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УДК 316.77:343.915
Оригиналан научни рад
Примљен: 29.04.2020
Одобрен: 22.05.2020
Страна: 493-511

SEXUAL EXPLOITATION OF MINORS / ANALYSIS IN SERBIAN LAW ENFORCEMENT PRACTICE***

Summary: Authors in this article are trying to address problems in the Serbian law system and Law enforcement practice at first level in determining what represents child sexual abuse activity (CSA) and material following it. On the next level it is pointed out to the problems and illusions in creation malfunctional paradigms with fawl definitions, and noneficient working material for law enforcing. Definitions are shown in ommissions even from the strategical law acts down to the last norm. Practically it is shown through analysis of statistical values and variables in the phenomena on the field. Authors are providing comparative analysis of the issue on the strategic, tactical and operationa level, colliding total of registered high-tech crimes HTC and comparing it with whole criminal activity in Republic of Serbia, and dispersing it to specific crimes in CSA and material creating for CSA. Results show low incidence of CSA crimes, but in this article it is intention to directly compare real incidence through comparison of crime rate and clearance rate of those crimes in order to get statistically and scientifically significant results.

Key words: child sexual exploitation, law enforcement, child abuse images and videos, law, society reactions

Introduction

In this geographical area and beyond, a recent trend in the discourse on new information technologies and their representation in crime is very noticeable. When some newspapers appear in real life, it is first and foremost the applicability, usefulness, or usability, that is relevant to everyday life. Along with it comes the possibilities of abuse in everyday life, because nothing is easier than the distortion of purpose and easy earnings that accompany it, even if it is illegal. In this sense, in addition to

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*** This article is a result of the project titled: Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations, registered under number of ON-179045, funded by Ministry of Education, Science and Technology Development for the period of 2011-2020.

the criminal intent to exploit new technologies, it is also a security defense, which forms the basis of the state's interest in these aspects of novelties and especially new technologies. So, the first and some would say the true meaning of new inventions and novelties is their capacity for abuse, to extract the hidden benefits from them in order to put the enemy, rival, victim (or user ...) in a subordinate position. In analyzing the novelties of information and communication technologies (ICT) with a historical paradigm, one can definitely see the regularity. For this reason, it is necessary to include in the analysis the definition of the term high-tech crime (FTC) as well as to include its specific aspects, which in almost every typology include the exploitation of minors and children for pornographic purposes (CSA).

Definition of the Term

The term cybercrime is sometimes used synonymously with the terms: technological crime, high-tech, cyber, cybercrime, digital or electronic, among many terms that denote a work done through a computer or other means of Internet technology¹. This can be confusing to anyone who has dealt with considering the issue in question. In this paper, we will consider them synonymous, and as a basic term we will use high-tech crime (VTK) as defined by the Law (Law on Organization and Competencies of State Bodies in Combating VTK “RS Official Gazette” no. 61/2005 and 104/2009) ZONDOBVTK Law).

Literature review

In most cases, when defining the term cybercrime, there are different views that can be grouped into three main groups. One that includes acts directed against computer data and systems in this form of criminality (in the narrow sense - Bidgoli 2004, Igrnjatović, 2000, Petrović, 2000, Budimlić M. Puharić P., 2000, Крылов B.B.1997) and second, which are perpetrated using computer data and systems (Jerkovic, 2010; United Nations 2010, 2015; Smith, Grabovski, and Urban 2004; Drakulic 2009; Europol; ZONDOBVTK Law). Under the new framework, the theory of telecommunications the idea of electronic communications is broader than telecommunications (Netcenter, 2010). It also covers broadcasting networks (radio and television) on the other hand not covering content services (providing content via electronic communications networks). Access to information society technologies include radio, television and landline telephony, which are considered to be old information and communication technologies (ICTs), as well as mobile telephony, computers and the Internet, which are modern ICTs („World Telecommunication Development Report 2003 – Access Indicators for the Information Society“, p.8). Here we are talking about ICT in *rerum natura*.

¹ Legislator in the Republic of Serbia in the Criminal Code, Art. clause 33 specifies that a computer is any electronic device that automatically processes and exchanges data based on a program, and in clause 34 a computer system is any device or group of interconnected or dependent devices, one or more of them based on a program, performs automatic data processing.

Given that there are significant differences between countries, as well as documents of international organizations and associations, this small “barrier” to behavior, which will be criminalized in the short term, is a precedent to reduce the consequences of non-synchronization and regulatory inconsistency. With all this in mind, it can be concluded that cybercrime is a form of criminal behavior in which cyber space is an environment in which computer networks appear as a means, target, evidence and / or symbol or environment of the commission of a crime. Cyber space means either a type of "community" made up of a network of computers in which elements of traditional society are in the form of bytes and bits or "space created by computer networks" (Drakulic & Drakulic, 2010). The term cyberspace was first used by William Gibson in the 1984 science fiction novel *Neuromancer* (Gibson W. 1984)².

Law on Organization and Jurisdiction of State Agencies for Combating High-Tech Crime (Official Gazette of the Republic of Serbia No. 61/05), which entered into force on 25.07.2005. For the first time in domestic legislation, the concept of high-tech crime was defined as follows: “committing criminal offenses in which as an object or a means of committing criminal offenses works are reported by computers, computer networks, computer data as well as their products in material or electronic form”³.

From the above it can be concluded that there are certain criminal offenses in which computer and other high-tech means have been used for the commission of the act but are not absolutely necessary (they are only a means) for the commission of the punishable act. They include, for example, the misuse of official position in the creation of hidden funds on a company computer, or its use, this criminal act can be done without computers and computer systems. The best example of this type of instrumental and incidental (secondary) relationship is the sexual abuse and exploitation of minors and children (pedophilia) for pornographic purposes.⁴ An example is luring children through certain chat rooms, to meet the performer live and, afterwards, performing e.g. rape or sexual acts⁵.

² “Cyberspace. A consensual hallucination experienced daily by billions of legitimate operators, in every nation, by children being taught mathematical concepts... A graphical representation of data abstracted from the banks of every computer in the human system. Unthinkable complexity. Lines of light ranged in the non-space of the mind, clusters and constellations of data. Like city lights, receding ...”

³ More can be found in: Ivanović, Z. Lajić, O. Pretresanje i oduzimanje predmeta u vezi sa automatsom obradom podataka, *Kultura polisa* Br. 41, godina XVII, 2020, str.: 323-342.

⁴ This term is currently more preferred in the EU, because pornography also includes consent in this case of a child victim, which of course is by no means existing.

⁵ Recently, legislators have been increasingly criminalizing such acts with specific forms of criminal offenses, - not recently than in 2009 did we incriminate this act. We may also mention Australia, or the State of Queensland, which introduced this offense under Article 218A of the Criminal Code. It is interesting to apply certain measures in these cases; in Australia, the provocateurs' measures were applied, where one of the inspectors, disguised as "betibu13", impersonated a 13-year-old girl and allowed the perpetrator to "lure" him. "To sexually exploit him. This has also led to the creation of sites specifically designed to attract such illegal activists, perpetrators of crime. In the US, there are special agencies that deal with these matters, and they represent a non-governmental sector working with the police. One example is: Cyber watchdogs. One of these was <http://www.vigil-watcher.com/> last accessed on September 20, 2010

To the shortcomings of the legal framework in this area also favor the existence of a large dark figure of this form of crime, as well as its latency. Substantial help in shedding light on these crimes and in detecting and imprisoning their perpetrators can be accomplished by studying their criminal characteristics. In doing so, it is crucial to understand the true meaning of the substantive and procedural criminal law standards, especially when describing the object of evidence and setting individual goals in the coverage of the crime. An analysis of the Criminal Code and previously mentioned lexes, as well as new legal solutions, will indicate that incrimination of these crimes and the introduction of accompanying procedural acts have led to the formation of new terminology and concepts, as well as new procedures, and new criminal measures and actions.

Defining the abuse of minors and children for pornographic purposes

VTK Convention as a “Child Pornography” Criminal act⁶ (a more politically and ethically correct term is material that depicts child abuse, or child sexual abuse material - CSAM) incriminates:

- a. production of CSAM for the purpose of its distribution through a computer system;
- b. offering or otherwise making available child pornography through a computer system;
- v. distribution or broadcasting of CSAM through a computer system;
- g. obtaining CSAM for themselves or others through a computer system;
- d. possession of CSAM on a computer system or on a medium for transmitting computer data.

The European Convention on High-Tech Crime (VTK) seeks to help harmonize the legal systems of the Member States and to influence this phenomenon with all seriousness. The Convention also contains some provisions that are broader than any comparable solution in national legislation (Komlen – Nikolic et al, 2010). Thus, the age limit for persons considered children is set at 18, with the possibility that States, by placing a reservation on this article of the Convention, reduce it to 16 years of age.⁷ Also, the contents are incriminated in which persons who can reasonably be assumed to be under 18 years of age appear, or present themselves as such, as well as other graphic contents (drawings, cartoons, etc.) in which persons younger than 18 are represented, represent the prescribed limits in a pornographic context. The Convention leaves the possibility of stating the reserve, to each Member State, we can say, very innovative solutions.

In general, when defining the exploitation of minors and children for pornographic purposes in Serbia has very poorly treated the issue, both by the legislature

⁶ In our country, this act is regulated in addition to Art 85, 185a and 185b.

⁷ In the previous period, this made a problem in practice, since until the changes in 2009. Article 185 stated that a child and not a minor appeared as a passive subject of this act, so unnecessarily certain extremely important categories of victims were expelled from criminality, given their definition in our laws (Juvenile Criminal Offenders and Criminal Protection of Juveniles ("Official Gazette of the Republic of Serbia" No. 85/05) - ZOM and Criminal code ("Official Gazette of Republic of Serbia", no. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009, 111/2009, 121/2012, 104/2013,) - CC).

and by the professional public. The wandering in defining and misunderstanding the legal framework by the legislature has resulted in inadequate standardization of crimes within the group of crimes against sexual freedoms - specifically Article 185 of the RS Criminal code - CC (already mentioned in relation to the 2009 amendments). The error which has been subordinated to the legislature but also to the doctrine in the preparation and drafting of a law which did not at one time cover minors (14-18 years old) is unforgivable. Some of the significant forms of these criminal acts were absent in the prosecution for this period, but the amendments to the Criminal Code regulate this by introducing the term juvenile, as well as by criminalizing and punishing them as a grave form of the offense of having a child as an object of attack (0-7 years).

This is also the case with foreign wandering in definitions where different studies have recognized different parameters in defining the term CSA. Many theorists define certain symptoms that are related to health, behavioral, social sequelae (symptoms) - which stand out in the consideration of CSA problems, where essentially the same is treated as a disease whose symptoms occur as heralds of occurrence (Chen et al., 2010; Dube et al. , 2005; Edwards, Freyd, Dube, Anda, & Felitti, 2012; Paolucci, Genuis, & Violato, 2001; Trickett, Noll, & Putnam, 2011; Finkelhor & Korbin, 1988; Giovannoni & Becerra, 1979; Haugaard, 2000;).

Others point to evidence of the etiology, prevalence and symptoms that have been increasingly prevalent since the 1970s. In any case, the foreign literature is dominated by the view that it is a very complex phenomenon that occurs due to a variety of reasons and conditions, in different ways and within different relationships within families, social groups, institutions and communities. In any case, the general definition is also missing - different concepts are provided - sexual abuse of children and minors, sexual assault of minors and children, exploitation of minors and children for pornographic purposes, underage and child sexual victimization, unwanted sexual experiences, bad sexual experiences (Mathews, B. Collin-Vezina, D. 2019). All of these concepts are either too general or too vague and it is necessary to define them more thoroughly.

Some authors in Western crime science, psychology, and criminology point out in their research the elements that define it through (Negriff, Schneiderman, Smith, Schreyer, & Trickett, 2014; Trickett, 2006; Trickett et al., 2011; Trickett, Noll, Reiffman , & Putnam, 2001): exact nature, duration, frequency of activities involving, use of force or serious threat, age of victims, perpetrator and his identity. Matthews and Colin-Vezina tried to come up with a concept that would be universal.

The prevalence and existence of grave consequences of CSA, along with the intercultural recognition of moral unjustifiability, have led to a wider incrimination of CSA. This is especially from the aspect proclaimed by the UN under the latest version of the Sustainable Development Goals (United Nations General Assembly, 2015, Targets 5.2 and 16.2).

Of course, in addition to being included in major international acts such as The United Nations Convention on the Rights of the Child (United Nations, 1989), signed by 196 countries but not ratified by all additional protocols and relevant

documents - Serbia ratified and signed 15 of a total of 18 (comparisons for Russia, for example, only 11, US 5, Canada 13, Mexico and Brazil 16 each ...) it may be that certain behaviors are not treated as CSAs, culturally or regionally due to e.g. advocating for certain elites to exclude from defining the term or non-incriminating e.g. Some elements such as the use of force in the context of intergenerational activities when engaging in sexual activities. In defining the CSA, it is also important that the UN Convention on the Rights of the Child defines any person under the age of 18 as a child.

When defining, the most common differences exist in defining the age of a child (juvenile) where, as mentioned above, we had such deficiency, the relationship between the perpetrator and the victim, the abuser, the element of sexual satisfaction, the definition of CSA activities and the nature of consent to forms of exploitation - CSA.

The concept offered by Matthews and Colin-Vezina (Matthews and Colin-Vezina, 2019) essentially boils down to several issues when considering the circumstances under which an event occurred, so that it could be treated as a CSA. According to this concept (Matthews and Colin-Vezina, 2019), the first question is whether the victim is a minor child?

1. Is the victim within the legal framework or developmentally considered a minor or a child? There are two extreme possible cases that are exclusive - the first legally stipulated conditions for a minor are met, that is, a child has reached the developmental status needed being underaged (adolescent, or child). Other exists when it is situation where both developmental and adult „victim“ is present - when the CSA situation is ruled out. A complex case would be when it comes to a situation where a person is of legal age when he or she is capable of managing his or her own actions and actions that that person does produces rights and obligations - that is, he / she has legal and, indeed, limited, legal capacity, as well as being of age when he / she is entitled to dispensation. In Serbia, a person who has reached the age of 14 may undertake legal activities for which he or she acquires exclusively rights, legal activities for which he / she acquires neither rights nor obligations and, also, legal actions of minor importance (Art. No. 64. para.2. of the Family law Official gazette od RS no. 18/2005, 72/2011 - other law and 6/2015) (hereinafter referred to as the FL), and at the age of 15 may undertake legal activities managing and disposing of his earnings or property which he has acquired through his own work (start a working relationship). The child may undertake other legal tasks when required by law. According to Article 23. st.2 FL person can conclude the marriage by dispensation - based on a court decision. Implicit here is the basis for socially acceptable sexual intercourse. This could be that age, however, our legislator did not take this into account and we have a situation where in such a case CSA would be treated under 18 years. A troublesome and complex case could be in the case of an attacked person who has reached the age of 16 and has reached the physical and mental maturity necessary to exercise the rights and duties of marriage. In such a case, it is a problem that is significantly complex and solvable through an analysis of a broader sociopolitical (criminological, procedural, logical, matrimonial, obligation ...) reach. Namely, it raises the question of the expediency of criminalizing this form of activ-

ity since it can be said that a person is free to base his or her romantic activities and according to systematic consideration is capable and authorized to engage in sexual relations, as a person who is also recognized as a person capable of making business relations (though admittedly limited). Does the case where the persons were in a romantic relationship have the significance of the differences in age, their psycho-physiological development, degree of maturity, and generally the overall circumstances under which the event occurred in order to think differently in that or about that relationship.

2. Is there a complete absence of consent from the victim? The World Health Organization - WHO includes three possible situations where such consent is absent. First, sexual activity that a person does not fully understand and is unable to provide informed consent for and is not developmentally ready. In criminal law terms, it is imperative that there is a free and voluntary consent that is clearly given, and it will not exist in cases where there is a (serious) threat, intimidation, abuse of a subordination or dependency relationship, as well as coercion. Medically, a person has the capacity to consent if he/she fully understands the consequences of his/her consent, as well as what is proposed to him/her in undertaking the activity – consequences and results. There are borderline cases here as in the previous question: is the person incapable of giving genuine and complete consent or the person does possess the ability but did not give full and free consent to sexual activities? Therefore, in cases where a person cannot or does not consent, and in most cases due to the developmental stage, minors and children will not have the capacity to completely and freely give consent. In other cases where a person from the aforementioned last category - a minor (14-18), has the capacity for informed consent to a sexual act because of his psychosocial condition, the real consent will be absent due to the presence of coercion, force or pressure. An exceptional borderline case is when the person consents and has the capacity to understand the consequences of his or her consent, and is physiologically and psycho-psychologically and psycho-socially with the capacity to understand and participate in such acts. Such a case would entail two persons with such capacities who consent to and engage in sexual relations (complete willpower, developmentally prepared, free and voluntary, not coerced, threatened, intimidated or abused by a subordination or addiction relationship, possessing the psychic capacity to fully understand the activities in question). The most complicated case would be when it is difficult to conclude whether the above free and voluntary mutual consent exists or whether there was coercion or social or economic pressure.

3. The question arises as to whether the situation will be clearer if, in addition to sexuality, 'consent' and 'abuse' or 'exploitation' are introduced into the concept. Whether the action is of a sexual nature can be determined by providing an answer to the question: is the action taken in order to fulfill and satisfy a physical or mental need (gratification) or is it otherwise understood by the object of the action orientation (child, minor) as sexual act. There are three categories proposed in this concept that represent "sexual activity": 1. any activity of the abuser engaging in the abuse that seeks to or achieves physical or psychological sexual satisfaction, whether this satisfaction is the one achieved at the time the action is taken or with delayed effect.

2. any action that requires or seeks sexual gratification of a third party (victim or third party directly involved in the abuse of another person remotely, such as consuming CSA material digital or physical) 3. any other form of action that does not involve sexual activity but is understood as a sex act by a minor or a child. Borderline cases would include any act of sexual intercourse as well as any contact or contactless form of activity that pursues or satisfies the sexual urges of any person, as well as actions solely taken to lure a child or minor to any level of physical or psychological gratification of sexual instincts. They would also include contactless verbal or written requests or requests for sexual activity, as well as other forms of communication of sexually oriented written or visual materials exchanged between persons physically or electronically (sexting or sharing audio, photo or video content with sexual content that is appropriate to such acts). Forms that exclude CSA material are a developmentally normal play between children or minors that implies pure curiosity about bodily functions, as well as other acts that do not involve sexual gratification and are not understood by the minor or child as such. A complex case would be when it comes to such activities that constitute a substantially asexual act taken without the clear purpose of satisfying the sexual urge or luring into sexual activity and not clearly tempted by a minor or child as sexual.

4. Does the action constitute abuse or exploitation? The answer can be answered by the existence of indications that 1. there is a relationship of unequal power, 2. the victim is in a position of inequality with the abuser 3. the exploitation of the victim's weaknesses and vulnerabilities and 4. the absence of full and true consent. Borderline cases would include any act that constitutes a sex act, whether involving physical contact or not by an adult (including authority figures - teachers, guardians, coaches, priests, sports supervisors, cultural or other religious groups) as well as any other non-consensual act or act by another minor or child in a privileged position or relationship of subordination or dependence. Cases of non-consensual gaming, ie. frivolous sexual acts undertaken by a person against another person of the same status (minor, child) and there is no relationship of subordination or dependence and where there is no victim who is exploited. A complex case exists when there is an act that is not consensually undertaken and constitutes a sexual act, but is not clearly immoral or inadequate and is undertaken within a romantic relationship between equals without clear inequalities in relationships (subordination or dependence) or exploitation of weakness or vulnerability.

Typology

Under the Cybercrime Convention (CETS 185)⁸ there are four categories of crimes:

1. acts against (security) confidentiality of integrity and availability of computer data and systems,
2. crimes in certain relation to computers

⁸ Convention on Cybercrime, CETS No.: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=185&CM=1&DF=22/06/2010&CL=ENG> last time accessed on 01.06.2019.

3. content-related acts (in terms of content that makes these acts fall into the category of high-tech crime) within which the CSA fall under
4. works related to intellectual property and related rights

Interestingly, the Council of Europe (SE) in the Judicial Training Manual (2010) qualifies and so-called. combined offenses by defining them as: a combination of the two types described above. This discredits the possible classification and divisions that could be used scientifically in this way, but gives the operational usability of this typology. (McQuade, S. C. 2009.)

- intrusions into computer networks;
- industrial espionage;
- software piracy;
- exploitation of minors and children for pornographic purposes;
- Distributed denial of service – DDoS
- sniffing codes;
- "dressing" one computer to "resemble" another electronically so that it can access a restricted system; and
- Credit card theft, or abuse of payment or credit cards.

Depending on the type of acts committed, cybercrime can be⁹:

a) Politically, consisting of:

- cyber espionage;
- hacking with a political motive;
- cyber sabotage;
- cyber terrorism;
- Cyber warfare.

b) Economic:

- cyber fraud;
- hacking with economic motivation;
- theft of Internet services and time;
- piracy of software, microchips and databases;
- cyber industrial espionage;
- fraudulent online auctions (non-delivery of products, impersonation of products, false appraisal, upgrading of product prices, association to achieve higher prices, black market goods, multiple personalities).

c) Production and distribution of illegal and harmful content:

- the exploitation of minors and children for pornographic purposes;
- pedophilia;
- religious sects;
- spreading racist, Nazi and similar ideas and attitudes;
- abuse of women and children.
- Manipulation of Prohibited Products, Substances and Goods:
 - trafficking of drugs;
 - trafficking of human organs;
 - trafficking of Weapons.

⁹ <http://www.apisgroup.org/sec.html?id=2> last time accessed 13.03.2009

e) Cyber privacy violations¹⁰:

- Email surveillance¹¹;
- spam
- phishing
- eavesdropping, recording (and monitoring events in) "chat rooms" (chat rooms)
- monitoring e-conferences
- uploading and analyzing "cookies"¹²

Art. 185 of the RS Criminal Code

There are many, many discussed issues within this crime. One such controversy is the criminalization of the act of owning child pornography and the integration of fictitious photographs. The first case of criminalization of possession relates to the explanation that the mere possession of it stimulates demand and leads to the continued production of such material. This link between possession and production is a major explanation, but it still leaves the possibility for States to place a reservation on this provision of the Convention (ETS 185, 201). On the other hand, protection is also provided on a broader scale, including the production of photographs or collages from parts of the image (photographs) and the use of 3D programs, therefore, the creation of brand new photographs (thus not breaching the freedoms and rights of any child), giving the reason for this fictitious CSAM (incriminating it) is that the photos created in this way can be used as bait for children to consent to sexual acts or to increase the demand for CSA material. However, this can be more discussed when analyzing the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201).¹³

In our legislation, crime takes many forms. The first form (stipulated in paragraph 1) is made by a person who sells, displays, or publicly presents to a minor, or otherwise makes available texts, images, audio-visual or other objects of pornographic content or presents him with a pornographic show. A fine or imprisonment of up to six months is provided for this shop.

¹⁰ „Directive 2002-22-EC on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services“, Official Journal of the European Communities, L108/51-77, from 24.04.2002. defines the right to privacy as: the power of the individual to control the amount of personal information available to others, and the power to determine the rules of entry into the individual private sphere.

¹¹ It is also important to include the classification given by Budimlic M. I Puharic, P. In Computer Crime, Criminology, Criminal Justice, Criminal Justice and Security Aspects, Sarajevo 2009, p.131. which includes: identity tapping, disguise, replay attack, sniffing, manipulation, DoS, malicious mobile code, misuse of privileges, trojans, social engineering.

¹² A small piece of textual information stored by a browser. It consists of one or more nominal value pairs that can also be encrypted. The Internet server sends this data and files to the user's browser and it goes back unchanged every time it accesses that server. Cookies can be used to authenticate, track a session, store user preferences, analyze and extract essential customer purchase and consumption data, a session identifier based on specific sessions. They do not represent the viruses, but can be used to spy users as spying software more about can be found in; Urosevic, V. Ivanovic, Z. (2010) Conference papers from Conference forum BISEC, pp.64-71.

¹³ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CL=ENG>, last accessed on 27.12. 2019.

Paragraph 2 incriminates another form, namely the exploitation of a minor for the production of audio-visual or other objects of pornographic content or for pornographic play, and imprisonment of six months to five years. It is about the exploitation of a minor for a specific purpose - the abuse of a minor who is often not even aware of the fact that it has been used or for what purpose it is being used

The third form exists when the person who performs the first two forms of this act against the child (under 14), the perpetrator of this form shall be punished for the offense referred to in paragraph 1 by imprisonment for a term between six months and three years, and for the offense referred to in paragraph 2 by imprisonment for one to eight years

The fourth form is provided for in paragraph 4 and is made by the act of a person who obtains for himself or another, owns, sells, displays, publicly exhibits or electronically or otherwise makes available images, audio-visual or other objects of pornographic content resulting from the exploitation of a minor. being imprisoned for three months to three years¹⁴. This criminal offense can be committed only in the way that the act is directed towards an adult, otherwise it would be the execution of this act but from paragraph 1. With respect to culpability, intent is required (Gercke et al, 2008).

The fifth form is provided for in paragraph 5. and is done by a person who consciously accesses images, audiovisual or other pornographic content created by exploitation of a minor by means of information technology. The offender will be fined or sentenced to up to six months in prison for this form.

Paragraph 6 defines material that is to be considered CSA material, so that any material that visually depicts a minor engaging in actual or simulated sexually explicit behavior, as well as any reproduction of sexual organs, is considered pornographic material created by exploitation of a minor. child for sexual purposes.

Paragraph 7 provides that the items in question will be seized.

The Code does provide a definition of CSAM through determining what constitutes it. Otherwise, the distribution of pornographic material up to the eighteenth century was not incriminated¹⁵. Convention for the Protection of Children from Sexual Exploitation and Sexual Abuse in Art. 20. provides a definition, and it has been introduced into our legal system by the law on its confirmation. This work has been completed by taking any of the alternative enforcement actions, and in terms of wine, it requires intent.

¹⁴ With regard to the enforcement of the special evidentiary actions referred to in Article 161 of the CPC, this act is one of very interesting examples. Namely, according to Art. 162 points 2 and 3, the application of these measures would be considered under the CPC for the second and third forms in the second case, and not for the first, fourth, or fifth.

¹⁵ Ambrose Pare published a textbook on obstetrics in the sixteenth century, detailing ways in which a woman could bring herself to a sexual climax. For this book, he was prosecuted and threatened with the death penalty, and the book itself was banned. Nikola Venet published in 1675. an illustrated work in which he credibly described the male and female genitals. All specimens of this work were seized and destroyed by the authorities. The first litigation to disrupt pornography was conducted in England in 1727. in which defendant was (and convicted) Edmund Kerl. The books he was prosecuted for were called "Cupid's Oil," "Venus in the Monastery," etc. He was fined £ 33 and one year of supervision.

By prescribing this crime and a large number of punishable acts, the legislator intended to protect the psychophysical and sexual integrity of children. Article 112 of the Criminal Code defines the terms (8) A child is a person who has not attained the age of fourteen. (9) A minor is a person who has reached the age of fourteen and has not reached the age of eighteen. (10) A minor is considered to be a person who has not attained the age of eighteen¹⁶.

Utilization of a computer network or communication with other technical means for committing sexual offenses against a minor

Article 185b.

The first basic form of this crime is: “Who, with the intention of committing the criminal offense referred to in Art. 178 (4) (“Rape” offense), 179 (3) (“Sexual act against a helpless person”), 180 (1). 1. and 2 (Sexual act against a child), 181st para. 2 and 3 (criminal offense “Sexual act of abuse of power), 182 (1) (criminal offense of “Prohibited sexual acts”), 183 (2) (criminal offense of “Subjugation and enabling sexual intercourse”), 184 (3) (criminal offense Providing prostitution through being a middleman(woman), Article 185, paragraphs 2 and 185a of CC, by using a computer network or communication by other technical means, arrange a meeting with a minor and appear at an agreed place for a meeting (grooming), shall be punished by imprisonment for a term between six months and five years and a fine punishment. Paragraph 2 prescribes a more serious form: “Whoever commits the offense referred to in paragraph 1 of this Article against a child shall be punished by imprisonment for a term between one and eight years.”

Article 185b. incriminates the exploitation of a computer network or communication by other technical means for the commission of criminal offenses against sexual freedom against a minor or a child. Today, this offense involves the intention of the perpetrator to arrange a meeting¹⁷ with a minor using a computer network or communicate with other technical means, and to appear at the agreed place for the purpose of the meeting. Within the framework of the fight against the FTC, the most intensive cooperation in recent years is related to these crimes¹⁸.

¹⁶ According to the old solution, juveniles above 14 years of age were not covered by criminal legal protection in the Republic of Serbia. Also, obtaining and possessing material that represents child pornography in a computer system was not intended to be punishable.

¹⁷ There is a known case from February 2009 when Aleksandar N., 43, was arrested on suspicion of sexually abusing a minor girl whom he had lured before by impersonating Philip, sixteen, on the Internet. During his arrest, police found a laptop and cellphone in his home with more than 100 photos of minors of both sexes.

¹⁸ Landslide firm was involved in the creation and maintenance of credit card payment portals. In April 1999, postal officials reported to the police a case in which CSAM was advertised through this site. Authorized officials, in collaboration with Microsoft experts, accessed the contents of the Internet portal and discovered a significant amount of CSAM that could be accessed by credit card payment at Landslide. In August of the same year, all material was seized and its owners Thomas and Janice Reid arrested. In January 2000, Thomas Reid was found guilty of distributing child pornography and sentenced to a total of 1,335 years in prison, which was reduced to 180 years after the appeal was lodged. Janice Reedy was sentenced to 14 years. During the investigation, Thomas Reed was ordered to leave an active portal for the company to be used in further investigations into child pornography. In August 2001, information gathered from Landslide was used to launch Operation landslide. They used the information about the way the Internet portals worked, as well as the users who paid for credit cards of

Research and discussion

In this section of the article we tried to statistically analyze dispersion of HTC and specially some of the CSA within cybercrimes and to conclude using scientifically available tools. We tried to include crime rate, clearance rate, and dispersion of crime acts in the analysis. Besides described we wanted to include in the analysis dispersion of offenders by gender and age. In this way we would be able to conclude some characteristics of offenders, crimes and their occurrence in Serbia, of course with comparison to whole existing HTC and whole criminal occurrence.

For the first view we need comparison of crime reports in whole for example for 2018 and relation to HTC crimes and CSA as shown at figure 1.

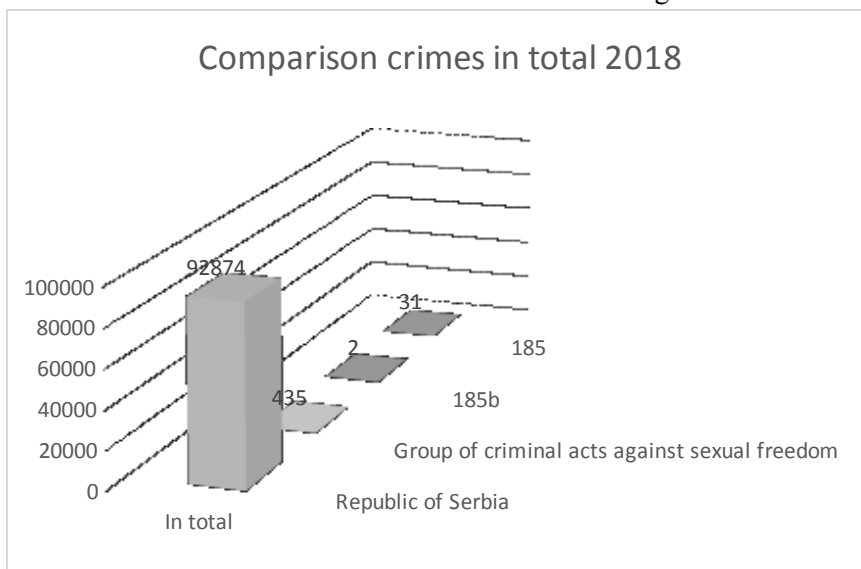


Figure 1: Totals in comparison in 2018 Source: statistical office of Republic of Serbia

Overall in the analysis CSA crimes are very low in existence in practice, but generally that is the case for all criminal acts against sexual freedom. That is normal,

the service and e-mailed child pornographic material, to set up Internet traps in order to gather evidence against Landslide users. As a result, over 1000 suspects were arrested through 144 investigations conducted in 37 states within the US. A deeper investigation has also led to individuals outside the US. The FBI provided this information to its foreign counterparts, which included, among other things, the names of 7272 individuals in the UK and 2329 in Canada. Further investigations have led to new arrests around the world. Operation Ore is also linked to an investigation into Landslide. The operation was conducted by British police based on information leaked by Operation Avalanche. Similar methods were applied and the result was dramatic: 7250 suspects, 4283 searches of suspects' homes, 3744 arrested, 1848 accused, 1451 confessions, 493 reprimands, 879 investigations leaked from new information, 140 children removed from suspicious and dangerous situations and eventually, as many as 39 suicides. Although Operation has revealed a significant number of pedophiles, distributors and users of child pornography, it later turned out that there were many omissions in investigations that resulted in false accusations and broken families. The biggest downside was that the credit card information used to pay online was not thoroughly verified. It turned out that a number of these cards were stolen, as well as their use did not lead to child pornography but to some other, harmless content. More on this in Cirović, et al 2005, page 12

in the figure of speech. But in thorough analysis those crimes are more vicious, more severe than others and more publicly striking and more public panic rising so they deserve more to be analysed.

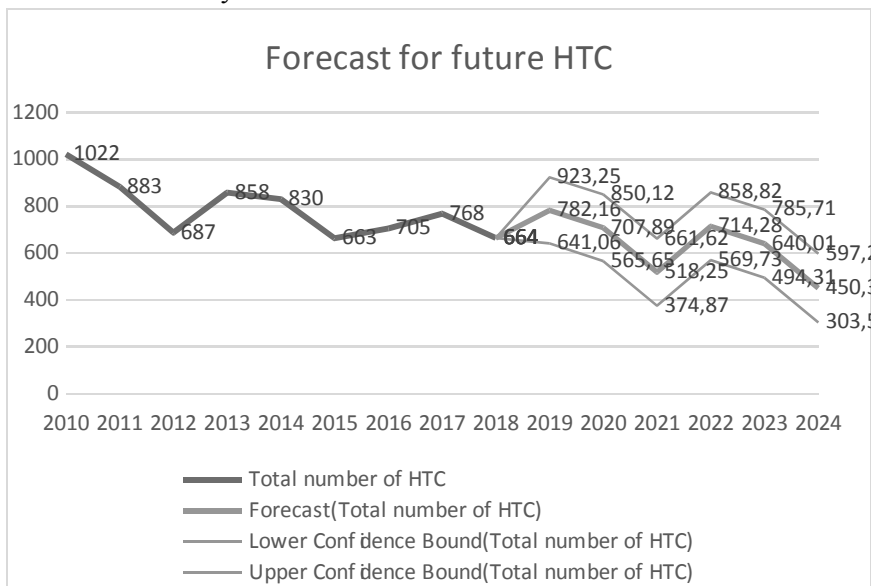


Figure 2: Forecast for following 5 years Source: MOI RS

For the forecast of future acts there was used statistical analysis offered by excel engine with upper and lower confidence bound level casted respectively. This forecast predicted for 2021 (next year in relation to the year in which this article was written) the lowest peak in occurrence of HTC in number 518 for the cycle, and lowest peak in 14 years predicted 2024 with 450 crimes.

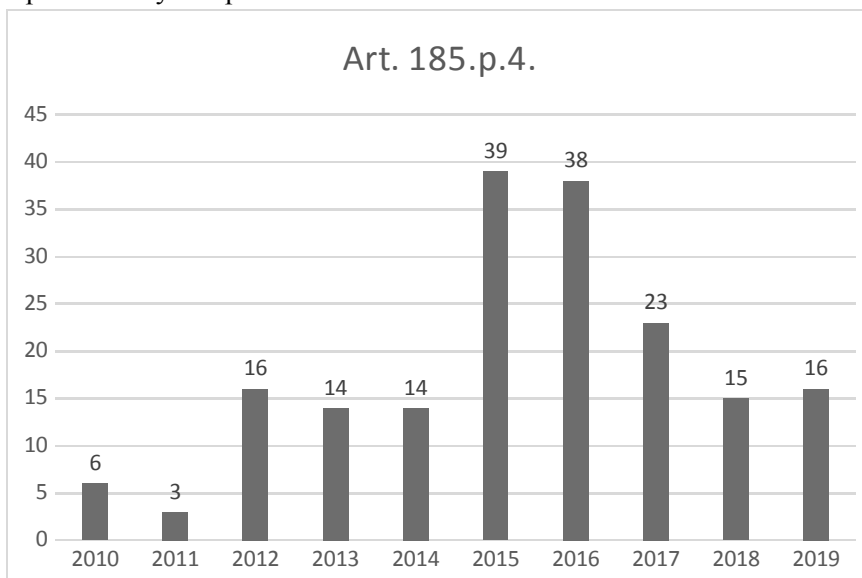


Figure 3: Distribution of art.185 p.4 Source: MOI RS

For the CSA crimes in this article it is necessary to compare article 185 para. 4 through years. As it can be seen from figure 3. years 2015 and 2016 are peak years bringing almost 40% of all reported crimes. Also when compared with article 185b on figure 4, there can be inferred that it had a slight rising in 2018, but overall result is that it is more represented in general number crime of CSA possessing and distributing by posting online in 185, than article 185b.

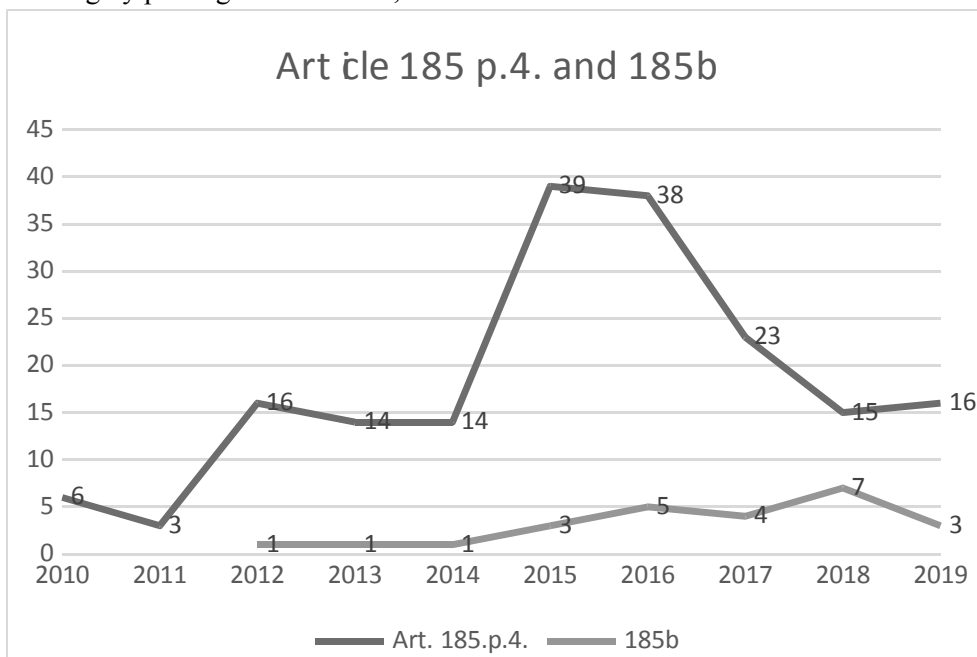


Figure 4 Comparative display of art 185 and 185b Source: MOI RS

It can be discussed that reported crimes in different articles 185 para.4. and 185b are one more detected than other, but crime rates and clearance rates should be involved here. So, when compared two, one can infer scientifically significantly. Clearance rate – A clearance rate is the percentage of crimes reported that have been cleared. A clearance rate is calculated by dividing the number of crimes cleared by the number of crimes reported; the result is multiplied by 100. A crime rate describes the number of crimes reported to law enforcement agencies per 100,000 total population. A crime rate is calculated by dividing the number of reported crimes by the total population; the result is multiplied by 100,000. In our case for year 2018 that would be:

			2018
Clearance rate	More precisely	Crime rate	
68,8	41,8	912,7	Republic of Serbia
88,5	61,0	5,5	Group of criminal acts against sexual freedom
93,5	75,9	0,4	Art. 185 p4.
100,0	100,0	0,0	Art. 185b

Table 1 Clearance and Crime Rate for 2018

For the first line of clearance rate it was used total reported, but for more precise we used known offenders instead to use unknown and known offenders, to get direct and precise clearance rate. So, it can be analysed precisely now when we have Clearance rate for Art. 185. p.4. global - 93,5 or more precisely - 5,9 and for Art. 185b 100 (of existing and cleared 2!) and with crime rate for the first 0,4 and the latter 0,0 (scientifically insignificant) and the whole group of criminal acts against sexual freedom has 5,5 crime rate. This is speaking for itself; those crimes are ephemerally in comparison to other crime types. There could also be done the comparison between all article 185 (all paras and 185b) which are significant and whole HTC. This comparison graphically is presented on figure 5.

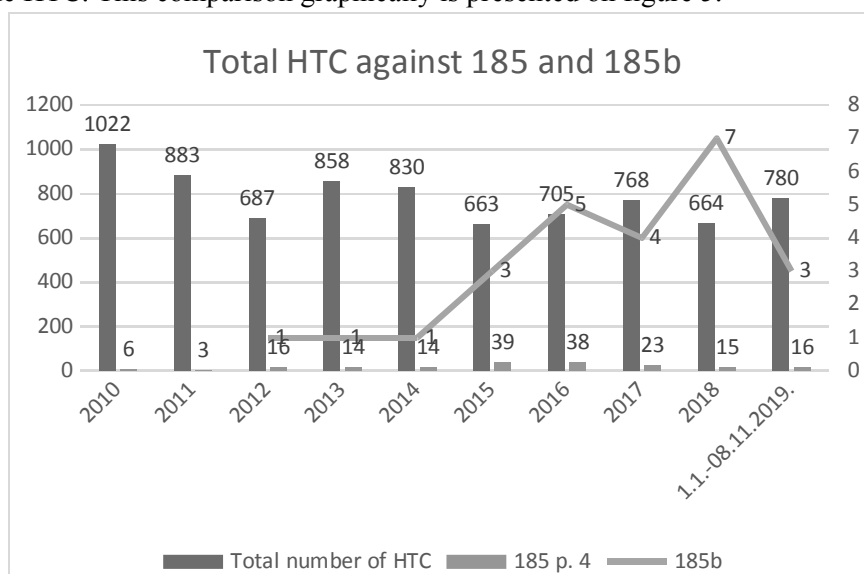


Figure 5 Total number of HTC against 185 and 185b Source MOI RS

Next we can analyze criminal perpetrators of HTC by age, gender and in different scales of age.

Age	Sex		Sum by age
	M	f	
under 13	7	3	10
14 – 15	42	7	49
16 – 17	118	22	140
18 – 20	591	216	807
21 - 30	3521	335	3856
31 - 40	3085	497	3582
41 - 50	1575	429	2004
51 - 60	875	174	1049
over 60	92	29	121
Sum by sex	9906	1712	

Table 2 Dispersion of perpetrators by sex and age

In the table 2 maximal values were painted red, so that means that in mail group the prevalence has a group of perpetrators aged 21-30 and in group of female aged 31-40 numbering 497. Interesting is that juvenile offenders number 199 that says that there is 8,57% of them that make scientifically insignificant number for analysis of minors influence in this phenomenon.

For the 2018 real counts are:

Age			Sum by age
	M	F	
under 13	2		2
14 - 15	4		4
16 – 17	4		4
18 – 20	7	3	10
21 - 30	31	10	41
31 - 40	39	11	50
41 - 50	36	17	53
51 - 60	20	5	25
over 60	11	2	13
Sum by sex	154	48	

Table 3 *Dispersion of perpetrators by sex and age in 2018*

In this area for 2018, we can see that in general there are 39 perpetrators of HTC in the most significant group of men aged 31-40 and 17 women aged 41-50 as most significant group of perpetrators. Number of 10 minors represents a 4,95% of a total population for 2018 so it is insignificant in terms of science.

Generally, although this type of crime provides a small number of criminal acts in comparison to the general crime types, it represents a very serious crime and should be very closely monitored and watched. From this article one should infer that it is here, it is serious, and victims are very vulnerable part of the society, so perpetrators should be prosecuted and punished as law prescribes. CSAM represents a product and a mean of crime and a part of a very serious and extremely rising crime type - cybercrime

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СЕСУАЛНО ИСКОРИШЋАВАЊЕ МАЛОЛЕТНИКА / АНАЛИЗА ПРАКСЕ ПРИМЕНЕ ЗАКОНА У СРБИЈИ

Сажетек: Аутори покушавају да укажу на проблеме који постоје у правном систему Србије и пракси примене закона, полазећи од основног нивоа који се тиче начина дефинисања активности односно радње сексуалног искоришћавања малолетника (СИМ) па до материјала које прате ове активности. На следећем нивоу аутори указују на проблеме и илузије у креирању нефункционалних парадигми кроз неваљане дефиниције и неефикасне радне материјале који се примењују у сузбијању активности сексуалног искоришћавања малолетника. Указује се на пропусте код дефинисања већ од стратешких докумената па све до најнижих норми. На описано аутори указују кроз анализу статистичких вредности и варијабли феномена у реалном догађању. Извршена је компаративна анализа питања на стратешком, тактичком и оперативном нивоу, упоређујући укупан број кривичних дела високотехнолошког криминала (ВТК) са укупним бројем извршених кривичних дела у Републици Србији, и њиховој заступљености и односу са специфичним кривичним делима сексуалног искоришћавања малолетника у порнографске сврхе. Резултати добијени истраживањем у овом раду указују на релативно ниску инциденцу ове врсте криминалитета, али намера аутора била је да се директно упореди реална инциденца, кроз стопу криминалитета и стопу расветљавања ових облика криминалитета како би се добили статистички значајно резултати.

Кључне речи: сексуално искоришћавање малолетника, примена закона, фотографије и видео записи који садрже материјал сексуалног искоришћавања малолетника, закон, друштвена реакција

