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## EXPLOITATION OF CHILD FOR THE PORNOGRAPHY: A CRIME VIOLATING CHILDREN'S RIGHTS OR SOCIETY'S MORALITY?"

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### ABSTRACT

It is not enough to regulate a criminal responsibility for the exploitation of a child for the pornography. It is of great importance – the way how such kind of prohibition is “put” into the law. At the moment there exists a particular ambiguous situation: on the one hand, exploitation of a child for the pornography in several countries is a crime violating children's interests, while on the other hand, it is an attempt to infringe the society's morality in others. Such a situation does not reflect those legal values (the object of a crime) which are offended while exploiting a child for the pornography and does not guarantee a more comprehensive security of children's interests.

The article provides the general overview of the problem of child pornography, also gives the description of the object as one of the compulsory part of the composition of a crime or criminal offence in the theory of criminal law. Comparing different models while regulating the question analysed in various countries, also evaluating the provisions of international acts, the article is concluded with the statement that criminal responsibility for exploiting a child for the pornography should be stated in the chapter of the Criminal Code where all crimes against child or interests of the family are criminalized.

**KEYWORDS:** child, child pornography, exploitation, morality.

### *Overview of the problem*

The rising number of sexual crimes against children facilitated the growth of a special interest in the topic of child pornography. Such a concern is reflected in the legislative acts which were adopted or being planned to be enacted. Over the past ten years, various legal mechanisms for the protection of children rights have been adopted. One of the most important legal instruments is the recognition of the right to accessible and effective remedies. This right is established in international human rights instruments<sup>1</sup> and further

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<sup>1</sup> COUNCIL FRAMEWORK DECISION 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13/44, 2004; COUNCIL OF EUROPE, Convention on

elaborated in the jurisprudence of various treaty monitoring bodies. A closer glimpse to the recently adopted statutory instruments shows the willingness and means of the legislator to tackle the problem of sexual exploitation of children. The phenomenon of the exploitation of children for the pornography, as one of the form of sexual exploitation of children, became one of the most topical issue both on the national and international dimensions. Nevertheless, in the sphere of exploitation of a child for the pornography one could easily notice the lack of academic research in this field. The problems, however, did not remain unnoticed and have been discussed by practicing criminal lawyers<sup>2</sup>. Again, such a situation confirms the need for a more comprehensive research, concrete strategy and in-depth analysis of the topic.

In March 2010, the European Commission adopted two proposals for Directives aiming at reinforcing the framework for protection of some of most vulnerable children, those who are victims of sexual exploitation and trafficking<sup>3</sup>. In the area of trafficking it is important that specific needs of children are fully taken into account in further development of trafficking policy notably within the integrated strategy on countering trafficking in human beings which will be adopted in 2012. The well-being of children can only be achieved in a society which is free of violence, abuse and exploitation of children<sup>4</sup>. The Committee on the Rights of the Child addressed this question in its dialogue with State parties and in several General Comments, including the most recent on the Right of the Child to Freedom from all Forms of Violence. Significant political commitments have also

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Cybercrime, Budapest, 23.XI.2001 // <http://conventions.coe.int/Treaty/EN/Treaties/html/185.htm>; COUNCIL OF EUROPE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Lanzarote, 25.X.2007. Council of Europe Treaties Series – No. 201 etc.

<sup>2</sup> Scientists who analyzed this topic mostly should be mentioned: TAYLOR M., QUAYLE E., 2003, *Child Pornography: an Internet Crime*. Bunner-Routledge. Great Britain; FINKELHOR D., 1986, *A Sourcebook of Child Sexual Abuse*. Sage, Newbury Park, Calif; FINKELHOR D., 1994, *Current Information on the Scope and Nature of Child Sexual Abuse*. The Future of Children. Vol. 4. No. 2; TATE T., 1990, *Child Pornography: an investigation*. Methuen, London; BURGESS A. W., CLARK M. L., 1985, *Child Pornography and Sex Rings*. British Journal of Criminology. Volume 25; CREIGHTON S. J., 2003, *Child Pornography: images of abuse of children*. NSPCC; CREIGHTON S. J., 1993, *Organized Abuse: NSPCC Experience*. Child Abuse Review. Vol. 2; LANNING K. V., 2001, *Child Molesters: a behavioural analysis*. For law enforcement officers investigating the sexual exploitation of children by acquaintance molesters. National Centre for Missing & Exploited Children.

<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, Proposal for a Directive on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA. Brussels, 29 March 2010.

<sup>4</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. An EU Agenda for the Rights of the Child. European Commission, Brussels, 15 February 2011.

been made in this field. The agenda agreed upon at the Brazil World Congress against the Sexual Exploitation of Children and Adolescents calls upon States to establish, by 2013, an effective and accessible system for reporting, follow-up and support for child victims of sexual exploitation. Despite these significant developments, many challenges remain<sup>5</sup>.

Questions connected to the exploitation of a child for the pornography are topical because of several reasons. First of all, this crime concerns children – the most vulnerable part of the society. Secondly, the analysis of exploitation of a child for the pornography did not reach the accuracy and a necessary system in a scientific field. Different interpretation of several features of this crime between scientists and practitioners does not allow to foresee and to implement a disciplined and purposeful regulation of criminal responsibility for those persons who exploited a child for the pornography.

#### *Object of the criminal offence in the theory of Criminal Law*

In a broadest sense the general objective of criminal law is to forbid or enjoin conduct by creating offences of commission or omission<sup>6</sup>. It is possible to characterise the criminal law as a system of prohibition and censure. A wide range of conduct can be the basis for criminal offences. There are many diverse conceptions of a crime, each of which reflects a different scientific and ideological viewpoint<sup>7</sup>. In spite of this, criminal law aims at protecting the interests of individuals, collective or public interests, or state interests, by using threats of punishment and by using execution of punishment to make the threat credible. In other words, this could be named as the object of each crime, e.g. those moral values in the society which are protected by criminal law.

The aim of legislature in terms of criminal law is to forbid and prevent the conduct which unjustifiably and inexcusably inflicts or threatens substantial harm to individuals or public interests. A crime is differentiable by the fact that the wrong is deemed to offend against duties owed to society<sup>8</sup>. Talking about the exploitation of a child for the pornography, the main question which arises here is whether a crime undermines children's

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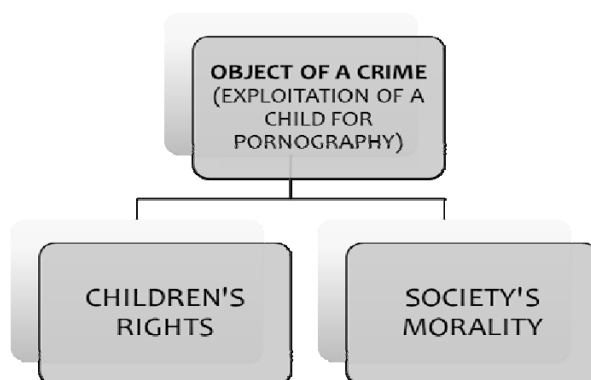
<sup>5</sup> The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents // [http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII\\_Outcome\\_Document\\_Final.pdf](http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf);

<sup>6</sup> WILLIAMS G., 1978, *Text Book of Criminal Law*, London, Stevens & Son, 26.

<sup>7</sup> A formal legal definition of crime, a social harm conception of crime, a cross-cultural universal norm definition, a labelling approach, a human rights approach, a human diversity approach etc. (HERRING J., 2006, *Criminal Law: text, cases and materials*, Oxford, University Press, 31).

<sup>8</sup> *Ibid.*

rights or society's morality? In other words, what do we want to protect while criminalising exploitation of a child for the pornography – children and their rights to normal and healthy development of personality, their right to sexual inviolability, or moral values and norms of ethics of the society are violated?



It is broadly accepted in the theory of criminal law that there are two sides of each crime or criminal offence – one of the external elements, and the other – of internal elements. Sometimes this is called as “architecture of the criminal law”<sup>9</sup>. According to the title of the article the aim is to deal with one of the essential components of a crime, e.g. the object of a crime as one of the external elements will be discussed<sup>10</sup>.

As it was mentioned already, it is possible to describe the object of the crime or of the criminal offence as those societal values, which are protected by criminal law. Criminal law asserts the direct interest exactly in protecting the community from behaviour it has defined as a crime<sup>11</sup>. In other words, the object of a crime represents those social values to which criminal act is directed, i.e. which experiences the damage because of the criminal act committed or which is under the threat because of the offender's conduct. Many scholars of criminal law agree the proposition stated. For example, V. Piesliakas argues that between

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<sup>9</sup> THOMAS C. W., BISHOP D. M., 1987, *Criminal Law – Understanding Basic Principles*, SAGE Publications, 47.

<sup>10</sup> In Common law system countries the traditional way of analyzing crimes or criminal offences is to divide them up into the conduct of the accused (known as the *actus reus* or conduct element) and the state of mind of the accused (the *mens rea* or mental element. In spite of this, in Miller [1983] 2 AC 161, 174 (HL) Lord Diplock suggested that it would be preferable not to use the Latin terminology and refer instead to “the conduct of the accused and his state of mind”. The draft criminal code also avoids the Latin terminology, preferring the terms “external elements” and “internal elements” (HERRING J., 2006, *Criminal Law: text, cases and materials*, Oxford, University Press, 85).

<sup>11</sup> THOMAS C. W., BISHOP D. M., 1987, *Criminal Law – Understanding Basic Principles*, SAGE Publications, 38.

many factors which determine the dangerousness of offender's act, social values and moral norms which are under the threat of the offender's conduct are of major significance<sup>12</sup>. Assessing from the formal point of view, usually those social values which are guaranteed by criminal law are reflected in the title of a certain chapter of the criminal law (Criminal/Penal Codes etc).

### *Two models of regulation*

Different regulation in the laws of many countries, ambiguous perception of which values should be given the priority while protecting a child from being exploited for the pornography makes it complicated to understand the real object of this crime. Criminal responsibility for the exploitation of a child for the pornography is extremely differently stated in criminal laws of foreign countries in terms of the object that legislatures aspire to protect. It is possible to distinguish two clusters of countries according to the *model* of how criminal responsibility for exploiting a child for the pornography is regulated (in which way the crime of child pornography is criminalised):

1) Countries where criminal responsibility for exploiting a child for the pornography is provided in one chapter of a criminal code (having in mind that the main and the direct object of such a crime is the normal development of child's personality and his sexual inviolability);

2) Countries where committing a crime of exploitation of a child for the pornography firstly means violation of society's morality. Criminal codes of these countries could be subdivided further more in details:

- a) Countries where exploitation of a child for the pornography is exceptionally a crime against society's morality;
- b) Countries where criminal responsibility for exploiting a child for the pornography is regulated in the chapter that foresees crimes or criminal offences against society's morality and also the other protected value (for instance, family interests, health etc.).

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<sup>12</sup> PIESLIAKAS V., 2006, Lietuvos baudžiamoji teisė. Pirmoji knyga. Vilnius: Justitia. Such a proposition is also confirmed by Abramavičius A., Akdeniz Y., Archard D., Creighton S. J., Drakšienė A., Finkelhor. D., Gillespie A. A., Itzin C., Muntarhorn V., Quayle E., Rettinger L. J., Seto C. M., Taylor M., Vermeulen G., Williams K. S. etc.

Analysing the *first model countries* these ones as Estonia, France and Germany etc. could be mentioned. In the Criminal Code of Estonia exploitation of a child for the pornography is criminalized in the chapter – “Offences against minors”<sup>13</sup>. Article 177 of Criminal Code (“Use of minors in manufacture of pornographic works”) says that “use of a person of less than 14 years of age as a model or actor in the manufacture of a pornographic or erotic picture, picture, film or other work, and use of a person of less than 18 years of age as a model or actor in the manufacture of a pornographic picture, film or other work is punishable by a pecuniary punishment or up to 5 years' imprisonment”. Whereas article 178 declares that “a person who manufactures, stores, hands over, displays or makes available in any other manner pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in a pornographic situation, or person of less than 18 years of age in a pornographic or erotic situation shall be punished by a pecuniary punishment or up to 3 years' imprisonment”. In the Criminal Code of France the criminal responsibility for exploiting a child for the pornography is stated in the chapter no. 5 – “Endangerment of minors”<sup>14</sup>. Article 227-23 criminalizes taking, recording or transmitting a picture or representation of a minor with a view to circulating it, where that image or representation has a pornographic character. Offering or distributing such a picture or representation by any means, and importing or exporting it, or causing it to be imported or exported, also possessing such an image or representation are also criminalized. The provisions of the present article also apply to the pornographic images of a person whose physical appearance is that of a minor unless it is proved that the person was over eighteen on the day his picture was taken or recorded<sup>15</sup>. Finally, in the Criminal Code of Germany criminal responsibility for exploiting a child for the pornography is provided in the chapter no. 13 – “Offences against sexual self-determination”<sup>16</sup> (section 184b criminalizes distribution, acquisition and possession of child pornography, section 184c – distribution, acquisition and possession of juvenile pornography).

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<sup>13</sup> <http://www.legislationline.org/documents/section/criminal-codes> (Criminal Code of the Republic of Estonia).

<sup>14</sup> <http://www.legislationline.org/documents/section/criminal-codes> (Criminal Code of the French Republic).

<sup>15</sup> *Ibid.*

<sup>16</sup> <http://www.legislationline.org/documents/section/criminal-codes> (Criminal Code of Federal Republic of Germany).

Thus, according to the laws of these countries mentioned above it is clear the position of legislature that in crimes or criminal offences concerning exploitation of a child for the pornography the interests of a child, including his right to sexual self-determination and sexual inviolability, is the main legal value we should protect. For every country which criminalizes child pornography in the similar way children are the main figure of this crime, these countries first of all seek to guarantee children health, develop their full potential and make the most of all existing opportunities.

In the criminal laws of the *second model countries* the main object which is violated while exploiting a child for the pornography is not only the interests of a child, but also society's morality and norms of ethics. Moreover, the priority is given to the latter value. Countries which we could attach to the second model are Latvia, Romania, Russia, Ukraine, Lithuania etc. In Latvia's Criminal Code criminal responsibility for exploitation of a child for the pornography is stated in the chapter no. 15 – "Criminal offences against morals, and sexual inviolability"<sup>17</sup> (section 166: "Violation of provisions regarding importation, production and distribution of pornographic or erotic materials"). In Romania's Criminal Code criminal responsibility for exploitation of a child for the pornography is regulated in the chapter no. 10 – "Crimes and delicts against good usage"<sup>18</sup> (in article 238 it is said that the act of displaying, selling or disseminating, renting, distributing, manufacturing or producing in any other manner, transmitting, offering or making available or of possessing in order to disseminate child pornography material, without right, shall be punished by strict imprisonment from 3 to 12 years and the prohibition of certain rights). The chapter no. 25 of the Criminal Code of Russia "Crimes against human health and public morality"<sup>19</sup> (article 242.1) says that making, keeping or moving across the state border of the Russian Federation for the purpose of dissemination, public showing or advertising, or dissemination, public showing or advertising, of materials or articles with pornographic images of known minors, as well as drawing known minors as performers to entertainment events of pornographic nature by a person who has reached the age of 18 years shall be

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<sup>17</sup> <http://www.legislationline.org/documents/section/criminal-codes> (Criminal Code of the Republic of Latvia).

<sup>18</sup> <http://www.legislationline.org/documents/section/criminal-codes> (Criminal Code of the Republic of Romania).

<sup>19</sup> <http://www.legislationline.org/documents/section/criminal-codes> (Criminal Code of the Russian Federation).



punishable by deprivation of liberty for a term of up to six years. The second part of the article mentioned declares that the same deeds committed: a) by a parent or other person which is obliged under laws to bring up a minor, as well as by a pedagogue or other employee working for an educational, pedagogical, medical or other institution who is obliged to exercise supervision over a minor, b) in respect of a person which is known to be under 14 years old or c) by a group of persons in a preliminary conspiracy or by an organized group shall be punishable by deprivation of liberty for a term of three to eight years. In Ukraine criminal responsibility for importation, production, selling or distribution of pornographic images is stated in the Criminal Code's chapter no. 12 – "Criminal offences against public order and morality"<sup>20</sup>. Comparing with other countries, the provisions of the Criminal Code of Ukraine are very similar to the ones of the Criminal Code of Lithuania. On the one hand, exploitation of a child for the pornography is provided in the article 162 (Chapter no. 23 – "Crimes and criminal offences against child and a family")<sup>21</sup>. On the other hand, article 309 (part 2) of the Criminal Code of Lithuania criminalizes the production, acquisition, possession, demonstration, advertisement or distribution of the material of pornographic nature if the child or a person represented as being a child is exposed in it<sup>22</sup> (chapter no. 44 – "Crimes and criminal offences against morality").

Summarizing the provisions of the second model countries Criminal Codes' it is possible to make a conclusion that by choosing such a way of criminalizing exploitation of a child for the pornography in a certain sense interests of a child and his sexual inviolability are ignored. The legislatures of these countries take up the position that while exploiting a child for the pornography, first of all the society's morality is violated. Such arguments are arguable, because they do not appropriately evaluate the real damage that exploitation of a child for the pornography can cause, also do not reflect the real essence, content and dangerousness of this crime. It seems that while criminalizing the exploitation of a child for the pornography the fundamental ambitious is to protect the society from viewing these

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<sup>20</sup> <http://www.legislationline.org/documents/section/criminal-codes> (Criminal Code of the Republic of Ukraine).

<sup>21</sup> Criminal Code of the Republic of Lithuania ([http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=397523](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=397523)).

<sup>22</sup> Besides, article 309 (part 3) of the Criminal Code of Lithuania criminalizes the production or acquisition of pornographic material of extensive amount in which a preteen child is exposed on the purpose to distribute it or distribution of such a material.

kinds of images (pictures), from spreading them over the communities, while there is not enough attention paid to the very fact that in order for these images (material) to appear a child has to be exploited for the pornography.

Evaluating the experience of foreign countries while regulating criminal responsibility for exploitation of a child for the pornography in a comparative way, most scholars accept the idea that the first model countries have a more precise and more reasonable method to criminalize exploitation of a child for the pornography. It means that if we treat the sexual inviolability and normal development of child's personality as the main and direct object (value) of exploitation of a child for the pornography, the very essence of such a crime, its dangerousness and values which are violated are reflected in a better way.

As it is seen from the examples of the structure of criminal laws of foreign countries, Criminal Codes in some of them have a separate chapter exceptionally for crimes or criminal offences against society's morality. In general, it is possible to discuss on the purposefulness and necessity of such type of regulation. For instance, if a person is under age of 18 and he is exploiting a child for the purpose of making pornographic images or other sort of material, but he does not have any intention to distribute or demonstrate this material in any other way (he needs it just for himself), does it mean that exceptionally only the interests of a child are violated while society's morality are "left outside" this crime<sup>23</sup> (Ukrainian and Lithuanian type of regulation)? Theoretically Criminal Codes mean that the law sets out for citizens those things which must not be done<sup>24</sup>. Why should some behaviour be criminalised, while other behaviour is permitted? When the legislature marks some action as criminal, however, it condemns it and rules it out as an acceptable option for citizens. A responsible legislature ought to take such drastic measures only if there are compelling reasons so to do. If a certain act is considered to be a criminal one, it means, in general, that criminalization of it is determined because it does not reflect those moral values which are being accepted in the society, i.e. society condemns such a conduct. For this reason it is possible to declare that criminal laws embody all the acts by committing

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<sup>23</sup> The situation when exploitation of a child for the pornography is regulated as crime against the interests of a child or of a family and also treated as crime against morality is called as a "double crime" according to the Ch. Bagley (BAGLEY CH., 1997, *Children, Pornography and Paedophilia: the limits of control*. Children, Sex and Social Policy Humanistic Solutions for Problems of Child Sexual Abuse, Avebury).

<sup>24</sup> SIMESTER A. P., SULLIVAN G. R., 2007, *Criminal Law Theory and Doctrine, third edition*, Oregon, Oxford and Portland. P. 5.

which norms of social morality are violated. According to this, chapters of Criminal Codes dedicated entirely for crimes or criminal offences against society's morality could be treated as surplus (redundant), because on each case when a crime or criminal offence is committed, not only a certain value (such as health, property etc.), but also society's morality and ethical values are violated. Crimes against morality are usually victimless crimes, in that there is no true victim of the crime. Crimes against morality are those that may offend another's sensibilities; in effect, another may be offended if a person engages in sexual activity for hire or has multiple wives. With these offenses, there is nothing inherently harmful to others; thus, some feel that the criminal law overreaches its authority by criminalizing conduct that poses no harm to others or conduct that is consensual<sup>25</sup>.

It is worth mentioning, that academics are discussing about the possibility to regulate criminal responsibility for crimes concerning child pornography in the chapters of crimes and criminal offences against sexual self-determination of the person and his sexual inviolability. It is obvious that usually in these chapters, crimes or criminal offences can be linked to a child and his interests as well (for instance, deprivation of preteen, sexual abuse of a juvenile etc.). According to this it is possible to say that criminal responsibility for exploiting a child for the pornography could be provided in this type of chapters of Criminal Codes. Nevertheless, it is necessary to bear in mind that the object of crimes or criminal offences from such chapters is the freedom of sexual self-determination and sexual inviolability of the person *per se* (including a child as well). Infringing the rights of a child in terms of such a chapter is always treated as aggravating circumstance. Moreover, when we talk about child pornography we have in mind the particular interest of a child, we do not talk about adults. Besides, these crimes and criminal offences are linked to the other type of sexual abuse of a child (often connected with physical contact), whereas crimes, linked to the exploitation of a child for the pornography do not necessarily mean the existence of physical contact between the child and the adult (offender).

#### *Provisions of International Legal Acts*

Promoting the rights of a child is also a result of international commitments. The way the first model countries are criminalizing exploitation of a child for the pornography, in

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<sup>25</sup> Ohio Revised Code, [www.ohio.gov/ohio/ohiolaws.html](http://www.ohio.gov/ohio/ohiolaws.html) (*State v. Messer* 2001, Ohio 4048 (2001)).

terms of its object, is well seen and noticeable in various international legal enactments, which universally encourage criminalization of this kind of criminal conduct. United Nations Convention on the Rights of the Child (CRC)<sup>26</sup> declares the main ideas towards child pornography, seeks to protect him from sexual exploitation. Thus, in CRC we find the link that safety of a child from sexual exploitation is the fundamental object, which is attempted to infringe by the offenders. National legal enactments of different countries which were adopted after ratification of CRC and which regulate questions concerning children rights, must continue to guide the standards and principles of the CRC that have an impact on the rights of the child<sup>27</sup>. The content of prohibiting exploitation of a child for the pornography on the international level is given in details in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol)<sup>28</sup>. In the preamble of this Optional Protocol it is indicated that while criminalizing the exploitation of a child for the pornography, firstly, it is trying to guarantee the right of a child to live healthy mental, spiritual, moral and social life.

That sexual inviolability of a child is the basic object which is violated while exploiting a child for the pornography is referred also in the Convention on Cybercrime<sup>29</sup> and in the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>30</sup> (Lanzarote Convention), in the title of which the object of the this crime is noticeable – sexual inviolability of a child. Talking about the latter document a new handbook for parliamentarians has been launched to help them and their peers promote the Council of Europe's Lanzarote Convention on the protection of children against sexual exploitation and sexual abuse with their governments, and raise the awareness of the general public for such crimes. The phenomenon of sexual exploitation of children has been on the international

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<sup>26</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990).

<sup>27</sup> Despite the fact that quite many international legal acts regulate children rights, nevertheless, CRC is that one which indicated the protection of sexual exploitation of a child for the first time (article 34, part c). This international document is like an initial one in the field of child pornography because for the first time a separate article is devoted for this problem.

<sup>28</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 (entered into force on 18 January 2002). Article 2 of the Optional Protocol defines child pornography as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.” While article 3 requires States Parties to criminalize “producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.”

<sup>29</sup> Council of Europe – ETS No. 185, Budapest, 23.XI.2001.

<sup>30</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse Lanzarote, 25.X.2007.

agenda since late 1990s. The 2006 UN Secretary-General's Study on Violence against children analysed sexual violence alongside several other forms of violence against children. It formulated a set of recommendations for international and national actions. The Lanzarote Convention is the first international treaty to address all forms of sexual violence against children. Its trademark is the so-called four "P" approach: prevention of violence, protection of child victims, prosecution of offenders, and participation of children". Ten states have so far ratified, and a further 32 have signed the Convention, which came into force in July 2010.

On the European Union level it is necessary to mention the Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (Framework Decision). In the preamble of this Framework Decision it is clearly phrased that sexual exploitation of children and child pornography constitute serious violations of human rights and of the fundamental right of a child to a harmonious upbringing and development. It is obvious that the main object of exploitation of a child for the pornography according to this EU document is the interests of children, not the morality of the society. On the EU level also it is worth mentioning the basis for promoting and protecting the rights of the child in its internal and external policies with its Communication "Towards an EU Strategy on the Rights of the Child"<sup>31</sup> established by the Commission in 2006. The document which should be treated as one of major importance is the "Europe 2020 Strategy"<sup>32</sup> which sets out a vision for the 21st century of a Europe where the children of today will have a better education, access to the services and to the resources they need to grow up and, one day, lead Europe into the 22nd century. This is why the Commission advocates "An EU Agenda for the Rights of the Child" mentioned. The purpose is to reaffirm the strong commitment of all EU institutions and of all Member States to promoting, protecting and fulfilling the rights of the child in all relevant EU policies and to turn it into concrete results.

Many scholars agree that while exploiting a child for the pornography, firstly, the sexual inviolability of a child is violated, not the moral values of the society. Kelly, Burton,

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<sup>31</sup> Communication from the Commission: Towards an EU Strategy on the Rights of the Child, COM (2006) 367 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF>.

<sup>32</sup> Communication from the Commission on Europe 2020 - A Strategy for smart, sustainable and inclusive growth, COM (2010) 2020 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>.

Regan and Wyre say that exploitation of a child for the pornography is a crime of sexual abuse against a child. E. Danica, L. Waterhouse, P. Dobash, J. Carnie, W. C. Wilson etc. agree with this statement<sup>33</sup>. Many NGOs also declares that exploitation of a child for the pornography is not a crime by committing which moral values of the society are violated. The author of the article has drawn up a survey to assess the ways in which NGOs perceive the most topical issues of exploitation of a child for the pornography. Questionnaires were distributed to the experts of NGOs in Belgium and Lithuania who were asked to answer the questions on the most problem-oriented aspects of exploitation of a child for the pornography. Unambiguously, almost all specialists consented that child pornography is not a crime against moral values of the society. According to them child pornography is a crime against children's and family's interests.

### *Conclusion*

Summarizing, it is possible to make a conclusion that criminal responsibility for exploiting a child for the pornography should be stated in the chapter of the Criminal law where all crimes against child or interests of the family are criminalized. Such a decision would reflect those values (object), which are violated while exploiting a child for the pornography, in a more precise way. Nowadays regulation of this problem is not fully correct, because it forces us to think that on the one hand the victim is a child, but on the other hand – moral values is treated as ones of major significance. Moreover, it is criticised the situation when two different crimes – child pornography and distribution of adult pornography – are combined together in one article. According to this, both exploitation of a child for the pornography and disposal of child pornographic images where a child or a person is represented like being a child is exposed, are crimes where the main and the direct object is sexual inviolability of a child, normal development of his personality.

If we want to answer the question that was raised in the title of the article, first of all it is necessary to emphasise, that on both cases (regulations) mentioned the main and the direct value is the interest of a child. A child is that one who experiences the hugest damage, the way towards normal development of personality is being blocked for him. The

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<sup>33</sup> QUALLS C. B., WINCZE J. P., BARLOW D. H., 1978, *The Prevention of Sexual Disorders. Issues and Approaches*. Plenum Press; ITZIN C., 1997, *Pornography and the Organization of Intrafamilial and Extrafamilial Child Sexual Abuse: developing a conceptual model*. Child Sexual Abuse. Vol. 6.

system of moral values in the society (even the interests of his family) could be treated only as a supplementary object of this crime. Nevertheless, it seems that according to the opinion of legislature, for instance, the production, distribution or possession of child pornographic images, firstly violate the society's morality. It is a precarious inference and hardly possible to admit such a position, because if society's morality is treated as the main value when a child is exploited for the pornography, it means we forget the child *per se*, the violence he experienced because of such an abuse and the consequence of this crime, i.e. the interests of a child becomes a secondary matter. In order to implement a comprehensive protection of children rights and to define the legal values which are undermined by the exploitation of a child for the pornography, it would be more meaningful to regulate the criminal responsibility for exploiting a child for the pornography or disposing the material in which a child or a person represented like being a child is exposed to provide in one chapter of the Criminal Code, i.e. in a chapter dealing with crimes and criminal offences against children's or family interests.

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