

Legal Developments as to "Cyber Grooming" Actions from the Lanzarote Convention to Now

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According to statistics, internet users have been increasing rapidly, especially since the COVID 19 pandemic. Nowadays, gaming platforms, chat platforms, and video conferencing applications are not only for grownups but for children as well. Minor users, encouraged for educational purposes, are particularly often the target of cybercrimes. One such offense is approaching a child through information and communication technology for sexual purposes, known as cyber-grooming. The act is a solicitation of minors using various techniques. Commonly, the first stage of criminal behaviour is an online conversation between the perpetrator (groomer) and the victim (child). In the second stage of the crime, the perpetrator aims to contact the target physically in person. Even though this is a new type of criminal behaviour, there are already international and national criminalization norms in place to penalize it. The Lanzarote Convention is the first international legal document to refer to these actions as crimes. Aiming to protect children from sexual exploitation and sexual abuse, the Convention sets out some responsibilities to signatory States. Despite being one of the signatories of the Lanzarote Convention, the aforementioned acts are not considered a separate crime in Türkiye. For that reason, this study will first bring examples of criminalization, and then evaluate the situation in Turkish law. This study seeks to make the issue visible and suggests providing measures to prevent the sexual exploitation of minors by taking the necessary legislative steps.

Keywords: Cybercrimes; Cyber grooming; Lanzarote Convention; Solicitation of children for sexual purposes; Sexual violence against children.

Introduction

The Convention on the Rights of the Child (CRC), adopted by the United Nations in 1990, is the most comprehensive document outlining the rights of children. It serves as the Magna Carta for safeguarding children's rights, encompassing a wide range of substantive rights and providing guidance on implementation measures. The CRC, along with its Optional Protocols, particularly the Protocol on child slavery, child prostitution, and child pornography¹, offer crucial guidance in promoting and protecting children's rights regarding online sexual exploitation and abuse. These instruments emphasise the

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¹OPSC 2022.

need for comprehensive measures, encompassing legislation, policies, and educational initiatives, all driven by the best interests of the child. They also advocate for the recognition and support of children's evolving autonomy and agency, while ensuring their protection from violence and discrimination.² However, this is not sufficient in terms of determining the measures that can be taken in the face of the transition of the types of abuse children are exposed to from the physical world to the cyber world, due to the advancement of technology.

Cyber grooming is a sexual offense against children as well as a cybercrime. Concerning cybercrime, there are two classifications based on the purpose for which a computer is used and against whom/what it is used. The computer can be the target (e.g., hacking) or the weapon used to commit material or financial crimes (e.g., credit card fraud). As to the second category (against whom/what), it is stated that there are three options regarding property, government, and individuals. While examples of cyber-crimes committed against property are stealing and robbing, crimes against the government are defined as cyber terrorism. Examples of cyber-crimes against individuals are cyberstalking, distributing pornography, trafficking, and online sexual grooming of minors.³ In terms of these classifications, we can put cyber grooming, which is a cybercrime, into the category of crimes against individuals for whom the computer is used as a tool. In terms of Turkish Law, it should be noted that crimes against property are the sub-title for crimes against individuals.⁴

When we consider cyber grooming actions as sexual offenses against children, it is necessary to determine the legal nature of the matter. Observing how governments regulate the offense in question, and under which heading, can provide some ideas. In some countries, this offense has been treated as a crime against the family stability and public morality (e.g., Belgium), while in others, it falls under crimes against individuals (e.g., Italy). Additionally, in some countries, it is considered as a part of sexual offenses committed against children (e.g. France). The protection of the child's physical and psychological integrity should indeed be the primary focus when it comes to preventing the perpetration of such crimes and developing mechanisms. Therefore, categorising these offenses solely as crimes against the family and public morality may have its drawbacks. It is

²Netkova & Mustafa (2021) at 112, 115.

³Nandan (2021) at 2414-2415.

⁴The Turkish Penal Code No. 5237 consists of two books: Volume I including "General Provisions" and Volume II "Special Provisions". Special provisions in which crimes are regulated are again divided into subcategories within themselves. In the Special Provisions book, *Chapter II is titled "Offences Against the Person"* and is divided into ten subcategories. These; Part 1 Offences against Life, Part 2 Offences Against Physical Integrity, Part 3 Torture and Torment, Part 4 Breach of the Duties of Protection, Observation, Assistance, and Notification, Part 5 Illegal Abortion, Miscarriage, and Sterilization, Part 6 Offences against Sexual Integrity, Part 7 Offences Against Liberty, Part 8 Offences against Dignity, Part 9 Offences Against Privacy and Confidentiality, *Part 10 Offences Against Property*. For more regarding crime category of sexual offences in Türkiye see Hafizoğulları & Özen (2021) at 155.

crucial to prioritise the well-being and safeguarding of children in any approach taken to prevent and address these offenses⁵.

The fact that the crime deals with the adult perpetrator's communication with the minor using the information and communication technologies (ICT) with the intention of physically meeting is likened to the punishment of sexual abuse at the preparatory stage.⁶

In this study, firstly, cyber grooming offenses will be examined as the preparatory stage for the sexual exploitation of children, followed by an assessment of regulations and the impact of the Lanzarote Convention on the subject matter. Finally, the situation in Turkish law will be evaluated.

Criminalising Cyber Grooming Actions

Grooming Actions as a Preparatory Stage of Sexual Abuse

While “The term “grooming” refers to the preparation of a child for sexual abuse, motivated by the desire to use the child for sexual gratification,”⁷ this kind of sexual abuse could be a material or online solicitation of children. Cyber grooming refers to online solicitation.

The traditional presumption that sexual predators target victims in playgrounds, schools⁸, or local neighbourhoods, a phenomenon traditionally defined as "grooming," is being challenged. With the advent of the Information Age, children can now be emotionally seduced, pursued, and manipulated virtually from the safety of their own homes.⁹

The titling of the chapter in favour of the view that grooming offenses are preparatory acts reflects the prevailing and well-intentioned perspective. However, it is necessary to clarify that some grooming offenders do not have the ultimate objective of physical contact. Hence, it is important to regulate grooming offenses as an independent crime. Moreover, there is evidence indicating that grooming is inherently harmful. Therefore, another aspect undermining the general argument is

⁵In research studies where victimology examines sexually abused children, incidents occurring within the family are also included as examples. Such as Finkelhor (2008) at 74: “Another example is the observation from the literature on sexual abuse that sexually abused young children manifest sexualised behaviour. *Victimization: A father repeatedly puts his 6-year-old girl on his lap and bounces her against his naked penis until he ejaculates. * Appraisal: “I make Daddy happy and he treats me like I’m special when I touch his penis.” *Task application: Getting affectional needs met from adults. *Coping strategy: “I offer to touch Daddy’s penis and the sexual parts of others when I want them to be nice to me.” *Environmental context: Variable; others may either reinforce or be alarmed by this behaviour.”

⁶Rutai (2020) at 26; Ost (2009) at 32; Coetzee (2023) at 4. The author suggests that defining grooming as a preparatory of sexual abuse causes a dilemma, namely that sexual grooming is seen as only "preparatory" to an offense or a sexual act and not as an offense or a sexual act in itself.

⁷Explanatory Report – CETS 201 – Protection of Children against Sexual Exploitation and Sexual Abuse, 23.-156, p. 23. <https://rm.coe.int/16800d3832> Retrieved June 10, 2023, from

⁸“Educator sexual predators” as an offender of grooming, see Coetzee (2023) at 18 ff.

⁹Hui, Xin & Khader (2015) at 40.

the assumption that preparatory offenses are often innocuous or devoid of victims.¹⁰

Research demonstrates that the occurrence of online grooming does not follow a linear progression, but rather unfolds through a dynamic process propelled by the offender's motivations and capabilities, as well as their proficiency in manipulating and exerting emotional-psychological control over the victim. The ultimate objective of online grooming is to engage in abusive sexual exploitation of the victim, which may manifest in various forms such as manipulating or coercing the victim into producing and transmitting sexually explicit images or videos to the perpetrator or arranging offline encounters with the victim for the purpose of committing sexual abuse against them.¹¹ For certain individuals, the dominant and exclusive fixation in their minds is the ultimate objective of exerting control over a child to the extent of coercing a meeting and subjecting the child to acts of perverted sexual abuse, while some perpetrators possess no interest other than engaging in 'chat'¹² conversations with children while assuming the persona of a child or adolescent. The exhilaration derived from interacting with a child regarding matters and interests relevant to childhood adequately satiates the perpetrators' desires and fuels their fantasies.¹³

According to Finkelhor's 'Precondition Model' of child sexual abuse, the perpetrator goes through four stages prior to committing acts of sexual abuse. These four preconditions of sex abuse are 1. "Motivation to sexually abuse a child", 2. "Overcoming the individual's inhibitions", 3. "Surmounting any external obstacles to committing the abuse", 4. "Overcoming the child's resistance." Finkelhor's second, third, and fourth prerequisites are the successful grooming actions that may be facilitated.¹⁴

Lanzarote Convention and EU Strategy for the Fight against Online Exploitation

Considering the longstanding priority of the international community in combating the sexual abuse of children, it is expected that some punitive measures would be taken in this regard. At the European level, this has recently led to the development of the Lanzarote Convention¹⁵ by the Council of Europe and the Directive¹⁶ submitted by the European Parliament and of the Council.

¹⁰See also Sorell (2017) at 706.

¹¹Selladurai (2022) at 759.

¹²See McMahon & Kirley (2019) at 60 ff.: The author sets forth that perpetrators of sexual offenses have attempted to evade accountability by employing coded emoji as slang or digital vernacular, which conceals the true intention of their online interactions with potential victims. Such cases pose novel challenges for criminal justice systems.

¹³Powell (2007) at 117.

¹⁴Ost (2009) at 32 ff.; Ward, Beech & Polazchek (2008) at 294 ff.

¹⁵Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No.201), hereinafter the "Lanzarote Convention", was adopted and opened for signature on 25 October 2007 in Lanzarote, Spain. The State Parties to the Lanzarote Convention are therefore: Albania, Andorra, Austria, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania,

The Lanzarote Convention is the first international instrument to criminalise the solicitation of children for sexual purposes by ICT.¹⁷ Grooming acts are “new”¹⁸ in that the crime is mainly committed through ICT, and “old”¹⁹ in that it is a type of sexual exploitation of children. For this reason, the approach of the Lanzarote Convention has been chosen as a reference point to distinguish it from similar acts of abuse.

According to article 23 “*Solicitation of children for sexual purposes*”

“Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18²⁰, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20²¹, paragraph 1.a, against

Luxemburg, Malta, Republic of Moldova, Monaco, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tunisia, Türkiye and Ukraine. Retrieved June 10, 2023, from “<https://www.coe.int/en/web/children/lanzarote-convention>”

¹⁶DIRECTIVE 2011/92/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.

¹⁷Council of Europe – *Opinion on Article 23 of the Lanzarote Convention and its explanatory note Solicitation of children for sexual purposes through information and communication technologies (Grooming)* - Adopted by the Lanzarote Committee on 17 June 2015, p. 9; De Felice (2017); Netkova & Mustafa (2021) at 117.

¹⁸Kool (2011) at 48.

¹⁹Ost (2009) at 25.

²⁰Article 18 – Sexual abuse -

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised: *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 recognised position of trust, authority or influence over the child, including within 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.*

2. ***For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.***

3. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

²¹Article 20 – Offences concerning child pornography

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalized: *a. producing child pornography; b. offering or making available child pornography; c. distributing or transmitting child pornography; d. procuring child pornography for oneself or for another person; e. possessing child pornography; f. knowingly obtaining access, through information and communication technologies, to child pornography.*

2. For the purpose of the present article, the term “child pornography” shall mean 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 primarily sexual purposes.

3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material: – consisting exclusively of simulated representations or realistic images of a non-existent child; Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – involving children who

him or her, where this proposal has been followed by material acts leading to such a meeting."

It could be briefly stated that Art. 23 covers the unlawful acts leading to the sexual abuse of a child who has not reached the legal age for consensual sexual activities (Article 18§1.a) as well as the production of child pornography (Article 20§1.a). With the opinion report prepared in 2015, an important issue came to the fore in terms of the article's interpretation. According to the report, the solicitation of children by information and communication technologies does not necessarily lead to a face-to-face encounter.²²

Under the Lanzarote Convention, the signatory states were specifically obligated to create a criminal offense that would allow the legal pursuit of the concerning behaviour commonly referred to as "child grooming." This pertains to the act of enticing minors, predominantly using the internet, with the purpose of committing sexual abuse or producing child pornography.²³

Considering the regulations of the signatory states, it should be noted that the group of crimes where grooming crimes are regulated, and the legal age for sexual activities vary.

The act of grooming is regulated in some states among crimes against persons (e.g., Italian Penal Code 609-undecies), in some states, among crimes against family well-being and public morality (e.g., Belgian Penal Code 377-quater), and in some states in the section of sexual crimes against children (e.g., French Penal Code 227-22-1). This is due to the fact that crime regulations seek to balance freedom with protecting children. According to our belief, the regulation of the offense in question among crimes against individuals is appropriate. What matters is the protection of the child as an individual. The psychosexual development of the minor should also be taken into consideration. In this context, the following is argued in the doctrine regarding the Italian regulation: According to some scholars, Italian Penal Code Article 609-undecies safeguards the "freedom of self-determination of the individual, particularly in terms of sexual freedom and the unrestricted expression of one's will." Conversely, other scholars argue that the protected legal interest of the offense is the "freedom and balanced psychosexual development of the minor." As stated in the Italian doctrine, the latter perspective more accurately captures the essence, as it values the essential core of disvaluing present in the crimes encompassed by the specific intent of the offense. Although these crimes differ, they all aim to foster forms of abuse and exploitation that seriously endanger the delicate development of the minor's personality, which inevitably includes experiences of a sexual nature. Moreover, the Preamble to the Lanzarote Convention explicitly refers to the fact that the exploitation of minors

have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.

4. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f

²²Council of Europe.

²³Vizzardi (2015) at 2.

and the commission of sexual abuse against them are "destructive to children's health and psycho-social development."²⁴

As mentioned before regarding criminalisation of grooming offenses, legal age of sexual activity varies from 13 (e.g., Romanian Penal Code art. 222²⁵) to 16 (e.g., Italian Penal Code 609-undecies). Sexual actions between peers should be evaluated. In Italy, there is a view related to the issue. It should be stated that in Italy there is an article related to the perpetrator who cannot plead, as an excuse, ignorance of the age of the offended person (Article 609-sexies). According to the Italian view, the offense encompasses actions committed against minors under the age of fourteen, despite the Lanzarote Convention referring to minors who have not reached the age to provide valid consent in sexual matters, which, in the Italian legal system, applies to minors under the age of fourteen. There is an exception for acts carried out between peers or nearly same-aged individuals, as stated in Article 609 quarter, paragraph 3. The extension of liability to minors between the ages of pre-fourteen and pre-sixteen is likely to give rise to misleading interpretations, especially in cases where the groomer, though employing deception or enticement, aims to engage in consensual sexual acts with a fifteen-year-old minor. In such cases, the groomer ultimately pursues lawful intentions that are unrelated to the specific intent described in the offense under Article 609-undecies. The perceived risk is that, concerning minors in this age group, the crime of "grooming" may, in practice, become a means to punish forms of "seduction through deception" targeted at minors, even when the eventual consummated sexual relationship does not satisfy any of the elements that should support the specific intent described in the criminal provision. The judge must always establish that the offender acted with will to commit one of the expressly referenced sexual offenses in the criminal provision and that the grooming conduct of the perpetrator constitutes an actual preparatory action for such offenses.²⁶

In addition to the criminalisation of grooming offenses by the signatory states, the provisions introduced by the Directive should also be examined. In this context, Article 6 of the Directive, titled "*solicitation of children for sexual purposes*," carries a similar intent and states: "*Member States shall take the necessary measures to ensure that the following intentional conduct is punishable.*" The Directive 2011/92/EU being more recent, concretises additional criteria related to the offense with a punishment of at least 1-year imprisonment (art. 6). After that biggest step relating to the issue is a proposal (*European Commission, Proposal for Regulation, 2022*,²⁷) at the EU level. There is an explanation set forward in the reasons for and objectives of the proposal title titled of the document that "*it is clear that the EU is currently still failing to protect children from falling victim to child sexual abuse, and that the online dimension represents a particular challenge. Therefore, on 24 July 2020, the European*

²⁴Vizzardi (2015) at 5.

²⁵For more related Romanian regulation; Moise (2015) at 150 ff.

²⁶Vizzardi (2015) at 3.

²⁷Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse (hereinafter "proposal") Retrieved June 10, 2023, from - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:209:FIN>; see more at Tolbaru (2022).

Commission adopted the EU Strategy for a More Effective Fight against Child Sexual Abuse”

As it is stated in the text the proposal aims to ensure that relevant online service providers established in the EU and in third countries effectively detect, remove, and report both previously-known and new instances of child sexual abuse material and grooming. The scope of the proposal encompasses the material itself, specifically child sexual abuse material and grooming, while the personal scope focuses on the online service providers responsible for addressing this issue. Technology not only increases the dangers but also enhances the solutions.²⁸ Detection technologies have reached a significant level of accuracy, as indicated by various sources, although human supervision and assessment are still essential. Over time, indicators of 'grooming' have become increasingly reliable as algorithms continue to be studied and improve.

Outside the EU Orbit

A new offense category was introduced in the Sexual Offences Act of 2003 (SOA) in England and Wales, which also applies to Northern Ireland. Section 15 of the Act criminalises the act of 'meeting a child following sexual grooming'. This offense encompasses interactions that occur online, through technologies such as mobile phones, as well as in the physical world. Several countries are adopting the UK's approach and enacting legislation against grooming behaviour. For instance, New Zealand recently included sexual grooming as an offense in the Crimes Amendment Act of 2005. In the USA, it is considered an offense to electronically transmit information about a child aged 16 or under for the purpose of committing a sexual offense. Similar restrictions exist in the Australian Criminal Code and the Canadian Criminal Code. However, the legislation in the UK differs in that the offense of sexual grooming applies to both new technologies, including the Internet and mobile phones, as well as interactions in the physical world. In contrast, legislation in other countries only addresses electronic grooming conducted via the Internet and mobile phones.²⁹

The publication of Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse ("Voluntary Principles") was announced on March 5, 2020, by Australia, Canada, New Zealand, the United Kingdom, and the United States. These countries introduced 11 voluntary principles as online measures that companies in the technology industry can choose to adopt. The aim is to safeguard children who utilise their platforms against online sexual abuse and to enhance the difficulty for child sex offenders to exploit these platforms.

By setting new standards within the private sector, the Voluntary Principles ensure that child safety is integrated throughout a company's operations, giving

²⁸(news)“How Artificial intelligence Stop Cyber Grooming Before the Damage Is Done” Retrieved June 10, 2023, from <https://www.reuters.com/brandfeature/tbd-media-group/50-leaders-of-change/how-artificial-intelligence-stop-cyber-grooming-before-the-damage-is-done>

²⁹Davidson & Gottschalk (2011) at 26.

proper consideration to the needs of victims and survivors. According to Principle 3: “Companies seeking to identify and combat preparatory child sexual exploitation and abuse activity, such as online grooming for child sexual abuse, take appropriate action under their terms of service, and report to appropriate authorities.”³⁰

Solicitation of Children for Sexual Purposes through Information and Communication Technologies in Turkish Law

Türkiye signed the Convention on 25/10/2007, ratified it on 07/12/2011, and it entered into force on 01/04/2012. However, grooming offenses have not yet been explicitly regulated as a crime in Turkish law³¹.

In Turkish Law, it is observed that the acts of grooming actions are often considered as sexual harassment in judicial decisions³², since not being regulated as a separate offense. This is because when there is no physical contact involved, the offense that comes into play within the category of sexual offenses³³ is the offense of sexual harassment³⁴ and the victims of the offense can be both adults and children.

Sexual harassment is regulated under Article 105 of the Turkish Penal Code (TPC) as “*a person who sexually harasses another person, upon the complaint of the victim, shall be sentenced to imprisonment for a period of three months to two years, or a judicial fine. If the act is committed against a child, the sentence shall be imprisonment for a period of six months to three years*”. TPC Article 105’s preamble also defines sexual harassment as “sexual behaviours that do not constitute a violation of a person's bodily integrity.”³⁵

If we compare acts of sexual harassment with similar acts that do not involve physical contact, in this case, we need to consider two possibilities. Firstly, in terms of acts that disturb individuals through communication devices, a comparison can be made between Articles 105 and 123 of the TPC. According to

³⁰Zagaris (2020).

³¹Similarly, Bosnia and Herzegovina do not have a comprehensive criminal regulation applicable across all its territories. However, it should be noted that a specific provision has been enacted in Republika Srpska for the prosecution of online grooming offenses, see Kazic-Cakar (2021) at 177.

³²Decision no. 2013/3391-2014/14781 dated December 23, 2014, the 14th Criminal Chamber of the Court of Cassation: “*In the case where the defendant contacted the 8-year-old victim through the internet, deceived the victim by presenting themselves as an 11-year-old girl, engaged in sexually explicit conversations, and convinced the victim to undress in front of the camera, the defendant should have been punished under Article 105/1 of the Turkish Penal Code (TPC) due to the non-physical nature of the act.*”

³³For more regarding the category of sexual offenses in Turkish Criminal Law see Taner & Gökçen (2023).

³⁴Koca & Üzülmöz (2022) at 432.; Bayraktar, Keskin Kızıroğlu, Yıldız, Memiş Kartal, Altunç, Bostancı Bozbayındır, Erman, Eroğlu Erman Kurt & Sınar (2020) at 561; Artuk, Gökçen, Alşahin & Çakır (2022) at 408.

³⁵See Baş (2016) at 1159 ff.; It is problematic that these statements are included in the preamble without being present in the article itself. The article does not contain a provision stating that there should be no violation of bodily integrity, nor does it focus on the perpetrator's behavior but rather on their intention.

Article 123 of the TPC: "If someone persistently disturbs another person's peace and tranquillity by making phone calls, creating noise, or engaging in any other unlawful behaviour with the same intention, upon the complaint of the victim, the perpetrator shall be sentenced to imprisonment for a period of three months to one year." While the acts mentioned in Article 105 of the TPC also disturb the peace of individuals, they are distinct from the other offense due to their involvement of sexuality. Another similar offense is regulated under Article 225 of the TPC, titled "Indecent Acts." According to this article, a person who engages in public sexual intercourse or exhibitionism shall be sentenced to imprisonment for a period of six months to one year. This article specifically intersects with acts involving the exhibition of the perpetrator's sexual organ. In determining the elements of these two offenses, it is taken into consideration whether the act was committed privately or publicly.³⁶

The commission of sexual harassment "by taking advantage of the convenience provided by postal or electronic communication tools" is regulated as an aggravated circumstance under Article 105/2-d of the TPC, which entails a higher penalty. However, this aggravated circumstance does not provide a suitable regulation for cases of virtual sexual exploitation of children. In legal doctrine, it has been argued that this circumstance cannot be applicable in situations where the victim does not have the option to resist or reject a sexual message and that it cannot apply to consensual communication. However, the grooming act of children often involves situations where the child is initially involved with consent but later manipulated and sexually abused, making Article 105/2-d inapplicable.³⁷

Conclusion

It is possible for grooming acts, which fall under the category of cybercrimes and sexual offenses against children, to be mistaken for harmless communication behaviours. Therefore, it is important to establish specific criteria in their acts to define the elements of the offense.

At the European Union level, the process initiated by the Lanzarote Convention aims to firstly define grooming acts as an independent offense. Subsequently, efforts have been made to ensure that such offenses are not punished with penalties below a certain threshold, and ultimately, to establish effective monitoring of technological developments in communication tools used in the commission of these crimes. Outside the EU there are joint cooperations such as the publication of Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse ("Voluntary Principles").

The signatory countries of the Lanzarote are working on incorporating the offense into their domestic laws. Although Türkiye is a party to the Convention, grooming acts are not recognised as an independent offense in Turkish law.

³⁶Bayraktar, Keskin Kızıroğlu, Yıldız, Memiş Kartal, Altunç, Bostancı Bozbayındır, Erman, Eroğlu Erman, Kurt & Sınar (2020) at 562-563.

³⁷Can (2022) at 130; Aksoy Retornaz (2022) at 227.

Indeed, since these acts lack physical contact, they are evaluated under the offense of sexual harassment, as there is no separate provision for grooming in cases where there is no physical contact involved. The Turkish Penal Code (TPC) considers the presence or absence of physical contact as a fundamental criterion in crimes related to sexual integrity. However, this criterion alone may not always be enough to determine the gravity of the injustice, especially considering the advancements in technology today. Given that virtual behaviours lack physical contact, it is essential to specifically address the actions conducted in virtual environments that target children. The existing provision of sexual harassment (Article 105) in the TPC is insufficient to adequately address the severity of the injustice in such cases. In terms of sexual offenses, actions involving physical contact are subject to more severe penalties. However, it should be considered that even in environments such as the child's safest spaces like home, school, etc., online grooming behaviours can occur, and the harm caused by such crimes must be considered. In Türkiye, this crime has not yet been regulated. This deficiency should be seen as an opportunity to follow previous developments. When making regulations, the laws of states that explicitly define grooming as a crime, international advisory reports, and judicial decisions should be considered. Therefore, it is essential that the state, as a party to the convention, encourages the use of artificial intelligence software capable of detecting grooming actions, which would be significant in preventing crime. Determinedly, it would also be appropriate to clearly define the approach to actions among children of similar ages and the measures to be taken in cases of mistaken age.

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