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Challenges and Prospects in Enforcing Legal Protection of Children from Online Sexual Exploitation

Submitted: 26.09.2023. Accepted: 1.10.2023.

Abstract

The issue of online sexual exploitation of children is a growing concern worldwide, and there is a pressing need to strengthen legal protection measures for children. International laws and conventions have been established to protect children from online sexual exploitation, but the enforcement of these laws faces several challenges, such as the difficulty of identifying perpetrators and the lack of resources and expertise in law enforcement agencies. Additionally, cultural and social norms may discourage children from reporting incidents of online sexual exploitation. However, there are prospects for improving legal protection measures, such as through increased international cooperation and coordination, awareness-raising campaigns, and capacity-building for law enforcement agencies. Overall, addressing the issue of online sexual exploitation of children requires a multifaceted approach involving legal, social, and technological measures.

Keywords: legal protection, children, sexual exploitation, internet, challenges.

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Wyzwania i perspektywy w egzekwowaniu prawnej ochrony dzieci przed wykorzystywaniem seksualnym w Internecie

Streszczenie

Problem wykorzystywania seksualnego dzieci online stanowi rosnący problem na świecie. Istnieje pilna potrzeba wzmocnienia środków ochrony prawnej dla dzieci. Międzynarodowe prawa i konwencje zostały ustanowione w celu ochrony dzieci przed wykorzystywaniem seksualnym online, jednak egzekwowanie tych praw napotyka wiele wyzwań, takich jak trudność w identyfikacji sprawców oraz brak zasobów i wiedzy w agencjach egzekwujących prawo. Dodatkowo normy kulturowe i społeczne mogą zniechęcać dzieci do zgłaszania przypadków wykorzystywania seksualnego online. Niemniej jednak istnieją perspektywy poprawy środków ochrony prawnej, takie jak zwiększona międzynarodowa współpraca i koordynacja, kampanie podnoszące świadomość oraz budowanie zdolności agencji egzekwujących prawo. Ogólnie rzecz biorąc, rozwiązanie problemu wykorzystywania seksualnego dzieci online wymaga wieloaspektowego podejścia, obejmującego środki prawne, społeczne i technologiczne.

Słowa kluczowe: ochrona prawna, dzieci, wykorzystywanie seksualne, internet, wyzwania.

Introduction

Sexual exploitation of children is one of the most dangerous and heinous forms of violations that children can be subjected to. This type of abuse can significantly escalate in times of wars and international crises. When children are displaced, and family structures disintegrate due to these disasters, they become vulnerable to seduction and exploitation by criminal groups taking advantage of their weakened state. In the wake of nuclear explosions during armed conflicts, children are not only physically affected by the resulting deformities, but they also become incapacitated and unable to defend themselves.³ The lasting consequences of nuclear catastrophes include severe physical and mental disabilities, rendering these children particularly vulnerable. Their physical limitations, coupled with the chaotic aftermath and social disintegration caused by such events, create an environment ripe for exploitation. This heightened vulnerability has contributed significantly to the alarming increase in cases of sexual exploitation among these already traumatized children.⁴

Furthermore, with the advancement of technology and the widespread use of the internet, child sexual exploitation has taken on multiple forms in the virtual world including the ease of communication, access to information, and convenience of online transactions. However, it has also created new opportunities for individuals to commit crimes.

The sexual exploitation of children via the internet is a growing problem that has attracted the attention of governments, international organizations, and civil society groups worldwide. The anonymity and accessibility of the internet have made it easier for offenders to exploit and abuse children without being detected. In this context, there is a pressing need to strengthen legal protection measures for children from sexual exploitation via the internet, so how can the current legal framework be effectively enforced to protect children from online sexual exploitation, given the challenges posed by the internet's anonymity and accessibility?

³ R. Tourkia, I. Bouderbala, *The French Nuclear Crime in the Algerian Sahara from the Perspective of the Rules of International Law*, "Journal of Legal and Social Sciences" 2022, 7(2), p. 522.

⁴ *Ibidem*.

Understanding Online Child Sexual Exploitation

The internet has transformed the way we live, work, and communicate with each other. However, with the rise of digital technology, we have also witnessed an alarming increase in online child sexual exploitation and abuse. This form of abuse is a serious crime that has devastating effects on children and their families. In this article, we will explore what online child sexual exploitation is and how we can combat it.⁵

What is online child sexual exploitation?

The Interpol committee specializing in crimes against children in pornography defined online child sexual exploitation as follows: 'Any means by which the sexual exploitation of a child is depicted or promoted, including written or oral material that focuses on explicit sexual conduct involving a child.'⁶ Similarly, the Council of Europe Convention on Cybercrime, in Article 9, defines online child pornography as: 'Any visual representation of a minor engaging in sexually explicit conduct, any sexually explicit visual representation of a person appearing to be a minor, or any real sexually explicit visual representation of a minor for primarily sexual purposes'.⁷ Algeria, having ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in 2000, adopted this definition in its legislation concerning the sexual exploitation of children online.⁸

Online child sexual exploitation and abuse can manifest in various forms and encompass a range of activities. One common form of exploitation is grooming, which involves establishing an online relationship with a child with the intention of sexually abusing them.⁹ This may include flattery, attention, and the offering of gifts or incentives to gain the child's trust and compliance. Once the perpetrator has gained the child's trust, they may proceed to solicit sexual activity or images from them.

Another form of online child sexual exploitation and abuse involves the creation and sharing of images and videos depicting child sexual abuse.¹⁰ This can

⁵ New digital technologies produce unprecedented levels of child abuse material online Special Rapporteur on the sale of children, child prostitution and child pornography (Human Rights Council, 18 March 2016).

⁶ INTERPOL Secretary General: Online sexual abuse of children is reaching record levels, <https://www.interpol.int/ar/1/1/2022/24> (access: 10.05.2023).

⁷ The Council of Europe Convention on Cybercrime in 2001, see Article 9.

⁸ Algeria ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in 2000 through Presidential Decree No. 06-299 of 6 September 2006. This decree was published in the Official Gazette, issue No. 55, dated 6 September 2006.

⁹ T. Ly, L. Murphy, J.P. Fedoroff, *Understanding Online Child Sexual Exploitation Offenses*, "Current Psychiatry Reports" 2016, 18, p. 3. <https://doi.org/10.1007/s11920-016-0707-0>.

¹⁰ Ibidem.

entail the production of new content or the distribution and sharing of existing material. The dissemination of such material contributes to the continued victimization of children and perpetuates cycles of abuse. What is more, perpetrators of online child sexual exploitation and abuse can be strangers, but they can also be individuals known to the victim, such as family members, teachers, or coaches.¹¹ In some cases, the abuse is facilitated through threats, blackmail, or coercion, making it challenging for children to report the abuse or seek help.

Table 1. Child Sexual Abuse: Consequences for Survivors¹²

Physical and Mental Health
<ul style="list-style-type: none"> ■ Harm to internal organs ■ Contracting sexually transmitted diseases ■ Sexual dysfunction and/or disrupted sexual functioning ■ Anxiety, acute and posttraumatic stress disorder ■ Suicidal ideas ■ Multiple or borderline personality disorder
Social and Emotional Impact
<ul style="list-style-type: none"> ■ Trust issues and difficulty forming healthy relationships ■ Shame, guilt, and self-blame ■ Difficulty concentrating in school or work ■ Lower educational achievement ■ Challenges in maintaining stable employment
Long-term Consequences
<ul style="list-style-type: none"> ■ Chronic health problems ■ Continued mental health issues ■ Increased risk of revictimization ■ Impact on future intimate relationships and parenting

Sources: own elaboration based on several references and compiled by the authors.

This issue has a profound impact, causing emotional and psychological trauma, physical harm, social isolation, and an increased risk of further exploitation or trafficking.¹³ Victims often experience intense feelings of shame, guilt, fear, and anxiety, leading to mental health issues like depression and post-traumatic stress

¹¹ S. Ali, H. Abou Haykal, E. Youssef Mohammed Youssef, *Child Sexual Abuse and the Internet: A Systematic Review*, "Human Arenas" 2023, 6(2), p. 410.

¹² S. Zierler et al., *Adult Survivors of Childhood Sexual Abuse and Subsequent Risk of HIV infection*, "American Journal of Public Health" 1991, 81(5), p. 573.

¹³ M. Skórzewska-Amberg, *Online Child Grooming – Some Remarks Against the Background of the Pandemic*, "Krytyka Prawa" 2021, 13(4), p. 78. <https://doi.org/10.7206/kp.2080-1084.493>.

disorder. Perpetrators may resort to physical violence, exacerbating the suffering of these children. The social consequences include isolation and difficulty forming healthy relationships. Moreover, victims may remain vulnerable to ongoing exploitation and trafficking as abusers persist in their crimes. This vicious cycle can lead to long-term physical and psychological scars that affect a child's well-being, education, and future opportunities.¹⁴

International and National Efforts to Protect Children from Exploitation via the Internet

Protecting children from online sexual exploitation is a global issue that requires international and national efforts. Here are some examples of efforts made by various organizations and governments to prevent and combat online child sexual exploitation:

The United Nations Convention on the Rights of the Child (UNCRC) is a legally binding international treaty that outlines the civil, political, economic, social, and cultural rights of children. One of its key provisions is that children have the right to protection from all forms of violence, abuse, and exploitation, including online exploitation. Many countries have ratified the UNCRC and have implemented legislation and policies aimed at protecting children from online sexual exploitation.¹⁵ For instance, in 2011, the UN General Assembly adopted a resolution on the promotion, protection, and enjoyment of human rights on the Internet, which includes the protection of children's rights online. In addition, the UN has established the Global Alliance Against Child Sexual Abuse Online, which aims to bring together governments, law enforcement, industry, and civil society to combat online child sexual abuse.¹⁶

Convention on the Rights of the Child 1989 in Article 20 of the Convention on the Rights of the Child (CRC) 1989 states that a child who is temporarily or permanently deprived of his or her family environment, or whose best interests cannot be fully protected in that environment, shall be entitled to special protection and

¹⁴ S. Ali et al., *op. cit.*, p. 411.

¹⁵ The Independent Commissioner for Child Sexual Abuse Issues, International and European Law, see this website <https://beauftragte-missbrauch.de/en/themen/recht/international-and-european-law> (access: 11.05.2023).

¹⁶ The General Assembly proclaims November 18 as the International Day for the Prevention of Sexual Exploitation, Abuse and Violence against Children: The United Nations General Assembly adopted a resolution today, Monday, declaring November 18 as the International Day for the Prevention and Cure of Child Sexual Exploitation, Abuse and Violence. This international day will be celebrated, starting this year (UN ORG website).

assistance provided by the state.¹⁷ We recognize that some children may not be able to live with their families for various reasons, such as abuse, neglect, or abandonment. In such cases, the State has a responsibility to ensure that these children are provided with appropriate care, protection, and assistance.

The International Conference on Combating Sexual Exploitation of Children was held in Stockholm, Sweden in 1996, and was organized by the Swedish Government in cooperation with the NGO ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes).¹⁸ The conference brought together representatives from governments, NGOs, and international organizations to discuss the issue of sexual exploitation of children and to develop strategies for preventing and responding to this crime. The conference resulted in the adoption of the Stockholm Declaration and Agenda for Action.

In 1999, a follow-up conference was held in Yokohama, Japan. This conference, known as the Second World Congress against Commercial Sexual Exploitation of Children, built on the work of the Stockholm conference and focused on developing a global strategy to combat the sexual exploitation of children.¹⁹

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) was adopted by the United Nations General Assembly in 2000 and entered into force in 2002.

The OPSC is a supplementary treaty to the Convention on the Rights of the Child (CRC) and aims to strengthen the protection of children from sexual exploitation and abuse. It requires States parties to prohibit and criminalize the sale of children, child prostitution, and child pornography.²⁰

The OPSC also requires States parties to take measures to prevent and address these crimes, including by:

- ❑ Ensuring that national laws provide for the extraterritorial prosecution of offenders who engage in the sale of children, child prostitution, or child pornography outside the jurisdiction of the State party.

¹⁷ Article 20 of the Convention on the Rights of the Child (CRC) 1989.

¹⁸ J. Packman J., *It's Time for an International Conference to Combat Child Exploitation*, 27 October 2021.

¹⁹ The Third World Congress against Sexual Exploitation of Children and Adolescents (November 2008) The World Congress against Sexual Exploitation of Children and Adolescents. See <https://www.mofa.go.jp/policy/human/child/cse.html> (access: 5.08.2023).

The Yokohama Congress resulted in the adoption of the Yokohama Global Commitment, which called for increased cooperation between governments, NGOs, and other stakeholders to prevent and respond to sexual exploitation of children. The Commitment identified a range of actions that should be taken, including strengthening legal frameworks, providing support for victims, and increasing public awareness and education.

²⁰ The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) was adopted by the United Nations General Assembly in 2000 and entered into force in 2002.

- ❑ Providing assistance to victims, including through medical care, counselling, and social reintegration.
- ❑ Strengthening international cooperation to prevent and combat the sale of children, child prostitution, and child pornography.
- ❑ Protecting the rights of child victims and witnesses, including by ensuring that they are not subjected to further victimization during legal proceedings.²¹

UNICEF (United Nations International Children's Emergency Fund), a UN agency that initially had a temporary role following World War II, aimed to provide food, clothing, and medical care to children affected by the conflict. However, due to its positive and effective contributions, it expanded its mandate through the United Nations Economic and Social Council to encompass all aspects of child welfare globally.²² It also plays an active role in assisting children in realizing their rights and protecting them. Its executive board reviews applications, conducts studies and research, and publishes regular reports on the situation of children worldwide; including violations they may face both materially and morally. Reports from the United Nations have revealed that approximately 1.8 million children are annually subjected to sexual exploitation, such as being lured into international prostitution networks and having their abuse recorded and disseminated on pornography websites.²³

Moreover, around 1.2 million children are trafficked annually, and European law enforcement authorities have reported that there are at least three million websites containing child sexual exploitation material, with this number expected to increase. UNICEF highlights that child sexual exploitation is a global issue, and combating it faces numerous challenges, such as a lack of internet monitoring specialists to detect suspicious websites and varying legal frameworks regarding the criminality of pornography in different countries.²⁴

UNICEF has implemented programmes to combat child sexual exploitation in several areas. Firstly, it focuses on preventing children from being exposed to sexual exploitation and violence, particularly in conflict-affected, impoverished countries, in collaboration with international relief organizations. Secondly, it provides care to victims who suffer from psychological trauma, requiring special-

²¹ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. BY resolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the United Nations (25 May 2000), <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> (access: 8.08.2023).

²² N. Hendel, *United Nations International Children's Emergency Fund (UNICEF)*, [in:] *International Conflict and Security Law: A Research Handbook*. The Hague: TMC Asser Press, 2022, p. 722.

²³ *Ibidem*, p. 724.

²⁴ *Ibidem*, p. 725.

lized rehabilitation to gradually reintegrate them into normal life according to their age and needs. Thirdly, it engages in political dialogue with host countries that shelter offenders or consumers of illicit internet content, urging them to strengthen penalties and raise awareness among adults about the seriousness of this criminal phenomenon. International non-governmental organizations also play a crucial role in the fight against child sexual crimes, as they consider them distinct offenses necessitating preventive, protective, and judicial measures tailored to their varying natures, which negatively impact children's material and moral rights guaranteed by international human rights conventions.²⁵

Key international non-governmental organizations include ECPAT (End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes). ECPAT has been at the forefront of efforts to raise international awareness about the exploitative crimes committed daily against children. This non-governmental organization called for an international conference on child sex trafficking, which received international response and was hosted by the Swedish government.²⁶ The conference was organized in collaboration with UNICEF and a group of non-governmental organizations advocating for the Convention on the Rights of the Child. Thus, ECPAT contributed to the preparation of regional papers addressing the situation of sexually exploited children, creating a conducive environment, and drawing international attention to this sensitive issue.

Legal Measures to Combat Online Child Sexual Exploitation

International law prescribes severe penalties for crimes of sexual exploitation of children via the internet. The severity of the punishment depends on the nature and gravity of the crime committed.

Some of the articles and international treaties that stipulate penalties for crimes of online child sexual exploitation include:

- ❑ Article 34 of the United Nations Convention against Transnational Organized Crime, which imposes penalties on those involved in internet crimes related to children, such as trading in child pornography, sexual solicitation of children, and incitement of children to perform sexual acts.²⁷

²⁵ UNICEF, *Trafficking for Sexual Exploitation and Other Exploitative Purposes*, Innocenti Research Center, 2005, www.unicef-irc.org (access: 15.08.2023).

²⁶ One in Three: Internet Governance and Children's Rights, https://www.unicef-irc.org/publications/pdf/idp_2016_01.pdf (access: 15.08.2023).

²⁷ Article 34 of the United Nations Convention against Transnational Organized Crime.

- ❑ Article 9 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which requires State Parties to adopt strict legal measures to combat internet crimes related to children, such as collecting child pornography, online sexual solicitation, and forcing children to engage in sexual acts.²⁸
- ❑ Article 3 of the Optional Protocol on the Trafficking in Persons, Especially Women and Children, which punishes the exploitation of children in sexual acts, including online.²⁹
- ❑ Article 23 of the Council of Europe’s decision on the protection of children from sexual abuse and sexual exploitation, which requires member states to adopt effective legislation and legal measures to combat internet crimes related to children.³⁰

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, frequently referred to as the European Children’s Convention, represents the culmination of a series of international legal instruments and regional declarations aimed at combatting sexual exploitation of children. Starting with the United Nations Convention on the Rights of the Child (the Universal Children’s Convention) in 1989, the international community, including the Council of Europe, has introduced legal instruments that generally adhere to a comprehensive model. These treaties typically guarantee a wide range of human rights, with child protection against sexual exploitation being just one of many equally important rights mentioned briefly within that framework.³¹

An exception to this comprehensive approach is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (Optional Protocol). This protocol is dedicated solely to safeguarding children from the three abuses indicated in its name.

Despite the existence of the Optional Protocol and other expressions of strong political will to combat sexual exploitation and abuse of children, both the Committee on the Rights of the Child (responsible for monitoring compliance with the Universal Children’s Convention and its protocols) and the Committee of Experts on the Protection of Children Against Sexual Exploitation and Sexual Abuse esta-

²⁸ Article 9 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

²⁹ Article 3 of the Optional Protocol on the Trafficking in Persons.

³⁰ Article 23 of the Council of Europe’s decision on the protection of children from sexual abuse and sexual exploitation.

³¹ S.H. Bitensky, *Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse*, “International Legal Materials” 2010, 49(6), p. 1664. <https://doi.org/10.5305/intelegamate.49.6.1663>.

blished by the Committee of Ministers of the Council of Europe, concluded that children in Europe were still not adequately protected from these destructive phenomena. After over fifteen years of efforts, the PC-ES called for the creation of a new legally binding instrument to protect children from sexual exploitation and abuse, leading to the drafting and adoption of the European Children's Convention, which came into force on 1 July 2010.³²

Given the proliferation of pornography and explicit content on the internet and the increasing dangers it poses to children, the international community has intervened to curb these issues, particularly as they continue to escalate day by day. This was evident with the convening of the International Conference on Combating Child Sexual Exploitation in Vienna in 1999, which resulted in several key recommendations. Among the most crucial ones are:

- ❑ Encouraging internet service providers to establish codes of conduct.
- ❑ Promoting the creation of reporting hotlines for citizens to report child pornography websites on the internet.
- ❑ Encouraging national legislatures to enact laws addressing the criminalization of online child sex trafficking, with the purpose of providing legal protection for children. It is incumbent upon states to establish regulations that define and specify this crime, taking into consideration the intentional possession of child images and any associated activities, including distribution, production, import, and export, all within the framework of the international Convention on the Rights of the Child.³³

On an international scale, there is a call for fostering international cooperation to combat child sexual exploitation on the internet. This entails the establishment of specialized units for this purpose and the development of dedicated training programmes in this field. In the European context, the European Union launched a Green Paper in 1996 on illegal and harmful content. Subsequently, a White Paper aimed at protecting minors and upholding human dignity from illegal content and sexual exploitation on the internet was issued. The European Union has consistently emphasized the necessity of combating child pornography on the internet, and this issue was a focal point of discussion at an international meeting of Interpol experts in France.³⁴

³² Ibidem, p. 1665.

³³ The International Conference on Combating Child Sexual Exploitation, Vienna 1999.

³⁴ Y. Akdeniz, *The European Union and Illegal and Harmful Content on the Internet*, "JCL" 1998, 3, p. 31.

Conclusion

In conclusion, the legal protection of children from sexual exploitation via the internet is a critical issue that requires attention from policymakers, law enforcement agencies, and the public. While international laws and regulations exist to prevent and punish online sexual exploitation of children, there is still a need for more comprehensive and consistent legal frameworks across countries.

The use of technology and the internet has made it easier for perpetrators to engage in these crimes, but it has also enabled law enforcement agencies to identify and prosecute offenders. It is essential to continue developing and implementing innovative technological solutions and investigative techniques to identify and prevent these crimes.

It is also crucial to raise awareness among parents, caregivers, and children about the risks of online sexual exploitation and how to stay safe online. Education and prevention programs are essential to promote digital literacy and empower children to protect themselves from potential threats.

In general, the legal protection of children from online sexual exploitation is a complex and ongoing process that requires cooperation and collaboration between various stakeholders. The ultimate goal should be to create a safe and secure online environment for children, where they can freely express themselves and access information without fear of harm.

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