

CHILD PORNOGRAPHY ON THE INTERNET IN CENTRAL EUROPE

by

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Internet is a new space for illegal behaviour which is especially dangerous for children.

One of the reasons is that communication by the Net is an easier way how to find potential child victims for producing pornographic materials.

Beside this fact there is fight against distributors of child pornography and Internet users possessing child pornographic shows.

There is the Convention on Cybercrime from 2001 concerning offences related to child pornography.

The EU focuses on prosecution commercial sexual abuse of children.

In 1997 the Joint Action was adopted to combat trafficking in human beings and sexual exploitation of children.

Having regard to the initiative of the Republic of Austria from 1999 the Council of the EU decided on operations against child pornography on the Internet.

The Joint Action was cancelled by council framework decision on combating the sexual exploitation of children and child pornography in 2003. The aim of it was the unification of member states legal regulations in the discussed area. The states should have adopted offences concerning sexual exploitation of children and child pornography. Even there was demand on member states to apply measures by 20th January 2006.

Nowadays the criminal legal regulations of the EU states in the middle of Europe – the Czech Republic, the Slovak Republic and the Republic of Hungary – is quite similar.

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KEYWORDS

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INTRODUCTION [1]

Child pornography is a serious form of sexual exploitation of children which constitutes a serious violation of human rights.

According to the Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children, the term “sexual exploitation” is cited among other thing in relation to a child as a use of children in pornographic performances and materials, including the production, sale and distribution or other forms of trafficking in such materials, and the possession of such materials.

The terms “commercial sexual exploitation of children” means 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 term was defined at the World Congress against commercial sexual exploitation of children held in Stockholm in 1996.¹

Child pornography shall mean pursuant to the council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, pornographic material that visually depicts or represents a real child involved or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child or a real person appearing to be a child involved or engaged in the conduct mentioned above or realistic images of non-existent child involved or engaged in the conduct mentioned above.

Internet is a new space for illegal behaviour which is especially dangerous for children. One of the reasons is that communication by the Net is an easier way how to find potential child victims for producing pornographic materials.

¹ Commercial sexual exploitation of children. Retrieved 30th November 2007, From http://en.wikipedia.org/wiki/Commercial_sexual_exploitation_of_children.

Internet itself is not regulated with any international treaty or national legal regulation.

There is fight against distributors of child pornography and Internet users possessing child pornography materials.

The fight is led with implementation of international obligations stated in different international treaties (see below).

Beside the treaties in the area of the European Union the member states adopt particularly framework decisions. The decisions define measures which should enter into force by the day cited in the decision.

The implementation of the measures is carried out with national law, particularly criminal codes or criminal procedure codes.

Miscellaneous documents, government ones or only informative ones, are also very important especially in prevention of criminal conduct.

The important work of international organisations must be also mentioned.

There is need to promote a safe use of the Internet, e. g. a few years ago the European Parliament and the Council adopted Decision No. 276/1999/EC about a multiannual community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks.

States should also cooperate, in contact with industry, by sharing their experiences and encouraging the production of filters and other technical means to prevent the distribution of child pornography and to make possible its detection.

One of the last well known cooperation between the private and public sector was among five huge providers of on-line services: AOL, Yahoo, Microsoft, EarthLink and United Online which gave 1 million USD for the combat child pornography on the Internet.

THE CONVENTION ON CYBERCRIME [2]

The Convention on Cybercrime was done on 23rd November 2001 in Budapest and entered into force on 1st July 2004.

The convention was signed in the Czech Republic in 2005 and in the Slovak Republic in 2005 (today is ratified in the Slovak Republic). The Republic of Hungary ratified the convention in 2003.²

In connection with child pornography the convention states in Chapter II – Measures to be taken at the national level, Section 1 – Substantive criminal law, Title 3 – Content-related offences, Article 9 – Offences related to child pornography.

Each party of the convention shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- producing child pornography for the purpose of its distribution through a computer system,
- offering or making available child pornography through a computer system,
- distributing or 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.

According to the convention the term “child pornography” shall include 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.

The term “minor” according to the convention shall include all persons under 18. A party may require a lower age-limit, which shall be not less than 16.

The convention also defines for its purpose the terms “computer system” and “computer data”. Computer system means any device or a group of interconnected or related devices, one or more of which, pursuant to a pro-

² Convention on Cybercrime. Retrieved July 23rd 2007, from <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG>.

gram, performs automatic processing of data. Computer data means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function.

Each party may reserve the right not to apply in whole or in part the conduct: procuring child pornography through a computer system for oneself or for another person or possessing child pornography in a computer system or on a computer data storage medium and also may reserve the right not to apply that child pornography is material with a person appearing to be a minor engaged in sexually explicit conduct or with realistic images representing a minor engaged in sexually explicit conduct.

THE EU LAW [3]

In 1997 the Joint Action was adopted to combat trafficking in human beings and sexual exploitation of children.

The Joint Action has adopted the following aims: each member state shall review existing law and practice with a view to providing that the types of behaviour among other things child pornography are classified as criminal offences and shall grant each other the widest possible judicial co-operation.

Having regard to the initiative of the Republic of Austria from 1999 the Council of the EU decided on operations against child pornography on the Internet.

It was decided to intensify measures to prevent and combat the production, processing, possession and distribution of child pornography material and to promote the effective investigation and prosecution of offences in this area. Member states shall take the necessary measures to encourage Internet users to inform law enforcement authorities on suspected distribution of child pornography material on the Internet, if they come across such material. Internet users shall be made aware of ways to make contact with law enforcement authorities to enable such authorities to fulfil their task of preventing and combating child pornography on the Internet.

The member states shall ensure the widest and speediest possible co-operation to facilitate an effective investigation and prosecution of offences concerning child pornography.

The states shall also ensure to inform the Europol about suspected cases of child pornography.

The Internet providers would be placed under duties like withdrawal from circulation child pornography material which they have been informed or of which they are aware and which is distributed through them.

The Joint Action was cancelled by the council framework decision on combating the sexual exploitation of children and child pornography in 2003. The aim of it was the unification of member states legal regulations in the discussed area. The states should have adopted offences concerning sexual exploitation of children and child pornography.

Offences concerning child pornography mean the following intentional conduct whether undertaken by means of a computer system or not, when committed without rights:

- production of child pornography,
- distribution, dissemination or transmission of child pornography,
- supplying or making available child pornography,
- acquisition or possession of child pornography.

The computer system shall mean any device or group of inter-connected or related devices, one or more of which, pursuant to a programme, perform automatic processing data.

It was possible to exclude from criminal liability conduct relating to child pornography, e. g. when a real person appearing to be a child was in fact 18 years old or older at the time of the depiction or images of children having reached the age of sexual consent are produced and possessed with their consent and for their own private use.

The instigation of, or aiding or abetting in the commission of an offence in the discussed area should be punishable, too.

Each member state shall also take necessary measures to ensure that legal persons can be held liable for offences concerning sexual exploitation of children or offences concerning child pornography or their instigation, aiding, abetting and attempt. Liability of legal person shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the mentioned offences include their instigation, aiding, abetting and attempt.

The member states should have applied the measures by 20th January 2006.

THE CZECH LAW [4]

The Czech law, particularly the Czech Criminal Code (Act No. 140/1961 Coll.), did not contain the crime of possession of child pornography for private use in contrast to the other European states, e. g. the Slovak Republic or the Republic of Hungary.

In February 2007 was detected a huge distribution of child pornography on the Internet in Austria. The offenders founded eight databanks with child pornographic material on a server. The provider of the server announced it to the police and disabled access to the databanks. The investigation was running also in the Czech Republic but the possession of child pornography for private use was not punishable at that time.

The code defined only the crime "Danger to morality" (§ 205). The factors that constitute an offence were changed with the amendment No. 271/2007 Coll. which came into effect on 1st December 2007.³

The amendment cancelled the crime "Danger to morality" and substituted it by the crimes "Distribution of pornography", "Possession of child pornography" and "Abuse of a child for production of pornography".

The crime "Distribution of pornography" is defined as: Any person who offers, conveys or accesses a child or exposes or accesses in other way on a place, which is accessible for children a pornographic work in written, as a photograph, by film, on PC, in electronic way or other similar work will be punished by imprisonment for up to two years, ban on activities or forfeiture (thing or asset value).

Any person who produces, imports, exports, transports, offers, makes available to the public, facilitates, puts into motion, sells or provides in other way to somebody a photographic, a film, a computer, an electronic or other pornographic work which shows or exploits in other way a child, which shows violence or disrespect to human being or which shows or shows in other way a sexual intercourse with an animal or any person who coerces from such a pornographic work will be punished by imprisonment

³ Návrh poslanců Milana Bičíka, Kateřiny Konečné, Zdeňka Maršíčka, Ivany Levé, Stanislava Grospiče a Soni Markové na vydání zákona, kterým se mění zákon číslo 140/1961 Sb., trestní zákon, ve znění pozdějších předpisů. Retrieved 23rd May 2007, From <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=114&CT1=0>.

between six months to three years, ban on activities or forfeiture (thing or asset value).

The offender who is a member of organized group or who commits the crime with print, with film, with radio, with television, with public computer net or in other effective way or who intentionally gets for herself/himself a substantive profit will be punished by imprisonment between two to six years.

The offender who is a member of organized group spread in several states or who intentionally gets for herself/himself a profit of big range will be punished by imprisonment between three to eight years.

Any person who possesses a photographic, a film, a computer, an electronic or other pornographic work which shows or exploits in other way a child will be punished by imprisonment for up to two years.

The crime "Abuse of a child for production of pornography" is defined as conduction of any person who forces, negotiates, hires, entraps, seduces or abuses a child for production of pornographic work or coerces from the participation of a child in such a pornographic work will be punished by imprisonment between one to five years.

The above mentioned harder penalties for offenders will be also applied in this case.

The Czech criminal law is in its time of a "big bang" because there was the proposal of criminal code last year which was not approved by the Senate of the Parliament of the Czech Republic on 21st March 2006. Nowadays there is a new proposal⁴ which contains the crimes "Distribution of pornography", "Production and other handling with child pornography" and "Abuse of a child for production of pornography".

THE SLOVAK LAW [5]

The Slovak legal regulation seems much more progressive than the Czech one. The Slovak Republic reacted on criminal development in the society, especially connected with modern communications and the Internet, faster.

⁴ Rekodifikace trestního práva hmotného. Retrieved 5th October 2007, From <http://portal.justice.cz/ms/ms.aspx?j=33&o=23&k=381&d=160504>.

The new Criminal Code (Act No. 300/2005 Coll.) was issued in compliance with the council framework decision of 2003 on combating the sexual exploitation of children and child pornography.

The code contains the crimes "Production of child pornography" (§ 368), "Distribution of child pornography" (§ 369), "Possession of child pornography" (§ 370) and "Danger to morality" (§ 371, 372).⁵

Firstly it must be highlighted that the act defines terms "child pornography", "child" and "pornography" besides other terms like "more serious way" or "in public" (see below).

The child pornography means for the purpose of the Criminal code as display of copulation, sexual intercourse in other way or other sexual intercourse with a child or show of nude parts of child body leading to sexual gratification of any other person.

The term child is defined for purpose of the code as a person younger than 18 years old if she/he did not come of age before.

The crime "Production of child pornography" is defined in the following way: any person who exploits, gets, offers or abuses a child in other way for production of child pornography or enables a child abuse or takes part in the production will be punished by imprisonment between four to ten years.

Upper penalties (imprisonment between seven to twelve years) are for any offender who commits the felony at a child younger 12 or in more serious way or in public, then (imprisonment between ten to fifteen years) for any offender who causes a hard health detriment or death or gets a substantive profit and then for any offender who causes a hard health detriment of more persons or death of more persons or gets a profit of big range or as a member of danger organisation as criminal organisation or terrorist organisation (imprisonment between twelve to twenty years).

The factors that constitute the crime "Distribution of child pornography" are defined as any person who reproduces, transfers, provides, accesses or distributes a child pornography in other way will be punished by imprisonment between one year to five years.

The offender who commits the crime in more serious way or in public will be punished by imprisonment between three to eight years.

⁵ Ivor, J. 2006, *Trestné právo hmotné*, Iura Edition, Bratislava.

The offender who gets a substantive profit will be punished by imprisonment between seven to twelve years and the offender who gets a profit of big range will be punished by imprisonment between four to ten years.

The possession of child pornography is punishable by imprisonment up to two years.

The crime "Danger to morality" concerns more serious forms of pornography (commercial sexual exploitation of children and so called hard pornography) which are prosecuted.

The crime is defined in two paragraphs: any person who produces, buys, imports or provides in other way pornography, record carrier or other things endangering morality showing disrespect to human being and violence or showing sexual intercourse with an animal or other sexual pathological intercourses, which are sold, lent, circulated in other way, distributed, made available to the public or published will be punished by imprisonment up to two years.

The offender who commits the crime in more serious way or in public will be punished by imprisonment between three to eight years and the offender who gets a profit of big range will be punished by imprisonment between one year to five years.

The second paragraph of the crime is following: any person who offers, conveys or hands over to a person younger 18 or exposes or accesses in other way on a place which is accessible to persons younger 18 will be punished by imprisonment up to two years.

Upper penalties (imprisonment between one year to five years) are for any offender who commits the felony in more serious way or in public, then (imprisonment between three to eight years) for any offender who gets a profit of big range or who offers, accesses or exposes pornography, record carrier, other things showing disrespect to human being and violence or showing sexual intercourse with an animal or other sexual pathological intercourses.

THE HUNGARIAN LAW [6]

The Hungarian Criminal Code (Act IV of 1978) defines in the Section 195/A as a crime possession, offer and conveyance and production and distribution of pornographic images of a minor.

Contrary to the Czech Criminal Code the Hungarian one defines terms “pornographic picture” and “pornographic show” which shall mean the act or display of sexuality in a gravely indecent manner of exposure specifically for arousing sexual demeanour.

The crimes with illegal pornographic material are defined in the following way:

Any person having possession of pornographic images of a minor made by video, film or photographic equipment or by any other technical means, is guilty of a felony punishable by imprisonment for up to three years.

Any person who offers and/or conveys pornographic images of a minor made by video, film or photographic equipment or by any other technical means is guilty of a felony punishable by imprisonment for up to five years.

Any person who produces pornographic images of a minor by video, film or photographic equipment or by any other technical means, and/or distributes or makes such pornographic images available to the public at large is guilty of a felony punishable by imprisonment between two to eight years.

A person having a minor participating in a pornographic show shall be punishable by imprisonment between two to eight years.

The person providing financial means and thus assisting in the commission of the crimes of production of pornographic images of a minor and/or of distribution or making such pornographic images available to the public at large or of having a minor participating in a pornographic show shall be punished by imprisonment between two to eight years.

CONCLUSION [7]

It is still needed to intensify the combat against child pornography, particularly on the Internet. The combat can not be formal at all. Using of different means is essential. The combat must not be led not only with issuing treat-

ies or any other documents but by international organisations, private corporations, too.

A very important part of national legal regulations are besides definitions of crimes also strict penalties which are deterrent.

Finally it should be ensured that legal persons can be held liable for offences concerning child pornography but the liability shall not close the investigation of natural persons.

REFERENCE

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