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Collection of Scientific Papers of the Polish-Hungarian Research Platform

VOLUME II

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Omne Ius Constitutum Sit

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Wydawnictwo Instytutu Wymiaru Sprawiedliwości **Warszawa 2025**

The publication was written within the framework of the international scientific project "Polish-Hungarian Research Platform" conducted by the Institute of Justice in Warsaw in 2023

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ISBN 978-83-67149-70-9 (collection)
ISBN 978-83-67149-71-6 (volume 2)

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Protecting Children from Online Sexual Exploitation and Abuse

1. Introduction

Information, digital technologies and the Internet have become an integral part of modern life, and play an important role in the educational and social development of children. They also, however, expose children to new and evolving forms of sexual exploitation, a crime that is constantly evolving as digital technology develops. Online child sexual exploitation involves the use of information and communication technology as a means of sexually abusing and/or sexually exploiting children. These illegal behaviours are described as among the most heinous crimes in the world today because they victimise children, who are the most vulnerable members of society. These crimes may have existed before the advent of the Internet, but "the online dimension of child sexual exploitation and abuse has enabled offenders to interact with each other online and obtain child sexual exploitation material in volumes that were unimaginable ten years ago."[1]

The aim of this paper/research is to ascertain whether an effective fight against crimes involving the sexual exploitation of children, together with the means of child protection, prevention, education and victim support, may be ensured by an adequate definition of the relevant criminal offences, and by the introduction of a specific criminal sanction to prevent access to material of child sexual abuse.

[1] Europol, *Internet Organised Crime Threat Assessment (IOCTA)*, 2018, p. 30.

This work aims to identify and analyse the existing and new forms of online child sexual exploitation (grooming, child sexual abuse/exploitation material, live-streaming of child sexual abuse, child sexual extortion, and sexting), to describe the related international legal environment, in particular the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) and the European Union's Directive 2011/93/EU. Finally, the paper/research seeks to analyse the Hungarian statutory definition of the crime of child pornography in the Criminal Code and to introduce the practice of rendering electronic data permanently inaccessible, a special criminal measure designed to prevent access to illegal data and the continuation of the crime. The Hungarian regulation in this regard may provide useful findings for legislators of other countries, including Poland.

2. Definitions

2.1. DEFINITION OF THE CHILD: THE QUESTION OF THE AGE OF THE VICTIM

The definition of a child as a victim is not uniform in the relevant international instruments. For the purposes of the Convention on the Rights of the Child, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.[2] Both the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also known as the Lanzarote Convention[3] (hereinafter: the Lanzarote Convention) and Directive 2011/92/EU[4] define a child as

[2] See: Article 1 of the Convention on the Rights of the Child, New York, 20 November 1989.

[3] See: Article 3 of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25 October 2007.

[4] See: Article 2a of the Directive 2011/93/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.

any person under the age of 18. The Budapest Convention,[5] however, uses the term "*minor*" instead of "*child*" and defines a child as any person under the age of 18, though a party may set a lower age limit, which shall not be less than 16 years.

On this basis, it may be concluded that the definition of a child under international law is generally linked to the age of 18, but some conventions allow for exceptions, which may lead to differences in the way countries regulate the concept. From a legal point of view, it would be important to have a single concept of "*child*", in order to define clearly what content or material is illegal and to be able to tackle this crime more effectively on a global level.[6] Although in Hungarian criminal law, a child is a person under the age of 14, in relation to the offence of child pornography, a person under the age of 18 may be the victim of this crime and a pornographic recording of persons under the age of 18 is considered the object of the crime.

2.2. DEFINITION OF SEXUAL ABUSE AND SEXUAL EXPLOITATION OF CHILDREN

It is often hard to distinguish between child sexual abuse and child sexual exploitation because there is a considerable overlap between them.[7] One common element is the exploitation of the lack of power and status of the child, but each refer to acts that are similar and/or overlap. The perpetrator may, for example, sexually abuse a child and then exploit him/her by selling images of the child abuse. The term "*abuse*" focuses more on the treatment of the child as the victim

[5] See: Article 9(3) of the Council of Europe's Convention on Cybercrime, Budapest, 23.11.2001.

[6] L. Dornfeld, K. Mezei, *Az online gyermekpornográfia elleni küzdelem aktuális kérdései*, "Infokommunikáció és Jog" 2017, No. 1, p. 32.

[7] *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, adopted by the Interagency Working Group in Luxembourg, 28 January 2016, p. 25.

of the crime, while "*exploitation*" refers more to the benefit of the perpetrator.[8]

Sexual abuse of children is a contact or interaction between a child and an adult, (who may be a relative, a person in a position of authority over the child, or even a stranger), or between a child and an older or more mature child, where the child is used as an object of the other individual's sexual desire. These contacts or interactions are carried out with violence, threats, pressure, bribery or deception of the child.[9] Sexual abuse of children involves practices by which a person, usually an adult, achieves sexual gratification, financial gain, or advancement through the abuse or exploitation of a child's sexuality by abrogating that child's human right to dignity, equality, autonomy, and physical and mental well-being.[10]

Sexual exploitation of children involves the sexual abuse of children and/or other sexualised acts that involve some kind of exchange (e.g., affection, food, drugs, or shelter).[11] Sexual exploiters typically take advantage of the power imbalance between themselves and a person under the age of 18 to sexually exploit them for their personal pleasure or gain.[12] Perpetrators of sexual exploitation abuse the at-risk state, vulnerability, or trust of the child and/or their own superior authority for financial gain.[13] A child is a victim of sexual

[8] According to the UNICEF: "sexual abuse becomes sexual exploitation when a second party benefits – through making a profit or through a *quid pro quo* – through sexual activity involving a child". See: *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, New York 2015, p. 7 (hereinafter: UNODOC).

[9] Pacific Perspectives on the Commercial Sexual Exploitation and Sexual Abuse of Children and Youth, UN Economic and Social Commission for Asia and the Pacific, 2009, pp. 6–7 (hereinafter: ESCAP); Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes. Criminal Law Approaches in the Age of the Information Society – Interpersonal Criminal Offences Committed in Cyberspace, with Particular Regard to the Sexual Abuse and Exploitation of Children*, [in:] Gy. Virág (ed.), *Combatting Cybercrime, Corruption and Money Laundering*, Budapest 2022, p. 98.

[10] R.J. Estes, *The Sexual Exploitation of Children: A working Guide to the Empirical Literature*, University of Pennsylvania, Philadelphia 2001, p. 6.

[11] UNODOC, 2015, p. 7.

[12] ESCAP, 2009, p. 5.

[13] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 98.

exploitation if he or she, when he or she participates in a sexual activity, receives something in return, either himself or herself or for a third party. The various forms of sexual exploitation of children include the exploitation of children in prostitution, the online child sexual exploitation, the sale and trafficking of children for sexual purposes, the sexual exploitation of children in the context of travel and tourism, and some forms of child, early and forced marriage.[14]

Online child sexual abuse and online sexual exploitation, as a form of sexual abuse and exploitation of children, involve the use of information and communication technology as a means to sexually abuse and/or sexually exploit children.[15] One of the worrying trends in this area is the increasing use of the Darknet to access and disseminate child sexual abuse material. Such material may be found on both the surface and the hidden web, but the more hard-core content is found on the hidden sites, and illegal material originally shared on Darknet then later appears on the surface web.[16]

3. Forms of online sexual exploitation and abuse of children

While online child sexual exploitation and child sexual abuse are prohibited by national, regional, and international laws, and represent a serious form of violence against children, the crimes that constitute child sexual exploitation and child sexual abuse vary within these legal instruments. There have been several attempts to categorise the relevant crimes in the literature, though here

[14] *Terminology Guidelines…*, *op. cit.*, p. 25.

[15] Ibidem, pp. 23 and 28.

[16] IOCTA, Europol, 2018, *op. cit.*, p. 32. During a criminal case investigated in 2020, a large-scale international operation led by the US and South Korean authorities took down one of the largest Darknet marketplaces for child pornography, "Welcome to Video". As a part of the operation, Hungarian authorities also identified a Hungarian offender who had downloaded nearly 200 images of child pornography from the Darknet site and paid for them with cryptocurrency, https://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/bunugyek/a-megalapozott-gyanu-gyermekpornografia (accessed on: 11.10.2023).

I mention only one. The UN Office on Drugs and Crime uses the term "Internet-facilitated child sexual abuse" (online child sexual abuse), which has four main categories: sexual harrassment, sexual solicitation, sexual grooming, and (commercial) sexual exploitation. The latter includes four additional criminal offences: child prostitution, child trafficking for sexual purposes, the production and consumption of child pornography, and child sex tourism. Due to the limitations of space, in this study I shall focus on crimes that are increasingly, almost exclusively, committed online and which may be considered relatively new forms of sexual offences against children. These crimes are online grooming, child sexual abuse material/child sexual exploitation material, live streaming of child sexual abuse, sexual extortion of children, and sexting.

3.1. ONLINE GROOMING

The solicitation of children for sexual purposes is often referred to as "child grooming" or the "enticement of children". It may be described as a practice where an adult "befriends" a child in ordert to abuse them sexually.[17] The grooming process usually takes place online but may also be committed offline. Online grooming means approaching and misleading children online with sexual intent. It may be described as a series of acts in which an adult, as a putative friend, offers emotional-psychological support to the child and creates a false image of the child to gain the child's trust and, as an ultimate goal, sexually abuse the child.[18]

In the relevant literature, the process of grooming is divided into several stages[19] which may be summarised as follows: the first step

[17] *Terminology Guidelines…*, *op. cit.*, p. 49.

[18] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, pp. 99–100.

[19] One of the most frequently cited descriptions of the grooming process is provided by O'Connell, who describes the first two steps as phases of friedship-forming and relationship-forming in which the perpetrator gathers information about, and makes contact with the victim. He builts a bond with the child by talking about friends, family, school and social life, showing empathy to gain the victim's trust and creating the illusion of being the child's best friend. The next

is the selection of the victim, which may be based simply on liking him or her, or attraction, the greater chances of success in grooming them, or the perceived vulnerability of the child. Factors that are taken into account when selecting the victim are: the physical characteristics of the children, e.g. how attractive they are, how they dress; the child's family circumstances, e.g. the fact that the child is being raised by one parent alone or that the parent has alcohol, drug, emotional or mental health problems, which may lead to a reduction in parental supervision; the psychological vulnerability of the child, e.g. low self-confidence or naivety.[20] Children are active on various social media platforms and use a variety of communication apps that make it easy for perpetrators to access them.[21]

The second phase of grooming is gaining access to the potential victim, which begins with contact with the child. The perpetrator begins a conversation with the child and tries to create a sense of privacy, by asking for example, where the child has access to the internet and what the parents' daily routine is like.[22] Isolation also takes place during this phase: the perpetrator may try to isolate the child physically or emotionally from their surroundings, for example by encouraging the victim to hide their relationship from their family. The next step, which may be regarded as the most important phase in the grooming, involves the emotional recruitment of the victim. In this phase, the perpetrator befriends the child, gains his

is the risk-assessment phase, where the perpetrator assesses the risk of being discovered, for example, by asking the child about the location and users of the computer. Once the perpetrator feels safe, during the exclusivity phase, he attemts to create a sense of exclusivity between him and the child and to encourage the victim to keep the relationship a secret. Finally, in the sexual phase, the perpetrator's intentions are clear, and he brings sexual topics into the conversation, e.g. he sends the victim pornographic images, enquires about the victim's past sexual experiences, and describes in detail the sexual acts he would like to perform on the victim. R. O'Connell, *A typology of child cybersexploitation and online grooming practices*, Cyberspace Research Unit, 2003, pp. 8–10.

[20] G.M. Winters, M.L. Jeglic, *Stages of Sexual Grooming: Recognising Potentially Predatory Behaviours of Child Molesters*, "Deviant Behaviour" 2016, Vol. 37, p. 2.

[21] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 100.

[22] *The new "Stranger Danger": Tactics used in the online grooming of children*, 1 March 2022, https://icmec.org.au/blog/the-new-stranger-danger-tactics-used-in-the-online-grooming-of-children/ (accessed on: 01.10.2023).

or her trust and creates the impression that the relationship between them is "special". By gaining the victim's trust and friendship, the perpetrator may control and manipulate the child to participate in the sexual abuse.[23]

The fourth stage is the transformation of friendship into a relationship. In doing this, perpetrators use a variety of methods, e.g. they present themselves as trustworthy and kind, praise the child's maturity and intelligence, encourage the child to disclose personal information, match their own language with that of the child, and emphasise the similarities between themselves (the perpetrator) and the child, (e.g., common interests, attitudes and ways of thinking).[24] It is also worth noting that prior to sexual exploitation, the perpetrator often assesses the potential risk of detection[25] (e.g., by asking the victim if parents or others are monitoring the child's accounts and/or digital devices), and emphasises the exclusivity of the relationship and the need for confidentiality. The final stage of grooming is the sexual abuse or exploitation of the child, either online (e.g., the perpetrator persuades or forces the child to take a photo or video of themselves with sexual content and send it to them) or offline, through a face-to-face meeting.[26]

3.2. CHILD SEXUAL ABUSE AND CHILD SEXUAL EXPLOITATION MATERIALS (CSAM, CSEM)

The "representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes"[27] is known as *child pornography*. As the section below will show, the relevant international legal instruments also use this term, and national criminal laws, such as the Hungarian Criminal Code, criminalise the misuse

[23] G.M. Winters, M.L. Jeglic, *Stages of Sexual Grooming…*, *op. cit.*, p. 3.
[24] *The new "Stranger Danger"*, *op. cit.*
[25] R. O'Connell, *A typology of child cybersexploitation…*, *op. cit.*, p. 9.
[26] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 100.
[27] See: Article 2 of UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography of 2000.

of images of persons under the age of 18 as "child pornography". Europol and Interpol, however, prefer the terms "*child sexual abuse material*" (CSAM) and/or "*child sexual exploitation material*" (CSEM) instead of using this concept, as this better reflects the seriousness and actual nature of the phenomenon and challenges the notion that such behaviour may occur with the consent of the child.[28] The two terms may be used interchangeably, even if the acts they cover are not exactly the same.[29]

The concept or statutory definition of the criminal offences covering child sexual abuse (the crime of child pornography) varies not only in international instruments, but also in national laws, as the definition depends on the moral, religious, social, economic and cultural factors of each country.[30] Significant differences may be seen, for example, in the object of the offence (child sexual abuse material) and the conducts of the perpetrators.

In some countries, only recordings of a real child are considered child sexual abuse material while others criminalise pornographic material consisting of realistic images of a non real child. In this context, various terms, such as "*pseudo child pornography*", "*virtual child pornography*" and "*computer-generated child sexual abuse material*" are also used. In the case of pseudo child pornography or morphed images, a real photo is digitally altered. In the first form of morphing, a pornographic image of an adult is taken and transformed into a child using graphic methods.[31] In the second form

[28] L. Dornfeld, K. Mezei, *Az online gyermekpornográfia elleni küzdelem aktuális kérdései*, *op. cit.*, p. 33.

[29] The term "*child sexual abuse material*" may be used as an alternative to "*child pornography*" for material depicting acts of sexual abuse and/or focusing on the genitalia of the child. The term "*child sexual exploitation material*" can be used in a broader sense to encompass all other sexualised material depicting children. See in: *Terminology Guidelines…*, *op. cit.*, pp. 39–40.

[30] L. Dornfeld, K. Mezei, *Az online gyermekpornográfia elleni küzdelem aktuális kérdései*, *op. cit.*, p. 32.

[31] According to an example, the hips of the female could be slimmed, breast size be reduced and pubic hair airbrushed out or thinned. The resulting image would appear to show a child. See: M. Eneman *et al.*, *Criminalising fantasies: the regulation of virtual child pornography*, p. 5, https://gup.ub.gu.se/file/207727 (accessed on: 11.10.2023).

of morphing, the face of a real child is superimposed onto an adult's body on a pornographic picture, or the photo is sexualised, for example by removing the clothing.[32] As a result of the development of ICT (Information and Communication Technology) realistic but completely fictitious computer-generated images (CGI) of children can be created. These images differ from morphed photos in that they never show a real child[33] and these materials may be defined narrowly as virtual child pornography or computer-generated child sexual abuse material.[34] Although computer-generated child sexual abuse material does not necessarily involve direct physical harm, it is harmful to children as it may be used in the grooming process. It may also contribute to the development of sexual fantasies about children, encourage the perpetrators to commit crimes and help maintain a market for child sexual abuse material.[35]

National laws may also differ in their regulation of the various forms of the associated criminal conduct of child pornography (obtaining, possession, production, distribution, sharing, etc). Many countries criminalise possession only if there is an intention to distribute the child sexual abuse material, and there are countries where there is no explicit provision for these materials at all.[36] One of the problematic criminal acts is accessing (viewing) child pornography online without downloading it. According to Hungarian practice,

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[32] L. Dornfeld, K. Mezei, *Az online gyermekpornográfia elleni küzdelem aktuális kérdései*, *op. cit.*, p. 32.

[33] M. Eneman *et al.*, *Criminalising fantasies…*, *op. cit.*, p. 5.

[34] Computer-generated child sexual abuse material is "the production, through digital media, of child sexual abuse material and other wholly or partly artificially or digitally created sexualised images of children. The realism of such images creates the illusion that children are actually involved, although this is not the case". See in: *Terminology Guidelines…*, *op. cit.*, p. 39.

[35] See: *Terminology Guidelines…*, *op. cit.*, p. 41; L. Dornfeld, K. Mezei, *Az online gyermekpornográfia elleni küzdelem aktuális kérdései*, *op. cit.*, p. 33. I note that it is still controversial whether the so-called pseudo-infantile pornography, when a young adult is portrayed in a way that gives the impression of a child, is child sexual abuse material. According to the Hungarian criminal law, it is not, but EU Directive 2001/93 explicitly includes "persons appearing to be minors" in the definition of child pornography. The harmful consequences of virtual pornography, however, may also be identified in the case of pseudo-infantile pornography.

[36] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 102.

this is not considered possession or obtaining and therefore does not constitute a criminal offence, while elsewhere, e.g. in Germany, it is regulated as possession and is also criminalised by the Lanzarote Convention (knowingly obtaining access by means of information and communication technology).

Perpetrators of child pornography can obtain child sexual abuse material in various ways. The use of the aforementioned grooming techniques is widespread, but it is also common when children share or post on social media material that they have originally voluntarily produced about themselves (self-generated explicit material) and this material is then obtained by the perpetrators. Finally, child pornography content obtained in various ways may be used as a basis for sexual extortion, which can lead to further material falling into the hands of the perpetrators.[37]

Child sexual exploitation and abuse material may also be traded via various methods. It may be distributed via e-mail, text message, chat applications, chat rooms, file-sharing networks, social networks, social media platforms, and encrypted or even unencrypted communication applications (Telegram, Whatsapp, Skype) or on password-protected websites, advertising platforms and forums.[38] In addition to the visible, open internet, the darknet is increasingly becoming a place for sharing and trading child sexual exploitation and abuse material and more extreme forms of this material.[39]

3.3. LIVE STREAMING OF THE SEXUAL ABUSE OF CHILDREN

Live streaming of child sexual abuse (LSCSA) means the real-time producing, broadcasting, and viewing of child sexual abuse, and is related to sexual exploitation through prostitution, sexual performances, and the production of child sexual exploitation material.[40]

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[37] IOCTA, Europol, 2018, *op. cit.*, p. 32.

[38] Ibidem.

[39] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 108.

[40] C. Drejer *et al.*, *Livestreaming Technology and Online Child Sexual Exploitation and Abuse: A Scoping Review*, "Trauma, Violence & Abuse" 2023, Vol. 25, No. 1, p. 1.

It may take place on various platforms, such as social media, online chat rooms and communication applications with video call features. The method and place of perpetration has shifted from wired internet-enabled computers to smartphones and tablets with mobile internet.[41] The viewers of live streaming can either be passive, those who "only" pay to watch, or active insofar as they may communicate with the child or the abuser, and even express wishes, for example which sexual act the child should perform, or which should be carried out on the child.[42] Detecting the crime and prosecuting the viewers is difficult, as streaming leaves no trace on the device being used as no file is downloaded. When the streaming stops, the illegal content disappears unless the offender records it.[43]

It is, however, not only the viewer of the live streaming who commits an unlawful act, but also the provider of the streaming service, who usually acts for profit. In fact, the most common form of this crime is that in which the purpose of the perpetrator is to exploit the child sexually for financial gain. There are, nevertheless, cases, particularly in relation to self-generated sexual content involving children, where the financial element is not present.[44] The live streaming of self-generated sexual material, which may take place via social media- or communication applications, does not in itself constitute a criminal offence, but it is often linked to other illegal activities. Children are often groomed or coerced by the perpetrators, for example, to participate in sexual acts in front of the camera of their laptop or phone. If the livestreaming is recorded, the resulting sexual material may, moreover, also be distributed further (the crime of child pornograpy), or may be used to commit additional crimes (sextortion or sexual coercion) by sexual offenders.[45]

Economic imbalances, extreme poverty, unemployment and existential insecurity are all importatnt factors in the development of the supply side of the live streaming of child sexual abuse.[46]

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41 IOCTA, Europol, 2018, *op. cit.*, p. 35.
42 Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 108.
43 *Terminology Guidelines…*, *op. cit.*, p. 47.
44 C. Drejer *et al.*, *Livestreaming Technology…*, *op. cit.*, pp. 1–2.
45 IOCTA, Europol, 2018, *op. cit.*, p. 36.
46 Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 109.

The Philippines remains the most common location for LSCSA. The reasons for this are the advanced IT infrastructure, the traditionally efficient sex industry, the simple methods of international money transactions and the limited police resources. In fact, for poor families, this behaviour represents a significant source of income and does not fly in the face of accepted ethical standards.[47]

Viewers may pay for live streaming in various ways. Payment by credit card or debit card has been significantly reduced. Instead, popular payment methods include using online payment services, money transfer services and local payment centres. Payments with virtual currencies are not yet widespread, as they are difficult to convert into cash on the receiving end. The use of mobile phones, for which neither a credit card nor a bank account is required, is developing into a new payment method. It is a type of Informal Value Transfer System (IVTS), where money may be deposited with neither registration nor identification, using only a mobile number and a reference number.[48]

3.4. SEXUAL EXTORTION OF CHILDREN

Although there is no uniform definition in the literature and individual cases vary greatly in practice, the simplest way to describe child sexual extortion or child sextortion is as follows: "Once the abuser obtains the sexual materials of the child, the abuser threatens the child with misusing them unless the child complies with his/her demands".[49] The elements of child sexual extortion are as follows:

1. Obtaining sexual material from a child; the perpetrator usually uses popular apps, video chat programs and persuades victims to send or share images of sexual content. In addition to images, perpetrators may also use other content to commit the offence,

[47] https://inhope.org/EN/articles/what-is-live-streamed-abuse (accessed on: 13.10.2023).

[48] IOCTA, Europol, 2018, *op. cit.*, p. 35.

[49] K.V. Acar, *Sexual Extortion of Children in Cyberspace*, "International Journal of Cyber Criminology" 2016, Vol. 10, No. 2, p. 111.

such as a screenshot of an intimate conversation, a video from the victim's webcam or private information about the victim's sexuality.[50]

2. Once the child sexual content is in the possession of the perpetrator, the *extortion* phase begins. The perpetrator usually threatens or blackmails the victim by disclosing the sexual material, for example by sharing the images or posting them on social media.
3. The purpose of the perpetrator is to obtain additional sexual content, sexual acts from the child, money[51] or other favours from the victim or simply to humiliate her or him. The threat of disclosure of the sexual content is at the heart of sextortion and distinguishes it from other forms of sexual exploitation of children. The purpose of the threat and the crime is to gain control over the victim. On the perpetrator's side, this feeling of power and the powerlessness of the victim are characteristic features of this crime.[52]

Two main types of sextortion are distinguishable. In the first type, the perpetrator and victim do not know each other to begin with, and the perpetrator contacts the victim online, via social networks or messaging applications.[53] The perpetrators often use the method of catfishing, i.e. creating a fictitious identity or a false identity on a social networking site, usually targeting a specific victim. After establishing contact, the next step is to obtain sexual content from the victim, which may be achieved by dint of various techniques. The main goal of the perpetrator is to gain the trust of the victim

[50] A. Breeann, *What is sextorsion?*, https://saprea.org/blog/what-is-sextortion/ (accessed on: 13.10.2023).

[51] This type of sextorsion may be referred to as financial sextorsion.

[52] According to Acar, although there are differences between cases, three elements always characterise sextortion. These crimes are committed in cyberspace (the interaction between the perpetrator and the victim takes place in cyberspace), possession (possession of sexual images of a child, regardless of the way they were obtained or produced) and extortion (forcing a child to perform certain acts). If any of these elements are missing, no crime is committed or sextorsion is not is committed (K.V. Acar, *Sexual Extortion of Children in Cyberspace*, *op. cit.*, p. 113).

[53] J. Wolak *et al.*, *Sextortion of Minors: Characteristics and Dynamics*, "Journal of Adolescent Health" 2018, Vol. 62, No. 1, p. 76.

and to establish a more individual relationships, which is achieved through grooming and social networking methods.

The grooming techniques used in practise are quite varied: praising the victim's qualities, compliments, emphasising common interests, inventing shared secrets, pretending to be genuinely interested in the victim's life, etc.[54] An example of the use of social networks is the case of James Kirby, who obtained sexual images of women and young girls by posing as the owner of a modelling agency and promising to make them famous models.[55] Note that sexual content may also be obtained without contacting the victim. One example of this is the downloading or recording of sexual content that the victim has inadvertently uploaded or transmitted. In another case, the content is obtained by hacking into the information system used by the child and taking control of the cameras built into mobile phones and other devices or the perpetrator accesses the child's online account without permission and steals sexual material depicting the child.[56] After the victim has sent the sexual material to the perpetrator, the perpetrator uses it for the purposes of blackmail. He or she threatens to share it online or with the victim's friends or relatives unless the victim complies with a demand.

In the second form of child sextortion the victims know the perpetrators personally. Most of these perpetrators are current or former romantic or sexual partners, but there are also cases in which victim-offender friendships and school relationships are involved.[57] As sexting remains a common form of dating, romantic expression and sexual exploration among young people, in many cases the subsequent victim initially provides the sexual content intentionally and knowingly. In typical cases, after the romantic or other

[54] A. Breeann, *What is sextorsion?*, *op. cit.* Other manipulative tactics used by perpetrators: developing a bond by establishing a friendship or romantic relationship; pretending to be younger; pretending to be female when they are really male; initially offering something to the child. See: Europol, *Online sexual coercion and sextortion as a form of crime affecting children*, 2017, p. 12.

[55] K.V. Acar, *Sexual Extortion of Children in Cyberspace*, *op. cit.*, p. 115.

[56] See: Europol, *Online sexual coercion…*, *op. cit.*, p. 12; K.V. Acar, *Sexual Extortion of Children in Cyberspace*, *op. cit.*, p. 116.

[57] K.J. Wolak *et al.*, *Sextortion of Minors…*, *op. cit.*, p. 75.

intimate relationship ends, the disappointed partner later threatens to make the content public, if the victim chooses not to return to the relationship.[58]

The damage done by sextortion, which may vary depending on whether the perpetrators carry out their threats, include the loss of friends or family relationships, moving home or changing school, financial loss,[59] and, most commonly, psychological problems, e.g. feelings of hopelessness, shame and anxiety, which may lead to depression, panic attacks, suicidal thoughts and, in the most severe cases, suicide or attempted suicide.[60]

3.5. SEXTING

The term *sexting* was first used by the Daily Telegraph in 2005, to combine the terms "sex" and "texting".[61] Sexting is a form of self-generated sexually explicit content which may be defined in the most general sense as the creation, sharing and forwarding of sexual content (e.g., images, photos, videos) via mobile phones, the internet or social media platforms.[62] There is a lack of agreement in the relevant literature on whether the term covers text messages or only image-based sexual content, and whether it includes coercion or whether sexting is voluntary by definition.[63]

Consensual sexting, i.e. where the sexual content is made or transmitted by the person concerned, is not a criminal offence, due to its lack of illegality. One of the obvious problems, however, is that the images forwarded may be transmitted without further permission or other restrictions. Victims also often create images of themselves under pressure or coercion. In this case, the sharing

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[58] A. Breeann, *What is sextorsion?, op. cit.*

[59] K.J. Wolak *et al.*, *Sextortion of Minors…*, *op. cit.*, p. 75.

[60] A. Breeann, *What is sextorsion?, op. cit.*

[61] A.M. Gassó *et al.*, *Sexting, Mental Health, and Victimisation Among Adolescents: A Literature Review*, "International Journal of Environmental Research and Public Health" 2019, Vol. 16, No. 13, p. 1.

[62] *Terminology Guidelines…*, *op. cit.*, p. 44.

[63] A.M. Gassó *et al.*, *Sexting, Mental Health…*, *op. cit.*, p. 1.

of images between young people is often done under pressure, even if it appears voluntary at first glance, so it may be difficult to distinguish from genuinely consensual sexting.[64] The forwarding and sharing of sexual content depicting a child may be done out of simple irresponsibility, but is often motivated by a desire for revenge, when one party, usually the boy or man, posts images of his partner once the relationship has broken down.[65] This conduct involving the child constitutes the crime of child pornography. In addition, sexting may also be a form of sexual bullying, in which a child is pressured into sending a picture to a friend who may also share or forward the images.[66]

4. The main international instruments fighting against sexual exploitation and the abuse of children

4.1. THE BUDAPEST CONVENTION

Among the criminal offences addressed by the research, the Council of Europe Convention on Cybercrime only covers crimes related to child pornography. As mentioned above, the Convention defines the victim of the crime as a minor: all persons under 18 years of age. The object of the crime is "child pornography", more specifically any pornographic material that visually depicts a minor engaged in sexually explicit conduct or a person appearing to be a minor engaged in sexually explicit conduct. It is important to note that virtual pornography is also punishable under the Convention, as the crime may also be committed in connection with a realistic image representing a minor engaged in sexually explicit conduct.

Article 9 of the Convention defines the criminal offences that State Parties are required to criminalise in their domestic law. These are:

[64] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 107.

[65] Z. Szathmáry, *Bűnözés az információs társadalomban*, *Doktori értekezés*, Budapest 2012, p. 69.

[66] *Terminology Guidelines…*, *op. cit.*, p. 44.

i. producing child pornography for the purpose of its distribution through a computer system;
ii. offering or making available child pornography through a computer system;
iii. distributing or transmitting child pornography through a computer system;
iv. procuring child pornography through a computer system for oneself or for another person;
v. possessing child pornography in a computer system or on a computer-data storage medium.

4.2. THE LANZAROTE CONVENTION

The Lanzarote Convention defines the concept of the "sexual exploitation and sexual abuse of children" in Articles 18 to 23 of the Convention. The first crime relevant here is "offences concerning child pornography". According to Convention, the term *child pornography* refers to "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 a primarily sexual purpose".[67] Like the Budapest Convention, it gives parties the discretion to criminalise, in whole or in part, pornographic material consisting solely of a simulated representation or realistic images of a non-existent child.

In the framework of the crime referred to as "offences concerning the participation of a child in pornographic performances", the Lanzarote Convention criminalises the recruitment of children for participation in pornographic performances, instructing/convincing/forcing a child to participate in such activities, other forms of exploitation of a child with similar purposes, profit-making activities associated with the participation of children in pornographic

[67] See: Article 20(2), The Convention criminalises the following acts: producing, possessing, offering or making avaiable child pornography; distributing or transmitting child pornography; procuring child pornography for oneself or for another person; knowingly obtaining access, through information and communication technologies, to child pornography.

performances, and intentional participation in pornographic performances involving children.[68]

The Convention explicitly criminalises forms of conduct that qualify as online grooming. Article 23 prohibits the solicitation of children for sexual purposes and requires such acts to be penalised. The conduct to be criminalised pursuant to the Convention is defined as an intentional proposal, through information and communication technologies, of an adult to meet a minor for the purpose of sexual abuse or the preparation of child pornography, where this proposal has been followed by material acts leading to such a meeting.[69]

4.3. DIRECTIVE 2011/93/EU

This Directive follows a holistic approach, encompassing provisions addressing the investigation and prosecution of offences, assistance to and protection of victims, and the prevention of such crimes.[70] In order to facilitate the prosecution of offenders, the Directive criminalises a wide range of situations of sexual abuse and exploitation, including grooming, and introduces increased levels of penalties. Maximum levels set by national legislation must not be lower than levels ranging from 1 to 10 years of prison, depending on the seriousness of the offence.[71] Another important step has been the introduction of new measures against websites containing or disseminating child pornography, consisting mainly of immediate removal at source and (voluntary) blocking by EU Member States.

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[68] See: Article of 21 of the Convention.

[69] Z. Szathmáry, M. Losonczy-Molnár, *Cybercrimes…*, *op. cit.*, p. 100. According to the opinion and explanatory note published by the Lanzarote Committee, the solicitation of children for sexual purposes does not necessarily and in a personal encounter; such acts can cause serious harm and damage to the child even without a meeting.

[70] L. Buono, *Editorial ERA Forum 3/2021: EU Strategy for a more effective fight against child sexual abuse*, "ERA Forum" 2020, Vol. 21, No. 3, p. 362.

[71] https://eur-lex.europa.eu/EN/legal-content/summary/fighting-child-sexual-abuse.html (accessed on: 10.10.2023).

The Directive provides a precise definition of child pornography and pornographic performances,[72] and defines sexual crimes against children in four categories,[73] of which the following are relevant here:

1. criminal offences related to pornographic performances involving the participation of a child;[74]
2. criminal offences concerning child pornography (acquisition or possession of child pornography; knowingly obtaining access, by means of information and communication technology, to child pornography; distribution, dissemination or transmission of child pornography; offering, supplying, making available or production of child pornography;
3. and criminal offences cover grooming: the "solicitation of children for sexual purposes".[75]

[72] According to Article 2(c), "child pornography" means: (i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; (ii) any depiction of the sexual organs of a child for primarily sexual purposes; (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes. The definition of the "pornographic performance" (Article 2(e)) is: "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".

[73] These crimes are: "offences concerning sexual abuse" (Article 3), "offences concerning sexual exploitation" (Article 4), "offences concerning child pornography" (Article 5) and "solicitation of children for sexual purposes" (Article 6).

[74] This crime may be committed by: (i) causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes; (ii) coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes; (iii) knowingly attending pornographic performances involving the participation of a child (Article 4(2–4)).

[75] "The proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting". (Article 6(1)).

5. The crime of child pornography in Hungarian criminal law: Articles 204 and 204/A of the Criminal Code

Since 1997, Hungarian criminal law has criminalised the production, sale or trafficking of pornographic images of minors. In 2007, the legislator recodified the statutory definition of the crime (entitled "abuse of illegal pornographic images"), criminalising new conduct and defining the victim as a person under the age of 18. The amendment to the Criminal Code in 2021 (Act LXXIX of 2021), as a part of the consistent stringency against paedophile offenders, among other things, regulates the offence of child pornography in a stricter and more differentiated manner than before.

The modifying Act "expanded the scope of the criminal conduct, increased the penalties, introduced new qualifying cases and redefined the concept of pornographic recording".[76] The amendment was justified not only by harmonisation with the relevant international instruments, but also by the fact that the rapid development of the information system has enabled the commission of child pornography online, and new forms of crime are increasingly linking this type of criminality to the world of the Internet.[77] Articles 204 and 204/A of the Criminal Code, under the title of child pornography, currently criminalise the offence in the chapter on crimes against sexual freedom and sexual morality in a rather complex statutory definition.

The passive subject (the victim of the crime) is a person under the age of 18 if the recording depicts an existing person. From 2021, Hungarian criminal law also criminalised virtual pornography, e.g. recordings produced by artificial intelligence or manipulative means (computer-generated images). In such latter cases, there would be no identifiable victim, since the crime is committed in connection with the pornographic recording of a non-existent person under the age of 18. According to the relevant case law, age needs

[76] See: the Explanatory Memorandum of the Act.

[77] Z. Márki, *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, [in:] I. Kónya (ed.), *Magyar büntetőjog I–IV. – Új Btk. – Kommentár a gyakorlat számára*, Budapest 2023 (available in ORAC online Jogkódex).

to be assessed at the time the recording is made, even if the crime is later committed by other perpetrators through different conduct.[78]

The object of the crime is the pornographic recording or pornographic programmes depicting a person under the age of 18, defined in the Criminal Code as follows:

> pornographic recording:[79] the depiction of one or more other persons in a manner that depicts sexuality in a grossly indecent explicit manner, with the intent to arouse sexual desire, including the depiction of a non-existent person or persons in a realistic manner.[80]

The Criminal Code defines the term *pornographic recording* as broadly as possible and includes videos, films, photographs and all other forms of recordings. It follows from the word *recording*, however, that the drawing, painting or other graphic depiction cannot be the object of the offence.[81] It should also be noted that scientific, artistic or educational representations of the human body are not covered by the concept of prohibited pornography, even if they are indecent.[82] It is important to emphasise that a crime is only committed if the recording in question is made of another person. If someone publishes pornographic material of himself or herself, he or she will therefore not be punished for this offence:[83]

> pornographic programme: any act or performance which depicts the sexuality of another person or persons with gross indecency and which is intended to arouse sexual desire.[84]

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[78] See: BH 2010.267. (Decision of the Hungarian Supreme Court).

[79] See: Article 204(8) of the Criminal Code.

[80] By *realistic* is meant a representation that is deceptively similar to the real thing, when it is "impossible and not expected to judge whether the person is real". See: the Explanatory Memorandum of the Act.

[81] Zs. Szomora, *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, [in:] K. Karsai (ed.), *Nagykommentár a Büntető Törvénykönyvhöz*, Budapest 2019, p. 467.

[82] E. Belovics (ed.), *Büntetőjog II. Különös rész*, Budapest 2019, p. 233.

[83] E. Belovics (ed.), *Büntetőjog II. Különös rész*, *op. cit.*, p. 234.

[84] See: Article 204/A (8) of the Criminal Code.

Due to the differentiation of the crime, the Code divides child pornography into two separate articles in relation to the objects of the crime. Article 204 covers crime related to pornographic recordings and Section 204/A deals with criminal conducts related to pornographic programmes. The crime covered by Article 204 falls into three different basic categories.

I. Any person who obtains or keeps a pornographic recording depicting a person under the age of eighteen, is punishable by imprisonment ranging from between one to five years.

The first case of the crime is the obtaining or keeping of a recording made by another person. Obtaining means taking possession, which may be done free of charge or for a fee, or through a crime such as theft. Downloading a data carrier from the Internet that contains the prohibited recordings also constitutes obtaining.[85] It is questionable whether viewing the recordings i.e. viewing the live stream of the recordings on a website without downloading them to the computer constitutes the obtaining of a recording, though I feel the answer appears to be no, so it would be necessary to criminalise viewing, since the protected value of the crime, i.e. the undisturbed sexual development of children, is also endangered by such viewing. The keeping of recordings means possession over a relatively longer period, including hiding the recordings.

II. Any person who who offers, supplies or makes available a pornographic recording depicting a person under the age of eighteen, is punishable by an imprisonment for between two and eight years.

Offering here means an unsuccessful call for taking up such an offer.[86] It may be an offer to buy or a free offer. *Supply of a recording* presupposes that the recipient receives it, i.e. obtains it.[87] By *making*

[85] Zs. Szomora, *A nemi élet szabadsága és a nemi erkölcs…*, *op. cit.*, p. 467.

[86] J. Jacsó, *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, [in:] I. Görgényi, J. Gula, T. Horváth, J. Jacsó (eds.), *Magyar büntetőjog különös rész*, Budapest 2020, p. 257.

[87] Z. Márki, *A nemi élet szabadsága és a nemi erkölcs elleni…*, *op. cit.*

available, the recording becomes available to others, accessible to anyone.[88]

III. Any person who produces, distributes or trades pornographic recordings depicting a person under the age of eighteen, or makes such a recording available to the public, is punishable by a term of imprisonment ranging from between five to ten years.

The first conduct of child pornography here, the production, is one of the most serious acts, as it affects the victim most directly.[89] The production of a recording is to be interpreted broadly, and it is also committed by the person who develops the recordings in the laboratory, the director or cameraman of the film or video recording, etc.[90] In the case of distribution, the perpetrator transmits the pornographic recordings to several persons. This may be done by contacting just one person, who then transmits the recordings to others.[91] In comparison, trading is a systematic distribution with the aim of making a profit.[92] The latter two types of conduct have in common that they involve more than one pornographic recordings. Finally, there is making a pornographic recording available to the public by creating a situation in which more people have the clear opportunity to access the recording, for example by uploading it to the Internet.[93]

The three cases of crime outlined above are punishable more severely if the conducts mentioned therein are as follows:

a) committed against a person under the age of 12;
b) committed against a victim who is under the perpetrator's education, supervision, care or treatment, or by the abuse of

[88] J. Jacsó, *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, *op. cit.*, p. 258.

[89] Explanatory Memorandum of the Act.

[90] Z. Márki, *A nemi élet szabadsága és a nemi erkölcs elleni…*, *op. cit.*

[91] Zs. Szomora, *A nemi élet szabadsága és a nemi erkölcs…*, *op. cit.*, p. 258.

[92] Ibidem.

[93] According to the case law, uploading of recordings to an online newsgroup represents "making available" as long as the recordings may be viewed, but there is no possibility to download them. If the recordings may be downloaded, reproduced or redistributed, the uploader's conduct already constitutes "distribution". See: BH 2005.133.

any other position of power or influence over the victim, or by taking advantage of the victim's vulnerability;
c) committed in an official capacity using that capacity;
d) committed on a recording involving the use of oppression or violence;
e) committed as a particular repeat offender.[94]

The most serious case is when the acts mentioned in the three cases are committed on a recording involving the use of oppression or violence against a person under the age of twelve.

The case is mitigated if the crime occurs when the conducts of obtaining, keeping or production are committed on a pornographic recording of a person or persons over the age of 14 but under 18, if the above-mentioned qualifying circumstances are not present.[95]

Given the seriousness of child pornography, the Criminal Code brings criminal law protection forward in time and punishes the preparatory acts and also the person who provides financial means for these acts. The Code takes strong action against the solicitation of children,[96] so that anyone who invites a person or persons under the age of eighteen to take a part in a pornographic recording may also be punished.[97]

As mentioned above, the crimes related to pornographic programmes are covered by a separate provision, Article 204/A of the Criminal Code:

I. Any person who takes a part in a pornographic programme in which a person or persons under the age of eighteen is involved, is punishable by imprisonment for between two and eight years.

Taking a part in a pornographic programme means participation in the programme in any capacity, e.g. as a performer or viewer.[98]

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[94] See: Article 204(2) of the Criminal Code.
[95] See: Article 204(5) of the Criminal Code.
[96] Explanatory Memorandum of the Act.
[97] A less serious form of this case is when the perpetrator invites a person or persons over the age of 14 but under the age of 18 to appear in a pornographic recording. See: Article 204(7) of the Criminal Code.
[98] J. Jacsó, *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, *op. cit.*, p. 259.

A viewer is punishable if it is a live programme and the participation is therefore personal participation. A person who watches a prohibited pornographic programme on the Internet, i.e. online, commits no crime.[99]

II. Any person who gives a role to a person or persons under the age of eighteen in a pornographic programme or organises such a pornographic programme, is punishable by an imprisonment for between five and ten years.

Giving a role in the prohibited programme may be established if the victim actively participates in the programme as a result of the perpetrator's successful persuasion. In this case, the director of the programme is also punishable.[100] The organisation of the programme includes the recruitment and selection of contributors, the designation and hiring of the venue, the provision of information to the viewers, but also be established when one of these partial acts is carried out.[101]

The aggravated cases of this crime are the same as in the previous Article. The preparatory acts of the crime and provision of financial means are also punishable, as is the perpetrator who invites a person or persons under the age of eighteen to perform in a pornographic programme.

The perpetrator of child pornography be anyone, except a person under the age of 18 who produces a recording of himself or herself or keeps or makes available such a recording, etc. The crime can only be committed intentionally, and the perpetrator must be aware that the victim or the non-existent person in the recording is under the age of 18. In this context, mistake of fact may be relevant as a ground for excluding criminal responsibility.

The issue of cumulative offences – whether one or more offences must be established if the criminal act or acts are committed in relation to more than one recording or if more than one victim seen

[99] Z. Márki, *A nemi élet szabadsága és a nemi erkölcs elleni…*, *op. cit.*
[100] Zs. Szomora, *A nemi élet szabadsága és a nemi erkölcs…*, *op. cit.*, p. 258.
[101] Z. Márki, *A nemi élet szabadsága és a nemi erkölcs elleni…*, *op. cit.*

on the recording – is regulated by the Kúria's Criminal Case Law Decision 2/2018. Accordingly:

i. the number of persons on the recording is irrelevant; one offence must be established;
ii. if the perpetrator commits more than one of the three cases mentioned (Case I, Case II or Case III) in relation to the same recording, only one offence, the most serious, needs to be established; if, for instance, the perpetrator first obtains the recording (Case I) and then distributes it (Case III), he or she is only liable for distribution;
iii. if the perpetrator commits the offence in relation to more than one recording, as a general rule, one offence must be established; this rule also applies if the perpetrator commits one of the three cases (Case I, Case II or Case III) through different conducts; if, for instance, he obtains and keeps several recordings, this constitutes one offence;
iv. however, if the perpetrator commits more than one of the three cases (Case I, Case II or Case III) in relation to several different recordings, the offences are cumulative and several offences must be established; if, for instance, the perpetrator obtains three recordings and then produces three new recordings, he or she will be charged with two offences.

Previously, there was no uniform judicial practice as to whether one or more offences must be established if the perpetrator obtained several pornographic recordings. The Kúria, as we have seen, may opt for the first position as the main rule, which reduces the number of child pornography crimesin the statistics by hundreds.[102]

[102] Sz. Gyurkó, *A gyerekekkel szembeni online szexuális visszaélések és a készülő új EU rendelet háttere*, "Családi Jog" 2023, No. 3, p. 12.

6. Rendering electronic data permanently inaccessible

6.1. BACKGROUND TO INTRODUCING THE NEW CRIMINAL MEASURE

In the case of cybercrimes, in particular some offences committed on the internet, it is essential to prevent access to illegal data and the continuation of the offence. As well as child pornography, these crimes include hate speech, misleading of consumers, copyright infringements or crimes against property committed on the internet. Until 2012, however, there was no sanction in Hungarian criminal law to make illegal content inaccessible, so the possibilities for the authorities to fight against cybercriminals were very limited. The introduction of the new legislation was also required by Hungary's obligation based on Article 25 of the Directive 2011/93/EU.[103] In order to comply with the obligation to harmonise criminal law, the Hungarian legislator has added a new criminal measure to the list of criminal sanctions in the new Criminal Code which consists of rendering electronic data permanently inaccessible.[104] Hungary currently has a variety of legal measures (criminal law, administrative law, civil law) for the blocking, filtering and taking down of illegal internet content. I shall now turn to the related measure of our substantive criminal law.

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[103] Article 25: "1. Member States shall take the necessary measures to ensure the prompt removal of web pages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.
2. Member States may take measures to block access to web pages containing or disseminating child pornography towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress."

[104] Rendering electronic data permanently inaccessible, as a criminal sanction, may be enforced after the judgment has become final. In the case of several content-related cybercrimes, however, it is crucial to prevent the continuation of the offence by making the data inaccessible at an early stage of the criminal proceedings. This is the purpose of the new coercive measure introduced in the Criminal Procedure Code in 2013, rendering electronic data temporarily inaccessible.

6.2. THE RELEVANT LEGISLATION: ARTICLE 77 OF THE HUNGARIAN CRIMINAL CODE

Article 77 (1) of the HCC:

> [T]he data published on an electronic communications network shall be rendered permanently inaccessible, when:
>
> a) the disclosure or publication of which constitutes a criminal offence, or
> b) which is used as an instrument for the commission of the crime, or
> c) which is created by the commission of a crime.
>
> (2) The measure for permanently rendering electronic data inaccessible shall be issued even if the perpetrator cannot be prosecuted due to minority or insanity or due to other grounds for exemption from criminal responsibility, or if the perpetrator has been given a warning.

In the Hungarian criminal sanction system, rendering electronic data permanently inaccessible is a security measure that may be imposed independently or together with a punishment or other criminal measure. Unlike punishments that require a culpable commission of a crime, this measure may also be applied to perpetrators who are children or mentally ill, and even if the perpetrator is not liable on grounds of exemption from criminal responsibility. Electronic data may be defined as data published on an electronic communications network by an electronic communications service provider that can be identified by an IP address, URL, domain name and port number.

In principle, the measure may be applied to any crime, but the Criminal Code defines the electronic data covered by the measure in a taxative manner:

i. data whose disclosure or publication constitutes a criminal offence, e.g. child pornography, copyright infringements;
ii. electronic data used as a tool to commit an offence. e.g. in the case of fraud committed through an information system,

a fake website used by the perpetrators that resembles an Internet banking login page;

iii. electronic data created by the commission of an offence, e.g., a defamatory communication.

6.3. ENFORCEMENT OF THE CRIMINAL MEASURE

Rendering the electronic data permanently inaccessible is enforceable in two ways. First, it be done by deleting the data, which is the responsibility of the web hosting provider, who is obliged to remove the electronic data. The court specifies the hosting provider in the judgment (name, address, registered office, name of representative, etc). The court issues a notice requiring the hosting provider to delete the data within one working day of receiving the judgment or sends the notice to the state tax authority for enforcement. If the web hosting provider fails to comply with the obligation to delete the electronic data, the court may impose a fine of between HUF 100,000 and HUF 1 million based on the notice from the tax authority. The fine may be imposed again.

Secondly, the sanction may also be carried out by permanently blocking access to the data. In this case, the court sends its judgment to the National Media and Infocommunications Authority (NMHH), which organises and supervises the enforcement of the judgment. Electronic communications service providers who provide access to the data are obliged to block access to the electronic data. These service providers are Internet access providers (Yettel Zrt., VodafoneZrt.), search providers (Google, Bing) and cache providers. The NMHH contributes to the prevention of cybercrimes. The Authority operates the so-called Central Electronic Database of Decisions on Rendering Data Inaccessible (KETHA). In this electronic database, the Authority stores and processes the decisions transmitted by the court and forwards them to electronic communications service providers together with search engines and caching service providers. According to the court decision, internet access providers are obliged to block access to the electronic data referred to in the decision within one working day and to filter it

from Internet traffic. Search providers and cache providers are also obliged to block access to data found or stored as a result of a search for the data mentioned in the decision. If service providers fail to comply with this obligation, the court may impose the fine mentioned above.

I note that the Act on International Legal Assistance in Criminal Matters (1996) allows the Hungarian authorities, in the interest of smooth international co-operation, to use the procedural or enforcement legal assistance available to render electronic data temporarily or permanently inaccessible if the website is hosted by a foreign web hosting service provider. The Act allows the Hungarian authorities to comply with such foreign requests for mutual legal assistance if the web hosting service provider is Hungarian.

7. Conclusions

This study is devoted to providing an overview of the definitions relevant to the crimes related to the child sexual abuse and exploitation, the most important traditional and new forms of online sexual offences against children, and to outline the main international legal instruments for the protection of children against these heinous crimes. As a result of the research, I hope that the hypothesis has been confirmed: crimes involving the sexual exploitation of children – together with the means of child protection, crime prevention, education and victim support – should be upheld by a suitable definition of the relevant criminal offences, and by the introduction of a specific criminal sanction to prevent access to child sexual abuse material. The Hungarian statutory definition of child pornography in the Criminal Code, the most common and perhaps most serious form of online sexual offence against children, in line with the relevant EU and international standards, criminalises all forms of conduct related to child sexual abuse material and now also punishes virtual pornography. The problem remains, however, that, despite the fact that the Lanzarote Convention criminalises the act of knowingly gaining access by means of information and communication technology, Hungarian criminal law does not punish

a perpetrator who views a live stream of recordings on a website without downloading them to a computer. *De lege ferenda*, the criminal conduct "viewing" should therefore also be included in the statutory definition of child pornography. Finally, I have reviewed the sanction system in Polish criminal law and have found no similar criminal measure as the Hungarian one rendering electronic data permanently inaccessible. I think that Hungarian legislation could serve as a good example for Polish criminal law in this context.

Bibliography

Acar, K.V., *Sexual Extortion of Children in Cyberspace*, "International Journal of Cyber Criminology" 2016, Vol. 10, No. 2.

Aitken, S., Gaskell, D., Hodkinson, A., *Online Sexual Grooming: Exploratory Comparison of Themes Arising From Male Offenders' Communications with Male Victims Compared to Female Victims*, "Deviant Behavior" 2018, Vol. 39, No. 9.

Belovics, E. (ed.), *Büntetőjog II. Különös rész*, Budapest 2019.

Breeann, A., *What is sextorsion?*, https://saprea.org/blog/what-is-sextortion/ (accessed on: 13.10.2023).

Buono, L., *Editorial ERA Forum 3/2021: EU Strategy for a more effective fight against child sexual abuse*, "ERA Forum" 2020, Vol. 21, No. 3.

Dornfeld, L., Mezei, K., *Az online gyermekpornográfia elleni küzdelem aktuális kérdései*, "Infokommunikáció és Jog" 2017, No. 1.

Drejer, C. *et al.*, *Livestreaming Technology and Online Child Sexual Exploitation and Abuse: A Scoping Review*, "Trauma, Violence & Abuse" 2023, Vol. 25, No. 1.

Eneman, M. *et al.*, *Criminalising fantasies: the regulation of virtual child pornography*, https://gup.ub.gu.se/file/207727 (accessed on: 11.10.2023).

Estes, R.J., *The Sexual Exploitation of Children: A working Guide to the EmpiricalLiterature*, University of Pennsylvania, Philadelphia 2001.

Europol, *Internet Organised Crime Threat Assessment (IOCTA)*, 2018.

Europol, *Online sexual coercion and sextortion as a form of crime affecting children*, 2017.

Gassó, A.M. *et al.*, *Sexting, Mental Health, and Victimisation Among Adolescents: A Literature Review*, "International Journal of Environmental Research and Public Health" 2019, Vol. 16, No. 13.

Gyurkó, Sz., *A gyerekekkel szembeni online szexuális visszaélések és a készülő új EU rendelet háttere*, "Családi Jog" 2023, No. 3.

Jacsó, J., *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, [in:] Görgényi, I., Gula, J., Horváth, T., Jacsó, J. (eds.), *Magyar büntetőjog különös rész*, Budapest 2020.

Lanning, K.V., *Child Molesters: A Behavioral Analysis for Professional Investigating the Sexual Exploitation of Children*, National Centre for Missing and Exploited Children (5th Edition), 2010.

Márki, Z., *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, [in:] Kónya, I., (ed.), *Magyar büntetőjog I–IV. – Új Btk. – Kommentár a gyakorlat számára*, Budapest 2023.

Mezei, K., *A kiberbűnözés egyes büntetőjogi szabályozási kérdései*, Pécs 2019.

O'Connell, R., *A typology of child cybersexploitation and online grooming practices*, Cyberspace Research Unit, 2003.

Szathmáry, Z., *Bűnözés az információs társadalomban, Doktori értekezés*, Budapest 2012.

Szathmáry, Z., Losonczy-Molnár, M., *Cybercrimes. Criminal Law Approaches in the Age of the Information Society – Interpersonal Criminal Offences Committed in Cyberspace, with Particular Regard to the Sexual Abuse and Exploitation of Children*, [in:] Virág, Gy. (ed.), *Combating Cybercrime, Corruption and Money Laundering*, Budapest 2022.

Szomora, Zs., *A nemi élet szabadsága és a nemi erkölcs elleni bűncselekmények*, [in:] Karsai, K. (ed.), *Nagykommentár a Büntető Törvénykönyvhöz*, Budapest 2019.

Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016.

The new "Stranger Danger": Tactics used in the online grooming of children, 1 March 2022, https://icmec.org.au/blog/the-new-stranger-danger-tactics-used-in-the-online-grooming-of-children/ (accessed on: 01.10.2023).

UN Economic and Social Commission for Asia and the Pacific (ESCAP), *Pacific Perspectives on the Commercial Sexual Exploitation and Sexual Abuse of Children and Youth*, 2009.

UNODOC, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, New York 2015.

Winters, G.M., Jeglic, M.L., *Stages of Sexual Grooming: Recognizing Potentially Predatory Behaviors of Child Molesters*, "Deviant Behaviour" 2016, Vol. 37.

Wolak, J. *et al.*, *Sextortion of Minors: Characteristics and Dynamics*, "Journal of Adolescent Health" 2018, Vol. 62, No. 1.