

**A TRANSNATIONAL CRIME OF GROOMING IN THE POLISH PENAL CODE**

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**Abstract.** The way of regulating criminal legal issues internationally has changed in recent decades, as an aftermath of increased intensity of globalization processes around the world combined with growth of transnational crime, and subsequent desire of the international community to co-operate on suppressing criminal conduct that transcends national frontiers. The vast majority of multilateral international treaties concluded over the past decades have been devoted to transnational crimes, falling within the scope of transnational criminal law. One of such crimes, inevitably connected to the development and increased use of information and communication technologies, is grooming. The paper aims at presenting international regulations, provided for in a suppression convention, obliging the Polish legislator to penalize grooming in the domestic legal order, as well as the Polish domestic provisions complying with the said obligation.

**Keywords:** transnational crime; grooming; penal law; criminal law; transnational criminal law

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## **1. Introduction**

The increased intensity of globalization processes around the world resulted in growth of transnational crime and, subsequent, proliferation of penal regulations at the transnational level aimed at suppressing such crime. The way of regulating criminal legal issues internationally has changed, as the vast majority of multilateral international treaties concluded over the past decades have been devoted to transnational crimes, falling within the scope of transnational criminal law, and understood as those crimes (or offences, depending on the national penal law system classification) “where states use a convention designed to suppress a particular form of conduct - a »suppression convention« - to provide for a mutual obligation to criminalize that conduct” (Boister, 2012).

Penetration of Internet brought various insecurities and crimes (Aleksejeva et al., 2021; Kovács, 2022; Grega, Nečas, 2022; Lavrinenko et al., 2022; Sikimić, 2022; Katina et al., 2023). One of crimes, relatively new on the international scene and inevitably linked to the development as well as increased use of information and communication technologies, is solicitation of children for sexual purposes, also referred to as sexual solicitation or contacting a minor for the purpose of leading him or her to engage in sexual activity. In the field of criminology, the crime has been commonly known as grooming.

Poland, as a party to suppression conventions devoted to protection of children from sexual exploitation, undertook to penalize grooming in its domestic legal order. The paper aims at presenting international legal provisions obliging the Polish legislator to introduce regulation on grooming into the national law, as well as the Polish domestic provisions complying with the said obligation.

## 2. Protection of children from sexual exploitation and sexual abuse

Before moving on to the grooming, few remarks have to be made on the problem of sexual exploitation of children in general, which is often described in the literature as one of the most important issues of contemporary criminal law. The need to protect children from sexual abuse has been expressed in many international documents, including the Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20, 1989, which entered into force in Poland on July 7, 1991 (*Journal of Laws*, 1991). According to Article 34 thereof, “State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials”. A child was defined in Article 1 as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

The international instrument entirely devoted to and focusing on the issue in question is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse signed on October 25, 2007 in Lanzarote - Lanzarote Convention (*Council of Europe Treaty Series – No. 201*). In Poland, it entered into force on June 1, 2015 (*Journal of Laws*, 2015). In the Preamble it was noted that “[...] the sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies (ICTs)” and that “preventing and combating such sexual exploitation and sexual abuse of children require international co-operation”. As stipulated in Article 1, the Lanzarote Convention aims at: preventing and combating sexual exploitation and sexual abuse of children; protecting the rights of child victims of sexual exploitation and sexual abuse; and promoting national and international co-operation against sexual exploitation and sexual abuse of children. According to a definition provided for in Article 3, for the purposes of the Lanzarote Convention, a child means any person under the age of 18 years.

Sexual exploitation and sexual abuse of children are defined as including the behavior stipulated in Articles 18 to 23 of the Lanzarote Convention. With reference to the sexual abuse, Article 18, paragraph 1 provides that the Parties “shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalized: (a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities; (b) engaging in sexual activities with a child where: use is made of coercion, force or threats; or abuse is made of a recognized position of trust, authority or influence over the child, including with the family; or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence”. According to paragraph 2 of Article 18, the Parties “shall decide the age below which it is prohibited to engage in sexual activities with a child”. Additionally, what should be noted, pursuant to paragraph 3, the provisions on engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities, “are not intended to govern consensual sexual activities between minors”. In Article 22 of the Lanzarote Convention, the Parties undertook to “take the necessary legislative or other measures to criminalize the intentional causing, for sexual purposes, of a child [...], to witness sexual abuse or sexual activities, even without having to participate”.

In the current Polish Penal Code of 1997 (*Journal of Laws*, 1997), the offense of sexual intercourse with a minor is penalized in Article 200. According to § 1, “Anyone who engages in a sexual intercourse or another sexual activity with a minor under the age of 15, or causes the same to submit to or to perform such activity, shall be liable to imprisonment for a term going between 2 and 12 years”. The provision of Article 200 § 1 protects a minor not only against a sexual intercourse, but also against another sexual activity. It is stressed in the literature (Hypś, 2018), that it introduces an absolute prohibition on engaging in any sexual activity with a child under the age of 15.

Pursuant to § 3 of Article 200, “Anyone who presents pornographic content to a minor under the age of 15 or provides him or her with objects of such nature or disseminates pornographic material in a manner allowing such a minor to become familiar with it shall be liable to imprisonment for a maximum term of 3 years”. The same penalty shall be imposed “on anyone who, for the purpose of obtaining his or her own sexual gratification or that of another person, presents the performance of sexual activity to a minor under the age of 15” (§ 4) as well as “on anyone who advertises or promotes the act of disseminating pornographic material in a manner allowing a minor under the age of 15 to become familiar with it” (§ 5).

One more provision that should be mentioned is Article 199 of the Penal Code, referring to an abuse of a relationship of dependency. According to § 1, “Anyone who, by abusing a relationship of dependency or taking advantage of a critical situation, causes another person to engage in sexual intercourse or to submit themselves to, or to perform another sexual activity, shall be liable to imprisonment for a maximum term of 3 years”. Pursuant to § 2, if the said act “has been committed to the detriment of a minor, the offender shall be liable to imprisonment for a term going between 3 months and 5 years”. Finally, as stipulated in § 3, the same penalty “shall be imposed on anyone who engages in a sexual intercourse or another sexual activity with a minor or who causes a minor to submit to or to perform same, by an abuse of trust or by giving or promising him or her a financial or personal benefit in exchange”.

The current wording of Article 200 and § 3 of Article 199 of the Penal Code was introduced by an amending act of 2014 (*Journal of Laws*, 2014). In the Explanatory Memorandum to a government bill, among the law’s purposes, bringing Polish criminal regulations into conformity with the provisions of the Lanzarote Convention was noted, along with organizing regulation of the Penal Code by changing the systematics of provisions and more accurate description of the elements of certain crimes. Regardless of the ongoing debates over the wording and legitimacy of the introduction of the provision of Article 199 § 3 (Warylewski, 2016; Bielski, 2017; Marek, 2010), it should be emphasized that the provisions of the Penal Code fulfill the obligations of protecting minors from sexual exploitation, resulting from 1989 and 2007 Conventions.

### **3. International provisions on grooming**

Grooming is regulated by the provisions of the Lanzarote Convention. In Article 23 thereof, titled “Solicitation of children for sexual purposes”, the Parties agreed to “take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of and adult to meet a child”, for the purpose of engaging in sexual activities or producing child pornography, “against him or her, where this proposal has been followed by material acts leading to such a meeting”. Furthermore, in Article 24, the Parties obliged themselves to take the necessary legislative and other measures to establish as criminal offences, when committed intentionally, aiding or abetting the commission (paragraph 1), as well as attempts to commit (paragraph 2) the said offence.

According to Article 27, paragraph 1, of the Lanzarote Convention, the Parties shall take the necessary legislative or other measures to ensure that the offence is punishable by effective, proportionate and dissuasive sanctions, taking into account its seriousness, whereas the sanctions shall include penalties involving deprivation of liberty which can give rise to extradition.

### **4. Polish provisions on grooming**

In the Polish Penal Code, prohibition on establishing a contact with a minor is provided for in Article 200a. According to its § 1, “Anyone who, for the purpose of committing the offence specified in Article 197 § 3 subparagraph 2 or Article 200, as well as for the purpose of producing or preserving pornographic materials, establishes contact with a minor under the age of 15 via an information system or telecommunications network, with the purpose of meeting him or her by misleading him or her, exploiting his or her error or incapacity to properly understand the situation, or by using unlawful threat, shall be liable to imprisonment for a maximum term of 3 years”. The referenced provision of Article 197 concerns a rape against a minor under

the age of 15. According to Article 197 § 3: “If the offender commits a rape [...] 2) against a minor under the age of 15, [...] he or she shall be liable to imprisonment for a minimum term of 3 years”. Whereas the Article 200 penalizes, as already mentioned above, the following: engaging in a sexual intercourse or another sexual activity with a minor under the age of 15, or causing the same to submit to or to perform such activity (§ 1); presenting pornographic content to a minor under the age of 15 or providing him or her with objects of such nature or disseminating pornographic material in a manner allowing such minor to become familiar with it (§ 3); presenting the performance of a sexual activity to a minor under the age of 15, by anyone for the purpose of obtaining his or her own sexual gratification or that of another person (§ 4); as well as advertising or promoting the act of disseminating pornographic material in a manner allowing a minor under the age of 15 to become familiar with it (§ 5).

According to § 2 of Article 200a of the Polish Penal Code, “Anyone who, via an information system or telecommunications network, offers a minor under the age of 15 to engage in sexual intercourse, to submit to or to perform another sexual activity, or to participate in the creation or preservation of pornographic material and takes steps to give effect to such offer, shall be liable to a fine, community sentence or imprisonment for a maximum term of 2 years”.

Article 200a was introduced to the Polish Penal Code by an amendment of 2009 (*Journal of Laws*, 2009) and entered into force on June 8, 2010. The proposal to add the said provision, as Article 202a (pornography), was included in a government bill dated October 31, 2008. The Explanatory Memorandum to the bill noted that the purpose of the proposed law was primarily to increase the criminal liability of those committing sexual offences against minors under the age of 15. With regard to the proposed (at that time) Article 202a it was noted that the introduction of that new type of offense had resulted from the necessity to adjust the Polish law to the provisions of the Lanzarote Convention. Nonetheless, as it was raised, the adjustment of the Polish law to the requirements of the Convention was dictated not only by the planned ratification, but – above all – by the need to ensure an effective fight against offences of sexual exploitation of minors. As it was stressed, this could be achieved by an appropriate response to the emerging phenomena associated with the use of new information and communication technologies.

The Explanatory Memorandum cited Article 23 of the Lanzarote Convention, emphasizing that the proposed provision of the Penal Code was modeled thereon. It was also stressed that the referenced provision of the Lanzarote Convention was the first international law attempt at responding to the increasing phenomenon of sexual exploitation of children by adults, by contacting children through communication technologies and ultimately leading to encounters with them. As stated, “This phenomenon, known as »grooming«, involves encouraging a child to participate in a sexual activity, e.g. by promising a reward, discussing intimate behaviors, presenting pornographic content in order to overcome the resistance or inhibitions regarding the sexual sphere. Sexual exploitation of a child in the context of »grooming« can take different forms, including also exploitation for pornographic purposes”.

With regard to the conformity of the proposed provision with the Lanzarote Convention it was noted that all the elements of Article 23 were reflected in the Article 202a of the Penal Code. As emphasized, the proposed provision was also expanded to include an act not provided for in the Lanzarote Convention, consisting in committing a rape against a minor under the age of 15 (Article 197 § 3 (2) of the Penal Code). Therefore, the protection granted by the regulation goes beyond international obligations.

Ultimately, the proposed provision was introduced to the Polish Penal Code as Article 200a (right after the article penalizing sexual intercourse and sexual activity with a minor under the age of 15) and it fully implements the Polish obligation to penalize grooming resulting from the Lanzarote Convention.

When it comes to statistics (<https://statystyka.policja.pl>), the number of grooming offences ascertained by the Police in 2020 was 456, compared to 423 in 2019 and 475 in 2018. The rates of detectability ranged from over 80% in 2012, 2013 and 2015 to just above 61% in 2011. In 2020, which is the most current year with the available data, the rate amounted to 69.2%.

## 5. Summary and conclusions

Transnational criminal law, suppressing crime that transcends national frontiers and defined as “the indirect suppression by international law through domestic penal law of criminal activities that have actual or potential trans-boundary effects” (Boister, 2003), “consists of (a) horizontal treaty obligations between states and (b) the vertical application of criminal law by those states to individuals in order to meet their treaty obligations” (Boister, 2003). New transnational crimes, provided for in suppression conventions, have been emerging, as a consequence of increasing globalization accompanied by the development of information and communication technologies, combined with the desire of international community to co-operate on preventing and prosecuting such conduct. One of such crimes, directly connected to the sexual exploitation and abuse of children, and already addressed by international community, is grooming.

Article 23 of the Lanzarote Convention obliged its Parties, including Poland, to penalize grooming in their domestic legal orders. The Polish legislator fulfilled its duty, by introducing Article 200a to the Polish Penal Code. All the necessary elements of the international regulation were reflected in the national provisions, whereas the protection granted minors thereby have gone beyond requirement provided for in the Lanzarote Convention.

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