SELECTED LEGAL ASPECTS OF SEXUAL ABUSE PREVENTION

Introduction

Prevention of child sexual abuse, as defined in Article 1 of the Convention on the Rights of the Child and adopted by the United Nations General Assembly on 20 November 1989\(^3\), in relation to any human being under 18 years of age\(^4\), includes all cases in which the child is the victim, consid-

---

\(^1\) Dr. Katarzyna Badźmirowska-Masłowska — Assistant professor at the Institute of Law at the War Studies University. Received her PhD in law from the Department of Criminology of the Institute of Legal Sciences at the National Academy of Sciences. In 1998-2003 she worked for the National Broadcasting Council and the Ministry of Culture, was a member of working groups of the Council of Europe, participated in negotiations between Poland and the European Union (culture and audiovisual policy). Specialises in criminal law, criminology, media law, European law, and security-related issues, in particular criminal law as regards juveniles in view of the development of information and communication technologies. Author of over 50 scientific and popular science publications, including four monographs. Participant of national and international conferences. Member of the Prof. Stanislaw Batavia Polish Society of Criminology and the European Society of Criminology. Experienced teacher.

E-mail: k.badzmirowskam@akademia.mil.pl.

\(^2\) Pr. Dr. Jacek Rosa — Assistant professor at the Faculty of Security and Legal Studies at the Police Academy in Szczytno and the Institute of Strategic Studies at the War Studies University. Received his PhD in bioethics from the Faculty of Bioethics at the Ateneo Pontificia Regina Apostolorum in Rome. Specialises in bioethical and philosophical issues in the context of Christian personalism, elements of national and international security. Author of several scientific and popular science publications.

E-mail: <j.rosa@wspol.edu.pl>.

\(^3\) Dz.U., 1991, No. 120, item 526.

\(^4\) In accordance with the national law, unless the child attains the age of majority earlier, which, under Article 10(1) of the Act of 25 February 1964, Kodeks
erer in broader terms than those of the criminal law though. This group includes victims, demoralised juvenile offenders (e.g. young prostitutes called ‘mall sluts’), and others committing criminal offences within the meaning of Article 1§1 in relation to Article 4 of the Act of 26 October 1982 on juvenile proceedings\(^5\), since the best interests of the child must be recognised both as an individual value and the public interest\(^6\): ‘Sexual abuse and sexual exploitation of children, including child pornography, constitute serious violations of fundamental rights, in particular the rights of children to the protection and care necessary for their proper development’\(^7\).

The main objective of the article is to present the issue of child sexual abuse from the perspective of practical crime prevention methods. First of all, a complementary and systemic application of legal instruments as well as alternative measures need to be considered. Moreover, the relevant authorities need to be identified, especially as regards the law enforcement and justice system.

The analysis of the national criminal law provisions on child protection recognises their regulation by the European standards, in particular the Directive 2011/92/EU of the European Parliament and the Council of Europe of 13 December 2011 on combatting sexual abuse and sexual exploitation of children and child pornography, replacing the Council Framework Decision 2004/68/JHA\(^8\) and the Lanzarote Convention, and includes a comprehensive definition of the protection of juveniles from sexual exploitation by adults.

Within the aforementioned legal instruments, there can be indicated the following: criminalisation and penalisation of specific criminal acts, categorised as sexual abuse and sexual exploitation, especially when it comes to child pornography\(^9\), crime prevention methods, including preventive and protective measures, and those of a legal and procedural nature as well as those related to the victim assistance, including specialist agencies responsible for the coordination of activities being undertaken. The states bound by the provisions of the supranational and international law are obliged to transfer them into their domestic law\(^10\).

---


\(^6\) Ustawa o postępowaniu w sprawach nieletnich, Article 4.

\(^7\) Lanzarote Convention, Preamble.

\(^8\) Dz.U., UE L, item 335, 2011, pp. 1–14; herinafter: Directive 2011/92/EU.


sically complied with the provisions in terms of legislation, by the amendment\textsuperscript{11} to the criminal code promulgated on 5 November 2009, rewording Article 197 § 3 (item 2), and adding Articles 200a and 200b (Article 1, items 24 and 25), which also criminalises promoting or praising publically any forms of paedophilic behaviour.

The biggest challenges have been identified in the preamble to the Lanzarote Convention: ‘sexual exploitation and sexual abuse of children have reached alarming proportions, both at national and and international levels, particularly with regard to an increasing use of information and communication technologies by both children and their offenders. Prevention and control of child sexual abuse and child sexual exploitation demand an effective international cooperation to be established’\textsuperscript{12}, which requires the focus to be shifted from an individually recognised aspect of sexual abuse to the aspect of sexual exploitation typical of organised forms of national and international crime (especially when it comes to trafficking of children for prostitution and pornography purposes). In this respect, discussed have been the problems of protection of the child from sexual abuse and exploitation.

**Methods for preventing sexual abuse and exploitation of children and problems related to their implementation on a national level**

In terms of crime prevention activities, the European standards provide for a strategy that needs to be approached in two ways: one towards sexual offenders and the other one towards victims of sexual offences.

The approach towards sexual offenders requires the availability of voluntary, effective intervention programmes or measures oriented at risk assessment and prevention of paedophilic acts through cooperation between relevant authorities and panels of medical and social experts. In particular, the situation refers to the persons who are subject to criminal proceedings or have been convicted of sexual offences against children, under-age offenders included\textsuperscript{13}.

\setlength\parindent{1em}


\textsuperscript{12} Lanzarote Convention, Preamble.

\textsuperscript{13} Directive 2011/92/EU, Article 22 in relations to Article 7 and Article 24; Lanzarote Convention, Articles 7, 15-17.
The requirement to record and store the domestic data on persons convicted of sexual offences can be also regarded as a preventive one.\textsuperscript{14} In Poland, members of the public who demand severe sanctions for child sexual offenders make this subject matter one of the main concerns of the minister of justice, however the persons diagnosed with medical disorders shall not be included in this category.\textsuperscript{15} The postulate of their systemic differentiation is justified insofar as it allows for an adequate adjustment of penalties and penal measures (particularly those provided for in Articles 41 and 41a of the Criminal Code, by analogy with Article 10 (1) of Directive 2011/92/EU, which indicate to have no contact with a juvenile both at work and in private life), as well as protective measures (Article 93a-g of the Criminal Code) for specific cases, however their execution requires special training offered to persons working for law enforcement and justice administration, as well as for educational, health and social welfare institutions. This is so important as it would allow for taking into consideration to a greater extent, an unaccepted by the Polish community but indicated in the literature, a method of treatment including counselling or tonic therapy, medical treatment aimed at lowering sexual desire (in isolation or outpatient conditions), supervision and control of persons (e.g. by their participation in voluntary programmes during and after criminal proceedings, considering the risk they may pose to others), requiring such measures to be taken rather than isolation to be imposed, which in turn should be imposed only on persons with no medical disorder stated, who constitute the majority of child sexual offenders.\textsuperscript{18} The overall objective of this proposal is to increase the crime prevention effectiveness.

The issues related to conducting awareness-raising research and educational activities, which reduce the risk in question, are implemented

\textsuperscript{14} Lanzarote Convention, Article 37.
\textsuperscript{17} Lanzarote Convention, Articles 15–17.
by offering trainings necessary to weaken and reduce all forms of sexual exploitation of children, including discouraging such behaviour (in view of the inevitability and level of imprisonment, for instance\(^{19}\)). They are addressed to public authorities and the general public, including the private sector, non-governmental organisations, churches and religious associations and, in particular, to:

— juveniles with educational needs,
— guardians of juveniles, including representatives of schools and other people having contact with children at work, whose awareness of this issue should be raised,
— representatives of law enforcement agencies and the judiciary to acquire relevant knowledge and skills aimed at preventing secondary victimisation of children\(^{20}\).

Those commitments do not seem to be fully and comprehensively implemented, neither at the level of general and systemic information nor education. Given the first two abovementioned categories of entities, the following initiatives undertaken by the ‘Naukowa Akademicka Sieć Komputerowa’ (Scientific Academic Computer Network), hereinafter: NASK, and ‘Fundacja Dajemy Dzieciom Siłę’ (Empowering Children Foundation) deserve special attention\(^{21}\). Their activities include the publication of scientific articles, research reports and, of particular importance, guide books for parents and children covering a wide range of preventive behaviours like establishing appropriate relationships or instructing how to use various technological tools. In addition, the organisations offer trainings for local government authorities and educational institutions on online safety of small children and young people\(^{22}\).

Of particular importance is to provide regular training to officials who may have professional contact with child victims, e.g. police officers and

\(^{19}\) Directive 2011/92/EU, Article 23.

\(^{20}\) Lanzarote Convention, Articles 5-6, 8-9; Directive 2011/92/EU, Article 23. The EU law also recognises the need to adopt measures to prevent the dissemination of information advertising the opportunities to commit sexual offences and to get involved in sex tourism. See: Directive 2011/92/EU, Article 21.


\(^{22}\) However, there appear some doubts about the lack of different levels and types of education, as well as comprehensive and coherent curricula contents oriented at the safety of the juvenile, which results from the lack of operational strategies in this respect.
judges, as part of voluntary intervention programmes or measures adapted to developmental needs of juveniles and available during and after criminal proceedings, as well as to teachers, educators and others, \textit{i.e.} entrepreneurs recruiting for specific jobs, or members of NGOs seeking volunteers\textsuperscript{23}. The abovementioned trainings, depending on the target audience, should include not only information about persons posing a threat, and circumstances of a given criminal case, but also elements related to the ability to talk to child victims and their families because the victims of the crime in question may include not only minors but also persons close to them who usually need counselling or psychological assistance. In a scientific discourse, court jurisdiction, legislative, administrative or social activity, the emphasis should be placed precisely on the protection of a child victim of a sexual offence (within the meaning of Article 49 of the Code of Criminal Procedure\textsuperscript{24}) and his or her environment (particularly in terms of primary structures – Article 19(5) of Directive 2010/92/EU and Articles 11 and 14(4) of the Lanzarote Convention), considering their views, needs and concerns, in particular, their need to remain isolated from the offender\textsuperscript{25}. The choice of methods should be based on an individual assessment of the situation of each child, considered as a particularly vulnerable victim, before and during criminal proceedings, as well as for some time after the procedure ends\textsuperscript{26}. One of the problems lies in the selection of entities responsible for offering trainings to law enforcement and justice system employees as relevant bodies competent to verify or certify such trainings, and the Minister of Justice seems to be the right choice.

Another particularly important issue is the opportunity to report a suspicion that a sexual offence against a child has been committed. In such a case, confidentiality and anonymity have to be ensured through opening special 24-hour telephone lines, where on-duty specialists can instruct minors how to solve their problems\textsuperscript{27} and assist other callers reporting sexual offences. This is particularly important when the reporting person knows the abuser or he or she belongs to the child’s family. However, there are not enough such phone lines in our country, and those operational ones are not always accessible 24/7. It should be emphasised that the line Dyzurnet.pl\textsuperscript{28} (<dyzurnet.pl>, formerly: NIFC (National Initiative for Children) Hotline Polska, \textit{i.e.} the panel of NASK experts, which is the contact point of the European Union programme for better and safer

\textsuperscript{23} Lanzarote Convention, Article 36(1).
\textsuperscript{24} Ustawa z 6 czerwca 1997 r. — Kodeks postępowania karnego (consolidated text: Dz.U., 2020. item 30 as amended).
\textsuperscript{27} Directive 2011/92/EU, Article 16; Lanzarote Convention, Articles 12–13.
\textsuperscript{28} \textit{Electronic source}: https://dyzurnet.pl/, \textit{accessed}: 29.06.2020.
Internet for children, where children and young people can call to report illegal content on the Internet, especially in relation to child sexual offenders, and which is open seven days a week between 12:00 and 20:00. Dyżurnet.pl, in cooperation with the Helpline, has a contact number that children and young people can call - 116 111.

Combatting sexual abuse and exploitation of children in the context of criminal law

A child victim of a sexual offence should have access to assistance and support. Such obligations have been imposed on the relevant state authorities.

Sexual offences against children should be prosecuted *ex officio*, in their best interest and with respect for their rights, which means that the preliminary and judicial proceedings should not traumatise them or their relatives (e.g. by using audio-video material instead of reinterviewing the persons concerned). What is more, the proceedings should be continued even if the testimony has been withdrawn and the child is unwilling to cooperate during the criminal procedure.

Within the framework of general measures provided for the protection of child victims during preliminary and judicial proceedings, it is necessary to ensure, by appropriate internal regulations, the right of the juvenile to:

— be widely informed, at all stages of the criminal procedure, of available services (legal, psychological, medical, etc.), ongoing procedures and other opportunities to receive public support,
— their own safety, safety of his or her family and witnesses, so as to avoid threats, intimidation, revenge, etc. posed by the offender, for example, who is knowledgeable about the child’s temporary or permanent release from a given penitentiary institution;
— immediate (upon notification) and, if possible, unrepeated interviews in a special room, preferably conducted by the same specialist who remains unchanged (e.g. a child psychologist) and, as regards court proceedings, outside the courtroom (by means of information and communication technology, audiovisual recording, etc.)

---


31 Directive 2011/92/EU, Article 18; Lanzarote Convention, Article 14.

32 Directive 2011/92/EU, Articles 15, 19(2); Lanzarote Convention, Articles 30, 32.

33 Lanzarote Convention, Article 31.

— a special representative appointed to represent the child’s interests and, if necessary, legal assistance offered free of charge by a legal counsellor or representative, the demand for compensation included,
— decide on, in accordance with the law, the form of participation in criminal proceedings (in person or being represented by authorised persons, upon having considered the needs and concerns of the child), for the child’s own good, not being exposed to direct contact with the offender, considering any possible risks the juvenile witnesses with specific dysfunctions may encounter (those with mental disorders, in serious health condition, disabled) who require an interpreter or being questioned under the conditions of Article 184 of the Code of Criminal Procedure (witness incognicto),
— preserve and protect the child’s identity, privacy and image as well as to the avoidance of information dissemination (in particular that concerning the identifiability of the victim), including the non-participation of the public in the trial.

Generally, the process of interviewing a child as part of criminal procedure (under Articles 185a and 185b of the Code of Criminal Procedure), by virtue of the child’s age and developmental stage, is a controversial institution because of the evidential value of his or her testimony which needs to be verified and because of being the most vulnerable and susceptible person to become revictimised. In this context, it is extremely important to properly question juvenile witnesses under the age of 15, whose protection from revictimisation determines their own good. When planning the time and duration of the interview, his or her age has to be considered as well as the need to establish prior contact with an expert psychologist, make breaks during the interview, and ask appropriate questions, emphasises that: ‘the ratio legis of Article 185a of the Code of Criminal Procedure is to provide the child victim with the most favourable conditions to freely give testimony and to minimise the stress caused by interviewing and reconstruction of the course of the crime and experienced trauma, which may cause disorders in the functioning of the body, including memory’. 


especially those intimate ones. Furthermore, the interview is conducted by a judge, accompanied by a legal expert, in a separate, friendly adapted and soundproof room painted in light and subdued colours, with soft carpeting and furnishings friendly both to children and adults. In addition, it is recommended that the interview room should be located in the premises of the court, a prosecutor’s office, a police station, etc. and, if possible, it should have a separate entrance, a toilet and waiting room with paper, crayons, books and magazines with no information on violence or sexual abuse, as well as a technical room with audio and video recording equipment, a two-way mirror, cameras allowing prosecutors, defence lawyers, etc. to participate in the interview.

The issue in question proves how important role law enforcement agencies, especially the police, play in preventing sex-related crimes against children, whose forms are becoming more and more advanced due to technological achievements going beyond national jurisdictions. To respect the abovementioned children’s rights, relevant individuals and services responsible for prosecution or accusation need to have access to:

— effective investigative tools, including those related to new technologies allowing the identification of offenders and victims, and compared to those accessible to units responsible for combatting organised crime and other serious crimes,
— specialist trainings on the development of skills related to interviewing juveniles,
— sufficient financial resources.

Given the above, on 5 September 2006 there was established the Central Team for Combatting Human Trafficking, and in 2014 the Department for Combatting Human Trafficking of the Criminal Service Bureau at the National Police Headquarters (hereinafter: KGP). Moreover, relevant provincial units have become operational, and on 1 December 2016 there

---

38 Rozporządzenie ministra sprawiedliwości z 18 grudnia 2013 r. w sprawie sposobu przygotowania przesłuchania przeprowadzanego w trybie określonym w art. 185a–185c Kodeksu postępowania karnego (Dz.U., 2013, item 1642), § 2–4.
41 Operational control, as provided for in Article 19(3a) of the Police Act, may be such a tool.
42 Lanzarote Convention, Article 34.
was established a specialist organisational cell within the KGP structure – Cybercrime Bureau dealing with cybercrime prevention and control as well as identification and prosecution of cybercrime offenders\textsuperscript{45}.

Undoubtedly, there can be observed an increased police involvement in the fight against this type of crime, which refers to the identification and control of online dissemination of child pornography and child grooming, which also encourages national and international police cooperation, particularly as regards organised trafficking in human beings, which make these activities a vital part of the policy of the European Union Agency for Law Enforcement Cooperation\textsuperscript{46} and the European Cybercrime Centre\textsuperscript{47}, which both put a lot of emphasis on crimes related to child exploitation.

To more effectively and comprehensively protect children and adolescents from sexual offences, an agreement on mutual cooperation between the Meter Onlus association and the KGP on combatting paedophile crime on the Internet has been signed at the Embassy of the Republic of Poland to the Holy See\textsuperscript{48}. The document has been signed on behalf of the Polish police by the National Police Chief, General Jarosław Szymczyk, and on behalf of the association by its long-standing president and founder Fr Fortunato Di Noto. The agreement constitutes a milestone in the development of the Polish-Italian cooperation as far as the transfer of information and content concerning sexual abuse of children online is concerned. The information obtained from the Meter Onlus association will be used by the Polish police in accordance with the applicable law of the Republic of Poland.

Nationally undertaken crime prevention activities include:
— cooperation with the NASK experts, operating within the Dyżurnet.pl team,


— providing patronage to awareness-raising initiatives, *e.g.* on sexual exploitation of children in tourism\(^{49}\),
— posting information addressed to adults on the KGP website\(^{50}\).

It is difficult to explicitly assess whether personal and non-personal resources to combat sex-related crimes against children are used efficiently enough, and whether officers and civilian employees are adequately trained, the structures appropriately organised and equipped with IT and financial tools which operate with the use of systemic solutions, especially in situations of a dynamic development of information and communication technologies and cross-border nature of network transmission, as well as the lack of sufficient criminological research referring to this type of crime. The Polish Bishops’ Conference has established the Saint Joseph’s Foundation whose mission is to protect children and young people of the Catholic Church community, provide support for child sexual victims and prevent further sexual abuse cases\(^{51}\).

## Conclusions

The aforementioned problems, resulting from the implementation of the European standards into the Polish legal system and from an axiological approach to the issues of underage victims of sexual abuse, lead to general conclusions and practical solutions to arrive at. Undoubtedly, as a result of the compliance with legislative implementation obligations, the criminal law protection of juveniles has been extended. In principle, legislative solutions can be considered adequate for combating the crime in question, but legal regulations tend not not keep up with technological challenges though.

What seems to be the main problem is the lack of a strategic approach to this issue as regards international (transnational/supranational) and national cooperation, and many valuable and desirable initiatives are undertaken by public authorities and community members ad hoc rather than systematically\(^{52}\). Yet the importance of international and transnational cooperation in preventing sexual offences against children\(^{53}\) and


\(^{53}\) Directive 2011/92/EU, Article 17; Lanzarote Convention, Article 39.
in protecting and assisting minors who become sexual victims\textsuperscript{54} is crucial, especially as regards the development of new technologies introducing effective tools against websites which contain or disseminate child pornography\textsuperscript{55} and, generally, in monitoring this practice or emergence of new challenges, \textit{e.g.} liability, including the punishment imposed on legal persons\textsuperscript{56}.

The basic problem lies in insufficient knowledge of the subject matter. Public authorities seem to ignore the importance of broad systemic cooperation, both nationally and internationally. Using the European Union terminology, it would be reasonable to prepare a relevant green and white book based on scientific research and to implement the proposals for solutions contained therein in a systemic manner, both in terms of legislation (especially as part of soft law) and the activity of government administration, local government, law enforcement and the judiciary, as well as in terms of cooperation with community members.

There emerge also specific internal problems that hinder practical implementation of the adopted legal solutions. There can be observed the lack of:

— sufficient public awareness of the seriousness of sexual crimes against children, which is of importance not only to undertaking crime prevention activities, but also to reporting such acts, especially if the alleged offender operates in the victim’s close environment,

— qualified people with substantive and social competences (empathy) who in the course of their professional work come into contact with the victimised children (and with their families), and who sometimes underestimate some technical and procedural problems because they seem irrelevant in their profession. This broad catalogue includes various professions: teachers, educators, doctors, paramedics, psychologists (sexologists), social welfare representatives, police officers, prosecutors, judges, probation officers, \textit{etc.}

An attempt to solve the aforementioned problems may become a starting point for the introduction of systemic, strategic and effective methods of preventing sexual offences against children.

References


2. Badźmirowska-Masłowska K, Edukacyjne aspekty bezpieczeństwa nowych technologii komunikacyjnych dla małoletnich w świetle Strate-\textsuperscript{54} Directive 2011/92/EU, Articles 18-20; Lanzarote Convention, Article 38.
\textsuperscript{55} Directive 2011/92/EU, Article 25.
\textsuperscript{56} \textit{Ibid.}, Articles 12–13 in relations to Article 2f.


39. Rozporządzenie ministra sprawiedliwości z 18 grudnia 2013 r. w sprawie sposobu przygotowania przesłuchania przeprowadzanego w trybie określonym w art. 185a–185c Kodeksu postępowania karnego (Dz.U., 2013, item 1642).


43. Świerk P, Przesłuchanie małoletniego pokrzywzonego na podstawie art. 185a kodeksu postępowania karnego, Prokuratura i Prawo, 2004, No. 5.


47. Ustawa z 26 października 1982 r. o postępowaniu w sprawach nieletnich. Consolidated text: Dz.U., 2018, item 969.


DOI: 10.5604/01.3001.0015.4711
http://dx.doi.org/10.5604/01.3001.0015.4711

**Keywords:** sexual abuse, child, prevention, combatting

**Summary:** The article on selected aspects of sexual abuse prevention presents the subject matter from the legal perspective and discusses the issues concerning prevention and control of sexual offences in Poland. The article refers to the status of the child in criminal law and applicable provisions under the Directive 2011/92/EU and the Lanzarote Convention concerning prevention, assistance and support for juveniles. In this context, presented have been the obligations of the state (public authorities), including the police, to prevent this type of crime as well as the difficulties associated with the implementation of relevant tasks. The conclusions indicate the problems that require practical solutions.