvoyée;

4) à la cour d'appel chambre des appels correctionnels siégeant en chambre du conseil, si appel a été interjeté ou s'il a été formé un pourvoi en cassation;

5) à la chambre criminelle du tribunal d'arrondissement.

- Voir L. 17 juin 1987 portant suppression de la Cour d'assises, Mém. 1987, p. 744.

Art. 379quinquies. (L. 10 novembre 1984) La requête sera déposée au greffe de la juridiction appelée à y statuer. Il y sera statué d'urgence et au plus tard dans les trois jours du dépôt, le ministère public et l'inculpé ou son défenseur entendus en leurs explications orales ou dûment appelés.

L'inculpé ou son défenseur seront avertis, par les soins du greffier, des lieu, jour et heure de la comparution.

Sans préjudice des droits du procureur général d'Etat et du procureur d'Etat, les ordonnances de la chambre du conseil peuvent être attaquées également par l'inculpé conformément aux dispositions de l'article 119 du Code d'instruction criminelle.

Art. 379sexies. (L. 10 novembre 1984) Lorsqu'une juridiction de jugement est saisie après la clôture de l'information, la fermeture d'un établissement ordonnée par le juge d'instruction pourra faire l'objet de renouvellements pour une durée de trois mois au plus chacun, qui seront prononcés:

- 1) par le tribunal correctionnel, siégeant en chambre du conseil, si l'affaire y a été renvoyée;
- 2) par la cour d'appel, chambre des appels correctionnels siégeant en chambre du conseil, si appel a été interjeté ou s'il a été formé un pourvoi en cassation;
- 3) par la chambre criminelle du tribunal d'arrondissement.

La mainlevée de la décision de fermeture pourra, dans ces cas être demandée auprès de la juridiction ayant ordonné le renouvellement. Il y sera statué conformément aux dispositions des alinéas 1er et 2 de l'article 379quinquies.

- Voir L. 17 juin 1987 portant suppression de la Cour d'assises, Mém. 1987, p. 744, et spécialement art. XI.

Art. 379septies. (L. 10 novembre 1984) Le juge pourra ordonner la fermeture temporaire ou définitive de tout établissement ou lieu quelconque ouvert au public ou utilisé par le public dans lequel l'une des infractions visées à l'article 379bis a été commise par le prévenu ayant participé soit comme auteur, soit comme complice, à un titre quelconque à la gestion, à la direction ou au financement de l'établissement.

En cas de condamnation à une peine principale d'amende, la durée de la fermeture courra du jour où la condamnation contradictoire ou par défaut sera devenue irrévocable.

En cas de condamnation à une peine privative de liberté, cette durée courra du jour où le condamné aura subi ou prescrit sa peine et, s'il est libéré conditionnellement, à partir du jour de la libération.

Dans le cas visé à l'alinéa précédent, la décision de fermeture produira, en outre, ses effets à compter du jour où la condamnation contradictoire ou par défaut sera devenue irrévocable.

Art. 380. (L. 1er avril 1968) Le minimum des peines portées par les articles 379 et 379bis sera élevé conformément à l'article 266:

Si les coupables sont les ascendants de la personne prostituée ou corrompue;

S'ils sont de la classe de ceux qui ont autorité sur elle;

S'ils sont ses instituteurs, ses serviteurs à gages ou serviteurs des personnes ci-dessus désignées;

S'ils sont fonctionnaires publics ou ministre d'un culte.

Dans les cas prévus par les articles 379 et 379bis les peines seront prononcées alors même que les divers actes qui sont les éléments constitutifs de l'infraction auraient été accomplis dans des pays différents.

- Voir C. instr. crim., art. 5, al. 7.

Art. 381. (L. 1er avril 1968) Dans les cas prévus par les articles 379 et 379bis les coupables seront en outre condamnés à une amende de 251 euros à 15.000 euros et à l'interdiction des droits spécifiés aux numéros 1, 2, 3, 4, 5 et 7 de l'article 11.

Les tribunaux pourront interdire aux condamnés frappés d'une peine d'emprisonnement d'un mois au moins, pour un terme de un an à dix ans, de tenir ou de continuer comme propriétaire ou comme gérant, un hôtel, une pension de famille, un bureau de placement, ou y être employé à quelque titre que ce soit. Toute infraction à cette interdiction sera punie d'un emprisonnement de huit jours à un mois et d'une amende de 251 euros à 5.000 euros ou de l'une de ces peines seulement.

Si, dans les cas visés à l'alinéa 1er, l'infraction a été commise par le père ou la mère, le coupable sera, en outre, privé des droits et avantages à lui accordés sur la personne et les biens de l'enfant par le Code civil, Livre 1er, Titre IX «De l'autorité parentale».

Art. 382. (L. 1er avril 1968) Sera puni d'un emprisonnement de huit jours à six mois et d'une amende de 251 euros à 5.000 euros ou de l'une de ces peines seulement, quiconque par gestes, paroles, écrits ou par tous autres moyens procéderait publiquement au racolage de personnes d'un ou de l'autre sexe en vue de les provoquer à la débauche.

Chapitre VI-I. – De la traite des êtres humains.

(L. 13 mars 2009)

Art. 382-1. (L. 13 mars 2009) (1) Constitue l'infraction de traite des êtres humains le fait de recruter, de transporter, de transférer, d'héberger, d'accueillir une personne, de passer ou de transférer le contrôle sur elle, en vue:

- 1) de la commission contre cette personne des infractions de proxénétisme, d'agression ou d'atteintes sexuelles;
  - 2) de l'exploitation du travail ou des services de cette personne sous la forme de travail ou de services forcés ou obligatoires, de servitude, d'esclavage ou de pratiques analogues et en général dans des conditions contraires à la dignité humaine;
  - 3) du prélèvement d'organes ou de tissus en violation de la législation en la matière;
  - 4) de faire commettre par cette personne un crime ou un délit, contre son gré.
- (2) L'infraction prévue au paragraphe 1er est punie d'une peine d'emprisonnement de trois ans à cinq ans et d'une amende de 10.000 à 50.000 euros.
- (3) La tentative de commettre l'infraction visée au paragraphe 1er est punie d'une peine d'emprisonnement d'un an à trois ans et d'une amende de 5.000 à 10.000 euros.

Art. 382-2. (L. 13 mars 2009) (1) L'infraction prévue à l'article 382-1, paragraphe 1er, est punie de la réclusion de cinq ans à dix ans et d'une amende de 50.000 à 100.000 euros dans les cas suivants:

- 1) l'infraction a délibérément ou par négligence grave mis la vie de la victime en danger; ou
  - 2) l'infraction a été commise en abusant de la situation particulièrement vulnérable dans laquelle se trouve une personne, notamment en raison de sa situation administrative illégale ou précaire, de sa situation sociale précaire, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale; ou
  - 3) l'infraction a été commise par la menace de recours ou le recours à la force ou d'autres formes de contrainte, par enlèvement, fraude, tromperie; ou
  - 4) l'infraction a été commise par offre ou acceptation de paiements ou d'avantages pour obtenir le consentement d'une personne ayant autorité sur la victime; ou
  - 5) l'infraction a été commise par un ascendant légitime, naturel ou adoptif de la victime ou par une personne qui a autorité sur elle ou abuse de l'autorité que lui confèrent ses fonctions; ou
  - 6) l'infraction a été commise par un officier ou un fonctionnaire public, un dépositaire ou un agent de la force publique agissant à l'occasion de l'exercice de ses fonctions.
- (2) L'infraction prévue à l'article 382-1, paragraphe 1er, est punie de la réclusion de dix ans à quinze ans et d'une amende de 100.000 à 150.000 euros dans les cas suivants:
- 1) l'infraction a été commise par recours à des violences; ou
  - 2) l'infraction a été commise dans le cadre d'une association de malfaiteurs ou d'une organisation criminelle au sens des articles 322 à 326 du Code pénal; ou
  - 3) l'infraction a été commise envers un mineur; ou
  - 4) l'infraction a été commise en recourant à des tortures; ou
  - 5) l'infraction a causé la mort de la victime sans intention de la donner.
- (3) Le consentement d'une victime de la traite des êtres humains n'exonère pas l'auteur ou le complice de la responsabilité pénale dans l'un des cas d'infraction ou de tentative d'infraction visés aux articles 382-1 et 382-2.
- (4) Le consentement d'une victime de la traite des êtres humains ne saurait pareillement constituer dans l'un des cas d'infraction ou de tentative d'infraction visés aux articles 382-1 et 382-2 une circonstance atténuante.

Art. 382-3. (L. 13 mars 2009) Les articles 379ter, 379quater, 379quinquies, 379sexies et 379septies s'appliquent par analogie aux infractions définies au présent chapitre.

#### Chapitre VII. - Des outrages publics aux bonnes moeurs.

Art. 383. (L. 31 mai 1999) Sera puni d'un emprisonnement de huit jours à trois ans et d'une amende de 251 euros à 50.000 euros:

- 1° quiconque aura fabriqué ou détiendra des écrits, imprimés, images, photographies, films ou autres objets à caractère pornographique, en vue d'en faire commerce ou distribution ou de les exposer publiquement;
- 2° quiconque aura importé, transporté, exporté ou fait exporter, transporter, ou importer, aux fins ci-dessus, lesdits écrits, imprimés, images, photographies, films ou autres objets à caractère pornographique, ou les aura mis en circulation d'une manière quelconque;
- 3° quiconque en aura fait le commerce même non public, effectué toute opération les concernant de quelque manière que ce soit, les aura distribués, exposés publiquement ou donnés en location;
- 4° quiconque aura annoncé ou fait connaître par un moyen quelconque, en vue de favoriser la circulation ou le trafic à réprimer, qu'une personne se livre à l'un quelconque des actes punissables énumérés ci-dessus; quiconque aura annoncé ou fait connaître comment et par qui lesdits écrits, imprimés, images, photographies, films ou autres objets à caractère pornographique peuvent être procurés, soit directement, soit indirectement.

Les faits énoncés aux points 1°, 2°, 3° et 4° seront punis d'un emprisonnement d'un an à cinq ans et d'une amende de 251 euros à 50.000 euros, s'ils impliquent ou présentent des mineurs âgés de moins de 18 ans ou une personne particulièrement vulnérable, notamment en raison de sa

situation administrative illégale ou précaire, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale.

- Voir C. pén., art. 386.

Art. 384. (L. 31 mai 1999) Sera puni d'un emprisonnement d'un mois à deux ans et d'une amende de 251 euros à 12.500 euros, quiconque aura sciemment détenu des écrits, imprimés, images, photographies, films ou autres objets à caractère pornographique impliquant ou présentant des mineurs âgés de moins de 18 ans. La confiscation de ces objets sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes.

Art. 385. (L. 31 mai 1999) Quiconque aura publiquement outragé les mœurs par des actions qui blessent la pudeur, sera puni d'un emprisonnement de huit jours à trois ans et d'une amende de 251 euros à 25.000 euros.

- Voir C. pén., art. 386.

1° Il n'est pas nécessaire, pour la constitution du délit d'outrage public aux bonnes mœurs, que l'agent ait eu l'intention déterminée de porter atteinte aux sentiments de pudeur d'autrui; il suffit qu'un fait obscène ait été posé dans des circonstances permettant à des tiers de l'observer, soit par suite de la nature ou de la destination des lieux, soit par suite de l'inobservation des précautions commandées pour cacher l'action aux yeux d'autrui.

Un acte obscène posé au domicile de l'agent, la fenêtre étant ouverte, ou même fermée, mais non voilée, de manière à pouvoir facilement être vu des personnes demeurant vis-à-vis, présente une publicité suffisante pour constituer l'outrage public aux mœurs. Cour 16 juillet 1898, P. 4, 539.

2° Ne constitue pas un outrage public aux bonnes mœurs l'acte immoral commis dans un lieu accessible au public, lorsque l'accès de ce lieu a été rendu impossible, et que l'acte n'a pu être observé qu'au moyen d'efforts ou d'escalade et sous l'impulsion d'une curiosité malsaine.

Il en est de même lorsque l'acte immoral a été commis dans un appartement privé et qu'il n'a pu être vu que par une personne qui par indiscretion s'est introduite sans droit dans cet appartement. Cour 27 février 1904, P. 7, 95.

3° En matière d'outrage public aux bonnes mœurs il est juridiquement indifférent que l'inculpé ait commis le fait incriminé avec l'intention de blesser la pudeur ou non; une telle intention n'est pas exigée pour constituer le délit prévu et puni par l'article 385 du Code pénal.

Le fait outrageant est punissable par cela seul que l'auteur ne prend pas les précautions commandées par les circonstances afin de se soustraire, au moment et pendant le fait, à la vue du public.

Spécialement se rend coupable d'outrage public aux bonnes mœurs l'individu qui se place tout nu, dans son jardin, sur le seuil de sa porte ouverte et qui, bien qu'il n'aperçoive personne dans les environs, est observé par des personnes se trouvant derrière une haie de laquelle ils ont une vue directe sur cette porte. Cour 20 juillet 1912, P. 9, 50.

4° L'élément de publicité requis pour le délit d'outrage aux bonnes mœurs par actes est suffisamment réalisé du moment que l'acte impudique a été commis dans un lieu où l'auteur a pu être vu, même fortuitement par une ou plusieurs personnes.

Spécialement, doit être qualifié d'outrage public aux bonnes mœurs l'acte impudique commis dans une voiture qui s'est

trouvée sur un chemin public, accessible à tout le monde. Le fait que la buée couvrait les glaces de la voiture est irrelevant, alors que la buée pouvait tout au plus diminuer mais non enlever la transparence des glaces. Cass. 24 juin 1971, P. 21, 495.

Art. 385-1. (L. 8 juin 2004) Quiconque aura publiquement outragé les mœurs par des chansons, pamphlets, figures, écrits, imprimés, dessins, gravures, peintures, emblèmes, images ou par tout autre support de l'écrit, du son, de la parole ou de l'image communiqués au public par la voie d'un média, sera puni d'un emprisonnement de huit jours à un an et d'une amende de 251 à 12.500 euros.

Art. 385bis. (L. 31 mai 1999) Sera puni d'une amende de 251 euros à 25.000 euros quiconque vend ou distribue à des enfants de moins de seize ans des écrits, images, figures ou objets indécents de nature à troubler leur imagination.

Sera puni de la même peine quiconque expose publiquement dans le voisinage d'un établissement d'instruction ou d'éducation fréquenté par des enfants de moins de seize ans des écrits, images, figures ou objets indécents de nature à troubler leur imagination.

La confiscation des écrits, figures ou objets indécents exposés, mis en vente ou en distribution sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes.

- Voir C. pén., art. 386.

Art. 386. Dans les cas prévus au présent chapitre, les coupables pourront, de plus, être condamnés à l'interdiction des droits indiqués aux numéros 1, 3, 4, 5 et 7 de l'article 11.

Chapitre VIII. - De la bigamie.

(L. 11 novembre 1974) Art. 387 à 390. Abrogés (L. 11 novembre 1974) .

Art. 391. Quiconque, étant engagé dans les liens du mariage, en aura contracté un autre avant la dissolution du précédent, sera puni de la réclusion de cinq à dix ans.  
Chapitre IX. - De l'abandon de famille et de l'insolvabilité frauduleuse.  
(L. 25 novembre 1977 ; L. 12 mars 1984)

Art. 391bis. (L. 25 novembre 1977) Sera puni d'un emprisonnement de un mois à un an et d'une amende de 251 euros à 2.500 euros ou d'une de ces peines seulement le père ou la mère qui se soustrait à l'égard de ses enfants, à tout ou partie des obligations alimentaires, auxquelles il est tenu en vertu de la loi, soit qu'il ait refusé de remplir ces obligations alors qu'il était en état de le faire soit que par sa faute il se trouve dans l'impossibilité de les remplir.  
Il en sera de même des obligations des époux entre eux, ainsi que de celles de l'adoptant à l'égard de l'adopté.

Dans les mêmes circonstances ces peines seront prononcées contre toute autre personne qui sera en défaut de fournir des aliments auxquels elle était tenue soit en vertu d'une décision judiciaire irrévocable ou exécutoire par provision, soit en vertu d'une convention intervenue entre époux en matière de divorce par consentement mutuel.

La disposition qui précède s'applique également à la décision judiciaire allouant une pension sur base de l'article 301 du Code civil.

La poursuite des infractions sera précédée d'une interpellation, constatée par procès-verbal, du débiteur d'aliments par un agent de la police grand-ducale. Si le débiteur d'aliments n'a pas de résidence connue l'interpellation n'est pas requise.

Le délit visé à l'article 391bis du Code pénal est consommé du seul fait que le montant intégral des pensions alimentaires échues n'a pas été acquitté; du moment que les périodes de maladie documentées par certificats médicaux ne couvrent que quelques semaines de la période durant laquelle le débiteur n'a pas payé de pension alimentaire, il est sans intérêt d'examiner si la maladie a mis le débiteur des aliments dans l'impossibilité absolue de gagner sa vie et d'effectuer les versements pendant la durée de sa maladie, dès lors qu'il ne peut justifier valablement l'absence de versements pour les périodes pendant lesquelles il n'était pas malade. Cass. 9 juin 1988, P. 27, 243.

Art. 391ter. (L. 12 mars 1984) Sera puni d'un emprisonnement de six mois à trois ans et d'une amende de 500 euros à 12.500 euros ou d'une de ces peines seulement tout débiteur qui, même avant la décision judiciaire, aura organisé ou aggravé son insolvabilité, soit en augmentant le passif ou en diminuant l'actif de son patrimoine, soit en dissimulant certains de ses biens, en vue de se soustraire à l'exécution d'une condamnation pécuniaire prononcée par une juridiction répressive ou, en matière délictuelle, quasi délictuelle ou d'aliments, par une juridiction civile.

Sera puni des mêmes peines le dirigeant de droit ou de fait d'une personne morale, qui aura organisé ou aggravé l'insolvabilité de celle-ci dans les conditions définies dans l'alinéa précédent, lorsque cette personne morale sera tenue à des obligations pécuniaires résultant d'une condamnation prononcée en matière pénale délictuelle ou quasi délictuelle.

La prescription de l'action publique ne courra qu'à compter de la condamnation à l'exécution de laquelle le débiteur a voulu se soustraire ou, s'il lui est postérieur, du dernier agissement ayant pour objet d'organiser ou d'aggraver l'insolvabilité du débiteur.

Pour l'application du présent article, sont assimilées aux condamnations au paiement d'aliments les décisions judiciaires et les conventions judiciairement homologuées portant obligation de verser des prestations, subsides ou contributions aux charges du mariage ainsi que les stipulations d'aliments contenues dans les conventions préalables au divorce par consentement mutuel prévues par l'article 277 du Code civil.



## 6.23 Moldova

### Extract:

Law on the Rights of Child nr.338-XII of 15.12.94

Art.6. Inviolability of individual rights, protection against physical and psychological violence.

The State shall protect the inviolability of the person, and protects him from any form of exploitation, discrimination, physical and mental abuse, and the following are prohibited: cruel behavior, contempt, insults and ill-treatment, engaging in criminal actions, starting in the consumption of alcohol, using illicit drugs and psychotropic substances, gambling, begging, incitement or coercion to practice any sexual activity, illegal operation for the purpose of prostitution or other sexual practices, illegal pornography and material pornographic including the parents or legal persons and relatives .

### **Criminal Code of Moldova nr.985-XV of 18.04.2002**

#### **Art.27. Attempt to commit offence**

An attempt to commit offence is a deliberate action or lack of action directed to the commission of an offense, but which did not happen because of circumstances independent of the offender's will.

#### **Art.77. Aggravating circumstances**

In determining the penalty, the following circumstances shall be considered as aggravating:

Crime committed by a person who previously was convicted for a similar offense or other facts relevant to the case;

Provocation of serious consequences through a crime;

crime committed by any form of participation;

crime committed for reasons of social, national, racial or religious hate;

crime committed deliberately against a minor or a pregnant woman or taking advantage of an obvious state of helplessness of the victim due to the advanced age, illness, physical or mental disability or other factor;

crime committed against a person in connection with the performing service or civil obligation;

crime committed using minors, persons in need, mentally retarded persons or dependent of perpetrators;

commitment of the crime through acts characterized by a special cruelty or mockery on the victim;

commitment of the crime by means that represent a major social danger;

Crime committed by a drunk person having consumed substances mentioned in art.24. The court has the right, depending on the nature of the crime, not to consider it as an aggravating circumstance;

crime committed with the use of weapons, ammunition, explosive substances or devices that imitate them, specially prepared technical resources, hazardous and radioactive substances, medicines or other chemical-pharmacological substances, as well as application of physical or psychological coercion ;

m) Committing offense profiting of the exceptional state, natural calamities such as the mass disorder;

n) Committing offense abusing of the entrusted confidence.

(1) If the circumstances mentioned in para. (1) are an integral part of the appropriate articles from the Special part of the present Code as components of the offence, they cannot be considered simultaneously as aggravating circumstances.

**Offenses regarding sexual life**

**Art.171.Violence**

Rape, sexual intercourse that is committed by a person's physical or psychological coercion or taking advantage of its impossibility to self-defense or to express their will, are punished with imprisonment from 3 to 5 years.

Violence:

committed by a person who previously committed a rape stipulated in para. (1) ;  
deliberately committed on a minor;

- b1) deliberately committed against a pregnant woman;
- c) committed by two or more persons;
- e) accompanied by deliberate contamination of venereal disease;
- f) accompanied by torture of the victim;

is punished with prison from 5 to 12 years.

(3) Rape:

- a) person who is in care, under protection, education or treatment of the perpetrator;
- b) a person up to 14 years old;
- c) resulted in intentional contamination of the victim with AIDS;
- d) causing, as a result of imprudence, serious injury to the integrity of the body or health;
- e) causing, as a result of imprudence, the death of the victim;
- f) resulted in other serious consequences

is punished with the imprisonment from 10 to 20 years or life imprisonment.

**Art.172 Violent actions with sexual character**

(1) Homosexuality or satisfaction of sexual desires in perverse form committed through physical or psychological coercion or taking advantage of the impossibility to defend or express their will, are punished with imprisonment from 3 to 5 years.

The same actions:

committed by a person who previously committed an act stipulated in para. (1) ;  
deliberately committed on a minor;  
deliberately against a pregnant woman;  
committed by two or more persons;  
resulted in intentional contamination with venereal disease;  
g) torturing the victim

is punished with imprisonment from 5 to 12 years.

(3) Actions referred to in para. (1) or (2) that:

- a) have been committed against a person about whom it is known with certainty that he/she has not reached the age of 14 years;
- a) have been committed against the person who is in the care, protection, education or treatment of the perpetrator;
- b) caused intentional contamination with AIDS;
- c) caused by imprudence the serious injury to the integrity of the body or health;
- d) caused by imprudence the death of the victim;
- e) caused other serious consequences

is punished with imprisonment from 10 to 20 years or life imprisonment.

**Art.173. Coercion to actions with sexual character**

Coercion of a person to sexual intercourse, or to commit other homosexual actions or to commit other actions with sexual character through blackmail or taking advantage of material, service or other dependence of the victim shall be punished by a penalty in size from 300 to 500 conventional units or by unpaid work for the community from 140 to 240 hours, or by imprisonment of up to 3 years.

**Art.174 Sexual intercourse with a person under the age of 16 years**

Sexual intercourse other than rape, as any other acts of vaginal or anal penetration committed with a person about whom it is known with certainty that had not reached the age of 16 years, is punishable by imprisonment up to 5 years.

The person who committed the act provided under para. (1) is not liable to criminal responsibility if his age or physical and mental state is close to that of the victim.

**Art.175 Perverse actions**

Commitment of perverse actions against a person about whom it is known with certainty that is under 16 years old, is punished by imprisonment up to 5 years.

**Art.206 Child Trafficking**

Recruitment, transportation, transfer, harboring or receipt of a child, and giving or receiving of payments or benefits to obtain the consent of the person who has the control over their children, for the purpose of:

sexual exploitation, commercial and non-commercial exploitation, in prostitution or porn industry;

exploitation through forced labor or services;

practicing begging or other vile uses;

exploitation in slavery or slavery-like conditions, including in case of illegal adoption;

use in criminal activities;

extracting of organs or tissues;

abandonment abroad;

sale or purchase, shall be punished with imprisonment from 8 to 12 years, with the interdiction of the right to occupy certain positions or to exercise a certain activities for a period of 2 - 5 years, and the legal entity is punished by a penalty in the amount from 3000 to 5000 conventional units, with the interdiction of the right to perform a given activity, or by liquidating the legal entity.

The same actions accompanied by:

physical and mental violence, use of the firearm or threat with its application;

abuse and sexual violence;

by taking advantage of abuse of authority or state of vulnerability of children, threatening by disclosure of confidential information to the child's family or other persons;

extraction of organs or tissues are punishable with imprisonment for 10 to 15 years, with interdiction of right to occupy certain positions or to exercise a certain activity for a period of 2 to 5 years and a penalty for the legal entity in the amount from 5000 to 7000 conventional units, with deprivation of the right to perform a given task, or liquidation of the legal entity.

(3) Actions provided in the paragraph (1) or (2) :

a) Committed by a person who previously committed the same actions;

b) Committed on two or more children;

c) Committed by a person depending on liability or a person of a high responsibility function;

d) Committed by a criminal organized group or by a criminal organization;

e) Resulted in serious injury of body integrity or mental illness of the child, followed by death or suicide;

f) Committed on a child under 14 years

are punished with prison from 15 till 20 years, with deprivation of the right to work in certain functions or to exercise a certain activity during a period from 3 to 5 years or with imprisonment for life, and the legal entity is punished with penalty in amount from 7000 to 9000 conventional units, with the interdiction of the right to activate in a certain field, or by liquidating the legal entity.

(4) The victim of the trafficking in children is absolved of criminal responsibility for the crimes committed by him in connection with this procedural statute.

**Article 2081. Child pornography**

Production, distribution, dissemination, import, export, offering, sale, change, use or holding the image or other representation of one or more children involved in explicit sexual activities, real or simulated, or images or other representations of sexual organs of a child, represented in a lascivious or obscene manner, including in computer system, is punished with prison from 1 to 3 years, penalty, applied to legal entity, from 2000 till 4000 conventional units with the interdiction of the right to exercise a certain activity.

**Article 220. Pimping**

(1) Urging or determination to prostitution or facilitation of practicing prostitution, or drawing benefits as the result of practicing prostitution by another person is punished with a penalty from 200 to 800 conventional units or with the imprisonment for a period from 2 to 5 years.

(2) The same actions:

a) committed by a criminal organized group or by a criminal organization;

c) committed towards more persons;

d) committed by applying violations that are not dangerous for the life or the health of the person or with the threat of using this method to the person who is practicing prostitution or to his relatives or friends, are punished with prison for the period from 4 to 7 years.

## 6.24 Monaco

### Extract:

#### CODE PÉNAL

(Promulgué le 28 septembre 1967 et déclaré exécutoire à dater du 1er janvier 1968)

Section - I Homicide volontaire menaces d'attentats contre les personnes

Meurtre, assassinat, parricide, infanticide, empoisonnement

Article 227 .- (Remplacé par la loi n° 1.344 du 26 décembre 2007 )

Tout coupable d'assassinat, de meurtre commis sur un mineur au-dessous de l'âge de seize ans accomplis, de parricide, d'infanticide ou d'empoisonnement est puni de la réclusion à perpétuité.

Article 243 .- (Modifié par la loi n° 1.344 du 26 décembre 2007 ; remplacé par la loi n° 1.382 du 20 juillet 2011 )

Quiconque aura volontairement fait des blessures ou porté des coups à un mineur au-dessous de l'âge de seize ans accomplis, qui l'aura volontairement privé d'aliments ou des soins au point de compromettre sa santé ou qui aura volontairement exercé à son encontre toute autre violence ou voie de fait, hormis les violences n'ayant entraîné aucune maladie ou incapacité totale de travail prévues par l'article 421, chiffre 1, sera puni d'un emprisonnement de un à cinq ans et de l'amende prévue au chiffre 3 de l'article 26.

La peine sera de trois à dix ans d'emprisonnement et l'amende, celle prévue au chiffre 4 de l'article 26, s'il est résulté de ces différentes violences ou privations une incapacité totale de travail supérieure à huit jours ou s'il y a eu guet-apens ou préméditation.

### **Chapitre - Ier CRIMES ET DÉLITS CONTRE LES PERSONNES**

#### **Section - II Coups et blessures volontaires non qualifiés homicides et autres crimes et délits volontaires**

Article 249-1 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

Le fait d'obtenir d'une personne l'un de ses organes contre un paiement, quelle qu'en soit la forme, est puni de sept ans d'emprisonnement et de l'amende prévue au chiffre 4° de l'article 26.

Est puni des mêmes peines, le fait d'apporter son entremise pour favoriser l'obtention d'un organe contre le paiement de celui-ci, ou de céder à titre onéreux un tel organe du corps d'autrui.

L'infraction prévue aux alinéas précédents est punie de dix à vingt ans de réclusion et de l'amende prévue au chiffre 4° de l'article 26 lorsqu'elle est commise à l'égard d'un mineur.

Les mêmes peines sont applicables dans le cas où l'organe obtenu provient d'un pays étranger.

La tentative et la préparation des infractions prévues par le présent article seront punies des mêmes peines que les infractions elles-mêmes

Article 249-2 .- (Créé par la loi n° 1.344 du 26 décembre 2007 ; remplacé par la loi n° 1.382 du 20 juillet 2011 )

Le fait d'obtenir d'une personne, dont la vulnérabilité ou l'état de dépendance sont apparents ou connus de l'auteur, la fourniture de services non rétribués ou en échange d'une rétribution manifestement sans rapport avec l'importance du travail accompli est puni de cinq ans d'emprisonnement et du double de l'amende prévue au chiffre 4 de l'article 26.

Le fait de soumettre une personne dont la vulnérabilité ou l'état de dépendance sont apparents ou

connus de l'auteur, à des conditions de travail ou d'hébergement incompatibles avec la dignité humaine est puni de cinq ans d'emprisonnement et du double de l'amende prévue au chiffre 4 de l'article 26.

L'infraction définie aux premier et deuxième alinéas est punie de sept ans d'emprisonnement et du triple de l'amende prévue au chiffre 4 de l'article 26 lorsqu'elle est commise :

1°) à l'égard de plusieurs personnes ;

2°) à l'égard d'un mineur.

Cette même infraction est punie de dix ans de réclusion et du triple de l'amende prévue au chiffre 4 de l'article 26 lorsqu'elle est commise :

1°) à l'égard de plusieurs personnes parmi lesquelles figurent un ou plusieurs mineurs ;

2°) en bande organisée.

## **Titre - II CRIMES ET DÉLITS CONTRE LES PERSONNES, LES PROPRIÉTÉS ET LES ANIMAUX**

### **Chapitre - II CRIMES ET DÉLITS CONTRE LES PROPRIÉTÉS**

Section - II Banqueroute — Escroquerie et autres espèces de fraude

Abus de confiance

Article 335 .- (Modifié par la loi n° 1.344 du 26 décembre 2007 )

Le fait d'abuser frauduleusement d'une personne dont la vulnérabilité ou l'état de dépendance sont apparents ou connus de l'auteur, pour conduire cette personne à un acte ou à une abstention qui lui seront gravement préjudiciables, est puni d'un emprisonnement de six mois à trois ans et de l'amende prévue au chiffre 3 de l'article 26.

Le coupable pourra, à compter du jour où il aura subi sa peine, être interdit pendant cinq ans au moins et dix ans au plus, des droits mentionnés en l'article 27 du présent code.

### **Chapitre - Ier CRIMES ET DÉLITS CONTRE LES PERSONNES**

#### **Section - IV Attentats aux mœurs**

Article 261 .- (Remplacé par la loi n° 1.344 du 26 décembre 2007 )

Tout attentat à la pudeur, consommé ou tenté sans violence sur la personne d'un mineur de l'un ou l'autre sexe, au-dessous de l'âge de seize ans accomplis, sera puni de la réclusion de cinq à dix ans.

Sera puni de la même peine l'attentat à la pudeur commis par tout ascendant sur la personne d'un mineur, même âgé de plus de seize ans, mais non émancipé par le mariage.

Article 262 .- (Modifié par la loi n° 1.344 du 26 décembre 2007 ; remplacé par la loi n° 1.382 du 20 juillet 2011 )

Le viol se définit comme tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'autrui, par violence, contrainte, menace ou surprise.

Le viol est constitué lorsqu'il a été imposé à la victime dans les circonstances prévues par le précédent alinéa, quelle que soit la nature des relations existant entre l'agresseur et sa victime, y compris s'ils sont unis par les liens du mariage.

Est en outre un viol tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur un mineur par :

1°) toute personne ayant un lien de parenté avec la victime, qu'il soit légitime, naturel ou adoptif,

ou un lien d'alliance ;

2°) toute personne vivant avec lui sous le même toit ou y ayant vécu durablement et qui exerce ou a exercé à son égard une autorité de droit ou de fait.

Quiconque aura commis le crime de viol sera puni de la réclusion de dix à vingt ans.

Si le viol a été commis sur la personne d'un mineur au-dessous de l'âge de seize ans ou dans les conditions définies au troisième alinéa, le coupable encourra le maximum de la réclusion à temps.

Il en est de même si le viol a été commis sur une personne dont la vulnérabilité ou l'état de dépendance étaient apparents ou connus de son auteur.

Article 263 .- (Modifié par la loi n° 1.344 du 26 décembre 2007 )

Quiconque aura commis un attentat à la pudeur, consommé ou tenté avec violence, contre un individu de l'un ou l'autre sexe, sera puni de la réclusion de cinq à dix ans.

Si le crime a été commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, le coupable subira la peine de la réclusion de dix à vingt ans.

Article 264 .- Si les coupables sont les ascendants de la personne sur laquelle a été commis l'attentat, s'ils sont de la classe de ceux qui ont autorité sur elle, s'ils sont ses instituteurs ou ses serviteurs à gages, ou serviteurs à gages de personnes ci-dessus désignées, s'ils sont fonctionnaires ou ministres d'un culte ou si le coupable, quel qu'il soit a été aidé dans son crime par une ou plusieurs personnes, la peine sera la réclusion de dix à vingt ans dans les cas prévus aux articles 261 (1er alinéa) et 263 (1er alinéa) et du maximum de la réclusion à temps dans les cas prévus aux articles 262 (1er alinéa) et 263 (2e alinéa) .

Article 265 .- (Modifié par la loi n° 1.203 du 13 juillet 1998 ; par la loi n° 1.261 du 23 décembre 2002 ; remplacé par la loi n° 1.344 du 26 décembre 2007 )

Est puni d'un emprisonnement de six mois à trois ans et de l'amende prévue au chiffre 3 de l'article 26 :

\* 1°) quiconque attente aux mœurs, en incitant habituellement à la débauche ou à la corruption de mineurs de l'un ou l'autre sexe, ou en favorisant ou facilitant habituellement ces agissements. Les mêmes peines sont applicables si l'attentat est perpétré, même occasionnellement, sur un mineur au-dessous de l'âge de seize ans accomplis ;

\* 2°) quiconque, pour satisfaire les passions d'autrui, embauche, entraîne ou détourne, même avec son consentement, une personne mineure en vue de la débauche ;

\* 3°) quiconque, pour satisfaire les passions d'autrui, embauche, entraîne ou détourne, par fraude ou à l'aide de violences, menaces, abus d'autorité ou tout autre moyen de contrainte une personne majeure en vue de la débauche ;

\* 4°) quiconque organise ou facilite l'exploitation sexuelle de mineurs sur le territoire ou hors du territoire de la Principauté.

Ces deux peines seront encourues alors même que les divers actes qui sont les éléments constitutifs des infractions auraient été accomplis dans des pays différents.

La tentative et la préparation des délits prévus par le présent article sont punies des mêmes peines que les délits eux-mêmes.

Article 266 .- (Remplacé par la loi n° 1.344 du 26 décembre 2007 )

Dans les cas prévus à l'article précédent, la peine est de cinq à dix ans d'emprisonnement :

\* 1°) lorsque le délit a été commis, tenté ou préparé par un ascendant légitime, naturel ou adoptif de la victime ou par une personne qui a autorité sur elle ou abuse de l'autorité que lui confèrent ses fonctions ;

- \* 2°) lorsque le mineur a été mis en contact avec l'auteur des faits grâce à l'utilisation, pour la diffusion de messages à destination d'un public non déterminé, d'un réseau de communications électroniques ;
- \* 3°) lorsque les faits sont commis à l'intérieur d'un établissement accueillant habituellement des mineurs ou à l'occasion des entrées ou sorties de mineurs, aux abords d'un tel établissement ;
- \* 4°) lorsque le délit a été commis à l'encontre d'un mineur dont la vulnérabilité ou l'état de dépendance était apparent ou connu de l'auteur ;
- \* 5°) lorsque le délit a été commis avec l'emploi de la contrainte, de violences ou de manœuvres dolosives.

La peine est de dix à vingt ans de réclusion et de l'amende prévue au chiffre 4 de l'article 26 lorsque la victime de l'infraction est un mineur au-dessous de l'âge de seize ans accomplis.

Article 267 .- (Remplacé par la loi n° 1.344 du 26 décembre 2007 )

Les personnes physiques coupables des infractions prévues aux deux articles précédents encourrent également les peines complémentaires suivantes :

1°) l'interdiction d'exercer l'activité professionnelle ou sociale dans l'exercice ou à l'occasion de laquelle l'infraction a été commise ;

2°) l'interdiction d'exercer toute activité professionnelle ou sociale supposant un contact avec des mineurs ;

3°) l'interdiction de faire partie d'un conseil de famille, d'être tuteur, curateur, subrogé-tuteur, si ce n'est de ses enfants et sur l'avis conforme du conseil de famille.

Lorsque l'infraction a été commise, tentée ou préparée par un ascendant légitime, naturel ou adoptif de la victime ou par une personne qui a autorité sur elle ou abuse de l'autorité que lui confèrent ses fonctions, l'interdiction est prononcée pour dix ans au moins et vingt ans au plus.

Si le coupable est le père ou la mère, il est, de plus, privé des droits à lui accordés sur la personne et les biens du mineur, par les dispositions du Code civil relatives à l'autorité parentale.

Article 268 .- (Remplacé par la loi n° 1.344 du 26 décembre 2007 )

Sont considérés comme proxénètes et punis d'un emprisonnement de six mois à trois ans et de l'amende prévue au chiffre 3 de l'article 26 ceux qui, de quelque manière que ce soit :

- \* 1°) embauchent, entraînent ou détournent une personne en vue de la prostitution ou exercent sur elle une pression pour qu'elle se prostitue ou continue à le faire ;
- \* 2°) aident ou assistent la prostitution d'autrui ou la protègent ;
- \* 3°) partagent les produits de la prostitution ou reçoivent sciemment sous une forme quelconque des subsides de personnes se livrant à la prostitution ;
- \* 4°) ne peuvent justifier de ressources correspondant à leur mode d'existence tout en étant en relation habituelle avec une ou plusieurs personnes se livrant à la prostitution.

Est assimilé au proxénétisme, et puni des mêmes peines, le fait, par quiconque, de quelque manière que ce soit :

- \* 1°) de faire office d'intermédiaire entre deux personnes dont l'une se livre à la prostitution et l'autre exploite ou rémunère la prostitution d'autrui ;
- \* 2°) de faciliter à un proxénète la justification de ressources fictives.

Article 269 .- (Remplacé par la loi n° 1.344 du 26 décembre 2007 )

Le proxénétisme est puni de cinq à dix ans d'emprisonnement et de l'amende prévue au chiffre 3 de l'article 26 lorsqu'il est commis :

- \* 1°) à l'égard d'un mineur ;
- \* 2°) à l'égard d'une personne dont la particulière vulnérabilité, notamment du fait de son âge, d'une maladie, d'une infirmité, d'une déficience physique ou psychique ou d'un état de grossesse, est apparente ou connue de son auteur ;



- \* 3°) à l'égard de plusieurs personnes ;
- \* 4°) par un ascendant légitime, naturel ou adoptif de la personne qui se prostitue ou par une personne qui a autorité sur elle ou abuse de l'autorité que lui confèrent ses fonctions ou l'état de dépendance matérielle ou psychologique dans lequel se trouve placée, vis-à-vis d'elle, la personne qui se prostitue ;
- \* 5°) avec l'emploi de la contrainte, de violences ou de manœuvres dolosives ;
- \* 6°) par plusieurs personnes agissant en qualité d'auteur ou de complice, sans qu'elles constituent une bande organisée.

Le proxénétisme est puni de dix à vingt ans de réclusion et de l'amende prévue au chiffre 4 de l'article 26 lorsqu'il est commis à l'égard d'un mineur au-dessous de l'âge de seize ans accomplis ou en bande organisée.

Article 269-1 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

L'utilisation d'un mineur aux fins d'activités sexuelles, en offrant ou en promettant de l'argent ou toute autre forme de rémunération, de paiement ou d'avantage, que cette rémunération, ce paiement, cette promesse ou cet avantage soit fait au mineur ou à un tiers, est puni d'un emprisonnement de trois à cinq ans et de l'amende prévue au chiffre 3 de l'article 26.

Article 279 .- (Modifié par la loi n° 1.344 du 26 décembre 2007 )

Sans préjudice de l'application, le cas échéant, des peines plus fortes prévues par le présent code ou par des lois spéciales, sera puni d'un emprisonnement de six mois à trois ans et de l'amende prévue au chiffre 3 de l'article 26.

\* 1°) Celui qui, ayant connaissance d'un crime contre les personnes, déjà tenté ou consommé, n'aura pas aussitôt averti les autorités judiciaires ou administratives, alors qu'une dénonciation était encore susceptible d'en prévenir ou limiter les effets ou lorsqu'il existait des circonstances de nature à laisser prévoir que les coupables commettraient de nouveaux crimes que cette dénonciation eût pu empêcher.

Sont exceptés des dispositions qui précèdent, les parents ou alliés, jusqu'au quatrième degré inclusivement, des auteurs ou complices du crime ou de la tentative, sauf en ce qui concerne les crimes commis sur les mineurs au-dessous de l'âge de seize ans accomplis.

\* 2°) Celui qui, pouvant empêcher par son action immédiate, mais sans risque pour lui ni pour les tiers, soit un fait qualifié crime, soit un délit portant atteinte à l'intégrité corporelle d'une personne, s'en abstient volontairement ;

\* 3°) Celui qui s'abstient volontairement de porter à une personne en péril l'assistance que, sans risque pour lui ni pour les tiers, il pouvait lui prêter, soit pas son action personnelle, soit en provoquant un secours ;

\* 4°) Celui qui, ayant la preuve de l'innocence d'une personne qu'il sait être détenue préventivement ou devoir être jugée pour crime ou délit, s'abstient volontairement d'apporter aussitôt son témoignage aux autorités de justice ou de police. Toutefois, aucune peine ne sera prononcée contre celui qui, spontanément, apportera ce témoignage, même tardif.

Sont exceptés de la disposition qui précède le : coupable du fait qui motivait la poursuite, ses coauteurs, ses complices et les parents ou alliés de ces personnes jusqu'au quatrième degré inclusivement.

Article 291 .- (Modifié par la loi n° 1.344 du 26 décembre 2007 )

Si le mineur ainsi enlevé ou détourné était âgé de moins de seize ans accomplis, la peine sera celle de la réclusion de dix à vingt ans.

Le maximum de la même peine sera prononcé, quel que soit l'âge du mineur, si le coupable s'est fait payer ou a eu pour but de se faire payer une rançon.

Toutefois, dans les cas prévus aux deux alinéas précédents, la peine sera celle de la réclusion de

cinq à dix ans, si le mineur est retrouvé sain et sauf avant qu'ait été rendu l'arrêt de condamnation.

Le crime emportera la peine de la réclusion à perpétuité, s'il a été suivi de la mort du mineur.

Article 294-3 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

Le fait, en vue de sa diffusion, de fixer, d'enregistrer, de produire, de se procurer ou de transmettre l'image ou la représentation d'un mineur lorsque cette image ou cette représentation présente un caractère pornographique est puni d'un emprisonnement de trois à cinq ans et de l'amende prévue au chiffre 3 de l'article 26. La tentative est punie des mêmes peines.

Le fait, sciemment, d'offrir ou de diffuser une telle image ou représentation, par quelque moyen que ce soit, de l'importer ou de l'exporter, de la faire importer ou de la faire exporter, est puni des mêmes peines.

Le fait de détenir sciemment une telle image ou représentation est puni de six mois à deux ans d'emprisonnement et de l'amende prévue au chiffre 2 de l'article 26.

Le fait d'accéder, en connaissance de cause, à une telle image ou représentation, est puni des mêmes peines.

Les peines sont portées de cinq à dix ans d'emprisonnement et à l'amende prévue au chiffre 4 de l'article 26 lorsqu'il a été utilisé, pour la diffusion de l'image ou de la représentation d'un mineur à destination d'un public non déterminé, un réseau de communications électroniques.

Les dispositions du présent article sont également applicables aux images pornographiques d'une personne dont l'aspect physique est celui d'un mineur, sauf s'il est établi que cette personne était âgée de dix-huit ans accomplis au jour de la fixation ou de l'enregistrement de son image.

Au sens du présent article, sont considérées comme des images à caractère pornographique :

- \* 1°) l'image ou la représentation d'un mineur subissant ou se livrant à un comportement sexuellement explicite ;
- \* 2°) l'image ou la représentation d'une personne qui apparaît comme un mineur subissant ou se livrant à un comportement sexuellement explicite ;
- \* 3°) l'image réaliste représentant un mineur se livrant à un comportement sexuellement explicite.

L'expression "image réaliste" désigne, notamment, l'image altérée d'une personne physique, en tout ou partie créée par des méthodes numériques.

Les dispositions du présent article ne s'appliquent pas si les images ou représentations d'images ont été collectées pour la constatation, la recherche ou la poursuite des infractions pénales.

Article 294-4 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

Lorsque les images ou représentations prévues à l'article précédent ont été portées à leur connaissance à l'occasion de leur activité professionnelle, les opérateurs ou prestataires de services chargés de l'exploitation de réseaux et de services de télécommunications et de communications électroniques, ou un de leurs agents, sont tenus de procéder aux opérations tendant à interdire l'accès du public à de telles images, et de les mettre à disposition de l'autorité judiciaire, pour les besoins de la recherche, de la constatation et de la poursuite des infractions pénales.

La méconnaissance des obligations prévues à l'alinéa précédent est punie d'un emprisonnement d'un an et de l'amende prévue au chiffre 4 de l'article 26, sans préjudice des peines encourues par les auteurs, coauteurs ou complices des infractions visées aux alinéas un à cinq de l'article précédent.

Article 294-5 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

Est puni d'un emprisonnement de trois à cinq ans et de l'amende prévue au chiffre 3 de l'article 26:

- \* 1°) le fait de contraindre un mineur à regarder ou à participer à des scènes ou spectacles pornographiques ou d'en tirer profit ou d'exploiter un mineur de toute autre manière à cette fin ;
- \* 2°) le fait de recruter, avec l'emploi de la contrainte, de violences ou de manœuvres dolosives, un mineur pour qu'il assiste ou participe à des scènes ou spectacles pornographiques ou de favoriser la participation d'un mineur à de tels spectacles ;
- \* 3°) le fait d'assister à des spectacles pornographiques impliquant la participation de mineurs.

Est puni des mêmes peines le fait d'amener intentionnellement un mineur à assister ou à participer à des activités sexuelles.

Article 294-6 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

Le fait pour un majeur de proposer intentionnellement, par l'emploi d'un réseau de communications électroniques, une rencontre à une personne, en connaissance de sa qualité de mineur dans le but de commettre à son encontre toute infraction à caractère sexuel punie d'une peine d'emprisonnement supérieure ou égale à trois ans, est passible d'un emprisonnement de six mois à deux ans et de l'amende prévue au chiffre 2 de l'article 26.

Lorsque cette rencontre a eu lieu, les peines sont portées de trois à cinq ans d'emprisonnement et à l'amende prévue au chiffre 4 de l'article 26.

Article 294-7 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

Le fait soit de fabriquer, de produire, de transporter, de diffuser par quelque moyen que ce soit et quel qu'en soit le support un message à caractère violent ou pornographique ou de nature à porter gravement atteinte à la dignité humaine, soit de faire commerce d'un tel message, est puni d'un emprisonnement de six mois à deux ans et de l'amende prévue au chiffre 3 de l'article 26 lorsque ce message est adressé à des mineurs. La tentative est punie des mêmes peines.

Article 294-8 .- (Créé par la loi n° 1.344 du 26 décembre 2007 )

Le fait de provoquer directement un mineur à transporter, détenir, offrir ou céder des stupéfiants est puni de sept ans d'emprisonnement et du double de la peine d'amende prévue au chiffre 4 de l'article 26. Lorsqu'il s'agit d'un mineur au-dessous de l'âge de seize ans accomplis, l'infraction définie par le présent article est punie de dix ans d'emprisonnement et du triple de la peine d'amende prévue au chiffre 4 de l'article 26.

Article 295 .- Sera puni d'un emprisonnement de trois mois à un an et de l'amende prévue au chiffre 2 de l'article 26 ou de l'une de ces deux peines seulement :

- \* 1° Le père ou la mère qui abandonne, sans motif grave, pendant plus de deux mois, la résidence familiale et se soustrait à tout ou partie des obligations résultant de la puissance paternelle ou de la tutelle légale, ledit délai ne pouvant être interrompu que par un retour définitif au foyer ;
- \* 2° Le mari qui, sans motif grave, abandonne volontairement, pendant plus de deux mois, sa femme, la sachant enceinte ;
- \* 3° Les père et mère qui, par de mauvais traitements, par des exemples pernicieux d'ivrognerie ou d'inconduite, par un défaut de soin ou de direction, compromettent gravement la santé, la sécurité, ou la moralité de leur enfant.

Dans les cas prévus aux chiffres 1 et 2, la poursuite ne sera exercée, pendant le mariage, que sur la plainte du conjoint.

Article 392-1 .- (Créé par la loi n° 1.349 du 25 juin 2008 )

Les peines d'amende concernant une personne morale reconnue coupable, en faveur de laquelle

les circonstances atténuantes auront été déclarées, pourront être réduites sans qu'elles puissent être inférieures au minimum suivant :

- en matière criminelle, le minimum du chiffre 2 de l'article 26 ;
- en matière correctionnelle, le minimum du chiffre 1 de l'article 26 ;
- en matière contraventionnelle, le minimum du chiffre 1 de l'article 29.

Les dispositions du présent article seront applicables à toutes les peines édictées même par des textes distincts pris en matière criminelle et correctionnelle

## **6.25 Montenegro**

Extracts:  
Criminal Code

### **TITLE EIGHTEEN CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM**

#### **Rape - Article 204**

(1) Anyone who forces another person to sexual intercourse or an act equal to it by using force or threat to attack the life or body of that or some other person, shall be punished by an imprisonment sentence of two to ten years.

(2) Where an offence referred to in paragraph 1 of this Article was committed under threat of revealing something about that person or another person that would harm their honour or reputation or by threat of some other grave wrong, the offender shall be punished by an imprisonment sentence of one to eight years.

(3) Where through offences referred to in paras. 1 and 2 of this Article a grievous bodily injury is inflicted on a person, or if the offence was committed by several persons in an especially cruel or especially degrading manner, or against a juvenile, or the consequence of the act is pregnancy, the offender shall be punished by an imprisonment sentence of three to fifteen years.

(4) Where through offences referred to in paras. 1 and 2 of this Article a person against whom the offence was committed has died or if the offence was committed against a child, the offender shall be punished by an imprisonment sentence of five to eighteen years.

#### **Sexual Intercourse with a Helpless Person - Article 205**

(1) Anyone who performs sexual intercourse or an equal act taking advantage of a person's mental illness, arrested mental development or other mental alienation, helplessness or some other state of that person due to which s/he is not capable of resistance, shall be punished by an imprisonment sentence of one to ten years.

(2) Where through offences referred to in paragraph 1 of this Article a grievous bodily injury is inflicted on a helpless person or if the offence was committed by several persons or in an especially cruel or degrading manner or it is committed against a juvenile or the act resulted in pregnancy, the offender shall be punished by an imprisonment sentence of two to twelve years.

(3) Where through an offence referred to in paras. 1 and 2 of this Article a person suffering the act died or if the act was committed against a child, the offender shall be punished by an imprisonment sentence of five to eighteen years.

#### **Sexual Intercourse with a Child - Article 206**

(1) Anyone who performs sexual intercourse or an equal act with a child shall be punished by an imprisonment sentence of one to ten years.

(2) Where through an offence referred to in paragraph 1 of this Article a grievous bodily injury is inflicted to a child against whom the act was committed, or if the offence was committed by several persons or it resulted in pregnancy, the offender shall be punished by an imprisonment sentence of two to twelve years.

(3) Where through offences referred to in paras. 1 and 2 of this Article a child died, the offender shall be punished by an imprisonment sentence of five to eighteen years.

(4) The perpetrator of an act referred to in paragraph 1 of this Article shall not be punished provided that there exists no larger difference between the offender and the child in respect to their mental and physical development.

#### **Sexual Intercourse by Abuse of Position - Article 207**

(1) Anyone who by abuse of his/her position instigates to sexual intercourse or an equal act a person who is in a subordinate or dependent position to him/her, s/he shall be punished by an imprisonment sentence of three months to three years.

(2) A teacher, instructor, guardian, adoptant parent, parent, stepfather, stepmother or some other person who by abuse of his/her position or authorizations performs sexual intercourse or an equal act with a juvenile entrusted to him/her for teaching, education, care and attendance, shall be punished by an imprisonment sentence of one to ten years.

(3) Where an offence referred to in paragraph 2 of this Article was committed against a child, the offender shall be punished by an imprisonment sentence of two to twelve years.

(4) Where an offence referred to in paras. 1 to 3 of this Article resulted in pregnancy, the offender shall be punished for offences referred to in paragraph 1 by an imprisonment sentence of six months to five years, for offences referred to in paragraph 2 by an imprisonment sentence of two to twelve years, and for offences referred to in paragraph 3 by an imprisonment sentence of three to fifteen years.

(5) Where through an offence referred to in paragraph 3 of this Article a child died, the offender shall be punished by an imprisonment sentence of five to eighteen years.

#### **Prohibited Sexual Acts - Article 208**

(1) Anyone who under the conditions referred to Article 204, paras. 1 and 2, Article 205, paras. 1 and 2, Article 206 paragraph 1 and Article 207, paras. 1 to 3 of this Code, performs some other sexual act, shall be punished by a fine or an imprisonment sentence not exceeding two years.

(2) Where through offences referred to in paragraph 1 of this Article a grievous bodily injury is inflicted to a person, or if the offence was committed by several persons or in an extremely cruel or degrading manner, the offender shall be punished by an imprisonment sentence of two to ten years.

(3) Where through an offence referred to in paragraph 1 of this Article a person against whom the offence was committed has died, the offender shall be punished by an imprisonment sentence of three to fifteen years.

#### **Pimping and Enabling having a Sexual Intercourse - Article 209**

(1) Anyone who procures a juvenile for sexual intercourse, an act equal to it or some other sexual act, shall be punished by an imprisonment sentence of three months to five years.

(2) Anyone who provides for performing sexual intercourse, an act equal to it or some other sexual act to a juvenile, shall be punished by an imprisonment sentence not exceeding three years.

#### **Mediation in Prostitution - Article 210**

(1) Anyone who instigates or incites another person to prostitution or participates in handing over a person to another person in view of prostitution or who by means of media and other similar means promotes or advertises prostitution, shall be punished by a fine or an imprisonment sentence not exceeding one year.

(2) Where an offence referred to in paragraph 1 of this Article was committed against a juvenile, the offender shall be punished by an imprisonment sentence of one to ten years.

#### **Displaying Pornographic Material to Children and Production and Possession of Child Pornography - Article 211**

(1) Anyone who sells, displays or makes available texts, pictures, audio-visual or other objects of pornographic content to a child by public displaying or in some other manner or displays to a child a pornographic show, shall be punished by a fine or an imprisonment sentence not exceeding six months.

(2) Anyone who uses a minor to produce pictures, audio-visual or other objects of pornographic content or for a pornographic show, shall be punished by an imprisonment sentence for a term of six months to five years.

(3) Anyone who procures, sells, shows, attends the displaying of, publicly exhibits or in electronic or some other manner makes available pictures, audio-visual or other objects of pornographic content resulting from the commission of acts referred to in paragraph 2 of this Article, or who owns such objects, shall be punished by an imprisonment sentence not exceeding two years.

(4) If the offence referred to in paras. 2 and 3 of this Article has been committed against a child, the offender shall be punished for the offence referred to in paragraph 2 by an imprisonment sentence for a term of one to eight years, and for the offence referred to in paragraph 3 by an imprisonment sentence of six months to five years.

(5) If the offence referred to in paragraph 2 of this Article was committed by use of force or threat, the offender shall be sentenced by an imprisonment sentence for a term of two to ten years.

(6) A person who owns points of pornographic content shall not be punished for the offence referred to in paragraph 3 of this Article if the senior juvenile depicted in them has given his/her consent therefor and if that person keeps such points exclusively for his/her own use.

(7) The points referred to in paras. 1 and 3 of this Article shall be confiscated and destroyed.

#### **Inducement of a Minor to Attend Criminal Offences against Sexual Freedom - Article 211a**

(1) Whoever induces a child to attend upon rape or an equal act or some other illicit sexual act, shall be punished by imprisonment of three months to three years.

(2) If the offence referred to in paragraph 1 hereof has been committed upon a minor by use of force or threat, perpetrator shall be punished by imprisonment of six months to five years.

(3) If offence referred to in paragraph 1 hereof is committed by use of force or threat, perpetrator shall be punished by imprisonment of one to eight years.

#### **Prosecution for Criminal Offences against Sexual Freedom - Article 212**

Prosecution for criminal offences referred to in Articles 204 and 205 of this Code committed against a spouse shall be taken upon a personal action at law.

#### **Attempt - Article 20**

(1) Anyone who with guilty mind commences the commission of a criminal offence, but does not finish it, shall be punished for attempted criminal offence punishable under law by an imprisonment sentence of five years or more, whereas other attempted criminal offences shall be punishable solely when explicitly provided for by law that an attempt shall be punishable.

(2) Use of certain tool or application of a certain manner of commission shall also be deemed a commenced criminal offence if the law lays them down as elements of criminal offence.

(3) An offender shall be sanctioned for an attempted offence by sentence laid down for criminal offence thereof, but s/he may be punished more leniently.

#### **Trafficking in Persons - Article 444**

(1) Anyone who by force or threat, misleading or keeping mislead, by abuse of authorizations, trust, relation of dependency, difficult position of another person or by keeping back personal documents or by giving or receiving money or other benefit in view of obtaining the consent of a person having control over another: recruits, transports, transfers, surrenders, sells, buys, mediates in sale, conceals or keeps another person for the purpose of his/her exploitation, forced labour, submission to servitude, commission of criminal activity, prostitution or other type of sexual exploitation, mendicancy, pornographic use, taking away a body part for transplantation or for use in armed conflicts, shall be punished by an imprisonment sentence for a term of one to ten years.

(2) It shall be considered that an offence referred to in paragraph 1 of this Article has been committed against a juvenile even when the offender did not use force, threat or another of the said manners of commission.

(3) If the offence referred to in paragraph 1 of this Article was committed against a juvenile, the offender shall be punished by an imprisonment sentence for a minimum term of three years.

(4) Where an offence referred to in paras. 1 to 3 of this Article has caused grievous bodily harms to a person, the offender shall be punished by an imprisonment sentence for a term of one to twelve years.

(5) Where an offence referred to in paras. 1 and 3 of this Article has caused death of one person or more, the offender shall be punished by an imprisonment sentence for a minimum term of ten years.

(6) Anyone who engages in committing criminal offences referred to in paras. 1 to 3 of this Article or where the offence is committed in an organised manner by several persons, shall be punished by an imprisonment sentence for a minimum term of ten years.

(7) Anyone who uses the services of a person known to be the victim of the offence referred to in paragraph 1 of this Article shall be punished by an imprisonment sentence for a term of six months to five years.

(8) Where the offence referred to in paragraph 7 of this Article was committed against a juvenile, the offender shall be punished by an imprisonment sentence for a term of three to fifteen years.

### **Trafficking in Children for Adoption - Article 445**

(1) Anyone who abducts a person who has not reached the age of fourteen for adoption in breach of valid regulations or whoever adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or surrenders another person who has not reached the age of fourteen or transports, provides accommodation for or conceals such a person, shall be punished by an imprisonment sentence of one to five years.

(2) Anyone who deals with activities referred to in paragraph 1 of this Article or participates in their organized commission together with several other persons shall be punished by an imprisonment for a minimum term of three years.

### **Definitions which Apply to This Code - Article 142**

(1) The territory of Montenegro is deemed to embrace the land territory, sea-shore and water areas within its borders, as well as air space above it.

(2) Criminal legislation of Montenegro implies this Code, as well as all other criminal provisions contained in other laws of Montenegro.

(3) Persons in official capacity are deemed to be:

1) persons who perform official duties in state bodies;

2) elected, appointed or designated persons in a state body, a local self-government body or a person who performs on a permanent or temporary basis official duties or official functions in these bodies;

3) persons in an institution, business organization or other entity who are assigned the performance of public authorizations, who decides on rights, obligations or interests of natural and legal persons or on public interest;

4) and other persons performing official duties under law, regulations adopted on the basis of laws, contracts or arbitration agreements, as well as persons who are entrusted with the performance of certain official duties or tasks;

5) military persons, with the exception of provisions of Chapter Thirty Four of this Code.

5a) a person performing in a foreign state legislative, executive, judicial or another public office for a foreign state, person who performs official duties in foreign country on basis of the laws, regulations adopted in accordance with the laws, contracts or arbitration agreement, a person performing official duty in an international public organization and a person performing judicial, prosecutorial or another office in an international tribunal.

(4) Responsible persons are deemed to be owners of a business organisation or other entity, or persons within a business organisation, institution or other entity assigned with, in consideration of his/her function, funds invested or his/her authorizations, a specific scope of affairs in the management of property, production or other trade or in supervision thereof or who is entrusted with the performance of specific affairs. Responsible persons are also deemed to be persons in official capacity, in the event of criminal offences for which a responsible person is designated as an offender, such offences being not envisaged by this Code in the Chapter dealing with criminal offences against official duties i.e. as criminal offences of a person in official capacity.

(5) Servicemen are deemed to be: professional servicemen (soldiers under contract, non-commissioned officers, non-commissioned officers under contract, officers and officers under contract) , members of the reserve forces (reserve soldiers, reserve non-commissioned officers and reserve officers) , civilians performing a specific military duty and persons who are during a state of war or a state of emergency subject to a military service.

(6) When a person in official capacity, a responsible person or a military person is designated as a perpetrator of specific criminal offences, persons referred to in paras. 3, 4 and 5 of this Article may be perpetrators of these acts, unless the elements of an individual offence or an individual regulation implies that the offender may be solely someone of these persons.

(7) Children are deemed to be persons who have not reached the age of fourteen.

(8) Juveniles are deemed to be persons who have reached the age of fourteen, but not the age of eighteen.

(9) Underage persons are deemed to be persons who have not reached the age of eighteen.

(10) Offenders are deemed to be perpetrators, co-offenders, inciters and aiders.

(11) Force is deemed to be the use of hypnosis or overpowering agents with the purpose to bring someone against his/her will to the state of unconsciousness or inability to give resistance.



(12) Elections are deemed to be elections for the Parliament of Montenegro, President of Montenegro, local self-government bodies and other elections called for and conducted on the basis of the Constitution and law.

(13) Referendum is deemed to be voting of citizens where they decide on the issues specified by the Constitution and law.

(14) Narcotic drugs are deemed to be substances and preparations declared by regulations founded on law to be narcotic drugs.

(15) Movable articles are also deemed to be each generated or collected energy for production of light, heat or movement, telephone impulses, as well as a computer datum and a computer program.

(16) Computer system is deemed to be all devices or groups of mutually linked and conditioned devices, of which one or several, depending on the program, performs automatic data processing.

(17) Computer data are deemed to be each presentation of facts, data or concepts in the form that is suitable for processing in a computer system, including programs used for the computer system for the performance of its functions.

(18) Computer programs are deemed to be sets of ordered computer data on the basis of which computers perform their functions.

(19) Computer viruses are computer programs that threaten or change the functions of the computer system and change, threaten or use computer data without authorization.

(20) Computer traffic data are deemed to be all computer data generated by computer systems, which make up a chain of communication between two computer systems that communicate, including themselves.

(21) Protected natural assets are deemed also to be assets that, under regulations on protection of natural assets, enjoy previous protection.

(22) Cultural assets are deemed also to be assets that, under regulations on protection of cultural assets, enjoy previous protection, as well as a part of cultural asset and protected environment of an immovable cultural asset.

(23) Money means both metal coins or paper money or money made of some other material that is in circulation in Montenegro or in a foreign country under law.

(24) Value symbols are deemed to be also foreign value symbols.

(25) Motor vehicles are deemed to be every transportation means with a motor drive used in the land, water and air transportation.

(26) Documents are deemed to be any objects that are suitable for or designated to serve as an evidence of a specific fact of relevance for legal relations, as well as a computer datum.

(27) Files, letters, parcels and documents may also be in an electronic form.

(28) Families or family communities are also deemed to be former spouses, cognates and fully adopted relatives in a direct line without limitation, whereas in a collateral line ending with the fourth degree, openly adopted relatives, relatives by marriage ending with the second degree, persons who live in the same household and individuals that have a joint child or a child is on the way, although they have never lived in the same household.

(29) The expression shall not be punished means that there exists no criminal offence in that case.

(30) When an imperfective verb is used to designate the action of a criminal offence, it shall be deemed that the offence is committed if the action is done once or several times.

## 6.26 Netherlands

Extract:

Criminal Code

Article 240a: The person who provides, offers or shows a picture, object or data carrier containing an image whose display could be considered damaging for persons below the age of sixteen to a minor of whom he knows or should reasonably know that this person is younger than sixteen, will be punished with a term of imprisonment of at most one year or a fine of the fourth category.

Article 240b: 1. The person who distributes, offers, openly displays, produces, imports, forwards, exports, acquires, has in his possession or gains access by means of an automated work or by making use of a communication service, an image – or a data carrier containing an image – of a sexual act, in which someone who evidently has not reached the age of eighteen is involved or appears to be involved, will be punished with a term of imprisonment of at most four years or a fine of the fifth category.

2. Those who make a profession or habit of the commission of one of the criminal offences described in the first paragraph, will be punished with a term of imprisonment of at most eight years or a fine of the fifth category.

Article 242: The person who, by an act of violence or another hostile act or by a threat of violence or other hostile act, forces someone to undergo acts that consist, or consist in part, of the sexual penetration of the body, will be punished, being guilty of rape, with a term of imprisonment of at most twelve years or a fine of the fifth category.

Article 243: The person who commits acts that consist, or consist in part, of the sexual penetration of the body, with a person who he knows to be in a state of unconsciousness, reduced consciousness or a condition of being physically helpless or unable to resist or to be suffering from such limited development or pathological disorder of his mental faculties that he is not, or insufficiently, able to determine or express his will in that respect or to resist such acts, will be punished with a term of imprisonment of at most eight years or a fine of the fifth category.

Article 244: The person who commits acts, with a person below the age of twelve, that consist, or consist in part, of the sexual penetration of the body, will be punished with a term of imprisonment of at most twelve years or a fine of the fifth category.

Article 245: The person who commits indecent acts, with a person who has reached the age of twelve but not yet the age of sixteen, outside of a marriage, which consist, or consist in part, of the sexual penetration of the body, will be punished with a term of imprisonment of at most eight years or a fine of the fifth category.

Article 246: The person who, by an act of violence or another hostile act or by a threat of violence or other hostile act, forces someone to commit or to tolerate indecent acts will be punished, being guilty of actual indecent assault, with a term of imprisonment of at most eight years or a fine of the fifth category.

Article 247: The person who commits acts that consist, or consist in part, of the sexual penetration of the body, with a person who he knows to be in a state of unconsciousness, reduced consciousness or a condition of being physically helpless or unable to resist or to be suffering from such limited development or pathological disorder of his mental faculties that he is not, or insufficiently, able to determine or express his will in that respect or to resist such acts, or who commits indecent acts with a person below the age of sixteen, outside of a marriage, or induces the latter person to commit or tolerate such acts outside of a marriage with a third party, will be punished with a term of imprisonment of at most six years or a fine of the fourth category.

Article 248: 1. The terms of imprisonment provided for in Articles 240b, 242 to 247, 248a to 248e, 249 and 250, can be increased by one third if the act is committed by two or more persons acting jointly.

2. The terms of imprisonment provided for in Articles 240b, 242 to 247 and 248a to 248e, can be increased by one third if the perpetrator commits the act against his own child, a child in respect of which he has custody, a child he cares for or raises as a member of his own family, his pupil, a minor entrusted to his care, instruction or supervision, or a minor who is his servant or subordinate.

3. If one of the criminal offences described in 240b, 243, 245 to 247, 248a, 248b and 249 results in serious physical injury or there is a likelihood that it will put the life of another in danger, a term of imprisonment of at most fifteen years or a fine of the fifth category will be imposed.

4. If one of the criminal offences described in 240b, 242, 243 to 247, 248a, 248b and 249 results in death, a term of imprisonment of at most eighteen years or a fine of the fifth category will be imposed.

Article 248a: The person who intentionally induces a person, of whom he knows, or should reasonably assume, that such person has not yet reached the age of eighteen, by means of gifts or promises of money or goods, abuse of dominance arising from actual relationships, or deceit, to perform indecent acts or to tolerate such acts from him, will be punished with a term of imprisonment of at most four years or a fine of the fourth category.

Article 248b: The person who performs indecent acts with someone who makes himself available to perform sexual acts with a third party for payment and who has reached the age of sixteen but who has not yet reached the age of eighteen, will be punished with a term of imprisonment of at most four years or a fine of the fourth category.

Article 248c: The person who intentionally is present at the performance of indecent acts by a person of whom he knows, or of whom he should reasonably assume, that this person has not yet reached the age of eighteen or who is intentionally present at the display of images of such acts in an establishment designated for that purpose, will be punished by a term of imprisonment of at most four years or a fine of the fourth category.

Article 248d: The person who induces, with an indecent motive, another person, of whom he knows, or should reasonably assume, that such person has not yet reached the age of sixteen, to witness sexual acts, will be punished with a term of imprisonment of at most two years or a fine of the fourth category.

Article 248e: The person who proposes to arrange a meeting, by means of an automated work or by making use of a communication service, to a person of whom he knows, or should reasonably assume, that such person has not yet reached the age of sixteen, with the intention of committing indecent acts with this person or of creating an image of a sexual act in which this person is involved, will be punished with a term of imprisonment of at most two years or a fine of the fourth category, if he undertakes any action intended to realise that meeting.

Article 249: 1. The person who sexually abuses his own child, step child or foster child, his pupil, a minor entrusted to his care, instruction or supervision, or a minor who is his servant or subordinate, will be punished with a term of imprisonment of at most six years or a fine of the fourth category.

2. The following persons will be liable to the same punishment:

1. A public servant who sexually abuses a person subject to his authority or entrusted or recommended to his care;

2. The director, doctor, teacher, official, supervisor or service staff member of a prison, state institution for the care and protection of children, orphanage, hospital, or charitable institution, who sexually abuses a person admitted to such institution;

3. The person who, when working in health care or social care, sexually abuses a person who has entrusted himself, as a patient or client, to the assistance or care of such care worker.

Article 250: 1. The person who:

1. intentionally causes or facilitates the commission of sexual abuse by his minor child, stepchild or foster child, his pupil, a minor entrusted to his care, instruction or supervision or a minor who is his servant or subordinate, with a third party, will be punished with a term of imprisonment of at most four years or a fine of the fourth category;

2. with the exception of the cases referred to at 1 above, intentionally causes or facilitates the commission of sexual abuse with a third party by a minor whose minority he knows or should reasonably assume.

2. If the guilty person makes a habit of committing the criminal offence, the terms of imprisonment can be increased by one third.

Article 251: 1. In the event of conviction of any of the criminal offences set out in Articles 240b to 247 or 248a to 250, refusal of the rights referred to in Article 28, first paragraph, at 1, 2 and 4, may be pronounced.

2. If the person guilty of any of the criminal offences set out in Articles 240b to 247 or 248a to 250 files an appeal, he may be denied the exercise of that appeal.

Article 273f: 1. If found guilty of trafficking in human beings, the following persons will be punished with a term of imprisonment of at most eight years or a fine of the fifth category:

1. The person who acquires, transports, transfers, accommodates or takes in another person, by coercion, violence or another hostile act or threat of violence or another hostile act, through extortion, fraud, deceit or abuse of dominance arising from actual circumstances, through abuse of a vulnerable position or by giving or receiving payments or benefits to gain the approval of a person who has authority over said other person, with the intention of exploiting said other person or removing his organs;

2. The person who recruits, transports, transfers, accommodates or takes in another person with the intention of exploiting said other person or removing his organs;

3. The person who recruits, takes along or kidnaps another person with the intention of inducing said other person to make himself available to perform sexual acts with or for third parties in return for payment in another country;

4. The person who forces or induces another, through one of the means referred to at 1, to make himself available to perform labour or services or to make his organs available, or who undertakes any action in the circumstances referred to at 1, in respect of which he knows or should reasonably assume that, as a result, said other person will make himself available to perform labour or services or would make his organs available;

5. The person who induces another to make himself available to perform sexual acts with or for a third party in return for payment, or to make his organs available in return for payment, or who takes any action towards another in respect of which he knows or should reasonably assume that said other person will as a result make himself available to perform said acts or make his organs available in return for payment, while said other person has not yet reached the age of eighteen;

6. The person who intentionally benefits from the exploitation of another;

7. The person who intentionally benefits from the removal of organs of another, while he knows or should reasonably assume that such organs were removed under the circumstances referred to at 1;

8. The person who intentionally benefits from sexual acts performed by another with or for a third party in return for payment, or from the removal of another's organs in return for payment, while said other has not yet reached the age of eighteen;

9. The person who forces or induces another, through one of the means referred to at 1, to let him benefit from the sexual acts of that other person with or for a third party, or from the removal of his organs.

2. Exploitation comprises at least the exploitation of another in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery or practices similar to slavery or servitude.

3. The guilty person will be punished with a term of imprisonment of at most twelve years or a fine of the fifth category, if:

1. The acts, described in the first paragraph, are committed by two or more persons acting jointly;

2. The person against whom the facts described in the first paragraph are committed has not yet reached the age of sixteen.

4. If an act described in the first paragraph results in serious physical injury or if there is a likelihood that it will put the life of another in danger, a term of imprisonment of at most fifteen years or a fine of the fifth category will be imposed.
5. If one of the acts described in the first paragraph results in death, a term of imprisonment of at most eighteen years or a fine of the fifth category will be imposed.
6. Article 251 will apply accordingly.

## 6.27 Norway

Extract:

### Chapter 19. Sexual offences [extract]

Section 193. Any person who engages in or who aids and abets another person to engage in sexual activity by misuse of a position, or a relationship of dependence or trust shall be liable to imprisonment for a term not exceeding five years.

Any person who engages in or who aids and abets another person to engage in sexual activity by exploiting any person's mental illness or mental retardation shall be liable to the same penalty.

Section 194. Any person who engages in sexual activity with any person who is an inmate of or placed in any home or institution under the correctional services or the police or in an institution under the child welfare service and who is there subject to his authority or supervision, shall be liable to imprisonment for a term not exceeding five years.

The same penalty shall apply to any person who aids and abets another person to engage in sexual activity with any person with whom he himself has such a relationship.

Section 195. Any person who engages in sexual activity with a child who is under 14 years of age shall be liable to imprisonment for a term not exceeding 10 years. If the said activity was sexual intercourse the penalty shall be imprisonment for not less than two years.

Imprisonment for a term not exceeding 21 years may be imposed if the act is committed by two or more persons jointly, the act is committed in a particularly painful or offensive manner, the act is committed against a child under 10 years of age and there have been repeated assaults,

d) the offender has previously been convicted and sentenced pursuant to this provision or section 192, or

e) as a result of the act the aggrieved person dies or sustains serious injury to body or health. Sexually transmitted diseases and generally infectious diseases, cf. section 1-3, No. 3, cf. No. 1, of the Act relating to control of communicable diseases, shall always be deemed to be considerable injury to body or health pursuant to this section.

Criminal liability shall not be excluded by any mistake made as regards age.

A penalty pursuant to this provision may be remitted or imposed below the minimum prescribed in the second sentence of the first paragraph if those who have engaged in the sexual activity are about equal as regards age and development.

Section 196. Any person who engages in sexual activity with a child who is under 16 years of age shall be liable to imprisonment for a term not exceeding five years.

Imprisonment for a term not exceeding 15 years may be imposed if

a) the act is committed by two or more persons jointly,

b) the act is committed in a particularly painful or offensive manner,

c) the offender has previously been convicted and sentenced pursuant to this provision or section 192 or 195, or

d) as a result of the act the aggrieved person dies or sustains considerable injury to body or health. Sexually transmitted diseases and generally infectious diseases, cf. section 1-3, No. 3, cf. No. 1, of the Act relating to control of communicable diseases, shall always be deemed to be considerable injury to body or health pursuant to this section.

Criminal liability shall not be excluded by any mistake made as regards age, unless there is no element of negligence in this respect.

A penalty pursuant to this provision may be remitted if those who have engaged in the sexual activity are about equal as regards age and development.

Section 197. Any person who engages in sexual activity with a blood relation in the descending line shall be liable to imprisonment for a term not exceeding five years. Both biological and adopted descendants shall be regarded as blood relations in the descending line.

Section 198. Any person who has sexual intercourse with a brother or sister shall be liable to imprisonment for a term not exceeding one year. No penalty shall, however, be imposed on persons under 18 years of age.

Section 199. Any person who engages in sexual activity with a foster-child, child in his care, step-child or any other person under 18 years of age who is under his care, or subject to his authority or supervision, shall be liable to imprisonment for a term not exceeding five years.

Any person who aids and abets another person to engage in sexual activity with any person with whom he himself has such a relationship shall be liable to the same penalty.

Section 200. Any person who commits a sexual act with any person who has not consented thereto shall be liable to fines or to imprisonment for a term not exceeding one year.

Any person who commits a sexual act with a child under 16 years of age shall be liable to imprisonment for a term not exceeding three years. Any person who misleads a child under 16 years of age to behave in a sexually offensive or otherwise indecent manner as referred to in section 201 shall be liable to imprisonment for a term not exceeding three years.

In cases referred to in the second paragraph the offender may be sentenced to imprisonment for a term not exceeding six years if the act has been committed under especially aggravating circumstances. In deciding whether especially aggravating circumstances subsist, particular importance shall be attached to how long the relationship has endured, whether the act is a misuse of a blood relationship, care relationship, position, or relationship of dependence or trust, and whether the act has been committed in a particularly painful or offensive manner.

Section 196, third and fourth paragraphs, shall apply correspondingly.

Section 201. Any person who by word or deed behaves in a sexually offensive or otherwise indecent manner

a) in a public place,

b) in the presence of or towards any person who has not consented thereto, or

c) in the presence of or towards children under 16 years of age, shall be liable to fines or to imprisonment for a term not exceeding one year.

Behaviour mentioned in the first paragraph letter b and c is considered committed also when committed through the use of a telephone, Internet or other electronic communication.

Section 201 a. Any person who has agreed on a meeting with a child under the age of 16, and who with a purpose to commit an act mentioned in sections 195, 196 or 200 second paragraph has arrived at the place of the meeting or a place from which the place of the meeting may be observed, is liable to fines or to imprisonment not exceeding one year.

Criminal liability shall not be excluded by any mistake made as regards age, unless there is no element of negligence in this respect.

A penalty pursuant to this provision may be remitted if those who have agreed on the meeting are about equal as regards age and development.

Section 202. Any person who

a) promotes the engagement of other persons in prostitution, or

b) lets premises on the understanding that such premises shall be used for prostitution or is grossly negligent in this respect, shall be liable to fines or to imprisonment for a term not exceeding five years.

Any person who in a public announcement unambiguously offers, arranges or asks for prostitution shall be liable to fines or to imprisonment for a term not exceeding six months.

In this provision prostitution means that a person engages in sexual activity or commits a sexual act with another person for payment.

Section 203. Any person who

procures for himself or for others sexual activity or act by rendering or agreeing upon payment, achieves sexual activity or act by having payment rendered or agreed upon by an other person, or in the manner described in letter a or b makes somebody commit with himself acts corresponding to sexual activity,

is liable to fines or imprisonment for a term not exceeding two years.

If the activity or act is committed in a particularly offensive manner, without being punishable pursuant to other provisions, the penalty is imprisonment for a term not exceeding three years.

Criminal liability shall not be excluded by any mistake made as regards age, unless there is no element of negligence in this respect.

Section 204. Any person who

- a) publishes, sells or in any other way attempts to disseminate pornography,
- b) imports pornography with intent to disseminate it,
- c) delivers pornography to persons under 18 years of age, or
- d) gives a public lecture or arranges a public performance or exhibition of a pornographic nature, shall be liable to fines or imprisonment for a term not exceeding three years.

In this section pornography means sexual depictions that seem offensive or are in any other way likely to have a humanly degrading or corrupting effect, including sexual depictions involving the use of corpses, animals, violence and duress. Sexual depictions that must be regarded as justifiable for artistic, scientific, informational or similar purposes shall not be regarded as pornographic.

Any person who negligently commits any act referred to in the first paragraph shall be liable to fines or imprisonment for a term not exceeding six months. The same penalty shall apply to any proprietor or superior who wilfully or negligently fails to prevent the commission in any activity of any act referred to in the first paragraph.

This section shall not apply to any film or videogram that the Norwegian Media Authority has by prior control approved for commercial exhibition or sale.

Section 204 a. Any person who

- a) produces, procures, imports, possesses, delivers to another person or for payment or systematically acquaints himself with any presentation of sexual abuse of children or any presentation of a sexual nature that involves children,
  - b) concerns himself with presentations of sexual abuse of children or presentations of a sexual nature that involve children in any other way as referred to in section 204, first paragraph, or
  - c) induces any person under 18 years of age to allow pictures of himself or herself to be taken as part of any commercial presentation of moving or non-moving pictures of a sexual nature, or produces such presentations depicting any person under 18 years of age,
- shall be liable to fines or imprisonment for a term not exceeding three years. In this section child means any person who is or who appears to be under 18 years of age.

Any person who negligently commits any act referred to in the first paragraph shall be liable to fines or imprisonment for a term not exceeding six months. The same penalty shall apply to any proprietor or superior who wilfully or negligently fails to prevent the commission in any activity of any act referred to in the first paragraph.

The penalty may be remitted in the case of any person who takes and possesses a picture of a person who is between the ages of 16 and 18 years if the latter has consented thereto and both of them are about equal in age and development.

Section 204, second paragraph, second sentence, and fourth paragraph, shall apply correspondingly.

Section 205. Any penal provision in this chapter shall also apply to any person who aids and abets the act.

Section 206. When the term sexual intercourse is used in the provisions of this chapter, both vaginal and anal intercourse are meant. Insertion of the penis into the mouth and insertion of an object into the vagina or rectum shall be equated with sexual intercourse. In the case of acts referred to in section 195 insertion of the penis in and between the labia majora and the labia minora shall also be equated with sexual intercourse.

Chapter 21. Felonies against personal liberty [extract]



Section 224. Any person who by force, threats, misuse of another person's vulnerability, or other improper conduct exploits another person for the purpose of prostitution or other sexual purposes, forced labour or forced services, including beggary, war service in a foreign country, or removal of any of the said person's organs, or who induces another person to allow himself or herself to be used for such purposes, shall be guilty of human trafficking and shall be liable to imprisonment for a term not exceeding five years.

Any person who makes arrangements for such exploitation or inducement as is mentioned in the first paragraph by procuring, transporting or receiving the person concerned, in any other way aids and abets such exploitation or inducement, or provides payment or any other advantage in order to obtain consent to such exploitation from any person who has authority over the aggrieved person, or who receives such payment or other advantage shall be liable to the same penalty.

Any person who commits an act referred to in the first or second paragraph against a person who is under 18 years of age shall be liable to a penalty independently of any use of force or threats, misuse of a person's vulnerability, or other improper conduct.

Gross human trafficking is punishable by imprisonment for a term not exceeding ten years. In deciding whether the offence is gross, particular importance shall be attached to whether the person exposed to the act was under 18 years of age, whether gross violence or coercion was used or whether the act led to considerable gain.

## 6.28 Philippines

### Revised Penal Code

Art. 337. Qualified seduction. — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by prision correccional in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

Art. 338. Simple seduction. — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

Art. 339. Acts of lasciviousness with the consent of the offended party. — The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in Articles 337 and 338.

Art. 340. Corruption of minors. — Any person who shall promote or facilitate the prostitution or corruption of persons underage to satisfy the lust of another, shall be punished by *prision mayor*, and if the culprit is a public officer or employee, including those in government-owned or controlled corporations, he shall also suffer the penalty of temporary absolute disqualification. (As amended by Batas Pambansa Blg. 92) .

Art. 341. White slave trade. — The penalty of *prision mayor* in its medium and maximum period shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of any other for the purpose of prostitution (As amended by Batas Pambansa Blg. 186.)

Art. 343. Consented abduction. — The abduction of a virgin over twelve years and under eighteen years of age, carried out with her consent and with lewd designs, shall be punished by the penalty of *prision correccional* in its minimum and medium periods.

Art. 200. Grave scandal. — The penalties of *arresto mayor* and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code.

Art. 201. Immoral doctrines, obscene publications and exhibitions and indecent shows. — The penalty of *prision mayor* or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

"1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

"2. a. The authors of obscene literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;

"b. Those who, in theaters, fairs, cinematographs or any other place, exhibit indecent or immoral plays, scenes, acts or shows, it being understood that the obscene literature or indecent or immoral plays scenes, acts or shows, whether live or in film, which are proscribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts.

"3. Those who shall sell, give away or exhibit films, prints, engravings, sculpture or literature which are offensive to morals.

Art. 266. Slight physical injuries and maltreatment. — The crime of slight physical injuries shall be punished:

1. By arresto menor when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period.
2. By arresto menor or a fine not exceeding 20 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.
3. By arresto menor in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

### **Republic Act 7610**

#### **AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES**

**Section 5. Child Prostitution and Other Sexual Abuse.** – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

- (1) Acting as a procurer of a child prostitute;
- (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
- (3) Taking advantage of influence or relationship to procure a child as prostitute;
- (4) Threatening or using violence towards a child to engage him as a prostitute; or
- (5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

**Section 6. Attempt To Commit Child Prostitution.** – There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

**Section 9. Obscene Publications and Indecent Shows.** – Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period.

## **Republic Act 9208**

### **ANTI-TRAFFICKING IN PERSON ACT OF 2003**

**SEC. 4. Acts of Trafficking in Persons.** - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

(e) To maintain or hire a person to engage in prostitution or pornography;

(f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and

(h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.

**SEC. 5. Acts that Promote Trafficking in Persons.** - The following acts which promote or facilitate trafficking in persons, shall be unlawful:

(a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;

(b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;

(c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;

(d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide predeparture registration and services for departing persons for the purpose of promoting trafficking in persons;

(e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;

- (f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and
- (g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

**Republic Act 9262**  
**Anti-Violence Against Women and Their Children Act of 2004**

**SECTION 5. Acts of Violence Against Women and Their Children.**- The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
  - (1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
  - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
  - (3) Depriving or threatening to deprive the woman or her child of a legal right;
  - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
  - (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
  - (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
  - (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
    - (1) Stalking or following the woman or her child in public or private places;
    - (2) Peering in the window or lingering outside the residence of the woman or her child;
    - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
    - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
    - (5) Engaging in any form of harassment or violence;
    - (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman's child/children.

**Republic Act 7877**  
**ANTI-SEXUAL HARASSMENT ACT OF 1995**

**SECTION 3. Work, Education or Training-related Sexual Harassment Defined.** — Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from

the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or

otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

(b) In an education or training environment, sexual harassment is committed:

(1) Against one who is under the care, custody or supervision of the offender;

(2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;

(3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges, or considerations; or

(4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.

#### **Republic Act 9775**

#### **ANTI-CHILD PORNOGRAPHY ACT OF 2009**

**Section 4. Unlawful or Prohibited Acts.** - It shall be unlawful for a person to commit any of the following acts:

(a) To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of child pornography;

(b) To produce, direct, manufacture or create any form of child pornography and child pornography materials;

(c) To sell, offer, advertise and promote child pornography and child pornography materials;

(d) To possess, download, purchase, reproduce or make available child pornography materials with the intent of selling or distributing them;

(e) To publish, post, exhibit, disseminate, distribute, transmit or broadcast child pornography or child pornography materials;

(f) To knowingly possess, view, download, purchase or in any way take steps to procure, obtain or access for personal use child pornography materials; and

(g) To attempt to commit child pornography by luring or grooming a child.

## 6.29 Poland

### Extract:

#### Criminal Code

Article 13 § 1. Whoever with the intent to commit a prohibited act, directly attempts its commission through his conduct which, subsequently however does not take place, shall be held liable for an attempt.

§ 2. An attempt also occurs when the perpetrator is not himself aware of the fact that committing it is impossible because of the lack of a suitable object on which to perpetrate the prohibited act or because of the use of means not suitable for perpetrating this prohibited act.

Article 18. § 1. Not only the person who has committed a prohibited act himself or together and under arrangement with another person, but also a person who has directed the commission of a prohibited act by another person, or taken advantage of the subordination of another person to him, orders such a person to commit such a prohibited act, shall be liable for perpetration.

§ 2. Whoever, willing that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating.

§ 3. Whoever, with an intent that another person should commit a prohibited act, facilitates by his behaviour the commission of the act, particularly by providing the instrument, means of transport, or giving counsel or information, shall be liable for aiding and abetting. Furthermore, whoever, acting against a particular legal duty of preventing the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.

Article 197. § 1. Whoever, by force, illegal threat or deceit subjects another person to sexual intercourse

shall be subject to the penalty of the deprivation of liberty for a term of between 2 and 12 years.

§ 2. If the perpetrator, in the manner specified in § 1, makes another person submit to other sexual act or to perform such an act, he shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

Article 198. Whoever, taking advantage of the vulnerability of another person, or of the lack of ability to recognise the significance of the act or ability to control his/her conduct, resulting from mental disability or disorder, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

Article 199§ 1 Whoever, abusing a relationship of dependence or by taking advantage of a critical situation, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act

shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. If the act specified in § 1 was committed against a minor, the perpetrator shall be subject to the penalty of deprivation of liberty for a term between 3 months and 5 years.

§ 3. The same punishment as provided for in § 2 shall be imposed on anyone who makes a minor to subject to sexual intercourse or other sexual act or to perform such an act abusing the trust or giving the material or personal benefit or the promise thereof.

Article 200. § 1. Whoever has a sexual intercourse with a minor under 15 years of age or subjects him/her to sexual intercourse or makes him/her submit to another sexual act or to perform such an act ,

shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. The same punishment shall be imposed on anyone, who for sexual purposes presents the sexual act to a minor under the age of 15,

Art. 200a. § 1. Whoever, for the purpose of committing the offence specified in art. 197 § 3 item 2 or art. 200 as well as for the purpose of producing or recording pornographic material, contacts a minor under the age of 15 through the information and communication system, intending to meet with the minor by misleading him/her, abusing his/her error or lack of ability to understand the situation properly, or by using illegal threat, shall be subject to the penalty of the deprivation of liberty for up to 3 years.

§ 2. Whoever, through the information and communication system offers to a minor to have sexual intercourse, to submit to or to perform other sexual act or to participate in producing or recording pornographic material and intends to its realization, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

Article 201. Whoever has sexual intercourse with an ascendant, descendant, or a person being an adopted, adopting relation or brother or sister shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

Art. 202 § 2. Whoever presents pornographic material to a minor under 15 years of age or makes available to him/her items of this nature, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

3. Whoever, for the purpose of dissemination, produces, records, procures, stores, posses or disseminates or publicly presents pornographic material in which a minor participates or pornographic material associated with the use of violence or the use of an animal shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years.

§ 4. Whoever, records the pornographic material with the participation of a minor under the age of 15, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§ 4a. Whoever, procures, stores or posses pornographic material with the participation of a minor under the age of 15, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 4b. Whoever, produces, disseminates, presents, stores or posses pornographic material representing the produced or processed image of a minor participating in the sexual act, shall be subject to the fine, the penalty of the restriction of liberty or deprivation of liberty for up to 2 years.

Article 203. Whoever, by force, illegal threat or deceit, or by abusing a relationship of dependence or by taking advantage of a critical situation, subjects another person to practice prostitution shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

Article 204. § 1. Whoever, in order to derive a material benefit, induces another person to practice prostitution or facilitates it, shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. Whoever derives material benefits from prostitution practiced by another person shall be subject to the penalty specified in § 1.

§ 3. If the person specified in § 1 or 2 is a minor, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.



## 6.30 Portugal

Extract:

PORTUGUESE PENAL CODE

(Decreto-Lei nº 400/82, from 23 September 1982, amended by Lei nº 59/2007, from 4 September 2007.

### **Article 171º - Sexual abuse of children**

1 — Those who practice relevant sexual acts with or in minor of 14 years, or convince him or her to practice it with other person, are punished with imprisonment of one to eight years.

2 — If the relevant sexual act consists in coitus, anal coitus, oral coitus or vaginal or anal introduction of parts of the body or objects, the agent is punished with imprisonment of three to ten years.

3 — Those who:

a) Importune minor of 14 years, practicing acts described under Article 170º; or (exhibitionist acts)

b) Acts over a minor of 14 years, by the means of a conversation, by written, show or pornographic object; are punished with imprisonment up to three years.

4 — Those who practice the acts described under above nr 3 with profit purposes are punished with imprisonment of six months to five years.

### **Article 172º - Sexual abuse of dependent minors**

1 - Whoever performs or take to perform the an act as described under paragraphs 1 or 2 of the previous article, relating to a minor from 14 to 18 years old, that has been given to him to education or assistance, shall be punished with imprisonment of one to eight years.

2 - Whoever commits an act described in subparagraphs of paragraph 3 of the previous article, refereeing to a minor as described in the previous article and under the conditions described therein, will be punished with imprisonment up to one year.

3 - Whoever commits the acts described in the preceding number with profit intention, will be punished with imprisonment up to three years or a fine.

### **Article 173º - Sexual acts with teenagers**

1 - Whoever, being more than 18 years old, practices sexual relevant acts with a minor between 14 and 16 years old, or convinces that minor to practice those acts by others, abusing of their inexperience, will be punished with imprisonment up to two years or a fine of up to 240 days.

2 - If the relevant sexual act consists of penetration, oral intercourse, anal intercourse or vaginal or anal introduction of parts of the body or objects, the agent will be punished with imprisonment up to three years or fine up to 360 days.

### **Article 174º - Prostitution of minors**

1 - Whoever, being more than 18 years old, practices relevant sexual act with a minor between 14 and 18 years old, against payment or other advantage, will be punished with imprisonment up to two years or a fine of up to 240 days.

2 - If the relevant sexual act consists on penetration, anal intercourse, oral intercourse or vaginal or anal introduction of parts of the body or objects, the agent will be punished with imprisonment up to three years or a fine of up to 360 days.

3 - The attempt is punishable.

### **Article 175º - Pimping minors**

1 - Whoever promote, encourages or facilitates the exercise of prostitution will be punished with imprisonment of one to five years.

2 - If the agent commits the crime described under nº 1:

a) by means of violence or serious threat;

b) by means of ruse or deception;

c) with abuse of authority resulting from a familiar relationship, guardianship or trusteeship, or hierarchical or economic dependence;

d) acting professionally or for profit purposes;

or

e) Taking advantage of mental disability or of a situation of special vulnerability of the victim; will be punished with imprisonment from two to ten years.

#### **Article 176° - Minors pornography**

1 — Those who:

- a) Engage minors in a pornographic show or seduces minors with that purpose;
- b) Engage minors in photographs, movies or other pornographic records, independently of the used means, or seduces minors with that purpose;
- c) Produces, distributes, imports, exports, makes public, exhibits or assigns, by any means, the materials above described, on b) ,
- d) Acquire or possesses the materials described on b) with the purpose of distributing, importing, exporting, making public, exhibiting or assigning; are punished with imprisonment of one to five years.

2 — Those who practice the acts described on the above nr 1, professionally or with profit purposes, are punished with imprisonment of one to eight years.

3 —Those who practice the acts described on the above nr 1, c) and d), using pornographic material with realistic representation of a minor, are punished with imprisonment up to two years.

4 — Those who acquire or possesses the materials described on the above nr 1, b, are punished with imprisonment up to one year or with fine.

5 — The attempt is punished.

#### **Article 177°**

1. The penalties described under articles 163 to 165 and 167 to 176 are aggravated on one third part in its minimum and maximum limits if the victim:

- a) is an ascendant, descendent, adopting or adopted, relative until the second degree from the agent or
- b) has a familiar relationship or an hierarchic, economic or working dependency from the agent of the crime and the crime is perpetrated on relation of that dependency."

## 6.31 Romania

Extract:

Law no 161/2003 (Title III) on cybercrime

Article 35

i) „pornographic materials with minors” refer to any material presenting a minor with an explicit sexual behaviour or an adult person presented as a minor with an explicit sexual behaviour or images which, although they do not present a real person, simulates, in a credible way, a minor with an explicit sexual behaviour.

### Section 3 - Child pornography through computer systems

Art.51 – (1) It is a criminal offence and shall be punished with imprisonment from 3 to 12 years and denial of certain rights the production for the purpose of distribution, offering or making available, distributing or transmitting, procuring for oneself or another of child pornography material through a computer system, or possession, without right, child pornography material in a computer system or computer data storage medium.

(2) The attempt shall be punished.

### Chapter III

#### OFFENCES REGARDING SEXUAL LIFE

#### Article 197 – Rape

122 Sexual intercourse, of any kind, with a person of the opposite sex or of the same sex, by coercion of this person or by taking advantage of the person’s inability to defend him/herself or to express volition, shall be punished by 3 to 10 years imprisonment and prohibition of certain rights.

The penalty shall be imprisonment from 5 to 18 years and the prohibition of certain rights, if:

the act has been committed by two or more persons together;

the victim is under the care, protection, education, guard or treatment of the perpetrator;

b1) the victim is a family member;

c) the victim suffered serious injury to corporal integrity or health.

123 If the victim was under the age of 15, the penalty shall be 10 to 25 years imprisonment and the prohibition of certain rights, and if the act resulted in the victim’s death or suicide, the penalty shall be imprisonment from 15 to 25 years and the prohibition of certain rights.

Criminal action for the act provided in paragraph (1) is initiated upon prior complaint of the injured person.

Recourses in the interest of the law. 1. According to the Decision no. III/2005 (Official Gazette no. 867 of 27 September 2005) , the High Court of Cassation and Justice has granted the recourse in the interest of the law and, applying provisions of Article 197 (1) in conjunction with Articles 198 and 201 of the Penal Code, has stated:

“1. By sexual intercourse of any nature, deemed rape as provisioned by Article 197 of the Penal Code, one understands any kind of obtaining sexual satisfaction using the sex or acting upon the sex, between persons of different genders or of the same gender, by coercion or taking advantage of the impossibility of that person to defend or to express volition.

2. By acts of sexual perversion, to the meaning of Article 201 of the Penal Code, one understand any other way of obtaining sexual satisfaction, other that those provisioned in indent 1.”

2. According to the Decision no. 17/2008 (Official Gazette no. 866 of 22 December 2008) the High Court of Cassation and Justice, United Sections, has granted the recourse in the interest of the law submitted by the General Prosecutor within the Prosecutor’s Office assigned to the High Court of Cassation and Justice, in respect of the legal framework of the plurality of sexual intercourse committed for the achievement of the same criminal purpose when the victim is a family member, by coercion or taking advantage of the impossibility of that person to defend or to express volition, both before and after the victim reached 15 years old, and stated that:

<sup>122</sup> Paragraphs (1) and (2) of Article 197 are reproduced as amended by Article 1 indent 1 of G.E.O. no. 89/2001.

<sup>123</sup> Paragraph (3) of Article 197 is reproduced as amended by Article I indent 1 of G.E.O. no. 143/2002.

"1. Sexual intercourse committed for the achievement of the same criminal purpose, when the victim is a family member, by coercion or taking advantage of the impossibility of that person to defend or to express volition, both before and after the victim reached 15 years old, gathers the constitutive elements of the offence of rape provisioned by Article 197 (1) in conjunction with paragraph (2) (b1) and paragraph 3) , thesis 1, with application of Article 41 (2) of the Penal Code.

2. The offence of rape to the meaning of sexual intercourse, provisioned by Article 197 (1) of the Penal Code in conjunction with paragraph (2) (b1) and paragraph 3) , thesis 1, with application of Article 41 (2) of the Penal Code shall be retained in concurrency with the offence of incest provisioned by Article 203 of the Penal Code, with application of Article 41 (2) of the Penal Code."

#### **Article 198 – 124 Sexual intercourse with a minor**

Sexual intercourse, of any nature, with a person of the other sex or of the same sex, who has not reached the age of 15, shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights.

This penalty shall also penalise sexual intercourse, of any nature, with a person of the opposite sex or of the same sex aged 15 to 18, if the act is committed by the person's guardian or curator or by his/her supervisor, by the person in charge of his/her care, by his/her physician, teacher, professor or educator, while taking advantage of their capacity, or if the perpetrator has abused the victim's confidence or his/her own authority or influence over the victim.

If the sexual intercourse, of any nature, with a person of the opposite sex or of the same sex, who has not reached the age of 18, was determined by the perpetrator's offering or giving the victim money or other benefits, either directly or indirectly, the penalty shall be imprisonment from 3 to 12 years and the prohibition of certain rights.

If the acts stipulated in paragraphs (1) -(3) were committed for the purpose of producing pornographic material, the penalty shall be 5 to 15 years imprisonment and the prohibition of certain rights, and if for the accomplishment of such a purpose coercion was used, the penalty shall be 5 to 18 years imprisonment and the prohibition of certain rights.

When the act in paragraph (1) has been committed under the circumstances provided in Article 197 (2) b) or if the acts provisioned by paragraphs (1) -(4) have had the consequences provided in Article 197 (2) c) , the penalty shall be 5 to 18 years imprisonment and the prohibition of certain rights.

If the act resulted in the victim's death or suicide, the penalty shall be 15 to 25 years imprisonment and the prohibition of certain rights.

Recourse in the interest of the law. See also the Decision no. III/2005 of the High Court of Cassation and Justice, issued within the recourse in the interest of the law concerning the meaning which must be regarded to acts referred to in Article 197 (1) and Article 198, as well as in Article 201 of the Penal Code supra to Article 197.

#### **Article 199 – Seduction**

The act of one who, through promises of marriage, determines a female person under the age of 18 to have sexual intercourse with him, shall be punished with one to 5 years imprisonment.

Reconciliation of parties removes criminal liability.

#### **Article 201 – 125 Sexual perversion**

Acts of sexual perversion committed in public or that caused a scandal shall be punished with one to 5 years imprisonment.

126 Acts of sexual perversion involving a person under the age of 15 shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights.

The same penalty shall also apply to acts of sexual perversion with a person aged 15 to 18, if the act is committed by the guardian or curator, or by the person charged with his/her supervision or care, by the physician, teacher/professor or educator, using their capacity, or if the perpetrator abused the victim's confidence or his/her authority or influence over him/her.

<sup>124</sup> Article 198 is reproduced as amended by Article 1 indent 2 of G.E.O. no. 143/2002.

<sup>125</sup> Article 201 is reproduced as amended by Article 1 indent 4 of G.E.O. no. 89/2001 (as amended by the single Article indent 1 of Law no. 61/2002) .

<sup>126</sup> Paragraphs (2) and (3) of Article 201 were reproduced as amended by Article 1 indent 3 of G.E.O. no. 143/2002.

(31) 127If the acts of sexual perversion with a person under the age of 18 were determined by the perpetrator's offering or giving the victim money or other benefits, either directly or indirectly, the penalty shall be imprisonment from 3 to 12 years and the prohibition of certain rights.

(32) If the acts in paragraph (2) , (3) and (31) were committed for the production of pornographic material, the penalty shall be imprisonment from 5 to 15 years and the prohibition of certain rights, and if for this purpose coercion was used, the penalty shall be imprisonment from 5 to 18 years and the prohibition of certain rights.

(4) Acts of sexual perversion involving a person unable to defend him/herself or to express will or by coercion, shall be punished by imprisonment from 3 to 10 years and the prohibition of certain rights.

(5) If the act in paragraph (1) -(4) resulted in serious injury to corporal integrity or health, the penalty shall be imprisonment from 5 to 18 years and the prohibition of certain rights, and if it resulted in the victim's death or suicide the penalty shall be imprisonment from 15 to 25 years and the prohibition of certain rights.

Recourse in the interest of the law. See also the Decision no. III/2005 of the High Court of Cassation and Justice, issued within the recourse in the interest of the law concerning the meaning which must be regarded to acts referred to in Article 197 (1) and Article 198, as well as in Article 201 of the Penal Code supra to Article 197.

#### **Article 202 – <sup>128</sup> Sexual corruption**

Acts of an obscene nature committed against minors or in the presence of a minor shall be punished by imprisonment from 6 months to 5 years.

When the acts in paragraph (1) were committed in the family, the penalty shall be imprisonment from one to 7 years.

(21) 129If the acts in paragraph (1) and (2) were committed to produce pornographic material, the special maximum of the penalty shall be increased by 2 years

130The act of alluring a person in order to commit sexual intercourse with a minor of the opposite sex or of the same sex shall be punished by imprisonment from one to 5 years.

#### **Article 203 – Incest**

Sexual intercourse between persons directly related, or between siblings shall be punished by imprisonment from 2 to 7 years.

#### **Article 329 – 131Procurement**

The act of encouraging or facilitating the practice of prostitution or of acquiring benefits from another person's practice of prostitution shall be punished by imprisonment from 2 to 7 years and the prohibition of certain rights.

The act of recruiting a person for prostitution or of trafficking persons for this purpose, as well as that of coercing a person to practice prostitution, shall be punished by imprisonment from 3 to 10 years and the prohibition of certain rights.

132If the act in paragraph (1) or (2) is committed against a minor or has another kind of serious nature, the penalty shall be imprisonment from 5 to 18 years and the prohibition of certain rights.

Money, values or any other assets that served or were meant to serve, either directly or indirectly, in the commission of the offence in Article (1) -(3) and that were acquired by its commission shall be confiscated, and if they cannot be found, the convict shall be obliged to pay their equivalent in money.

Attempt is punishable.

Note: See also Article 10-12 of Law no. 678/2001 on preventing and fighting human trafficking, with subsequent amendments and supplements.

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<sup>127</sup> Paragraphs (3<sup>1</sup>) and (3<sup>2</sup>) were inserted by Article 1 indent 4 of G.E.O. no. 143/2002.

<sup>128</sup> Paragraph (1) and (2) of Article 202 were reproduced as amended by Article 1 indent 5 of G.E.O. no. 143/2002.

<sup>129</sup> Paragraph 2<sup>1</sup> of Article 202 was inserted by Article 1 indent 6 of the G.E.O. no. 143/2002.

<sup>130</sup> Paragraph 3 of Article 202 was inserted by Article 1 indent 6 of the G.E.O. no. 89/2001.

<sup>131</sup> Article 329 is reproduced as amended by Article 1 indent 18 of Law no. 169/2002

<sup>132</sup> Paragraph (3) of Article 329 is reproduced as amended by Article 1 indent 8 of the G.E.O. 143/2002.

**Law no. 678/2001 – 16/10/2005**

**Chapter 3 – Offences**

**Section 1 – Offences concerning trafficking in persons**

Article 13

The recruitment, transportation, transfer, housing and receipt of a minor for the purpose of exploitation of such minor shall be regarded as an offence of trafficking in minors and shall be punished with imprisonment from 5 to 15 years and prohibition of certain rights.

If the deed provided in paragraph (1) is committed by using threats, violence and other forms of constraint, kidnapping, fraud or deceit, misuse of power or taking advantage of the impossibility of such minor to defend himself or to express his will, or by offering, giving, accepting or receiving money or other benefits to obtain the consent of the person having authority on the minor, the punishment shall be imprisonment from 7 years to 18 years and prohibition of certain rights.

If the deeds provided in paragraph (1) and (2) are committed under the terms provided in Article 12 (2) , the punishment shall be imprisonment from 7 years to 18 years and prohibition of certain rights, in the case provided in paragraph (1) , and imprisonment from 10 years and 20 years and prohibition of certain rights, in the case provided in paragraph (2) .

If the deeds provided in this article resulted in death or suicide of the victim, the punishment shall be imprisonment from 15 years and 25 years and prohibition and certain rights.

**SECTION 2**

**Offences related to trafficking in persons**

Article 18

The deed of exposing, selling or spreading, renting, distributing, manufacturing or producing in any other way, of transmitting, offering, supplying or holding in view of spreading of objects, films, pictures, slides, emblems or other visual supports that represent sexual positions or acts of a pornographic nature presenting or involving minors under the age of 18, shall be the offence of infantile pornography and shall be punished with imprisonment from 3 to 10 years.

By the same punishment it shall also be sanctioned the import or delivery of objects of the sort provided in paragraph (1) to a transport or distribution agent, with a view to being sold or distributed.

\*\*\* Repealed

**Law no. 196 of 13 May 2003 \*\*\* Republished**

**On fighting and preventing pornography**

Issuing authority: The Romanian Parliament

Published in the Official Gazette no. 87 of 4 February 2009

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Law no. 196/2003 on fighting and preventing pornography was published in the Romanian Official Gazette, Part I, no. 531 of 24 July 2003, and was as well amended by Law no. 496/2004 concerning the amendment of Law no. 196/2003 on fighting and preventing pornography, published in the Romanian Official Gazette, Part I, no. 1.070 of 18 November 2004.

**Chapter 1**

**General provisions - Article 2**

To the meaning of this Law, pornographic shall be deemed acts of obscene nature, as well as material reproducing or casting such acts.

Acts of obscene nature shall be deemed gestures or explicit sexual behaviours, committed by individuals or by groups of individuals, sounds or words which by their meaning are offensive to decency, as well as any other forms of indecent manifestations regarding sexual life, if committed in public.

Materials of obscene nature shall be deemed objects, engravings, photos, holograms, drawings, writings, imprints, emblems, publications, films, video-audio recordings, commercial videos,

software and computer applications, songs, as well as any other form of expression which has explicit content or suggests a sexual activity.

### **Chapter 3**

#### **Offences and misdemeanours - Article 9**

Recruiting, forcing, determining or using minors or persons with mental or physical disabilities in acts of obscene nature is punished with 3 to 12 years imprisonment and interdiction of certain rights.

#### Article 10

Organising reunions in public spaces, attended by or assisted by minors and within which acts of obscene nature are committed shall be punished with 2 to 7 years imprisonment and interdiction of certain rights.

#### Article 11

The distribution of materials of obscene nature, presenting images of minors having explicit sexual behaviour shall be punished with 1 to 5 years imprisonment,

The same penalty shall be applied to possession of materials as provisioned in paragraph (1) for distribution.

#### **Article 182 - Exploitation of human beings**

Exploitation of human beings shall be deemed:

Submission to work or services, by coercion;

Preserving a status of slavery or other similar procedures involving the deprivation of liberty or dependence;

Forcing into prostitution, pornographic manifestations for the purpose of producing and distributing pornographic materials or any other forms of sexual exploitation;

Forcing to beggary;

Illegal taking of organs.

### **Chapter VII**

#### **TRAFFICKING AND EXPLOITING VULNERABLE PERSONS**

#### **Article 210 - Trafficking in human beings**

Recruiting, transporting, transferring, accommodating or receiving a person for the purpose of his/her exploitation, committed:

by coercion, abduction, misleading or misuse of authority;

taking advantage of his/her inability to defend or to express volition or of the obvious state of vulnerability of such person;

by offering, giving, accepting or receiving money or other advantages in the exchange of the consent of the person with authority in relation with the victim;

shall be punished with 3 to 10 years imprisonment and interdiction of certain rights.

The consent of the victim of trafficking in human beings is not deemed justifiable cause.

#### **Article 211 - Trafficking in children**

Recruiting, transporting, transferring, accommodating or receiving a minor for the purpose of his/her exploitation shall be punished with 3 to 10 years imprisonment and interdiction of certain rights.

If the deed was committed in the circumstances provisioned by article 210 (1) the penalty shall be 5 to 12 years imprisonment and interdiction of certain rights.

The consent of the victim of trafficking in human beings is not deemed justifiable cause.

#### **Article 213 - Procurement**

The act of encouraging or facilitating the practice of prostitution or of acquiring benefits from the practice of prostitution of one or several persons shall be punished by imprisonment from 2 to 7 years and the prohibition of certain rights.

If the person concerned was determined to begin or to continue the practice of prostitution by coercion, the penalty shall be 3 to 10 years imprisonment and interdiction of certain rights.

If the deeds are committed against a minor the special limits of the penalty shall be increased by a half.

By practicing prostitution it shall be deemed having intercourse with various persons for the purpose of obtaining benefits for one's self or for another.

#### **Article 216 - Using the services provided by an exploited person**

The deed of using the services provided by Article 182, delivered by a person about whom the beneficiary is aware that she/he is a victim of the trafficking in human beings or of the trafficking in children, shall be punished with 6 months to 3 years imprisonment or with a fine, if the deed does not represent a more serious offence.

### **Chapter VIII**

#### **Offences against freedom and sexual integrity**

##### **Article 218 - Sexual assault**

The sexual intercourse, other than the ones stipulated in art. 218, with a person, committed by coercion, by making the person unable to defend him/herself or express his/her consent, or taking advantage of this situation shall be punished with imprisonment of 2 to 7 years and prohibition of certain rights.

The penalty of imprisonment of 3 to 10 years and prohibition of certain rights is applied when:

the victim is under the care, protection, education, guard or treatment of the perpetrator;

the victim is a descendant, brother or sister;

the victim is not yet 16 years old;

the deed was carried out in order to produce pornographic materials;

the deed resulted in physical injury

If the act resulted in the victim's death, the penalty shall be imprisonment from 7 to 15 years and the prohibition of certain rights.

if the sexual assault acts had been preceded or followed by committing the sexual intercourse stipulated in art. 218 (1) and (2) , the deed shall be considered rape.

Criminal action for the act provided in paragraph (1) is initiated upon preliminary complaint by the injured person.

The attempt of the criminal offences stipulated in paragraph (1) and (2) shall be punished.

##### **Article 220 - Sexual intercourse with a minor**

Sexual intercourse, oral or anal sex, as well as any other acts to the meaning of vaginal or anal penetration committed against a minor aged 13 to 15, shall be punished with one to 5 years imprisonment.

The deed provisioned in paragraph (1) committed against a minor who has not reached the age of 13, shall be punished with 2 to 7 years imprisonment.

The deed provisioned in paragraph (1) committed by an adult with a minor aged 13 to 18, when the adult misused its authority or influence over the victim, shall be punished with 2 to 7 years imprisonment and the prohibition of certain rights.

The deed provisioned in paragraphs (1) – (3) shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights when:

the minor is a descendant, brother or sister;

the minor is under the care, protection, education, guard or treatment of the perpetrator;

the deed was committed in order to produce pornographic materials.

The deeds provisioned in paragraphs (1) and (2) shall not be punished if the age difference does not exceed 3 years.

##### **Article 221 - Sexual corruption of a minor**

Committing a sexual act, other than the one provisioned by Article 220, against a minor under the age of 13, as well as determining the minor to have or perform such act shall be punished with one to 5 years imprisonment.

The penalty shall be 2 to 7 years imprisonment and the prohibition of certain rights when:

the minor is a descendant, brother or sister;

the minor is under the care, protection, education, guard or treatment of the perpetrator;

the deed was carried out in order to produce pornographic materials



The sexual intercourse of any kind committed by an adult in the presence of a minor under the age of 13 shall be punished with 6 months to 2 years imprisonment or a fine.

Determining a minor under the age of 13 to assist acts of exhibitionist nature or to attend shows or representations containing sexual intercourse of any kind, as well as providing him/her with pornographic materials shall be punished with 3 months to one year imprisonment or a fine.

The deeds provisioned in paragraph (1) shall not be punished if the age difference does not exceed 3 years.

**Article 222 - Recruitment of children for sexual purposes**

The adult proposing a meeting to a minor who is not 13 years, for the purpose of committing an act of the type provided for in Article 220 or in Article 221, including when the proposal was made by distance communication means, shall be punished with one month to one year imprisonment or by a fine.

**Article 374 - Child pornography**

Producing, holding for display or distribution, acquiring, storing, exposing, promoting, distributing, as well as offering in any way pornographic material depicting children, shall be punished with one to 5 years imprisonment.

If the acts provided for in paragraph (1) were committed using a computerized system or any other way of storing computer data, the penalty shall be 2 to 7 years imprisonment.

Accessing unrightfully of pornographic materials depicting children using computerised systems or other means of electronic communication shall be punished with 3 months to 3 years imprisonment or with a fine.

The term pornographic materials depicting children means any material presenting a minor child having an explicit sexual behaviour or which, although it does not represent a real person, simulates in a credible way a child having such a behaviour.

Attempt shall be punished.

## **6.32 Serbia**

### **Extract:**

CRIMINAL CODE (Official Gazette of the RS, Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/2009)

### **2. Attempted Criminal Offence**

#### **Attempt - Article 30**

**(1) Whoever commences the perpetration of a criminal offence with intent, but does not complete it, shall be punished for an attempted criminal offence punishable by law with terms of imprisonment of five years or longer, and for attempted commission of other criminal offences only where the law explicitly provides for sanctions for such attempts.**

(2) Perpetrators shall be punished for attempted criminal offences with the penalties prescribed for the criminal offence, or a mitigated penalty.

#### **Inappropriate Attempt - Article 31**

Offenders attempting to commit criminal offences using inappropriate means or against inappropriate objects may have their punishment remitted.

#### **Co-perpetration - Article 33**

Where several persons jointly commit a criminal offence by taking part in the commission with intent or by negligence, or substantively contribute to the commission of a criminal offence by carrying out another action with intent and based on a joint decision, each of shall be punished with the penalty prescribed for that offence.

#### **Instigation - Article 34**

(1) Whoever with intent instigates another to commit a criminal offence shall be punished with the penalty prescribed for that criminal offence.

(2) Whoever with intent instigates another to commit a criminal offence whose attempt is punishable by law, but the offence is not attempted, shall be punished as if for an attempted criminal offence.

#### **Aiding and Abetting - Article 35**

(1) Whoever with intent aids another in the commission of a criminal offence shall be punished with the penalty prescribed for that criminal offence, or a mitigated penalty.

(2) The following, in particular, shall be deemed as aiding and abetting in the commission of a criminal offence: providing instructions or advice on how to commit the criminal offence, placing at the disposal of the perpetrator the necessary means to commit the criminal offence, creating the necessary conditions or removing obstacles for the commission of the criminal offence, issuing prior promises to conceal the commission of the criminal offence, the offender, evidence of the criminal offence, and items acquired by the commission of the criminal offence.

### **Limits of Culpability and Penalisation of Accomplices - Article 36**

(1) Accomplices are culpable for criminal offences committed within the limits of their intent or negligence, and instigators and aiders and abettors in the limits of their intent.

(2) The grounds precluding culpability of the perpetrator (Articles 23, 28 and 29 of this Code) do not preclude a criminal offence of accomplices, instigators or aiders and abettors who have culpability.

(3) Personal relations, characteristics and circumstances owing to which the law allows remission of punishment, or which affect the sentence pronounced, may be taken into consideration only for those perpetrators, accomplices, instigators or aiders and abettors who possess such relations, characteristics and circumstances.

(4) Personal relations, characteristics and circumstances which represent an essential element of the criminal offence do not need to exist with instigators or aiders and abettors. Such instigators or aiders and abettors may have their penalties mitigated.

### **4. Punishment of Instigators and Aiders and Abettors for Attempts**

#### **Attempts and Lighter Offences - Article 37**

(1) Where a criminal offence remains as an attempt, instigators or aiders and abettors shall be punished for the attempt.

(2) Where perpetrators committed a lighter criminal offence than that which the instigation and aiding and abetting concerned, and which would have been encompassed in it, instigators and aiders and abettors shall be punished for the criminal offence committed.

(3) The provision of paragraph 2 of this Article shall not be applied if the instigator would be given a more severe penalty by the application of Article 34 paragraph 2 of this Code.

### **DEFINITIONS**

The Meaning of Expressions used in this Code - Article 112

(8) A child is a person under fourteen years of age.

(9) A minor is a person over fourteen years of age but below eighteen years of age.

(10) A juvenile is a person who has not attained eighteen years of age.

### **CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM**

#### **Rape - Article 178**

(1) Whoever by using of force or a threat of direct attack against at person's body or the body of another forces that person to copulation or an equivalent act, shall be punished with imprisonment of from three to twelve years.

(2) If the offence referred to in paragraph 1 of this Article is committed under threat of disclosure of information against such person or another that would discredit such person's reputation or honour, or by threat of other grave evil, the offender shall be punished with imprisonment of from two to ten years.

(3) If the offence referred to in paragraphs 1 and 2 of this Article resulted in grievous bodily harm to the person against whom the offence was committed, or if the offence is committed by more than one person, or in a particularly cruel or particularly humiliating manner, or against a juvenile, or the act resulted in pregnancy, the offender shall be punished with imprisonment of from five to fifteen years.

(4) If the offence referred to in paragraphs 1 and 2 of this Article results in the death of the person against whom it was committed or is committed against a child, the offender shall be punished with imprisonment of a minimum of ten years.

#### **Copulation with a Helpless Person - Article 179**

(1) Whoever copulates with another or commits an equivalent act by taking advantage of such person's mental illness, mental retardation or other mental disorder, incapacity or some other state of that person due to which the person is incapable of resistance, shall be punished with imprisonment of two to ten years.

(2) If the helpless person suffers serious bodily harm due to the offence referred to in paragraph 1 of this Article, or the offence has been committed by several persons, or in a particularly cruel or humiliating manner, or against a juvenile, or if the act resulted in pregnancy, the perpetrator shall be punished with imprisonment of five to fifteen years.

(3) If the offence referred to in paragraphs 1 and 2 of this Article results in death of the person against whom it was committed, or was committed against a child, the offender shall be punished with imprisonment of a minimum of ten years.

#### **Copulation with a Child - Article 180**

(1) Whoever copulates with a child or commits an equivalent act against that child shall be punished with imprisonment from three to twelve years.

(2) If the offence referred to in paragraph 1 of this Article results in grievous bodily harm to the child against whom the act was committed, or if the act was committed by several persons, or the act resulted in pregnancy, the offender shall be punished with imprisonment of from five to fifteen years.

(3) If the offence referred to in paragraphs 1 and 2 resulted in the death of the child, the offender shall be punished with imprisonment of a minimum of ten years.

(4) Offenders shall not be punished for the offence referred to in paragraph 1 of this Article if there is no significant difference between the offender and the child in respect of their mental and physical level of development.

#### **Sexual Intercourse through Abuse of Position - Article 181**

(1) Whoever by abuse of position induces to copulation or an equivalent act a person who is in a subordinate or dependant position, shall be punished with imprisonment of three months to three years.

(2) Teachers, educators, guardians, adoptive parents, stepfathers, stepmothers or other persons who by abusing their position or authority copulate with a child or commit an equivalent act against a juvenile entrusted to them for instruction, education, guardianship or care, shall be punished with imprisonment of from one to ten years.

(3) If the offence referred to in paragraph 2 of this Article is committed against a child, the offender shall be punished with imprisonment of three to twelve years.

(4) If the offence referred to in paragraphs 1 through 3 of this Article resulted in pregnancy, the offender shall be punished for the offence referred to in paragraph 1 by imprisonment of from six months to five years, and for the offence referred to in paragraph 2 by imprisonment of from two to twelve years, and for the offence referred to in paragraph 3 by imprisonment of from three to fifteen years.

(5) If the offence referred to in paragraph 3 of this Article results in the death of the child, the offender shall be punished with imprisonment of a minimum of ten years.

#### **Prohibited Sexual Acts - Article 182**

(1) Whoever under conditions referred to in Article 178 paragraphs 1 and 2, Article 179 paragraph 1, Article 181 paragraphs 1 through 3 of this Code commits some other sexual act, shall be punished with a fine or imprisonment of up to three years.

(2) Whoever under the conditions referred to in Article 180 paragraph 1 of this Code commits another form of sexual act, shall be punished with imprisonment of from six months to five years.

(3) If the offence referred to in Article 180 paragraphs 1 and 2 of this Article results in grievous bodily harm to the person against whom the act was committed, or if the act is committed by several persons or in a particularly cruel or degrading manner, the offender shall be punished with imprisonment of from two to ten years.

(4) If the offence referred to in paragraphs 1, 2 and 3 of this Article results in death of the person against whom the act is committed, the offender shall be punished with imprisonment from of a minimum of five years.

#### **Procurement of Sexual Services - Article 183**

(1) Whoever procures a juvenile for performing copulation, an equivalent act, or other sexual act, shall be punished with imprisonment of one year to eight years, and a fine.

(2) Whoever makes possible the performance of copulation or an equivalent act or other sexual act with a juvenile shall be punished with imprisonment of from six months to five years, and a fine.

#### **Mediation in Prostitution - Article 184**

(1) Whoever causes or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of the information media or otherwise promotes or advertises prostitution, shall be punished with a fine or imprisonment of from six months to five years, and a fine.

If the offence referred to in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment from one to ten years, and a fine.

#### **Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography - Article 185**

(1) Whoever sells, shows or publicly displays or otherwise makes available texts, images, audio-visual or other items of pornographic content to a juvenile or shows to a juvenile a pornographic performance, shall be punished with a fine or imprisonment of up to six months.

(2) Whoever exploits a juvenile to produce photographs, audio-visual or other items of pornographic content or for a pornographic performance, shall be punished with imprisonment from six months to five years.

(3) Where the offence referred to in paragraphs 1 and 2 of this Article was committed against a child, the offender shall be punished for the offence referred to in paragraph 1 with imprisonment of from six months to three years, and for the offence referred to in paragraph 2 of this Article with imprisonment of from one to eight years.

(4) Whoever obtains for themselves, possesses, sells, exhibits privately or publicly, or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting from the abuse of juveniles, shall be punished with imprisonment of between three months and five years.

(5) Items referred to in paragraphs 1 through 4 of this Article shall be confiscated.

#### **Incitement of Minors to Attend Sexual Acts - Article 185a**

(1) Whoever incites minors to attend a rape, an act of copulation, or an equivalent act or some other sexual act, shall be punished with imprisonment of six months to five years and with a fine.

(2) If the offence referred to in paragraph 1 of this Article is committed by the use of force or threat, or against the child, the offender shall be punished with imprisonment of one to eight years.

#### **Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles - Article 185b**

(1) Whoever with intent to commit criminal offences referred to in Article 178 paragraph 4, Article 179 paragraph 3, Article 180 paragraphs 1 and 2, Article 181 paragraphs 2 and 3, Article 182 paragraph 1, Article 183 paragraph 2, Article 184 paragraph 3, Article 185 paragraph 2 and Article 185a of this Code, uses computer networks or other communication means to make appointments with juveniles, and appears at the place of the appointment, shall be punished with imprisonment of from six months to five years, and with a fine.

(2) Whoever commits any of the criminal offences referred to in paragraph 1 of this article against the child, shall be punished with imprisonment of from one to eight years.

#### **Human Trafficking - Article 388**

(1) Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts shall be punished by imprisonment of from three to twelve years.

(2) When the offence referred to in paragraph 1 of this Article is committed against a juvenile, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration.

(3) If the offence referred to in paragraph 1 of this Article is committed against a juvenile, the offender shall be punished by imprisonment of a minimum of five years.

- (4) If the offence referred to in paragraphs 1 and 3 of this Article resulted in serious bodily injury of a person, the offender shall be punished by imprisonment of from five to fifteen years.
- (5) If the offence referred to in paragraphs 1 and 3 of this Article resulted in the death of one or more persons, the offender shall be punished by imprisonment of a minimum of ten years.
- (6) Whoever habitually engages in offences referred to in paragraphs 1 to 3 of this Article or if the offence is committed by a group shall be punished by imprisonment of a minimum of five years.
- (7) If the offence referred to in paragraphs 1 to 3 of this Article is committed by an organised group, the offender shall be punished by imprisonment of a minimum of ten years.
- (8) Whoever knows or should know that a person is a victim of trafficking, and abuses his/her position or allow to another to abuse his/her position for the exploitation referred to in paragraph 1 this Article, shall be punished by imprisonment from six months to five years.
- (9) If the offence referred to in paragraph 8 of this Article is committed against a juvenile, the offender shall be punished by imprisonment of from six months to five years.
- (10) The agreement of persons to be exploited or placed in slavery or servitude referred to in paragraph 1 this Article shall not affect the existence of the criminal offence referred to in paragraphs 1, 2 and 6 of this Article.

## **6.33 Slovak Republic**

### Extract

#### **Section 14 Attempt of a criminal offence, Section 21 para 1 letter b) and d) of the Criminal Code of the Slovak Republic**

##### **Section 14 - Attempted criminal offence**

(1) An attempted criminal offence is an action directly leading to the commission of a criminal offence and performed by an offender intending to commit a criminal offence if the commission of a criminal offence was not completed.

(2) An attempted criminal offence shall give rise to the same punishment as a completed criminal offence concerned.

(3) An attempted criminal offence shall not give rise to the punishment if the offender voluntarily stopped performing the action leading to the commission of the criminal offence and removed the threat to an interest protected under this Act presented by the attempt, or gave information about the attempted criminal offence to the body active in criminal proceedings or to Police Force at such time when it was still possible to remove the threat to an interest protected under this Act presented by the attempt; members of the armed forces may give such information to their superior officers and persons serving their imprisonment sentences or remanded in custody may give such information also to the officers of the Corps of Prison and Court Guard of the Slovak Republic.

(4) The application of paragraph 3 shall not, however, prejudice criminal liability of the offender for a different criminal offence he had already committed through such an action.

##### **Section 21 - Abettor**

An abettor to a completed or attempted criminal offence is any person who wilfully masterminded or directed the commission of a criminal offence (organiser) instigated another person to commit a criminal offence (instigator) , asked another person to commit a criminal offence (hirer) , assisted another person in committing a criminal offence, in particular by procuring the means, removing the obstacles, providing an advice, strengthening the determination, making a promise of post crime assistance (aider) .

(2) Unless this Act provides otherwise, the criminal liability of an abettor shall be governed by the same provisions as the criminal liability of an offender.

##### **Section 201 Sexual violence (General Provision)**

##### **Section 201 - Sexual abuse**

(1) The person who has sex with a person younger the age of fifteen or who sexually abuses such a person in another manner shall be punished with the imprisonment from three to ten years.

(2) The offender shall be punished with the imprisonment from seven to twelve years if s/he commits the offence referred to in part 1

a) in serious mode of action,

b) on a protected person, or



c) with a specific motive.

(3) The offender shall be punished with the imprisonment from twelve to fifteen years if s/he commits the offence referred to in part 1 and causes an aggravated bodily injury by the offence.

(4) The offender shall be punished with the imprisonment from fifteen to twenty years if s/he commits the offence referred to in part 1

a) and causes death by the offence, or

b) in a critical situation.

## **Section 202**

(1) The person who makes a person younger the age of eighteen have extramarital sex or sexually abuses him/her in another manner

a) if such a person is a person entrusted to his/her custody or supervision or a dependant person, or

b) for a reward shall be punished with the imprisonment from one to five years.

(2) The offender shall be punished with the imprisonment from two to eight years if s/he commits the offence referred to in part 1 on a person younger the age of eighteen who was made to such acting because of obedience, by pressure or with threat.

## **Section 14 Attempt of a criminal offence, Section 21 para 1 letter b) and d) of the Criminal Code of the Slovak Republic**

### **Section 368 - Production of child pornography**

(1) The person who uses, gains, offers or otherwise abuses a child for the production of child pornography or enables its abuse or otherwise participates in such production shall be punished with the imprisonment from four to ten years.

(2) The offender shall be punished with the imprisonment from seven to twelve years if s/he commits the offence referred to in part 1

a) on a child younger the age of twelve,

b) in serious mode of action, or

c) in public.

(3) The offender shall be punished with the imprisonment from ten to fifteen years if s/he commits the offence referred to in part 1

a) and causes an aggravated bodily injury or death by the offence, or

b) and gains a considerable benefit by the offence.

(4) The offender shall be punished with the imprisonment from twelve to twenty years if s/he commits the offence referred to in part 1

- a) and causes aggravated bodily injuries to several persons or death of several persons,
- b) and gains an extensive benefit, or
- c) as a member of a dangerous group.

### **Section 369, Dissemination of child pornography**

(1) The person who disseminates, transports, delivers, makes available or otherwise disseminates child pornography shall be punished with the imprisonment from one to five years.

(2) The offender shall be punished with the imprisonment from three to eight years if s/he commits the offence referred to in part 1

- a) in serious mode of action, or
- b) in public.

(3) The offender shall be punished with the imprisonment from four to ten years if s/he commits the offence referred to in part 1 and gains a considerable benefit by the offence.

(4) The offender shall be punished with the imprisonment from seven to twelve years if s/he commits the offence referred to in part 1 and gains an extensive benefit by the offence.

### **Section 370 - Possessing of Child Pornography**

Any person who receives and possesses children pornography, shall be liable to a term of imprisonment of up to two years.

### **Section 371 - Corrupting the morals**

(1) The person who makes, purchases, imports or otherwise delivers and then sells, lends or otherwise puts into circulation, disseminates, makes available to the public or publishes pornography, sound and visual carriers, images or other objects corrupting morals, showing disrespect to man and violence, or displaying sex with an animal or other sexual pathologic practices shall be punished with the imprisonment for up to two years.

(2) The offender shall be punished with the imprisonment from one to five years if s/he commits the offence referred to in part 1

- a) in serious mode of action, or
- b) in public.

(3) The offender shall be punished with the imprisonment from three to eight years if s/he commits the offence referred to in part 1 and gains a considerable benefit by the offence.

Section 14 Attempt of a criminal offence, Section 21 para 1 letter b) and d) of the Criminal Code of the Slovak Republic

### **Section 367 - Procuring and soliciting prostitution**

(1) The person who procures, moves, entices, uses, gains or offers another person for the execution of prostitution, or the person who profits from prostitution executed by someone else or enables its execution shall be punished with the imprisonment for up to three years.

(2) The offender shall be punished with the imprisonment from one to five years if s/he commits such an offence in serious mode of action.

(3) The offender shall be punished with the imprisonment from three to ten years if s/he commits the offence referred to in part 1 on a protected person.

(4) The offender shall be punished with the imprisonment from seven to twelve years if s/he commits the offence referred to in part 1

a) and gains a major benefit for him/herself or another person by the offence,

b) as a member of a dangerous group, or

c) on a person younger the age of fifteen.

(5) The offender shall be punished with the imprisonment from ten to fifteen years if s/he commits the offence referred to in part 1 and causes an aggravated bodily injury or death by the offence.

**Section 127, para 1**

For the purpose of this law, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

## 6.34 Slovenia

### Extract

The Criminal Code (official consolidated text) (Official Gazette of the Republic of Slovenia, no. 50/2012) – not official translation

#### Chapter Nineteen - CRIMINAL OFFENCES AGAINST SEXUAL INTEGRITY

<p style="text-align: center;">Trafficking in human beings Article 113</p> <p>(1) Whoever due to the exploitation of prostitution or other forms of sexual abuse, forced labor, slavery, servitude, or service offenses of trafficking in human organs, human tissue or blood of another person buy, take, housed, transported, sold, delivered, or it otherwise possession or recruit such a person, changing or transferring control over whether these practices to be, irrespective of whether such consent is punishable by imprisonment of one to ten years.</p> <p>(2) If the offense under the preceding paragraph is committed against a minor or by force, threat, kidnapping or abuse of a subordinate or dependent position or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, or to coerce the pregnancy or in vitro fertilization, the perpetrator shall be punished by imprisonment of three to fifteen years.</p> <p>(3) the punishment referred to in the preceding paragraph shall be punished, whoever commits an act referred to in the first or second paragraph of this article as a member of a criminal organization to carry out such acts, or if it was this action acquired a large property.</p>	<p style="text-align: center;">Kazenski zakonik (KZ-1) Trgovina z ljudmi - 113. Člen</p> <p>(1) Kdor zaradi izkoriščanja prostitucije ali drugih oblik spolnih zlorab, prisilnega dela, suženjstva, služabništva, storitve kaznivih dejanj ali trgovine z organi, človeškimi tkivi ali krvjo drugo osebo kupi, prevzame, nastani, prepelje, proda, izroči oziroma z njo kako drugače razpolaga ali tako osebo novači, menjava ali prenaša nadzor nad njo ali pri teh ravnanjih posreduje, se, ne glede na morebitno privolitev te osebe, kaznuje z zaporom od enega do desetih let.</p> <p>(2) Če je dejanje iz prejšnjega odstavka storjeno proti mladoletniku ali pa s silo, grožnjo, preslepitvijo, ugrabitvijo ali zlorabo podrejenega ali odvisnega položaja ali z dajanjem ali prejemanjem plačil ali koristi, da se doseže soglasje osebe, ki ima nadzor nad drugo osebo, ali z namenom prisiljevanja k nosečnosti ali umetni oploditvi, se storilec kaznuje z zaporom od treh do petnajstih let.</p> <p>(3) S kaznijo iz prejšnjega odstavka se kaznuje, kdor stori dejanje iz prvega ali drugega odstavka tega člena kot član hudodelske združbe za izvedbo takih dejanj ali če je bila s tem dejanjem pridobljena velika premoženjska korist.</p>
<p style="text-align: center;">Rape Article 170</p> <p>(1) Whoever compels a person of the same or opposite sex to submit to sexual intercourse with him/her or to this tied sexual behaviour, by force or threat of imminent attack on life or limb shall be sentenced to imprisonment for not less than one and not more than ten years.</p> <p>(2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.</p>	<p style="text-align: center;">Posilstvo 170. člen</p> <p>(1) Kdor prisili osebo drugega ali istega spola k spolnemu občevanju ali s tem izenačenemu spolnemu ravnanju, tako da uporabi silo ali zagrozi z neposrednim napadom na življenje ali telo, se kaznuje z zaporom od enega do desetih let.</p> <p>(2) Če je dejanje iz prejšnjega odstavka storjeno grozovito ali posebno poniževalno ali če je dejanje storilo več oseb zaporedoma ali nad obsojenci ali drugimi osebami, ki jim je vzeta prostost, se storilec kaznuje z zaporom od treh do petnajstih let.</p> <p>(3) Kdor prisili osebo drugega ali istega spola k spolnemu občevanju ali s tem izenačenemu spolnemu ravnanju, tako da ji zagrozi, da bo o</p>

<p>(3) Whoever compels a person of the same or opposite sex to submit to sexual intercourse or to tied sexual behaviour, by threatening him/her with large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not less than six months and not more than five years.</p> <p>(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.</p>	<p>njej ali njenih bližnjih odkril, kar bi škodovalo njeni ali njihovi časti ali dobremu imenu, ali da bo njej ali njenim bližnjim povzročil veliko premoženjsko škodo, se kaznuje z zaporom od šestih mesecev do petih let.</p> <p>(4) Če sta bili dejanji iz prvega ali tretjega odstavka tega člena storjeni proti osebi, s katero storilec živi v zakonski, zunajzakonski skupnosti ali registrirani istospolni skupnosti, se pregon začne na predlog.</p>
<p style="text-align: center;">Sexual Violence Article 171</p> <p>(1) Whoever uses force or threatens a person of the same or opposite sex with imminent attack on life or limb thereby compelling that person to submit to any lewd act not covered by the preceding Article or to perform such an act shall be sentenced to imprisonment for not less than six months and not more than ten years.</p> <p>(2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.</p> <p>(3) Whoever compels a person of the same or opposite sex to perform or submit to any lewd act by threatening him/her with a large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not more than five years.</p> <p>(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.</p>	<p style="text-align: center;">Spolno nasilje 171. člen</p> <p>(1) Kdor uporabi silo ali zagrozi osebi drugega ali istega spola z neposrednim napadom na življenje ali telo in jo tako prisili, da stori ali trpi kakšno spolno dejanje, ki ni zajeto v prejšnjem členu, se kaznuje z zaporom od šestih mesecev do desetih let.</p> <p>(2) Če je dejanje iz prejšnjega odstavka storjeno grozovito ali posebno poniževalno ali če je dejanje storilo več oseb zaporedoma ali nad obojenci ali drugimi osebami, ki jim je vzeta prostost, se kaznuje z zaporom od treh do petnajstih let.</p> <p>(3) Kdor osebo drugega ali istega spola prisili, da stori ali trpi kakšno spolno dejanje iz prvega odstavka tega člena, tako da ji zagrozi, da bo o njej ali njenih bližnjih odkril, kar bi škodovalo njeni ali njihovi časti ali dobremu imenu, ali da bo njej ali njenim bližnjim povzročil veliko premoženjsko škodo, se kaznuje z zaporom do petih let.</p> <p>(4) Če sta bili dejanji iz prvega ali tretjega odstavka tega člena storjeni proti osebi, s katero storilec ali storilka živi v zakonski, zunajzakonski skupnosti ali registrirani istospolni partnerski skupnosti, se pregon začne na predlog.</p>
<p>Sexual Abuse of Defenceless Person - Article 172</p> <p>(1) Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex by abusing the fact of</p>	<p>Spolna zloraba slabotne osebe - 172. člen</p> <p>(1) Kdor spolno občuje ali stori kakšno drugo spolno dejanje z osebo drugega ali istega spola, tako da zlorabi njeno duševno bolezen, začasno duševno motnjo, hujšo duševno zaostalost,</p>

<p>his/her mental disease, temporary or graver mental disorder or sickness or any other state, owing to which that person is not capable of resisting, shall be sentenced to imprisonment for not less than one and not more than eight years.</p> <p>(2) Whoever, under circumstances under the preceding paragraph, violates the sexual integrity of another person in any other way shall be sentenced to imprisonment for not more than five years.</p>	<p>slabost ali kakšno drugačno stanje, zaradi katerega se ne more upirati, se kaznuje z zaporom od enega do osmih let.</p> <p>(2) Kdor v okoliščinah iz prejšnjega odstavka kako drugače prizadene spolno nedotakljivost slabotne osebe, se kaznuje z zaporom do petih let.</p>
<p>Sexual Assault on a Person Below Fifteen Years of Age - Article 173</p> <p>(1) Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to imprisonment for not less than three and not more than eight years.</p> <p>(2) Whoever commits the offence under the preceding paragraph against the defenceless person under the age of fifteen or by using force or threatening him/her with imminent attack on life or limb, or in such manner reach services act with another person, shall be sentenced to imprisonment for not less than five and not more than fifteen years.</p> <p>(3) A teacher, educator, guardian, adoptive parent, parent, priest, doctor or any other person who through the abuse of his/her position has sexual intercourse or performs any lewd act with a person under the age of fifteen and whom he/she is entrusted to teach, educate, health treat, protect or care for shall be sentenced to imprisonment for not less than three and not more than ten years.</p> <p>(4) Whoever, under circumstances under paragraphs 1, 2 and 3 of this Article, violates the sexual integrity of the person under the age of fifteen years in any other way, shall be sentenced to imprisonment for not more than five years.</p> <p>(5) An act under the paragraph 1 of this Article is not illegal, if it was committed with the person of comparative age and if it fits to the level of him/her mental and physical maturity.</p>	<p>Spolni napad na osebo, mlajšo od petnajst let 173. člen</p> <p>(1) Kdor spolno občuje ali stori kakšno drugo spolno dejanje z osebo drugega ali istega spola, ki še ni stara petnajst let, se kaznuje z zaporom od treh do osmih let.</p> <p>(2) Kdor stori dejanje iz prejšnjega odstavka s slabotno osebo, ki še ni stara petnajst let, ali tako, da uporabi silo ali zagrozi z neposrednim napadom na življenje ali telo, ali na tak način doseže storitev dejanja z drugo osebo, se kaznuje z zaporom od petih do petnajstih let.</p> <p>(3) Učitelj, vzgojitelj, skrbnik, posvojitelj, roditelj, duhovnik, zdravnik ali druga oseba, ki z zlorabo svojega položaja spolno občuje ali stori kakšno drugo spolno dejanje z osebo, ki še ni stara petnajst let in mu je zaupana v učenje, vzgojo, zdravljenje, varstvo ali oskrbo, se kaznuje z zaporom od treh do desetih let.</p> <p>(4) Kdor v okoliščinah iz prvega, drugega in tretjega odstavka tega člena kako drugače prizadene spolno nedotakljivost osebe, ki še ni stara petnajst let, se kaznuje z zaporom do petih let.</p> <p>(5) Dejanje iz prvega odstavka tega člena ni protipravno, če je bilo storjeno z osebo primerljive starosti in če ustreza stopnji njene duševne in telesne zrelosti.</p>
<p>Grooming - Article 173.a</p> <p>(1) Whoever grooms a person under the age of 15 years over the informational or communicational technologies to meet with him/her to commit a criminal offence from paragraph 1 of Article 173 of this Criminal Code, or in order to produce pictures, audio-</p>	<p>Pridobivanje oseb, mlajših od petnajst let, za spolne namene - 173.a člen</p> <p>(1) Kdor osebo, mlajšo od petnajst let, prek informacijskih ali komunikacijskih tehnologij nagovarja za srečanje z namenom, da bi zoper njo storil kaznivo dejanje iz prvega odstavka 173. člena tega zakonika ali zaradi izdelave slik,</p>

<p>visual or other items of a pornographic or other sexual nature, and due to this proposal has been followed by concrete actions to achieve the meeting, shall be sentenced to imprisonment for not more than one year.</p> <p>(2) The offence under the preceding paragraph is not illegal, if it was committed to achieve the act under circumstances under the paragraph 1 of Article 173 and under conditions under the paragraph 5 of Article 173 of this Criminal Code.</p>	<p>avdiovizualnih ali drugih predmetov pornografske ali drugačne seksualne vsebine, in so nagovarjanju sledila konkretna dejanja za uresničitev srečanja, se kaznuje z zaporom do enega leta.</p> <p>(2) Dejanje iz prejšnjega odstavka ni protipravno, če je bilo storjeno zaradi uresnitve dejanja iz prvega odstavka 173. člena in pod pogoji iz petega odstavka 173. člena tega zakonika.</p>
<p>Violation of Sexual Integrity by Abuse of Position - Article 174</p> <p>(1) Whoever, by abusing his position, induces his subordinate or a person of the same or different sex who depends on him to have sexual intercourse with him or to perform or submit to any lewd act shall be sentenced to imprisonment for not more than five years.</p> <p>(2) A teacher, educator, guardian, adoptive parent, parent or any other person who through the abuse of his position has sexual intercourse or performs any lewd act with a person above the age of fifteen whom he is entrusted to teach, educate, protect or care for shall be sentenced to imprisonment for not less than one and not more than eight years.</p>	<p>Kršitev spolne nedotakljivost z zlorabo položaja 174. člen</p> <p>(1) Kdor zlorabi svoj položaj in tako pripravi osebo drugega ali istega spola, ki mu je podrejena ali od njega odvisna, k spolnemu občevanju, ali da stori oziroma trpi kakšno drugo spolno dejanje, se kaznuje z zaporom do petih let.</p> <p>(2) Učitelj, vzgojitelj, skrbnik, posvojitelj, roditelj ali druga oseba, ki z zlorabo svojega položaja spolno občuje ali stori kakšno drugo spolno dejanje z osebo, staro nad petnajst let, ki mu je zaupana v učenje, vzgojo, varstvo in oskrbo, se kaznuje z zaporom od enega do osmih let.</p>
<p>Misuse of Prostitution - Article 175</p> <p>(1) Whoever participates for exploitative purposes in the prostitution of another person or instructs, obtains or encourages another to engage in prostitution with force, threats or deception, shall be sentenced to imprisonment for not less than three months and not more than five years.</p> <p>(2) Whoever participates for exploitative purposes in the prostitution of a minor person, or seizes on the prostitution of a minor person, or by force, threat, deceit, groom or persuade or encourage a minor person to the prostitution, shall be sentenced to imprisonment for not less than one and not more than ten years.</p> <p>(3) If the offences from the paragraph 1 or 2 of this Article is committed against more than one person or as part of a criminal organisation, the perpetrator shall be sentenced to imprisonment for not less than one and not more than ten years.</p>	<p>Zloraba prostitucije - 175. člen</p> <p>(1) Kdor zaradi izkoriščanja sodeluje pri prostituciji druge osebe ali kdor s silo, grožnjo ali preslepitvijo navede, pridobi ali spodbudi drugo osebo k prostituciji, se kaznuje z zaporom od treh mesecev do petih let.</p> <p>(2) Kdor zaradi izkoriščanja sodeluje pri prostituciji mladoletne osebe ali posega po prostituciji mladoletne osebe ali kdor s silo, grožnjo, preslepitvijo, novačenjem ali nagovarjanjem navede, pridobi ali spodbudi mladoletno osebo k prostituciji, se kaznuje z zaporom od enega do desetih let.</p> <p>(3) Če sta bili dejanji iz prvega ali drugega odstavka tega člena storjeni proti več osebam ali v okviru hudodelske združbe, se storilec kaznuje z zaporom od enega do dvanajstih let.</p>
<p>Presentation, Manufacture, Possession and Distribution of Pornographic Material - Article 176</p>	<p>Prikazovanje, izdelava, posest in posredovanje pornografskega gradiva 176. člen</p>

<p>(1) Whoever sells, presents or publicly exhibits documents, pictures or audio-visual or other items of a pornographic nature to a person under fifteen years of age, enables them to gain access to these in any other way or shows them a pornographic or other sexual performance shall be given a fine or a prison sentence of up to two years.</p> <p>(2) Whoever in order to produce pictures, audio-visual or other items of a pornographic or other sexual nature, by force, threat, deceit, exceed or abuse a power or because of exploitation groom, persuade or encourage minor persons, or uses them in a pornographic or other sexual performance or is knowingly present at such performance, shall be sentenced to imprisonment for not less than six months and not more than eight years.</p> <p>(3) Whoever produces, distributes, sells, imports or exports pornographic or other sexual material depicting minors or their realistic images, supplies it in any other way for himself/herself or for someone else, or whoever possesses such material, or gets the access to such material with the usage of informational or communicational technologies, or discloses the identity of a minor in such material, shall be subject to the same sentence as in the preceding paragraph.</p> <p>(4) If an offence from paragraphs 2 or 3 of this Article was committed within a criminal organization for the committing of such criminal offences, the perpetrator shall be sentenced to imprisonment for not less than one and not more than eight years.</p> <p>(5) Pornographic or other sexual material from paragraphs 2, 3 and 4 of this Article shall be seized or its use appropriately disabled.</p>	<p>(1) Kdor osebi, mlajši od petnajst let, proda, prikaže ali z javnim razstavljanjem ali kako drugače omogoči, da so ji dostopni spisi, slike, avdiovizualni ali drugi predmeti pornografske vsebine, ali ji prikaže pornografsko ali drugačno seksualno predstavo, se kaznuje z denarno kaznijo ali zaporom do dveh let.</p> <p>(2) Kdor s silo, grožnjo, preslepitvijo, prekoračitvijo ali zlorabo pooblastil, novačenjem, nagovarjanjem ali zaradi izkoriščanja navede, pridobi ali spodbudi mladoletno osebo za izdelavo slik, avdiovizualnih ali drugih predmetov pornografske ali drugačne seksualne vsebine, za sodelovanje v pornografski ali drugačni seksualni predstavi ali kdor taki predstavi vedoma prisostvuje, se kaznuje z zaporom od šestih mesecev do osmih let.</p> <p>(3) Enako kot v prejšnjem odstavku se kaznuje, kdor zase ali za drugega pridobiva, proizvede, razširi, proda, uvozi, izvozi ali drugače ponudi pornografsko ali drugačno seksualno gradivo, ki vključuje mladoletne osebe ali njihove realistične podobe, ali kdor poseduje tako gradivo ali pridobi dostop do takega gradiva s pomočjo informacijskih ali komunikacijskih tehnologij, ali razkriva identiteto mladoletne osebe v takem gradivu.</p> <p>(4) Če je bilo dejanje iz drugega ali tretjega odstavka tega člena storjeno v hudodelski združbi za izvrševanje takih kaznivih dejanj, se storilec kaznuje z zaporom od enega do osmih let.</p> <p>(5) Pornografsko ali drugačno seksualno gradivo iz drugega, tretjega in četrtega odstavka tega člena se vzame ali njegova uporaba ustrezno onemogoči.</p>
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## **6.35 Spain**

**Information Society Services and Electronic Commerce Law 34/2002 of July 12, 2002**  
(the "LSSI")

### **CHAPTER III CODES OF CONDUCT**

#### **Article 18. Codes of conduct**

1. Public Administrations shall, through coordination and advisory services, encourage the drawing up and implementation of voluntary codes of conduct by commercial, professional and consumer associations, organizations and corporations in regard to the subject areas governed by this Act. In particular, the Administración General del Estado (National Public Administration) shall encourage the drawing up of codes of conduct at the European Community and international levels.

Codes of conduct may deal in particular with procedures for detecting and removing unlawful content and the protection of recipients of services from the receipt of unsolicited commercial communications, and with extrajudicial procedures for resolving any disputes that may arise in regard to the provision of information society services.

2. In drawing up these codes, steps must be taken to assure participation by consumer and user associations and organizations representing persons with physical or mental disabilities, where the interests of such groups may be affected.

Codes of conduct shall particularly take into account the protection of minors and human dignity insofar as the content of such codes may pertain to these areas; and, where necessary, codes specifically concerned with these areas may be established.

Government authorities shall especially promote the establishment of common standards agreed by industry for classifying and labelling content, and shall encourage providers to adhere to them.

3. The codes of conduct referred to in the foregoing paragraphs must be accessible by electronic means. For wider dissemination, their translation into other official languages of the European Community shall be encouraged.

### **CRIMINAL CODE - ORGANIC ACT 10/1995, DATED 23 NOVEMBER**

#### **Article 16**

1. An attempted offence takes place when a person begins to perpetrate an offence by direct action, perpetrating all or part of the acts that objectively should produce the intended result, and notwithstanding this, such is not attained due to causes beyond the control of the principal.

2. Whoever voluntarily avoids the offence being consummated, either by going no further with its commission when already commenced, or by preventing the result from taking place, shall be exempt from criminal accountability, without prejudice to the accountability he may have incurred for the acts perpetrated, should these already have constituted another felony or misdemeanour.

3. When various subjects intervene in an act, the one or those who desist from execution thereof once already commenced, and who prevent or attempt to prevent consummation, in a serious, firm manner, shall be exempt from criminal accountability, without prejudice to accountability they may have incurred for the acts perpetrated, should these already have constituted another felony or misdemeanour.

#### **Article 18**

1. Provocation exists when a direct incitation is present by means of the printing press, radio broadcasting or any other means with a similar effectiveness, affording publicity, or when persons have gathered, inciting the perpetration of a crime.

Conniving at a criminal act by expressing approval thereof, for the purposes of this Code, is presentation, before an assembly of persons, or by any means of diffusion, of ideas or doctrines that defend the offence or praise the principal. Connivance at a criminal act by expressing approval thereof shall only be criminal as a form of provocation and if, due to its nature and circumstances, it constitutes a direct incitement to commit a crime.

2. Provocation shall be punished exclusively in cases in which the Law foresees this.

If the provocation has been followed by perpetration of the offence, it shall be punished as induction.

### **Article 28**

Principals are those who perpetrate the act themselves, alone, jointly, or by means of another used to aid and abet.

The following shall also be deemed principals:

- a) Whoever directly induces another or others to commit a crime;
- b) Whoever co-operates in the commission thereof by an act without which a crime could not have been committed.

### **Article 29**

Accessories are those who, not being included in the preceding Article, co-operate in carrying out the offence with prior or simultaneous acts.

## **TITLE VIII**

### **Felonies against sexual freedom and indemnity**

#### **CHAPTER I**

##### **On sexual assault**

Article 178 (As amended by Organic Law 5/2010, of 22nd June)

Whoever offends against the sexual freedom of another person, using violence or intimidation, shall be punished for sexual assault with a sentence of imprisonment from one to five years.

Article 179 (As amended by Organic Law 15/03, of 25th November)

When the sexual assault consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the offender shall be convicted of rape with a sentence of imprisonment from six to twelve years.

Article 180 (As amended by Organic Law 5/2000, of 22nd June)

1. The preceding conduct shall be punished with prison sentences of five to ten years for assaults pursuant to Article 178, and from twelve to fifteen years for those of Article 179, when any of the following circumstances concur:

1. When the violence or intimidation made are of a particularly degrading or humiliating nature;
  2. When the acts are committed by joint action of two or more persons;
  3. When the victim is especially vulnerable due to age, illness, handicap or circumstances, except for what is set forth in Article 183;
  4. When, in order to execute the offence, the offender has availed himself of a superiority or relationship, due to being the ascendant, descendent or brother or sister, biological or adopted or in-law of the victim;
  5. When the doer uses weapons or other equally dangerous means which may cause death or any of the injuries foreseen in Articles 149 and 150 of this Code, without prejudice to the relevant punishment for the death or injuries caused.
2. Should two or more of the above circumstances concur, the penalties foreseen in this Article shall be imposed in the upper half.

#### **CHAPTER II**

##### **On sexual abuse**

Article 181 (As amended by Organic Law 5/2010, of 22 June)

1. Whoever, without violence or intimidation and without there being consent, perpetrates acts against the sexual freedom or indemnity of another person, shall be convicted of sexual abuse, with a sentence of imprisonment from one to three years or a fine of eighteen to twenty- four months.
2. For the purposes of the preceding Section, non-consensual sexual abuse is deemed to be that perpetrated on persons who are unconscious, or whose mental disorder is taken advantage of, as well as those committed by overcoming the will of the victim using narcotics, drugs or any other natural or chemical substance that is appropriate for such purpose.
3. The same punishment shall be imposed when consent is obtained by the offender availing himself of a situation of manifest superiority that deprives the victim of liberty.

4. In all the preceding cases, when the sexual abuse consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the offender shall be punished with a sentence of imprisonment from four to ten years.

5. The penalties stated in this Article shall be imposed in the upper half if the circumstance of 3a. or that of 4a. of those foreseen in Section 1 of Article 180 of this Code concur.

Article 182 (As amended by Organic Law 5/2010, of 22nd June)

1. Whoever, by deceit, engages in acts of a sexual nature with a person over the age of thirteen and under the age of sixteen shall be punished with a sentence of imprisonment from one to two years, or a fine of twelve to twenty- four months.

2. When the acts consist of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the punishment shall be prison from two to six years. The punishment shall be imposed in its the upper half if circumstances 3 or 4 of those foreseen in Article 180.1 of this Code concur.

## **CHAPTER II BIS**

### **On sexual abuse and assault on children under the age of thirteen years**

Article 183 (As amended by Organic Law 5/2010, of 22nd June)

1. Whoever perpetrates acts against the sexual indemnity of a child under the age of thirteen years shall be convicted of sexual abuse of the child, with a sentence of imprisonment from two to six years.

2. When the assault takes place by means of violence or intimidation, the offender shall convicted of the offence of sexual assault of the child, with the punishment of five to ten years imprisonment.

3. When the assault consists of vaginal, anal or oral penetration, or inserting body parts or objects into either of the former two orifices, the offender shall be punished with a sentence of imprisonment from eight to twelve years, in the case of Section 1 and with the punishment of twelve to fifteen years, in the case of Section 2.

4. The conducts foreseen in the preceding three numbers shall be punished with the relevant sentence of imprisonment in its upper half when any of the following circumstances concur:

- a) When the scarce intellectual or physical development of the victim has caused a situation of total defencelessness and, in all cases, when under four years old;
- b) When the acts are committed by the joint action of two or more persons;
- c) When the violence or intimidation made are of a particularly degrading or humiliating nature;
- d) When, in order to execute the offence, the offender has availed himself of a superiority or relationship, due to being the ascendant, descendent or brother, biological, adopted or in-law of the victim;
- e) When the offender has endangered the life of the minor;

f) When the offence has been committed within a criminal organisation or group with the purpose of perpetrating those activities.

5. In all the cases foreseen in this Article, when the offender has availed itself of his condition as an authority, agent or public officer thereof, the punishment of absolute barring from six to twelve years shall also be applied.

Article 183 bis (As amended by Organic Law 5/2010, of 22nd June)

Whoever uses the Internet, telephone or any other information and communication technology to contact a person under the age of thirteen years and proposes to meet that person in order to commit any of the offences described in Articles 178 to 183 and 189, as long as such a solicitation is accompanied by material acts aimed at such an approach, shall be punished with the penalty of one to three years imprisonment or a fine of twelve to twenty- four months, without prejudice to the relevant penalties for the offences actually committed. The penalties shall be imposed in the upper half when the approach is obtained by coercion, intimidation or deceit.

### **CHAPTER III**

#### **On sexual harassment**

Article 184 (As amended by Organic Law 15/03, of 25th November)

1. Whoever solicits favours of a sexual nature, for himself or for a third party, within the setting of a continuous or usual work relation, teaching or service provision relation, and by such conduct causes the victim a situation that is objective and seriously intimidating, hostile or humiliating, shall be convicted of sexual harassment and punished with a sentence of imprisonment of three to five months or a fine from six to ten months.
2. Should the party guilty of sexual harassment have committed the act availing himself of a situation of labour, teaching or hierarchical superiority, or specifically or tacitly warning of harm to the victim in relation to the lawful expectations that person may have within the setting of that relation, the punishment shall be five to seven months imprisonment or a fine of ten to fourteen months.
3. When the victim is especially vulnerable, due to age, illness or the circumstances, the punishment shall be five to seven months imprisonment or a fine of ten to fourteen months in the cases foreseen in Section 1, and of imprisonment for six months to one year in the cases foreseen in Section 2 of this Article.

### **CHAPTER IV**

#### **On felonies of exhibitionism and sexual provocation**

Article 185 (As amended by Organic Law 15/03, of 25th November)

Whoever perpetrates or has another perpetrate acts of obscene exhibitionism before minors or the incapacitated, shall be punished with a sentence of imprisonment of six months to one year or fine from twelve to twenty- four months.

Article 186 (As amended by Organic Law 15/03, of 25th November)

Whoever, by any direct means, were to sell, distribute or exhibit pornographic material among minors or the incapacitated, shall be punished with a sentence of imprisonment of six months to one year or a fine from twelve to twenty- four months.

### **CHAPTER V**

#### **On felonies related to prostitution and corruption of minors**

Article 187 (As amended by Organic Law 5/2010, of 22nd June)

1. Whoever induces, promotes, favours or facilitates the prostitution of a person who is underage or incapacitated shall be punished with the penalties from one to five years and a fine of twelve to twenty- four months. The same punishment shall be imposed on whoever solicits, accepts or obtains a sexual relation with a person who is a minor or incapacitated in exchange for a remuneration or promise.
2. Whoever perpetrates the conducts described in Section 1 of this Article when the victim is under thirteen years old shall be punished with a sentence of imprisonment from four to six years.
3. Those who perpetrate the acts availing themselves of their status as an authority, agent or public officer thereof shall be subject, in a sentence of imprisonment stated, in the upper half, and also that of absolute barring from six to twelve years.
4. The penalties shall be imposed in a higher degree to those foreseen in the preceding Sections, in the respective cases, when the offender belongs to an organisation or assembly, even if transitory in nature, with the purpose of perpetrating those activities.
5. The penalties stated shall be imposed, in the respective cases, without prejudice to the relevant ones for offences against sexual freedom or indemnity committed against minors or the incapacitated.

Article 188 (As amended by Organic Law 5/2010, of 22nd June)

1. Whoever uses violence, intimidation or deceit, or abuse of a situation of superiority or need or vulnerability of the victim, to force a person who is of legal age to practice prostitution, or to continue to do so, shall be punished with the prison sentences of two to four years and a fine from twelve to twenty- four months. The same punishment shall be incurred by whoever makes a profit from exploiting prostitution by another person, even when that person consents.
2. Should the conduct mentioned by perpetrated against a minor or incapacitated person, to initiate or maintain that person in prostitution, the offender shall be handed down a sentence of imprisonment from four to six years.

3. Whoever behaves as foreseen in the preceding Section, when the victim is under thirteen years old, shall be punished with a sentence of imprisonment from five to ten years.
4. The penalties shall be imposed as foreseen in the preceding Sections, in the upper half, in the respective cases, when any of the following circumstances concur:
  - a) When the offender has availed himself of his status as an authority, agent or public officer thereof. In that case, the punishment of absolute barring from six to twelve years shall also be applied;
  - b) When the offender belongs to a criminal organisation or group with the purpose of perpetrating those activities;
  - c) When the offender has endangered the life or health of the victim, maliciously or due to serious negligence.
5. The penalties stated shall be imposed in the respective cases, without prejudice to the relevant one for the sexual assaults or abuses committed against the person prostituted.

Article 189 (As amended by Organic Law 5/2010, of 22nd June)

1. A sentence of imprisonment from one to five years shall be handed down to:
  - a) Whoever recruits or uses minors or the incapacitated for exhibitionistic or pornographic purposes or shows, both public or private, or to prepare any kind of pornographic material, whatever the media, or who finances or profits from any of these activities.
  - b) Whoever produces, sells, distributes, displays, offers or facilitates the production, sale, diffusion or display by any means of pornographic material, in the preparation of which minors or incapacitated persons have been used, or possesses such material for such purposes, even though the material is of foreign or unknown origin.
2. Whoever possesses pornographic material for his own use, in the preparation of which minors or the incapacitated have been used, shall be punished with the penalty from three months to a year of imprisonment or with a fine of six months to two years.
3. Whoever perpetrates the acts foreseen in Section 1 of this Article shall be punished with a sentence of imprisonment from five to nine years when any of the following circumstances concur:
  - a) When using children under the age of thirteen years;
  - b) When the acts are particularly degrading or humiliating in nature;
  - c) When the acts are especially serious in view of the financial value of the pornographic material;
  - d) When the pornographic material displays children or the incapacitated who are victims of physical or sexual violence;
  - e) When the offender belongs to an organisation or assembly, even if transitory in nature, with the purpose of perpetrating those activities;
  - f) When the offender is an ascendant, tutor, carer, minder, teacher or any other person in charge, de facto or de jure, of the minor or incapacitated person.
4. Whoever makes a minor or incapacitated person participate in a conduct of a sexual nature that damages the personal evolution or development of that person shall be punished with a sentence of imprisonment of six months to one year.
5. Whoever has a minor or incapacitated person under his care, guardianship, protection or fostership and who, being aware of his state of prostitution or corruption, does not do everything possible to prevent such situation continuing, or does not resort to the competent authority for such purpose, if lacking the resources for custody of the minor or incapacitated person, shall be punished with a sentence of imprisonment from three to six months or a fine from six to twelve months.
6. The Public Prosecutor shall promote the pertinent actions in order to deprive whoever commits any conduct described in the preceding Section of his parental rights, guardianship, safekeeping or family fostership, as appropriate.
7. Whoever produces, sells, distributes, displays or facilitates pornographic material by any means in which, while minors or incapacitated persons have not been used directly, makes use of their altered or modified voice or image, shall be punished with a sentence of imprisonment from three months to a year or a fine of six months to two years.

Article 189 bis (Introduced by Organic Law 5/2010, of 22nd June)

When, pursuant to the terms established in Article 31 bis, a legal person is responsible for the offences included in this Chapter, it shall have the following penalties imposed thereon:

- a) Fine from three to five times the profit obtained, if the offence committed by a natural person has a punishment of imprisonment foreseen exceeding five years;

- b) Fine of two to four times the profit obtained, if the offence committed by a natural person has a punishment of imprisonment foreseen exceeding two years not included in the preceding Section;
- c) Fine of two to three times the profit obtained, in the rest of the cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Sections b) to g) of Section 7 of Article 33.

Article 190

Sentencing by a foreign Judge or Court of Law, for offences included in this Chapter, shall be equivalent to sentences by Spanish Judges or Courts of Law for the purposes of applying the aggravating circumstance of recidivism.

## **CHAPTER VI**

### **Provisions common to the preceding Chapters**

Article 191

1. Prosecution of felonies of sexual assault, harassment or abuse, shall require this to be reported by the victim, his legal representative or a suit to be filed by the Public Prosecutor, who shall act in line with the lawful interests concerned. When the victim is a minor, incapacitated or handicapped person, the report by the Public Prosecutor shall suffice.
2. In these felonies, forgiveness by the victim or legal representative does not extinguish the criminal action or the criminal liability.

## 6.36 Switzerland

### Extract:

Code pénal Suisse<sup>133</sup> du 21 décembre 1937 (Etat le 1er janvier 2012) L'Assemblée fédérale de la Confédération suisse, vu l'art. 123 de la Constitution<sup>1</sup>, vu le message du Conseil fédéral du 23 juillet 19183, arrête:

#### Art. 22

1 Le juge peut atténuer la peine si l'exécution d'un crime ou d'un délit n'est pas poursuivie jusqu'à son terme ou que le résultat nécessaire à la consommation de l'infraction ne se produit pas ou ne pouvait pas se produire.

2 L'auteur n'est pas punissable si, par grave défaut d'intelligence, il ne s'est pas rendu compte que la consommation de l'infraction était absolument impossible en raison de la nature de l'objet visé ou du moyen utilisé.

#### Art. 23

1 Si, de sa propre initiative, l'auteur a renoncé à poursuivre l'activité punissable jusqu'à son terme ou qu'il a contribué à empêcher la consommation de l'infraction, le juge peut atténuer la peine ou exempter l'auteur de toute peine.

2 Si plusieurs auteurs ou participants prennent part à l'acte, le juge peut atténuer la peine ou exempter de toute peine celui qui, de sa propre initiative, a contribué à empêcher la consommation de l'infraction.

3 Le juge peut également atténuer la peine ou exempter de toute peine l'auteur ou le participant dont le désistement aurait empêché la consommation de l'infraction si d'autres causes ne l'avaient évitée.

4 Le juge peut atténuer la peine ou exempter de toute peine l'auteur ou le participant si celui-ci s'est, de sa propre initiative, sérieusement efforcé d'empêcher la consommation de l'infraction et que celle-ci a été commise indépendamment de sa contribution.

#### Art. 24

1 Quiconque a intentionnellement décidé autrui à commettre un crime ou un délit encourt, si l'infraction a été commise, la peine applicable à l'auteur de cette infraction.

2 Quiconque a tenté de décider autrui à commettre un crime encourt la peine prévue pour la tentative de cette infraction.

#### Art. 25

La peine est atténuée à l'égard de quiconque a intentionnellement prêté assistance à l'auteur pour commettre un crime ou un délit.

#### Art. 26

Si la punissabilité est fondée ou aggravée en raison d'un devoir particulier de l'auteur, la peine est atténuée à l'égard du participant qui n'était pas tenu à ce devoir

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<sup>133</sup> Source LegislationOnline OSCE ODIH:  
<http://www.legislationline.org/documents/action/popup/id/16257/preview>

Art. 188

1. Celui qui, profitant de rapports d'éducation, de confiance ou de travail, ou de liens de dépendance d'une autre nature, aura commis un acte d'ordre sexuel sur un mineur âgé de plus de 16 ans celui qui, profitant de liens de dépendance, aura entraîné une telle personne à commettre un acte d'ordre sexuel, sera puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

2. Si la victime a contracté mariage ou conclu un partenariat enregistré avec l'auteur, l'autorité compétente pourra renoncer à le poursuivre, à le renvoyer devant le tribunal ou à lui infliger une peine.

Art. 189

1 Celui qui, notamment en usant de menace ou de violence envers une personne, en exerçant sur elle des pressions d'ordre psychique ou en la mettant hors d'état de résister l'aura contrainte à subir un acte analogue à l'acte sexuel ou un autre acte d'ordre sexuel, sera puni d'une peine privative de liberté de dix ans au plus ou d'une peine pécuniaire.

3 Si l'auteur a agi avec cruauté, notamment s'il a fait usage d'une arme dangereuse ou d'un autre objet dangereux, la peine sera la peine privative de liberté de trois ans au moins.

Art. 190

1 Celui qui, notamment en usant de menace ou de violence, en exerçant sur sa victime des pressions d'ordre psychique ou en la mettant hors d'état de résister, aura contraint une personne de sexe féminin à subir l'acte sexuel, sera puni d'une peine privative de liberté de un à dix ans.

3 Si l'auteur a agi avec cruauté, notamment s'il a fait usage d'une arme dangereuse ou d'un autre objet dangereux, la peine sera la peine privative de liberté de trois ans au moins.155

Art. 191

Celui qui, sachant qu'une personne est incapable de discernement ou de résistance, en aura profité pour commettre sur elle l'acte sexuel, un acte analogue ou un autre acte d'ordre sexuel, sera puni d'une peine privative de liberté de dix ans au plus ou d'une peine pécuniaire.

Art. 192

1 Celui qui, profitant d'un rapport de dépendance, aura déterminé une personne hospitalisée, internée, détenue, arrêtée ou prévenue, à commettre ou à subir un acte d'ordre sexuel, sera puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

2 Si la victime a contracté mariage ou conclu un partenariat enregistré avec l'auteur, l'autorité compétente pourra renoncer à le poursuivre, à le renvoyer devant le tribunal ou à lui infliger une peine.

Art. 193

1 Celui qui, profitant de la détresse où se trouve la victime ou d'un lien de dépendance fondé sur des rapports de travail ou d'un lien de dépendance de toute autre nature, aura déterminé celle-ci à commettre ou à subir un acte d'ordre sexuel sera puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.



2 Si la victime a contracté mariage ou conclu un partenariat enregistré avec l'auteur, l'autorité compétente pourra renoncer à le poursuivre, à le renvoyer devant le tribunal ou à lui infliger une peine.

#### Art. 195

Celui qui aura poussé une personne mineure à la prostitution, celui qui, profitant d'un rapport de dépendance ou dans le but de tirer un avantage patrimonial, aura poussé autrui à se prostituer, celui qui aura porté atteinte à la liberté d'action d'une personne s'adonnant à la prostitution en la surveillant dans ses activités ou en lui en imposant l'endroit, l'heure, la fréquence ou d'autres conditions, celui qui aura maintenu une personne dans la prostitution, sera puni d'une peine privative de liberté de dix ans au plus ou d'une peine pécuniaire.

#### Art. 197

1. Celui qui aura offert, montré, rendu accessibles à une personne de moins de 16 ans ou mis à sa disposition des écrits, enregistrements sonores ou visuels, images ou autres objets pornographiques ou des représentations pornographiques, ou les aura diffusés à la radio ou à la

télévision, sera puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

2. Celui qui aura exposé ou montré en public des objets ou des représentations visés au ch. 1 ou les aura offerts à une personne qui n'en voulait pas, sera puni de l'amende.

Celui qui, lors d'expositions ou de représentations dans des locaux fermés, aura d'avance attiré l'attention des spectateurs sur le caractère pornographique de celles-ci ne sera pas punissable.

3. Celui qui aura fabriqué, importé, pris en dépôt, mis en circulation, promu, exposé, offert, montré, rendu accessibles ou mis à la disposition des objets ou représentations visés au ch. 1, ayant comme contenu des actes d'ordre sexuel avec des enfants, des animaux, des excréments humains ou comprenant des actes de violence, sera puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

Les objets seront confisqués.

3bis. Celui qui aura acquis, obtenu par voie électronique ou d'une autre manière ou possédé des objets ou des représentations visés au ch. 1 qui ont comme contenu des actes d'ordre sexuel avec des enfants ou des animaux ou comprenant des actes de violence, sera puni d'une peine privative de liberté d'un an au plus ou d'une peine pécuniaire.

Les objets seront confisqués.

4. Si l'auteur a agi dans un dessein de lucre, la peine sera une peine privative de liberté de trois ans au plus ou une peine pécuniaire. En cas de peine privative de liberté, une peine pécuniaire est également prononcée.

5. Les objets ou représentations visés aux ch. 1 à 3 ne seront pas considérés comme pornographiques lorsqu'ils auront une valeur culturelle ou scientifique digne de protection.

## **6.37 “The former Yugoslav Republic of Macedonia”**

Extract:

### **Sexual assault of a juvenile under the age of 14 - Article 188**

(1) A person who commits statutory rape or some other sexual act upon a juvenile under 14 years of age shall be punished with imprisonment of at least eight years.

(2) If the crime from paragraph 1 is committed by a blood relative in direct line of kinship or a brother, i.e. sister, teacher, educator, adoptive parent, guardian, stepfather, stepmother, doctor or some other person, by misusing his position or while performing family violence, he shall be punished with imprisonment of at least ten years.

(3) The sentence referred to in paragraph (2) will be imposed on any person who commits the crime referred to in paragraph (1) with a juvenile under the age of 14, by abusing his or hers mental illness, mental disorder, disability, insufficient mental development, or other condition that renders him or her incapable of resistance.

(4) If because of the crimes from items 1 and 2 a severe body injury, death or some other severe consequences were caused, or the crime was perpetrated by several persons, or in an especially cruel and degrading manner, the offender shall be punished with imprisonment of at least ten years or life imprisonment.

(5) For the perpetrator of the crime specified in paragraph (2) of this Article, the Court shall determine a sentence for the perpetrator prohibition to perform a profession, activity or duty under the conditions specified in Article 38-b of this Code.

### **Mediation in conducting prostitution - Article 191**

(1) A person who recruits, instigates, stimulates or entices another to prostitution, or a person who in any kind of way participates in handing over another to someone for performing prostitution, shall be punished with imprisonment of five to ten years.

(2) A person who because of profit enables another to use sexual services shall be punished with imprisonment of three to five years.

(3) A person who because of profit, by using force or by serious threat to use force, forces or by deceit induces another to give sexual services, shall be punished with imprisonment of at least eight years.

(4) A person who organizes the crimes from items 1 to 3 or the activities that this person will commit while performing family violence shall be punished with imprisonment of at least to ten years.

(5) If the crime is committed by a legal entity, the legal entity shall be subject to a fine.

(6) The real estate and objects used for the crime to be committed shall be confiscated.

### **Procuring and enabling sexual acts - Article 192**

(1) A person who procures a juvenile to sexual acts shall be punished with imprisonment of at least eight years.

(2) A person who enables the performing of sexual acts with a juvenile shall be punished with imprisonment of at least five years.

(3) If the crime is committed by a legal entity, the legal entity shall be subject to a fine.

### **Showing pornographic materials to a juvenile - Article 193**

(1) A person who sells, shows or by public presentation in some other way makes available pictures, audio-visual or other objects with a pornographic content to a juvenile, under the age of 14, or shows him a pornographic performance, shall be punished with imprisonment of six months up to three years.

(2) If the crime has been committed through the public information media, the perpetrator shall be sentenced to imprisonment of three to five years.

(3) The punishment from item 2 shall be applied to a person who abuses a juvenile in the production of audio-visual pictures or other objects with a pornographic content or for pornographic presentations as well as the person who participates in such presentation.

(4) The person who shall force a minor in making and taking photographs or other items with pornographic content or for pornographic show,

shall be punished by imprisonment for at least eight years.

(5) If the crime referred to in paragraph (4) of this Article is committed against minor younger than 14 years of age, the perpetrator shall be punished by imprisonment for at least four years.

(6) If the crime referred to in this Article is committed by a legal entity, the legal entity shall be subject to a fine.

(7) The items referred to in paragraphs 1, 2, 3 and 4 shall be confiscated..

**Enticement of a child under the age of 14 into statutory rape or other sexual activities - Article 193-b**

Any person who via computer-communication means entices a minor that is under the age of 14 into statutory rape or other sexual activities or into production of child pornography, by scheduling an appointment or in any other manner, and if direct encounter with the minor occurred with such intent shall be sentenced to imprisonment for one to five years.

**Incest - Article 194**

(1) A person who commits statutory rape upon a blood relation of the first line or with a brother, respectively sister, shall be punished with a fine, or with imprisonment of five to ten years.

(2) If the crime stipulated in paragraph (1) is performed with a juvenile 14 years of age or older, the perpetrator shall be sentenced to imprisonment of at least ten years.

## 6.38 Turkey

### Extract:

Criminal Code<sup>134</sup>

Law Nr. 5237 Passed On 26.09.2004

(Official Gazette No. 25611 dated 12.10.2004)

### **FIRST SECTION**

#### **Basic Principles and Definitions**

##### **Definitions**

ARTICLE 6- (1) In practice of criminal laws, the terms used herein, shall have the following meanings;

b) Minor ; Any person not attained the age of eighteen

##### **Solicitation**

ARTICLE 38- (1) A person soliciting another person to commit offense is punished according to the degree of crime committed.

(2) In case of solicitation to commit offense by using the power originating from lineage (antecedent/descendent) relation, the punishment of the soliciting person is increased from one-third to one half. The lineage relation is not sought for increase of punishment pursuant to the provisions of this subsection in case of solicitation of minors to commit offense.

(3) Where the soliciting person is not known, the offender who plays role in identification of the soliciting person, or other accomplice is sentenced to imprisonment from twenty years to twenty-five years instead of heavy life imprisonment and to imprisonment from fifteen years to twenty years the offense requires life imprisonment. In other cases, one-third of the punishment can be abated.

##### **Encouragement of A person To Commit Offence**

ARTICLE 39- (1) A person encouraging another person to commit offense is sentenced to life imprisonment from fifteen years to twenty years if subject to heavy life imprisonment; and from ten years to fifteen years imprisonment if the offense requires life imprisonment.

2) A person is kept responsible under the following conditions from commission of offense as the party encouraging the offender;

a) To solicit a person for commission of an offense or to support his decision to commit offense or to guarantee help after commission of offense.

b) To give idea about how the offense shall be committed or to supply the necessary tools to be used during commission of offense.

c) To render support before and during the commission of offense in order to simplify the intended act.

##### **Connected offenses**

ARTICLE 40- (1) If an act is executed intentionally and contrary to the laws, then this is considered as participation in commission of offense. Each person participating in commission of an offense is punished according to his involvement in the offense, irrespective of the personal reasons avoiding the punishment of the other.

(2) In particular offenses the person possessing the characteristics of a perpetrator is defined as offender. The others who participate in commission of offense are kept responsible from commission of offense as soliciting or supporting parties.

(3) In order to keep a person responsible from participation in commission of an offense, at least there must be an attempt to commit offense.

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<sup>134</sup> Source LegislationOnline OSCE ODIH:

<http://www.legislationline.org/documents/action/popup/id/16257/preview>

## **Voluntary Abandonment in Jointly Committed Offenses**

ARTICLE 41-(1) In jointly committed offenses, only the accomplice who voluntarily abandons the attempt to commit offense may benefit from the provisions of the law relating to voluntary abandonment.

(2) The provisions relating to voluntary abandonment is applied;

- a) If the commission of offense is not bound to any other reason than the efforts shown by the person who voluntarily abandons the attempt.
- b) If the offense is committed despite all the efforts of the person who voluntarily abandons the attempt.

## **SIXTH SECTION**

### **Offenses against Sexual Immunity**

#### **Sexual abuse**

ARTICLE 102- (1) Any person who attempts to violate sexual immunity of a person, is sentenced to imprisonment from two years to seven years upon complaint of the victim.

(2) In case of commission of offense by inserting an organ or instrument into a body, the offender is punished with imprisonment from seven years to twelve years. In case of commission of this offense against a spouse, commencement of investigation or prosecution is bound to complaint of the victim.

(3) If the offense is committed;

- a) Against a person who cannot protect himself because of corporal or spiritual disability,
- b) By undue influence based on public office,
- c) Against a person with whom he has third degree blood relation or kinship,
- d) By using arms or participation of more than one person in the offense,

the punishments imposed according to above subsections are increased by one half.

(4) In case of use of force during the commission of offense in such a way to break down victim's resistance, the offender is additionally punished for felonious injury.

(5) In case of deterioration of corporal and spiritual health of the victim as a result of the offense, the offender is sentenced to imprisonment not less than ten years.

(6) In case of death or vegetal existence of a person as result of the offense, the offender is sentenced to heavy life imprisonment.

#### **Child molestation**

ARTICLE 103-(1) Any person who abuses a child sexually is sentenced to imprisonment from three years to eight years.

Sexual molestation covers the following acts;

- a) All kinds of sexual attempt against children who are under the age of fifteen or against those attained the age of fifteen but lack of ability to understand the legal consequences of such act,
- b) Abuse of other children sexually by force, threat or fraud.

(2) In case of performance of sexual abuse by inserting an organ or instrument into a body, the offender is sentenced to imprisonment from eight years to fifteen years.

(3) In case of performance of sexual abuse by antecedents, second or third degree blood relations, step father, guardian, educator, trainer, nurse and other persons rendering health services and responsible from protection and observation of the child, or by undue influence based on public office, the punishment to be imposed according to the above subsections is increased by one half.

(4) In case of execution of sexual abuse against the children listed in paragraph (a) of first subsection by use of force or threat, the punishment to be imposed is increased by one half.

(5) The provisions relating to felonious injury are additionally applied in case the acts of force and violence cause severe injury to the person subject to sexual abuse.

(6) In case of deterioration of corporal and spiritual health of the victim as a result of offense, the offender is sentenced to imprisonment not less than fifteen years.

(7) In case the offense results with death or vegetal existence of the victim, the offender is punished with heavy life imprisonment.

### **Sexual intercourse between/with persons not attained the lawful age**

ARTICLE 104 – (1) Any person who is in sexual intercourse with a child who completed the age of fifteen without using force, threat and fraud, is sentenced to imprisonment from six months to two years upon filing of a complaint.

(2) If the offender is older than the victim more than five years, the punishment to be imposed is doubled without seeking raise of a complaint.

### **Sexual harassment**

ARTICLE 105-(1) If a person is subject to sexual harassment by another person, the person performing such act is sentenced to punishment from three years to two years upon complaint of the victim.

(2) In case of commission of these offenses by undue influence based on hierarchy or public office or by using the advantage of working in the same place with the victim, the punishment to be imposed according to the above subsection is increased by one half. If the victim is obliged to leave the business place for this reason, the punishment to be imposed may not be less than one year.

ARTICLE 109-(1) Any person who unlawfully restricts the freedom of a person by preventing him from traveling or living in a place is sentenced to imprisonment from one year to five years.

(2) If a person uses physical power or threat or deception to perform an act or during commission of offense, then he is sentenced to imprisonment from two years to seven years.

(3) In case of commission of this offense;

a) By use of a weapon,

b) Jointly by a group of persons,

c) By virtue of a public office,

d) By undue influence based on public office,

e) Against antecedents, descendants or spouse,

f) Against a child or a person who cannot protect himself due to corporal or spiritual disability, the punishment to imposed according to above subsections is increased by one fold.

(4) If this offense results with gross economical loss of the victim, the offender additionally is imposed punitive fine up to one thousand days.

(5) In case of commission of offense with sexual intent, the punishments to be imposed according to above subsections are increased by one half.

(6) The provisions relating to felonious injury are additionally applied in case of commission of aggravated form of this offense which creates the consequences of felonious injury.

### **Indecency**

ARTICLE 226-(1) Any person who involves in an unlawful act;

a) By allowing a child to watch indecent scene or a product, or to or hear shameful words,

b) By displaying these products at places easy to reach by children, or reading the contents of these products, or letting other to speak about them,

c) By selling or leasing these product in such a way open for public review,

d) By selling, offering or leasing these products at places other than the markets nominated for sale of these product,

e) By gratuitously supplying or distributing these products along with other goods or services,

f) By making advertisement of these products,

is punished with imprisonment from six months to two years.

(2) The persons who publicize indecent scenes, words or articles through press and broadcast organs or act as intermediary in publication of the same is punished with imprisonment from six months to three years.

(3) Any person who uses children in production of indecent scenes, words or articles is punished with imprisonment from five years to ten years, and also imposed punitive fine up to five thousand days. Any person who engage in import, duplication, transportation, storage , export of these products, or presents the same to other's use, is punished with imprisonment from two years to five years, and also imposed punitive fine up to five thousand days.

(4) Any person who produces products containing audio-visual or written material demonstrating abnormal sexual intercourse by using sex, or with animals, or body of a death person, and engages in import sale, transportation storage of the same and presents such material to other's use, is punished with imprisonment from one year to four years.

(5) Any person who publicizes the contents of the products mentioned in third and fourth subsections through press and broadcast organs, or acts as intermediary in publication of the same, or lets children to read, hear or see this material is punished with imprisonment from six months to ten years, and also imposed punitive fine up to five thousand days.

(6) Security precautions specific to legal entities are imposed due to such offenses.

(7) Excluding third subsection, the provisions of this article may not be applicable for the works of art which are produced for scientific, artistic or literary purposes in order to avoid children to reach such material.

### **Prostitution**

ARTICLE 227-(1) Any person who encourages a child to become a prostitute, or facilitates prostitution, or shelters a person for this purpose, or acts as go-between during prostitution of the child, is punished with imprisonment from four years to ten years, and also imposed punitive fine up to ten thousand days.

(2) Any person who encourages another person to become a prostitute, or facilitates prostitution, or acts as go-between or provides place for such purpose is punished with imprisonment from two years up to four years, and also imposed punitive fine up to three thousand days. Any act aimed to benefit from the income of a person engaged in prostitution to earn one's living, totally or partially, is considered encouragement of prostitution.

(3) Any person who brings people into the country, or sends groups to abroad for prostitution purposes is punished according to the provisions of above subsection.

(4) The punishment to be imposed according to above subsections is doubled in case a person is encouraged to become a prostitute by use of threat or force, or malice, or taking advantage of one's helplessness.

(5) The punishment to be imposed by one half in case of commission of offenses listed in the above subsections by any one of the spouses, antecedents, descendants, brother/sister, adopter, guardian, trainer, educator, nurse or any other person responsible for protection and control of a person, or by a public officer or employee by due influence.

(6) The punishment to be imposed according to above subsections is increased by one half in case of commission of these offenses within the frame of activities of an organized criminal group.

(7) Security precautions specific to legal entities are imposed in case of commission of these offenses by organizations in the statute of legal entity.

(8) Any person who involves in prostitution is subject to treatment or therapy.

### **Breach of obligations conferred upon by family law**

ARTICLE 233-(1) Any person who fails to fulfill the obligations conferred upon by the family law, which stipulate care, education or support of family members, is punished with imprisonment up to one year upon compliant.

(2) Any person who abandons his pregnant wife, or another woman whom he knows that she is waiting child from him, is sentenced to imprisonment from three months to one year.

(3) Mother or father who is determined to be risking the health, good morals and safety of their children due to addiction to alcohol or drugs, or by bringing dishonor on their children, is sentenced with imprisonment from three years up to one year.

### **Kidnapping and retention of a child**

ARTICLE 234- (1) In case a child under the age of sixteen is kidnapped without using force or threat by mother or father who lost his/her parental rights, or by third degree blood relations while he/she is legally under the care or custody of a natural parent or guardian, the offender is punished with imprisonment from three months up to one year.

(2) Punishment to be imposed is increased by one fold if this offense is committed without using force or threat or involves a child not yet attained the age of twelve.

## 6.39 Ukraine

### Chapter IV - CRIMES AGAINST SEXUAL FREEDOM AND SEXUAL INVIOABILITY OF A PERSON<sup>135</sup>

#### Article 152. Rape

1. Rape, that is sexual intercourse combined with violence, threats of violence, or committed by taking advantage of the victim's helpless condition, - shall be punishable by imprisonment for a term of three to five years.
2. Rape, where it was repeated, or committed by a person who previously committed any of the offenses provided for by Articles 153 to 155 of this Code, - shall be punishable by imprisonment for a term of five to ten years.
3. Rape committed by a group of persons, or rape of a minor, - shall be punishable by imprisonment for a term of seven to twelve years.
4. Rape which caused any grave consequences, and also rape of a young child, - shall be punishable by imprisonment for a term of ten to fifteen years.  
(Article 152 as amended by Law No 2295-VI (2295-17) of 01.06.2010)

#### Article 153. Violent unnatural gratification of sexual desire

1. Violent unnatural gratification of sexual desire combined with physical violence, or threats of violence, or committed by taking advantage of the victim's helpless condition, - shall be punishable by imprisonment for a term up to five years.
2. The same act, if repeated, or committed by a group of persons, or by a person who previously committed any of the offenses provided for by Articles 152 or 154 of this Code, and also committed in regard of a minor, - shall be punishable by imprisonment for a term of three to seven years.
3. The same act committed in regard of a young child, where it caused especially grave consequences, - shall be punishable by imprisonment for a term of ten to fifteen years.  
(Article 153 as amended by Laws No 2276-IV (2276-15) of 21.12.2004, No 2295-VI (2295-17) of 01.06.2010)

#### Article 154. Compulsion to sexual intercourse

1. Compulsion of a female or male to natural or unnatural sexual intercourse by a person on whom such female or male is financially or officially dependent, - shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six months.
2. The same actions accompanied with threats to destroy, damage or seize property of the victim or his/her close relatives, or to disclose information defaming the victim or his/her close relatives, - shall be punishable by arrest for a term up to six months, or restraint of liberty for a term up to three years.

#### Article 155. Sexual intercourse with a sexually immature person

1. Sexual intercourse with a sexually immature person, - shall be punishable by restraint of liberty for a term up to five years or imprisonment for the same term. (Item 2 of paragraph 1 of Article 155 in version of Law No 600-VI (600-17) of 25.09.2008)
2. The same actions committed by a parent, step parent, foster parent or guardian, or any person imposed by a duty of upbringing or taking care of a sexually immature person, or where they caused sterility or other grave consequences, - shall be punishable by imprisonment for a term of five to eight years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.  
(Paragraph 2 of Article 155 in version of Law No 600-VI (600-17) of 25.09.2008)

<sup>135</sup> Source LegislationOnline OSCE ODIH:  
<http://www.legislationline.org/documents/action/popup/id/16257/preview>



#### **Article 156. Debauchery of minors**

1. Debauched actions committed in regard of a person under 16 years of age, - shall be punishable restraint of liberty for a term up to five years, or imprisonment for the same term. (Item 2 of paragraph 1 of Article 156 in version of Law No 600-VI (600-17) of 25.09.2008)
2. The same actions committed in regard of a young child, or by a parent or surrogate parent, step parent, foster parent or guardian, or any person imposed by a duty of upbringing or taking care of a sexually immature person, - shall be punishable imprisonment for a term or five to eight years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years. (Paragraph 2 of Article 156 in version of Law No 600-VI (600-17) of 25.09.2008) .

#### **Article 301. Importation, making, sale or distribution of pornographic items**

1. Importation into Ukraine for sale or distribution purposes, or making, transportation or other movement for the same purposes, or sale or distribution of pornographic images or other items, and also compelling others to participate in their making, - shall be punishable by a fine of 50 to 100 tax-free minimum incomes, or arrest for a term up to six months, or restraint of liberty for a term up to three years, with the forfeiture of pornographic images or other items and means of their making and distribution.
2. The same actions committed in regard to pornographic motion pictures and video films, or computer programs, also selling pornographic images or other items to minors or disseminating such images and items among them, - shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or restraint of liberty for a term up to five years, or imprisonment for the same term, with the forfeiture of pornographic motion pictures and video films and means of their making and showing.
3. Any such acts as provided for by paragraph 1 or 2 of this Article, if repeated, or committed by a group of persons upon their prior conspiracy, or aimed at obtaining big profit, - shall be punishable by imprisonment of three to seven years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of pornographic items, motion pictures, video films, computer programs, and means of their making, dissemination and showing.
4. Acts provided for in paragraphs 1 and 2 of this Article committed in regard to pornographic works, images or other items containing child pornography, or compelling minors to participate in making pornographic works, images or motion and video films, computer programs, - shall be punishable by imprisonment of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of pornographic items, motion pictures, video films, computer programs, and means of their making, dissemination and showing.
5. Acts provided for in paragraphs 1 and 2 of this Article, if repeated, or committed by a group of persons upon their prior conspiracy, or aimed at obtaining big profit, - shall be punishable by imprisonment of seven to twelve years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of pornographic items, motion pictures, video films, computer programs, and means of their making, dissemination and showing.

Note: Gaining big profit takes place when its amount equals or exceeds 200 tax-free minimum incomes.

(Article 301 as amended by Laws No 1520-VI (1520-17) of 11.06.2009, No 1819-VI (1819-17) of 20.01.2010)

#### **Article 302. Creating or running brothels and trading in prostitution**

1. Creating or running brothels, and also trading in prostitution, shall be punishable by a fine up to 50 tax-free minimum incomes, or restraint of liberty for a term up to two years.
2. The same actions committed for gainful purposes, or by a person previously convicted of this offense, or by an organized group, - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term.
3. Any such acts as provided for by paragraph 1 or 2 of this Article, if committed by engaging a minor, -

shall be punishable by imprisonment for a term of two to seven years.

**Article 303. Pimping or engaging person in employment prostitution**

1. Engaging person in employment prostitution or compulsion to engage in prostitution, involving deceit, blackmail or vulnerable state of a person, with imposition of violence or threat of violence, or pimping -

shall be punishable by imprisonment for a term of three to five years.

2. Acts provided for in paragraph 1 of this Article, if committed concerning several individuals or repeatedly, or by a group of persons upon their prior conspiracy, or by an official through abuse of office, from whom the victim was material or otherwise dependent, -

shall be punishable by imprisonment for a term of four to seven years.

3. Acts provided for in paragraphs 1 and 2 of this Article, if committed concerning a minor or by an organized group, -

shall be punishable by imprisonment for a term of five to ten years, with or without the forfeiture of property.

4. Acts provided for in paragraphs 1, 2 and 3 of this Article, if committed concerning a juvenile or they caused grave consequences, -

shall be punishable by imprisonment for a term of eight to fifteen years, with or without the forfeiture of property.

Note: 1. Pimping under this Article shall mean any action of person committed for the purpose of engaging another person in prostitution.

2. The liability of engaging juvenile or minor in employment prostitution or compulsion to engage in prostitution under this Article should be incurred regardless of that such acts are committed with involving deceit, blackmail or vulnerable state of a person, with imposition of violence or threat of violence, abuse of office, or by a person from whom the victim was material or otherwise dependent.

(Article 303 in version of Law No 3316-IV ( 3316-15 ) of 12.01.2006)

## 6.40 United Kingdom

*Extract:*

### Protection of Children Act 1978

#### 1978 CHAPTER 37

An Act to prevent the exploitation of children by making indecent photographs of them; and to penalise the distribution, showing and advertisement of such indecent photographs

[20th July 1978]

#### 1 Indecent photographs of children

(1) It is an offence for a person—

(a) to take, or permit to be taken [F1or to make], any indecent photograph [F1or pseudo-photograph]of a child F2. . .; or

(b) to distribute or show such indecent photographs [F3or pseudo-photographs]; or

(c) to have in his possession such indecent photographs [F3or pseudo-photographs], with a view to their being distributed or shown by himself or others; or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs [F3or pseudo-photographs], or intends to do so.

(2) For purposes of this Act, a person is to be regarded as distributing an indecent photograph [F4or pseudo-photograph] if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(4) Where a person is charged with an offence under subsection (1) (b) or (c) , it shall be a defence for him to prove—

(a) that he had a legitimate reason for distributing or showing the photographs [F5or pseudo-photographs]or (as the case may be) having them in his possession; or

(b) that he had not himself seen the photographs [F5or pseudo-photographs]and did not know, nor had any cause to suspect, them to be indecent.

(5) References in the M1Children and Young Persons Act 1933 (except in sections 15 and 99) to the offences mentioned in Schedule 1 to that Act shall include an offence under subsection (1) (a) above.

(6) . . . . . F6

(7) In paragraph 1 of the Schedule of Visiting Forces Act 1952 (offences against the person in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a United Kingdom court) , after sub-paragraph (b) (viii) (inserted by the Sexual Offences Act 1956) there shall be added—

“(ix) section 1(1) (a) of the Protection of Children Act 1978”.

(3) In proceedings under this Act [F9relating to indecent photographs of children]a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that he was then under the age of 16.

### **3 Offences by corporations**

(1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(1) The following applies where a justice of the peace is satisfied by information on oath, laid by or on behalf of the Director of Public Prosecutions or by a constable, that there is reasonable ground for suspecting that, in any premises in the petty sessions area for which he acts, there [F10is an indecent photograph [F11or pseudo-photograph]of a child].

(2) The justice may issue a warrant under his hand authorising any constable to enter (if need be by force) and search the premises F12. . . , and to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs [F13or pseudo-photographs]of children . . . F14.

(3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before a justice of the peace acting for the same petty sessions area as the justice who issued the warrant.

(4) This section and section 5 below apply in relation to any stall or vehicle, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

### **5 Forfeiture**

(1) The justice before whom any articles are brought in pursuance of section 4 above may issue a summons to the occupier of the premises to appear on a day specified in the summons before a magistrates’ court for that petty sessions area to show cause why they should not be forfeited.

(2) If the court is satisfied that the articles are in fact indecent photographs [F15or pseudo-photographs]of children, . . . F16 the court shall order them to be forfeited; but if the person summoned does not appear, the court shall not make an order unless service of the summons is proved.

(3) In addition to the persons summoned, any other person being the owner of the articles brought before the court, or the persons who made them, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

(4) Where any of the articles are ordered to be forfeited under subsection (2) , any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.

(5) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for their seizure was issued to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the photographs [F15or pseudo-photographs]should not be forfeited; and costs ordered to be paid under this subsection shall be recoverable as a civil debt.

(6) Where indecent photographs [F15or pseudo-photographs]of children are seized under section 4 above, and a person is convicted under section 1(1) [F17or section 160 of the Criminal Justice Act 1988] of offences in respect of those photographs, the court shall order them to be forfeited.

(7) An order made under subsection (2) or (6) above (including an order made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose—

(a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

## **6 Punishments.E+W**

(1) Offences under this Act shall be punishable either on conviction on indictment or on summary conviction.

(2) A person convicted on indictment of any offence under this Act shall be liable to imprisonment for a term of not more than [F18ten] years, or to a fine or to both.

(3) A person convicted summarily of any offence under this Act shall be liable—

(a) to imprisonment for a term not exceeding six months; or

(b) to a fine not exceeding the prescribed sum for the purposes of [F19section 32 of the Magistrates' Courts Act 1980] (punishment on summary conviction of offences triable either way: £1,000 or other sum substituted by order under that Act) , or to both.

### **Annotations: Help about Annotation**

Close

Annotations are used to give authority for changes and other effects on the legislation you are viewing and to convey editorial information. They appear at the foot of the relevant provision or under the associated heading. Annotations are categorised by annotation type, such as F-notes for textual amendments and I-notes for commencement information (a full list can be found in the Editorial Practice Guide) . Each annotation is identified by a sequential reference number. For F-notes, M-notes and X-notes, the number also appears in bold superscript at the relevant location in the text. All annotations contain links to the affecting legislation.

### **Amendments (Textual)**

F18Word in s. 6(2) substituted (11.1.2001) by 2000 c. 43, s. 41(1) ; S.I. 2000/3302, art. 2(a)

F19Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82) , Sch. 7 para. 171

## **7 Interpretation. E+W**

(1) The following subsections apply for the interpretation of this Act.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Act as indecent photographs of children [F20and so as respects pseudo-photographs].

[F21(4) References to a photograph include—

(a) the negative as well as the positive version; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.]

(5) "Film" includes any form of video-recording.

[F22(6) "Child", subject to subsection (8) , means a person under the age of 16.

(7) "Pseudo-photograph" means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include—

(a) a copy of an indecent pseudo-photograph; and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.]

## **Sexual Offences Act 2003**

### **2003 CHAPTER 42**

An Act to make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts, and for connected purposes.

[20th November 2003]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## **Part 1. Sexual Offences**

### **Rape**

#### 1 Rape

(1) A person (A) commits an offence if—

(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,

(b) B does not consent to the penetration, and

(c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

### **Assault**

#### 2 Assault by penetration

(1) A person (A) commits an offence if—

(a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,

(b) the penetration is sexual,

(c) B does not consent to the penetration, and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

#### 3 Sexual assault

(1) A person (A) commits an offence if—

(a) he intentionally touches another person (B) ,

(b) the touching is sexual,

(c) B does not consent to the touching, and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **Causing sexual activity without consent**

#### 4 Causing a person to engage in sexual activity without consent

(1) A person (A) commits an offence if—

(a) he intentionally causes another person (B) to engage in an activity,

(b) the activity is sexual,

(c) B does not consent to engaging in the activity, and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section, if the activity caused involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.



### **Rape and other offences against children under 13**

#### **5 Rape of a child under 13**

(1) A person commits an offence if—

- (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and
- (b) the other person is under 13.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

#### **6 Assault of a child under 13 by penetration**

(1) A person commits an offence if—

- (a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else,
- (b) the penetration is sexual, and
- (c) the other person is under 13.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

#### **7 Sexual assault of a child under 13**

(1) A person commits an offence if—

- (a) he intentionally touches another person,
- (b) the touching is sexual, and
- (c) the other person is under 13.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

#### **8 Causing or inciting a child under 13 to engage in sexual activity**

(1) A person commits an offence if—

- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual, and

(c) B is under 13.

(2) A person guilty of an offence under this section, if the activity caused or incited involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

### **Child sex offences**

#### **9 Sexual activity with a child**

(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally touches another person (B) ,

(b) the touching is sexual, and

(c) either—

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section, if the touching involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**10 Causing or inciting a child to engage in sexual activity**

(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally causes or incites another person (B) to engage in an activity,

(b) the activity is sexual, and

(c) either—

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section, if the activity caused or incited involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**11 Engaging in sexual activity in the presence of a child**

(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, he engages in it—

(i) when another person (B) is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it, and

(d) either—

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **12 Causing a child to watch a sexual act**

(1) A person aged 18 or over (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual, and

(c) either—

(i) B is under 16 and A does not reasonably believe that B is 16 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **13 Child sex offences committed by children or young persons**

(1) A person under 18 commits an offence if he does anything which would be an offence under any of sections 9 to 12 if he were aged 18.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

### **14 Arranging or facilitating commission of a child sex offence**

**(1) A person commits an offence if—**

(a) he intentionally arranges or facilitates something that he intends to do, intends another person to do, or believes that another person will do, in any part of the world, and

(b) doing it will involve the commission of an offence under any of sections 9 to 13.

(2) A person does not commit an offence under this section if—

(a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and

(b) any offence within subsection (1) (b) would be an offence against a child for whose protection he acts.

(3) For the purposes of subsection (2) , a person acts for the protection of a child if he acts for the purpose of—

(a) protecting the child from sexually transmitted infection,

(b) protecting the physical safety of the child,

(c) preventing the child from becoming pregnant, or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1) (b) or the child's participation in it.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

### **15 Meeting a child following sexual grooming etc**

(1) A person aged 18 or over (A) commits an offence if—

(a) having met or communicated with another person (B) on at least two earlier occasions, he—

(i) intentionally meets B, or

(ii) travels with the intention of meeting B in any part of the world,

(b) at the time, he intends to do anything to or in respect of B, during or after the meeting and in any part of the world, which if done will involve the commission by A of a relevant offence,

(c) B is under 16, and

(d) A does not reasonably believe that B is 16 or over.

(2) In subsection (1) —

(a) the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world;

(b) " relevant offence" means—

(i) an offence under this Part,

- (ii) an offence within any of paragraphs 61 to 92 of Schedule 3, or
- (iii) anything done outside England and Wales and Northern Ireland which is not an offence within sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) if done in England and Wales.

(3) In this section as it applies to Northern Ireland—

- (a) subsection (1) has effect with the substitution of " 17" for "16" in both places;
- (b) subsection (2) (b) (iii) has effect with the substitution of " sub-paragraph (ii) if done in Northern Ireland" for "sub-paragraph (i) if done in England and Wales".

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

#### **Abuse of position of trust**

16 Abuse of position of trust: sexual activity with a child

(1) A person aged 18 or over (A) commits an offence if—

- (a) he intentionally touches another person (B) ,
- (b) the touching is sexual,
- (c) A is in a position of trust in relation to B,
- (d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and
- (e) either—
  - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
  - (ii) B is under 13.

(2) This subsection applies where A—

- (a) is in a position of trust in relation to B by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and
- (b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

### **17 Abuse of position of trust: causing or inciting a child to engage in sexual activity**

(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally causes or incites another person (B) to engage in an activity,

(b) the activity is sexual,

(c) A is in a position of trust in relation to B,

(d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This subsection applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

### **18 Abuse of position of trust: sexual activity in the presence of a child**

(1) A person aged 18 or over (A) commits an offence if—

(a) he intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, he engages in it—

(i) when another person (B) is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) A is in a position of trust in relation to B,

(e) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(f) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This subsection applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and



(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

**19 Abuse of position of trust: causing a child to watch a sexual act**

(1) A person aged 18 or over (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) A is in a position of trust in relation to B,

(d) where subsection (2) applies, A knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to B, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) This subsection applies where A—

(a) is in a position of trust in relation to B by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and

(b) is not in such a position of trust by virtue of other circumstances.

(3) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(4) Where in proceedings for an offence under this section—

(a) it is proved that the defendant was in a position of trust in relation to the other person by virtue of circumstances within section 21(2) , (3) , (4) or (5) , and

(b) it is not proved that he was in such a position of trust by virtue of other circumstances,

it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which he was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know of those circumstances.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

## **20 Abuse of position of trust: acts done in Scotland**

Anything which, if done in England and Wales or Northern Ireland, would constitute an offence under any of sections 16 to 19 also constitutes that offence if done in Scotland.

## **21 Positions of trust**

(1) For the purposes of sections 16 to 19, a person (A) is in a position of trust in relation to another person (B) if—

(a) any of the following subsections applies, or

(b) any condition specified in an order made by the Secretary of State is met.

(2) This subsection applies if A looks after persons under 18 who are detained in an institution by virtue of a court order or under an enactment, and B is so detained in that institution.

(3) This subsection applies if A looks after persons under 18 who are resident in a home or other place in which—

(a) accommodation and maintenance are provided by an authority under section 23(2) of the Children Act 1989 (c. 41) or Article 27(2) of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2) ), or

(b) accommodation is provided by a voluntary organisation under section 59(1) of that Act or Article 75(1) of that Order,

and B is resident, and is so provided with accommodation and maintenance or accommodation, in that place.

(4) This subsection applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions—

(a) a hospital,

(b) an independent clinic,

(c) a care home, residential care home or private hospital,

(d) a community home, voluntary home or children's home,

(e) a home provided under section 82(5) of the Children Act 1989, or

(f) a residential family centre,

and B is accommodated and cared for in that institution.

(5) This subsection applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.

(6) This subsection applies if A is appointed to be the guardian of B under Article 159 or 160 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2) ) .

(7) This subsection applies if A is engaged in the provision of services under, or pursuant to anything done under—

(a) sections 8 to 10 of the Employment and Training Act 1973 (c. 50) , or

(b) section 114 of the Learning and Skills Act 2000 (c. 21) ,

and, in that capacity, looks after B on an individual basis.

(8) This subsection applies if A regularly has unsupervised contact with B (whether face to face or by any other means) —

(a) in the exercise of functions of a local authority under section 20 or 21 of the Children Act 1989 (c. 41) , or

(b) in the exercise of functions of an authority under Article 21 or 23 of the Children (Northern Ireland) Order 1995.

(9) This subsection applies if A, as a person who is to report to the court under section 7 of the Children Act 1989 or Article 4 of the Children (Northern Ireland) Order 1995 on matters relating to the welfare of B, regularly has unsupervised contact with B (whether face to face or by any other means) .

(10) This subsection applies if A is a personal adviser appointed for B under—

(a) section 23B(2) of, or paragraph 19C of Schedule 2 to, the Children Act 1989, or

(b) Article 34A(10) or 34C(2) of the Children (Northern Ireland) Order 1995,

and, in that capacity, looks after B on an individual basis.

(11) This subsection applies if—

(a) B is subject to a care order, a supervision order or an education supervision order, and

(b) in the exercise of functions conferred by virtue of the order on an authorised person or the authority designated by the order, A looks after B on an individual basis.

(12) This subsection applies if A—

(a) is an officer of the Service [F1or Welsh family proceedings officer (within the meaning given by section 35 of the Children Act 2004) ] appointed for B under section 41(1) of the Children Act 1989,

(b) is appointed a children’s guardian of B under rule 6 or rule 18 of the Adoption Rules 1984 (S.I. 1984/265) , or

(c) is appointed to be the guardian ad litem of B under rule 9.5 of the Family Proceedings Rules 1991 (S. I. 1991/1247) or under Article 60(1) of the Children (Northern Ireland) Order 1995,

and, in that capacity, regularly has unsupervised contact with B (whether face to face or by any other means) .

(13) This subsection applies if—

(a) B is subject to requirements imposed by or under an enactment on his release from detention for a criminal offence, or is subject to requirements imposed by a court order made in criminal proceedings, and

(b) A looks after B on an individual basis in pursuance of the requirements.

] 22 Positions of trust: interpretation

(1) The following provisions apply for the purposes of section 21.

(2) Subject to subsection (3) , a person looks after persons under 18 if he is regularly involved in caring for, training, supervising or being in sole charge of such persons.

(3) A person (A) looks after another person (B) on an individual basis if—

(a) A is regularly involved in caring for, training or supervising B, and

(b) in the course of his involvement, A regularly has unsupervised contact with B (whether face to face or by any other means) .

(4) A person receives education at an educational institution if—

(a) he is registered or otherwise enrolled as a pupil or student at the institution, or

(b) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

(5) In section 21—

“authority”—

(a)

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in relation to England and Wales, means a local authority;

.....

**23 Sections 16 to 19: [F3exception for spouses and civil partners]E+W+N.I.**

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if at the time —

(a) B is 16 or over, and

(b) A and B are lawfully married [F4] or civil partners of each other].

(2) In proceedings for such an offence it is for the defendant to prove that A and B [F5] were at the time lawfully married or civil partners of each other].

#### **24 Sections 16 to 19: sexual relationships which pre-date position of trust**

(1) Conduct by a person (A) which would otherwise be an offence under any of sections 16 to 19 against another person (B) is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between A and B.

(2) Subsection (1) does not apply if at that time sexual intercourse between A and B would have been unlawful.

(3) In proceedings for an offence under any of sections 16 to 19 it is for the defendant to prove that such a relationship existed at that time.

#### **Familial child sex offences**

#### **25 Sexual activity with a child family member**

(1) A person (A) commits an offence if—

(a) he intentionally touches another person (B) ,

(b) the touching is sexual,

(c) the relation of A to B is within section 27,

(d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person guilty of an offence under this section, if aged 18 or over at the time of the offence, is liable—

(a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;

(b) in any other case—

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(6) This subsection applies where the touching involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis.

## **26 Inciting a child family member to engage in sexual activity**

(1) A person (A) commits an offence if—

(a) he intentionally incites another person (B) to touch, or allow himself to be touched by, A,

(b) the touching is sexual,

(c) the relation of A to B is within section 27,

(d) A knows or could reasonably be expected to know that his relation to B is of a description falling within that section, and

(e) either—

(i) B is under 18 and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18, the defendant is to be taken not to have reasonably believed that that person was 18 or over unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a description falling within section 27, it is to be taken that the defendant knew or could reasonably have been expected to know that his relation to the other person was of that description unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that it was.

(4) A person guilty of an offence under this section, if he was aged 18 or over at the time of the offence, is liable—

(a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding 14 years;

(b) in any other case—

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.

(6) This subsection applies where the touching to which the incitement related involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis.

## **27 Family relationships**

(1) The relation of one person (A) to another (B) is within this section if—

(a) it is within any of subsections (2) to (4) , or

(b) it would be within one of those subsections but for section 67 of the Adoption and Children Act 2002 (c. 38) (status conferred by adoption) .

(2) The relation of A to B is within this subsection if—

(a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or

(b) A is or has been B's foster parent.

(3) The relation of A to B is within this subsection if A and B live or have lived in the same household, or A is or has been regularly involved in caring for, training, supervising or being in sole charge of B, and—

(a) one of them is or has been the other's step-parent,

(b) A and B are cousins,

- (c) one of them is or has been the other's stepbrother or stepsister, or
  - (d) the parent or present or former foster parent of one of them is or has been the other's foster parent.
- (4) The relation of A to B is within this subsection if—
- (a) A and B live in the same household, and
  - (b) A is regularly involved in caring for, training, supervising or being in sole charge of B.
- (5) For the purposes of this section—
- (a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning;
  - (b) "cousin" means the child of an aunt or uncle;
  - (c) a person is a child's foster parent if—
    - (i) he is a person with whom the child has been placed under section 23(2) (a) or 59(1) (a) of the Children Act 1989 (c. 41) (fostering for local authority or voluntary organisation) , or
    - (ii) he fosters the child privately, within the meaning given by section 66(1) (b) of that Act;
  - (d) a person is another's partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship;
  - (e) "step-parent" includes a parent's partner and "stepbrother" and "stepsister" include the child of a parent's partner.

**28 Sections 25 and 26: [F6]exception for spouses and civil partners]**

- (1) Conduct by a person (A) which would otherwise be an offence under section 25 or 26 against another person (B) is not an offence under that section if at the time—
- (a) B is 16 or over, and
  - (b) A and B are lawfully married [F7]or civil partners of each other].
- (2) In proceedings for such an offence it is for the defendant to prove that A and B [F8]were at the time lawfully married or civil partners of each other].
- (3) In proceedings for an offence under section 25 or 26 it is for the defendant to prove the matters mentioned in subsection (1) (a) to (c) .

**Offences against persons with a mental disorder impeding choice**

**30 Sexual activity with a person with a mental disorder impeding choice**

- (1) A person (A) commits an offence if—
- (a) he intentionally touches another person (B) ,



(b) the touching is sexual,

(c) B is unable to refuse because of or for a reason related to a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

(a) he lacks the capacity to choose whether to agree to the touching (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason) , or

(b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this section, if the touching involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**31Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity**

(1) A person (A) commits an offence if—

(a) he intentionally causes or incites another person (B) to engage in an activity,

(b) the activity is sexual,

(c) B is unable to refuse because of or for a reason related to a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

(a) he lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because he lacks sufficient understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason) , or

(b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this section, if the activity caused or incited involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**32 Engaging in sexual activity in the presence of a person with a mental disorder impeding choice**

(1) A person (A) commits an offence if—

(a) he intentionally engages in an activity,

(b) the activity is sexual,

(c) for the purpose of obtaining sexual gratification, he engages in it—

(i) when another person (B) is present or is in a place from which A can be observed, and

(ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,

(d) B is unable to refuse because of or for a reason related to a mental disorder, and

(e) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

(a) he lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason) , or

(b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

**33Causing a person, with a mental disorder impeding choice, to watch a sexual act**

(1) A person (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) B is unable to refuse because of or for a reason related to a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder and that because of it or for a reason related to it B is likely to be unable to refuse.

(2) B is unable to refuse if—

(a) he lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason) , or

(b) he is unable to communicate such a choice to A.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Inducements etc. to persons with a mental disorder

**34Inducement, threat or deception to procure sexual activity with a person with a mental disorder**

(1) A person (A) commits an offence if—

(a) with the agreement of another person (B) he intentionally touches that person,

(b) the touching is sexual,

(c) A obtains B's agreement by means of an inducement offered or given, a threat made or a deception practised by A for that purpose,

(d) B has a mental disorder, and

(e) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this section, if the touching involved—

(a) penetration of B's anus or vagina with a part of A's body or anything else,

(b) penetration of B's mouth with A's penis,

(c) penetration of A's anus or vagina with a part of B's body, or

(d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**35 Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception**

(1) A person (A) commits an offence if—

(a) by means of an inducement offered or given, a threat made or a deception practised by him for this purpose, he intentionally causes another person (B) to engage in, or to agree to engage in, an activity,

(b) the activity is sexual,

(c) B has a mental disorder, and

(d) A knows or could reasonably be expected to know that B has a mental disorder.

(2) A person guilty of an offence under this section, if the activity caused or agreed to involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**36 Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder**

(1) A person (A) commits an offence if—

(a) he intentionally engages in an activity,

- (b) the activity is sexual,
  - (c) for the purpose of obtaining sexual gratification, he engages in it—
    - (i) when another person (B) is present or is in a place from which A can be observed, and
    - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
  - (d) B agrees to be present or in the place referred to in paragraph (c) (i) because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
  - (e) B has a mental disorder, and
  - (f) A knows or could reasonably be expected to know that B has a mental disorder.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

**37Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception**

- (1) A person (A) commits an offence if—
- (a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,
  - (b) the activity is sexual,
  - (c) B agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by A for the purpose of obtaining that agreement,
  - (d) B has a mental disorder, and
  - (e) A knows or could reasonably be expected to know that B has a mental disorder.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Care workers for persons with a mental disorder

**38 Care workers: sexual activity with a person with a mental disorder**

- (1) A person (A) commits an offence if—

- (a) he intentionally touches another person (B) ,
- (b) the touching is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and
- (e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section, if the touching involved—

- (a) penetration of B's anus or vagina with a part of A's body or anything else,
- (b) penetration of B's mouth with A's penis,
- (c) penetration of A's anus or vagina with a part of B's body, or
- (d) penetration of A's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### **39 Care workers: causing or inciting sexual activity**

(1) A person (A) commits an offence if—

- (a) he intentionally causes or incites another person (B) to engage in an activity,
- (b) the activity is sexual,
- (c) B has a mental disorder,
- (d) A knows or could reasonably be expected to know that B has a mental disorder, and

(e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section, if the activity caused or incited involved—

- (a) penetration of B's anus or vagina,
- (b) penetration of B's mouth with a person's penis,
- (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or
- (d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

#### **40 Care workers: sexual activity in the presence of a person with a mental disorder**

(1) A person (A) commits an offence if—

- (a) he intentionally engages in an activity,
- (b) the activity is sexual,
- (c) for the purpose of obtaining sexual gratification, he engages in it—
  - (i) when another person (B) is present or is in a place from which A can be observed, and
  - (ii) knowing or believing that B is aware, or intending that B should be aware, that he is engaging in it,
- (d) B has a mental disorder,
- (e) A knows or could reasonably be expected to know that B has a mental disorder, and
- (f) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### **41 Care workers: causing a person with a mental disorder to watch a sexual act**

(1) A person (A) commits an offence if—

(a) for the purpose of obtaining sexual gratification, he intentionally causes another person (B) to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity,

(b) the activity is sexual,

(c) B has a mental disorder,

(d) A knows or could reasonably be expected to know that B has a mental disorder, and

(e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### **42 Care workers: interpretation**

(1) For the purposes of sections 38 to 41, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if—

(a) B is accommodated and cared for in a care home, community home, voluntary home or children's home, and

(b) A has functions to perform in the home in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(3) This subsection applies if B is a patient for whom services are provided—

(a) by a National Health Service body or an independent medical agency, or

(b) in an independent clinic or an independent hospital,

and A has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought him or are likely to bring him into regular face to face contact with B.

(4) This subsection applies if A—

(a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder, and



(b) as such, has had or is likely to have regular face to face contact with B.

(5) In this section—

“care home” means an establishment which is a care home for the purposes of the Care Standards Act 2000 (c. 14) ;

“children’s home” has the meaning given by section 1 of that Act;

“community home” has the meaning given by section 53 of the Children Act 1989 (c. 41) ;

“employment” means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;

“independent clinic”, “independent hospital” and “independent medical agency” have the meaning given by section 2 of the Care Standards Act 2000;

“National Health Service body” means—

a [[F9](#)Local Health Board] ,

(b) a National Health Service trust,

(c) a Primary Care Trust, or

(d) a Special Health Authority;

“voluntary home” has the meaning given by section 60(3) of the Children Act 1989.

### **Indecent photographs of children**

45Indecent photographs of persons aged 16 or 17

(1) The Protection of Children Act 1978 (c. 37) (which makes provision about indecent photographs of persons under 16) is amended as follows.

(2) In section 2(3) (evidence) and section 7(6) (meaning of “child”) , for “16” substitute “ 18”.

(3) After section 1 insert—

“1AMarriage and other relationships

(1) This section applies where, in proceedings for an offence under section 1(1) (a) of taking or making an indecent photograph of a child, or for an offence under section 1(1) (b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 1(1) (b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) In the case of an offence under section 1(1) (a) , if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.

(5) In the case of an offence under section 1(1) (b) , the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.

(6) In the case of an offence under section 1(1) (c) , if sufficient evidence is adduced to raise an issue both—

(a) as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, and

(b) as to whether the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child,

the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child."

(4) After section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child) insert—

### **160A Marriage and other relationships**

(1) This section applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(2) This section also applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—

(a) were married, or

(b) lived together as partners in an enduring family relationship.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented."

#### **46Criminal proceedings, investigations etc**

(1) After section 1A of the Protection of Children Act 1978 (c. 37) insert—

"1BException for criminal proceedings, investigations etc.

(1) In proceedings for an offence under section 1(1) (a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—

(a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,

(b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or

(c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.

(2) In this section "GCHQ" has the same meaning as in the Intelligence Services Act 1994."

(2) After Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17) ) insert—

"3AException for criminal proceedings, investigations etc.

(1) In proceedings for an offence under Article 3(1) (a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—

(a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,

(b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or

(c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.

(2) In this Article "GCHQ" has the same meaning as in the Intelligence Services Act 1994."

## **Abuse of children through prostitution and pornography**

### **47 Paying for sexual services of a child**

(1) A person (A) commits an offence if—

(a) he intentionally obtains for himself the sexual services of another person (B) ,

(b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and

(c) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) In this section, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) A person guilty of an offence under this section against a person under 13, where subsection (6) applies, is liable on conviction on indictment to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section against a person under 16 is liable—

(a) where subsection (6) applies, on conviction on indictment, to imprisonment for a term not exceeding 14 years;

(b) in any other case—

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(5) Unless subsection (3) or (4) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

(6) This subsection applies where the offence involved—

(a) penetration of B’s anus or vagina with a part of A’s body or anything else,

(b) penetration of B’s mouth with A’s penis,

(c) penetration of A’s anus or vagina with a part of B’s body or by B with anything else, or

(d) penetration of A’s mouth with B’s penis.

(7) In the application of this section to Northern Ireland, subsection (4) has effect with the substitution of " 17" for "16".

#### **48 Causing or inciting child prostitution or pornography**

(1) A person (A) commits an offence if—

(a) he intentionally causes or incites another person (B) to become a prostitute, or to be involved in pornography, in any part of the world, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

#### **49 Controlling a child prostitute or a child involved in pornography**

(1) A person (A) commits an offence if—

(a) he intentionally controls any of the activities of another person (B) relating to B's prostitution or involvement in pornography in any part of the world, and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

#### **50 Arranging or facilitating child prostitution or pornography**

(1) A person (A) commits an offence if—

(a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person (B) , and

(b) either—

(i) B is under 18, and A does not reasonably believe that B is 18 or over, or

(ii) B is under 13.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

#### 51 Sections 48 to 50: interpretation

(1) For the purposes of sections 48 to 50, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and "pornography", are to be interpreted accordingly.

(2) In those sections "prostitute" means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and "prostitution" is to be interpreted accordingly.

(3) In subsection (2) , "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

#### **Exploitation of prostitution**

#### 52 Causing or inciting prostitution for gain

(1) A person commits an offence if—

(a) he intentionally causes or incites another person to become a prostitute in any part of the world, and

(b) he does so for or in the expectation of gain for himself or a third person.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

#### 53 Controlling prostitution for gain

(1) A person commits an offence if—

(a) he intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world, and

(b) he does so for or in the expectation of gain for himself or a third person.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

54 Sections 52 and 53: interpretation

(1) In sections 52 and 53, "gain" means—

(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.

(2) In those sections "prostitute" and "prostitution" have the meaning given by section 51(2) .

### ***Amendments relating to prostitution***

#### **55 Penalties for keeping a brothel used for prostitution**

(1) The Sexual Offences Act 1956 (c. 69) is amended as follows.

(2) After section 33 insert—

"33A Keeping a brothel used for prostitution

(1) It is an offence for a person to keep, or to manage, or act or assist in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices) .

(2) In this section "prostitution" has the meaning given by section 51(2) of the Sexual Offences Act 2003."

(3) In Schedule 2 (mode of prosecution, punishment etc.) , after paragraph 33 insert (as a paragraph with no entry in the fourth column) —

#### **56 Extension of gender-specific prostitution offences**

Schedule 1 (extension of gender-specific prostitution offences) has effect.

### **Trafficking**

#### **57 Trafficking into the UK for sexual exploitation.**

(1) A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either—

(a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or

(b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**58 Trafficking within the UK for sexual exploitation**

(1) A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—

(a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or

(b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

**59 Trafficking out of the UK for sexual exploitation**

(1) A person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either—

(a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, or

(b) he believes that another person is likely to do something to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

.....

**62 Committing an offence with intent to commit a sexual offence**

(1) A person commits an offence under this section if he commits any offence with the intention of committing a relevant sexual offence.

(2) In this section, "relevant sexual offence" means any offence under this Part (including an offence of aiding, abetting, counselling or procuring such an offence) .



(3) A person guilty of an offence under this section is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

### 63 Trespass with intent to commit a sexual offence

(1) A person commits an offence if—

(a) he is a trespasser on any premises,

(b) he intends to commit a relevant sexual offence on the premises, and

(c) he knows that, or is reckless as to whether, he is a trespasser.

(2) In this section—

“premises” includes a structure or part of a structure;

“relevant sexual offence” has the same meaning as in section 62;

“structure” includes a tent, vehicle or vessel or other temporary or movable structure.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

## **Sex with an adult relative**

### **64 Sex with an adult relative: penetration**

(1) A person aged 16 or over (A) commits an offence if—

(a) he intentionally penetrates another person’s vagina or anus with a part of his body or anything else, or penetrates another person’s mouth with his penis,

(b) the penetration is sexual,

(c) the other person (B) is aged 18 or over,

(d) A is related to B in a way mentioned in subsection (2) , and

(e) A knows or could reasonably be expected to know that he is related to B in that way.

(2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2) —

(a) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;

(b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

#### **65 Sex with an adult relative: consenting to penetration**

(1) A person aged 16 or over (A) commits an offence if—

(a) another person (B) penetrates A’s vagina or anus with a part of B’s body or anything else, or penetrates A’s mouth with B’s penis,

(b) A consents to the penetration,

(c) the penetration is sexual,

(d) B is aged 18 or over,

(e) A is related to B in a way mentioned in subsection (2) , and

(f) A knows or could reasonably be expected to know that he is related to B in that way.

(2) The ways that A may be related to B are as parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(3) In subsection (2) —

(a) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;

(b) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person in any of those ways, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

### **Supplementary and general**

#### **73 Exceptions to aiding, abetting and counselling**

(1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if he acts for the purpose of—

(a) protecting the child from sexually transmitted infection,

(b) protecting the physical safety of the child,

(c) preventing the child from becoming pregnant, or

(d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to—

(a) an offence under any of sections 5 to 7 (offences against children under 13) ;

(b) an offence under section 9 (sexual activity with a child) ;

(c) an offence under section 13 which would be an offence under section 9 if the offender were aged 18;

(d) an offence under any of sections 16, 25, 30, 34 and 38 (sexual activity) against a person under 16.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Part.

#### **74 Consent**

For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

#### **75 Evidential presumptions about consent**

(1) If in proceedings for an offence to which this section applies it is proved—

(a) that the defendant did the relevant act,

(b) that any of the circumstances specified in subsection (2) existed, and

(c) that the defendant knew that those circumstances existed,

the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) The circumstances are that—

(a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him;

(b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

(c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;

(d) the complainant was asleep or otherwise unconscious at the time of the relevant act;

(e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;

(f) any person had administered to or caused to be taken by the complainant, without the complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(3) In subsection (2) (a) and (b) , the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

## **76 Conclusive presumptions about consent**

(1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed—

(a) that the complainant did not consent to the relevant act, and

(b) that the defendant did not believe that the complainant consented to the relevant act.

(2) The circumstances are that—

(a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

(b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

## **77 Sections 75 and 76: relevant acts**

In relation to an offence to which sections 75 and 76 apply, references in those sections to the relevant act and to the complainant are to be read as follows—

## **78 "Sexual"**

For the purposes of this Part (except section 71) , penetration, touching or any other activity is sexual if a reasonable person would consider that—

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

## **79 Part 1: general interpretation**

(1) The following apply for the purposes of this Part.

(2) Penetration is a continuing act from entry to withdrawal.

(3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery) .

(4) "Image" means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image.

(5) References to an image of a person include references to an image of an imaginary person.

(6) "Mental disorder" has the meaning given by section 1 of the Mental Health Act 1983 (c. 20) .

(7) References to observation (however expressed) are to observation whether direct or by looking at an image.

(8) Touching includes touching—

(a) with any part of the body,

(b) with anything else,

(c) through anything,

and in particular includes touching amounting to penetration.

(9) "Vagina" includes vulva.

(10) In relation to an animal, references to the vagina or anus include references to any similar part.

**Criminal Justice Act 1988**

**1988 CHAPTER 33**

**Possession of indecent photograph of child**

**160 [F185Possession of indecent photograph of child]**

(1) [F186Subject to subsection (1A) ,] it is an offence for a person to have any indecent photograph or pseudo-photograph of a child F187. . . in his possession.

(2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—

(a) that he had a legitimate reason for having the photograph [F188or pseudo-photograph] in his possession; or

(b) that he had not himself seen the photograph [F188or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photograph [F188or pseudo-photograph] was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

[F189(2A) A person shall be liable on conviction on indictment of an offence under this section to imprisonment for a term not exceeding five years or a fine, or both.]

(3) A person shall be liable on summary conviction of an offence under this section to [F190imprisonment for a term not exceeding six months or] a fine not exceeding level 5 on the standard scale [F190, or both].

(4) Sections 1(3) , 2(3) , 3 and 7 of the M92Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.



