
Legislation Response to Use of Minors' Self-generated Sexual Content for their ICT-facilitated Sexual Coercion

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Abstract:

The third Millennium has brought to life new digital contexts of human activities that include positive, negative and even alarming phenomena with regard to human development and safety. Among other things minors' self-generated content has become a tool for their ICT-facilitated sexual coercion and extortion. Therefore, the national legislations should implement adequate measures to withstand such activities.

The paper follows the authors' report made at the 21st session (June 2018) of the Council of Europe Committee of the Parties to the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). The report focused on the reference in national legislations to ICT-facilitated sexual coercion and/or extortion of children due to use of their self-generated sexually explicit visual content.

The paper aims to explore the legal instruments which Member States use to respond to the mentioned challenge, to systematize the above tools and to evaluate them in terms of their compliance with internationally binding legislation.

The materials included officially submitted information by 42 Lanzarote Committee Member States. The methodology integrated comparative, descriptive, conceptual, evaluative approaches to the subject matter study.

The analysis made it possible to identify typical ways that Lanzarote Committee Member States use to withstand the issue under study. The research relevance stems from the revealed promising national practices regarding the criminalization of minors' ICT-facilitated sexual coercion that uses their self-generated sexual content.

Keywords: Minor's Self-Generated Sexual Content, Lanzarote Convention.

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1. Introduction

The cyberspace has become one of the key spaces for developing human self-identity and self-expression (O'Sullivan, 2014). A lot of people publish on-line their personal images. This might have diverse consequences as along with charming experience sharing the respective content might be used by third parties for indecent purposes, including blackmail and extortion.

The current understanding of major trends in child sexual exploitation cover online grooming and solicitation, live streaming of child sexual abuse, spread of self-generated sexually explicit material in social media. Analytical reports argue that the latter phenomenon requires additional research due to its unclear relationship with child sexual exploitation (Europol VGT. Child Sexual Exploitation. Environmental Scan, 2015).

There is world-wide evidence (Aebi *et al.*, 2014; Ashurst and Mcalinden, 2015; Lee and Crofts, 2015) that young people use social media in grooming and bullying to abuse and exploit others sexually with enough frequency. Such behaviour requires actions from society and legislation. This is critical regarding the UNO Agenda for 2030. It considers the end of sexual violence and abuse of children as one of its sustainable development goals.

Therefore, it is timely to foster the applicability of the Lanzarote Convention to sexual offences against children facilitated through use of ICTs.

Against the above background, the research hypothesis states that the Lanzarote Convention Member States have adequate tools to address the existing threat though their national legal instruments might differ in terms of the legislation scope within which they address phenomenon under study.

The research goal is three-fold. It aims to explore the legal instruments through which Member States respond to the use of minors' self-generated sexual content for their ICT-facilitated sexual coercion, to systematize the above instruments and to evaluate them in terms of their compliance with internationally binding legislation. The above goal requires a number of tasks including the following:

- Mapping of world-wide societal context regarding the question under study.
- Overview of the relevant international legislation and principles.
- Analysis of the information from the Member States.
- Identification of national legislations approaches and provision.

2. Materials and Methods

The research materials cover the replies of 42 Member States to the question on reference in national law to ICT-facilitated sexual coercion and/or extortion

(Compilation of Member States replies on Reference in law to ICT facilitated sexual coercion and/or extortion, 2018). The replies contain the reference to concrete legislation (articles of the criminal codes, legal acts, cases, etc.) and provide relevant explanations. All the materials have been uploaded on the Lanzarote Committee site in the open access mode.

The research methodology rests on qualitative paradigm and use the comparative analysis as the major tool to explore national legislations. The analysis also involves descriptive techniques with regard to current national legislations in force, applies conceptual analysis of the existing legal framework for the issue under study; uses the method of evaluation regarding national legislations compliance with the Lanzarote Convention.

3. World-Wide Societal Context

INHOPE (INHOPE Annual report 2013-2014, 2014) states that the number of child sexual abuse material (CSAM) reports increased nearly twice during three years from 29,908 in 2011 to 54,969 in 2014.

According to the EU Survey, 20% of children of 14-16 years old received sexual images online; 43% had contact online with someone they have not met face to face before and 11% sent their photo or video to these persons, and 14% met online contact offline (EU Kids Online Survey, 2014).

Pan-European Insafe Youth Panel Survey (Buchegger, 2011) conducted in 27 EU Member States among children of 14-18 years old revealed that about one-third of them have had contact with sexting. Motivations for posting sexual content are to get noticed by another person (47%), stupidity (45%), to attract the attention of a person he/she likes (28%) and being forced to (14%). Negative consequences of posting sexual references is the possibility of meeting dangerous people (57%), getting into trouble with parents (49%), being sexually abused (45%) and gradually ending up in prostituting oneself (12.8%).

IWF study (Emerging Patterns and Trends Report #1 Online-Produced Sexual Content, 2015) reveals that of the 3,803 images and videos assessed during the course of the Study, 3,419 (89.9%) had apparently been harvested from their original upload location and were being redistributed via third party websites. While adults are commonly assumed to be the perpetrators of online sexual abuse, research indicates that children and young people also engage in online sexual offending (Belton and Hollis, 2016; NICE 2016. Harmful Sexual Behaviour Amongst Children and Young People, 2016).

According to Europol's iOCTA, "sexting or self-generated images which initially were made voluntarily between peers consequently turn into unwanted dissemination that may lead to bullying, harassment, or even suicide (Internet Organised Crime

Threat Assessment, iOCTA, 2015).

The above data confirm the relevance of the question on the international and national legislation capacity to address the issue under study.

4. International legislation

The Best interests of the child have been the starting point of the information provision and its evaluation. Therefore, the analysis of materials by the Parties aims to consider ways to foster minors' protection. Although, it is widely recognised that the above principle integrates multiple dimensions, including social, cultural, legal ones, etc. (Sormunen, 2016).

Art. 23 of the Lanzarote Convention (2007) lays general grounds to criminalize any adult's ICT-facilitated intentional activities that are subject to art. 18, paragraph 1.a, or art. 20, paragraph 1a. The Explanatory Report on the Convention (2007) further states on ways through which ICT-tools may be used to engage a child into interaction, and although underlines that a child might be sexually abused or otherwise harmed at the stage of the minor's physical meeting with the groomer.

More recent documents by the Lanzarote Committee provide appropriate instruments to prevent and combat sexual offences against children in the context of skyrocketing emerging digital tools that might be used to facilitate the above crimes. Thus, the Opinion on Article 23 of the Lanzarote Convention and its explanatory note warns that modern children consider it acceptable to exchange and post self-generated sexual materials in the cyberspace. This puts minors at risk of being subject to sexual abuse in cyberspace as stated in the Opinion on Article 23 of the Lanzarote Convention 2015.

The Lanzarote Committee Interpretative Opinion (2017) on the applicability of the Convention to sexual offences against children facilitated through the ICT use mentions that due to the society digital advance ICT-facilitated offences emerge are not explicitly mentioned in the Convention text adopted in 2007. Therefore, there are international legal grounds to provide an adequate legal response to challenges that the child might face due to multidimensional forms of ICT-facilitated sexual abuse of minors.

5. Member States' legislation

5.1. The scope of legislation in relation to the question under study

Most Member States limited their replies to the provisions of national Criminal Codes (further-CC)/Laws on ICT-facilitated offences. Meanwhile, some Parties mentioned legal sources that go beyond the scope of the above CCs/Laws on ICT-facilitated offences. The above approach can be seen in Iceland who mentions that

Icelandic law does not explicitly address ICT facilitated sexual coercion and/or extortion of children and/or other persons related to the child depicted on self-generated sexually explicit material. However, the Supreme Court in Iceland passed a judgement in December 15th of 2016 in case No. 441/2016 where coaxing a child to send self-generated sexually explicit material and then trying to coerce a child to perform sexual act has been found to be in violation of art. 209 of the Penal Code and art. 99 par. 3 of the Child protection Act. Moreover, Russia, apart from the CC provisions, refers to the Resolution of the Plenum of the Supreme Court on December 4, 2014 No. 16 (items 16, 17) under which actions could be recognized as depraved, even in case with no direct physical contact with the injured person, when committed through the use of the Internet, other information and telecommunications networks. Besides, in Russia is in force the Federal Law No. 466-FZ of December 29, 2010 "On the protection of children from information that is harmful to their health and development".

5.2. Legislations that addresses the issue under study through the most general concepts with no reference to ICT

Some national legislations rest on the most general concepts with no reference to coercion and/or extortion or ICT-facilitated sexual coercion and/or extortion. Thus, Estonia refers to art 175. 1) of the Penal Code that specifies punishment for human trafficking in order to take advantage of minors (involvement in criminal activities, pornographic or erotic performance or work, begging, prostitution). Furthermore, Montenegro mentions that under the Criminal Code of Montenegro in art. 211, paragraph 5 the perpetrator will be punished by a prison term from two to ten years if he commits a criminal offense by use of force or threat. Moreover, the Slovak Republic informs that Slovak legal order does not comprise explicit regulation related to above mentioned cause of conduct, explicit terms "sexual coercion" or "sexual extortion" are not recognized by national law. Slovenia underlines that such actions are subject to art. 171/3 of the Criminal Code. It states that whoever will be criminalized in case of compelling 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 due to damaging his/her or his/her relatives' honour and reputation. Similar approach is revealed in Malta's reply. Sweden mentions that whoever will be sentenced for the exploitation of a child for sexual posing if the above person promotes or exploits performance or participation in sexual posing by a child. In assessing whether the crime is gross, special consideration shall be given to whether the crime has concerned a large-scale activity, brought significant financial gain or involved ruthless exploitation of the child (Chapter 6 Section 8).

5.3. Legislations that address the issue under study through interrelated umbrella concepts with no reference to ICT

Some Parties inform that the behaviours under study are addressed by their

legislations with no particular reference to ICT-facilitated activities and are considered under a number of interrelated umbrella concepts. These might refer to:

- coercion and general provisions of criminalizing sexual abuse with children (Albania, Greece);
- coercion, extortion and pornography (Croatia, Hungary);
- prostitution and pornography (Denmark);
- coercion and blackmail (Germany);
- extortion and blackmail (France);
- pornography and extortion (Latvia);
- coercion, extortion, production of child pornography, blackmail (Spain);
- pornography, blackmail / extortion, slander, violation of the secret domain or private domain by means of a camera, duress (Switzerland);
- rape, sexual duress, sexual abuse, solicitation, pornography, seduction to sexual Intercourse (Czech Republic).

The Republic of Moldova provides a list of articles specifying concrete crimes which can cover the behaviors under study.

5.4. Aggravating circumstances

Some Parties also mention that their national legislations can consider the cases under study as aggravating circumstances. Thus, despite no explicit reference in the Austrian Criminal Code to ICT facilitated sexual coercion or extortion both are punishable under the general provisions of (serious) coercion (art. 105, 106 CC) and (aggravated) extortion (art. 144, 145 CC). Similarly, in Finland the situation under study might be considered as subject to coercion (Chapter 25, Sec. 8), extortion (Chapter 31, Sec. 3), or aggravated extortion (Chapter 31, Sec. 4). Liechtenstein provides the reference to the CC paragraphs on aggravated coercion (par. 106), extortion (par. 144), and aggravated extortion (par. 145). Similar references are made by Lithuania and Poland.

5.5. Legislations that address the issue under study through reference to ICT-facilitated criminal offences

The issue under study is addressed in the Penal Code of Andorra (art. 155, par.2), the CC of Bosnia and Herzegovina (art. 177), in the CC of Bulgaria (art. 155a), in the CCC of Cyprus under art. 12, in part 2 of art. 255 of the CC of Georgia, and the CC of Luxemburg states (art. 385-2, L. July 16, 2011).

Under legislation of Monaco the ICT-facilitated activities of child sexual abuse nature are covered by a number of provisions (Law No. 1.344 of December 26, 2007, Replaced by Law No. 1.435 of November 8, 2016).

In the Netherlands cases of coercion and/or extortion of children and/or other persons related to the child depicted can be considered under a number of CC provisions, including child pornography (section 240b), sexual assault (section 246), general criminalization of coercion (section 284), extortion and blackmail (sections 317 and 318).

In Serbia there are a number of provisions that cover coercion under art. 135 of the CC, extortion under art. 214, criminal offence of blackmail under art. 215, and a criminal offence of trafficking in human beings and pornography under art. 388.

The CC of the Former Yugoslav Republic of Macedonia holds criminalization for cover cases that are subject for present consideration in Chapter 19 that covers such crimes as rape, sexual assault of minors, pornography, etc. art. 193-b provides criminalization of a person who through a computer communication device by scheduling a meeting or in other way shall entice a child below the age of 14 to sexual intercourse or other sexual act or to production of child pornography and if the person has arranged a meeting with the minor with such an intention.

In Russia, the cases under study are subject to consideration under a number of provisions of the CC art. 131 (rape), art. 132 (violent actions of sexual character), art. 134 (sexual intercourse and other actions of sexual character with a person who has not reached the age of 16), art. 135 (depraved actions), art. 242 (illegal production and distribution of pornographic materials or objects). Moreover, as example of case law the Resolutions of the Plenum of the Supreme Court can be considered (see the reference to Resolution of December 4, 2014 N 16 (items 16, 17)).

Turkey mentions that despite the fact that their CC does not make clear reference to ICT -facilitated sexual coercion and extortion of children the country has the Law on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications that lays grounds for legal action.

6. Discussion

The analysis of the Member States information show that there is no precise wording on self-generated sexually explicit images and/or videos or self-generated sexual content in the official provisions of their national legislations.

Following and fostering the legal culture and tradition of the UNO Convention of the Rights of the Child, the Council of Europe Lanzarote Convention, the member States Parties who have replied consider the issues under study from the angle of the child's protection, view it as one of the nation's top priorities. Therefore, no replies have specifically focused on minors' activities criminalization though as it was mentioned earlier, there is world-wide evidence regarding minors' grooming and sexual offending.

On the other hand, every Party provided the direct link to the article(s)/section(s) in its national legislation (Criminal Code) that covers such offences as ICT-facilitated sexual coercion and/or extortion of children and/or other persons related to the child depicted on the self-generated sexually explicit images and/or videos or self-generated sexual content.

The above state of affairs confirms the lawfulness and proportionality of the approach stated in the Lanzarote Committee Opinion on Article 23 of the Lanzarote Convention and the Committee Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies. New digital realities emerge every second, every potential case can hardly be predicted. Therefore, the Lanzarote Committee Member States' paramount task is to integrate existing international and national legal tools to protect children.

Furthermore, the Member States information confirms the opportunity to criminalize the cases of child pornography according to a number of international provisions. These include interpretation within the Optional Protocol to the UNCRC (art.2(c)), the Lanzarote Convention (art. 20). Although simple possession is not illegal across all countries (ICMEC, International Center for Missing and Exploited Children, 2016): of the 196 countries reviewed by the International Center for Missing and Exploited Children in 2016, only 82 countries were seen to have legislation deemed sufficient to combat child pornography offenses.

7. Conclusion

There is no legally accepted understanding of the concepts “self-generated sexually explicit images” and “self-generated sexual content” at the level of international or regional law.

The Lanzarote Convention leaves enough room to national legislation specifics in terms of legal concepts definitions, their scope, activities in accordance with Member States' internal law, though strongly requires aggregated strategies and tactics with reference to substantial criminal law and criminalization of offences specified in art.18-29 of the Convention.

The analysis of the Member States information has confirmed the research hypothesis on possible diversity of national legislations scope regarding issue under study. The comparative analysis allowed the researchers to systematize various options that countries use to consider the matter. The nations might address the issue in a number of ways, i.e.:

- through the most general concepts with no reference to ICT. The above approach goes in line with art. 18 of the Convention that states that the engaging in sexual activities with a child shall be criminalized in case of coercion, force or threats;

- through interrelated umbrella concepts with no reference to ICT. The above approach goes in line with the provisions of art. 19-24 of the Lanzarote Convention;
- as aggravating circumstances this approach corresponds to art. 28 of the Lanzarote Convention;
- through reference to ICT-facilitated criminal offences.

Member States provided persuading information regarding legislation sources. Therefore, despite different legal conceptual framework in national legislations the Lanzarote Convention Member States operate in compliance with background international legislation on the issues under study.

Thus, most effort of those involved should be addressed to minors, their peers and relatives with the view to raise awareness of possible criminal challenges (Richardson et al., 2017) regarding the Internet Literacy.

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References:

- Aebi, M., Plattner, B., Ernest, M., Kaszynski, K., Bessler, C. 2014. Criminal history and future offending of juveniles convicted of the possession of child pornography. *Sexual Abuse: A Journal of Research and Treatment*, 26(4), 375-390.
- Ashurst, L., Mcalinden, A. 2015. Young people, peer-to-peer grooming and sexual offending: Understanding and responding to harmful sexual behaviour within a social media society. *Probation Journal*, 62(4), 374-388.
- Belton, E., Hollis, V. 2016. A review of the research on children and young people who display harmful sexual behaviour online (HSB): What online HSB is and how it compares to HSB offline. London: NSPCC.
- Buchegger, B. 2011. Sexting: Nude pictures and Internet. Results of Pan European in safe youth Panel survey. Available at: http://www.saferinternet.at/fileadmin/files/Online_Communities_Studie/Sexting_survey_nov11.pptx.p
- Compilation of Member States replies on Reference in law to ICT facilitated sexual coercion and/or extortion. 2018. Available at: <https://rm.coe.int/compilation-of-replies-to-question-11-reference-in-law-to-ict-facilita/168089fdca>
- Emerging Patterns and Trends Report #1 Online-Produced Sexual Content. 2015. Available at: https://www.iwf.org.uk/sites/default/files/inline-files/Online-produced_sexual_content_report_100315.pdf
- EU Kids Online Survey. 2014. Available at: <http://eprints.lse.ac.uk/60512/1/EU%20Kids%20online%20III%20.pdf>
- Europol VGT. Child Sexual Exploitation. Environmental Scan. 2015. Available at: <https://virtualglobaltaskforce.com/>
- ICMEC – International Center for Missing and Exploited Children. 2016. Available at: <https://www.icmec.org>
- INHOPE Annual report (2013-2014). 2014. Available at: <http://www.inhope.org/tns/resources/statistics-and-infographics/statistics-and-infographics-2014.aspx>

- Internet Organised Crime Threat Assessment, iOCTA. 2015. Available at: <https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2015>
- Lanzarote Convention. 2007. Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822>
- Lanzarote Committee Interpretative Opinion. 2017. Available at: <https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f>
- Lee, M., Crofts, T. 2015. Gender, pressure, coercion and pleasure: untangling motivations for sexting between young people. *British Journal of Criminology*, 55(3), 454-473.
- NICE 2016. Harmful Sexual Behaviour Amongst Children and Young People. Available at: <https://www.nice.org.uk/guidance/indevelopment/gidphg66>
- O'Sullivan, L. F. 2014. Linking Online Sexual Activities to Health Outcomes Among Teens. *New Directions for Child and Adolescent Development*, 144, 37-51.
- Optional Protocol to the UNCRC Article 2(c). 2015. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>
- Richardson, J., Milovidov, E., Schmalzried, M. (Eds.). 2017. *Internet Literacy Book*. Council of Europe. France: Strasbourg Cedex.
- Sormunen, M. 2016. *The best interests of the child – A dialogue between theory and practice*. Council of Europe, Strasbourg Cedex.