

Annex to Legal Opinion on Draft Amendments to Select Legislative Acts of Ukraine Relating to the Implementation of the Council of Europe Convention on Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (TRAFF-UKR/378/2020)

Draft Law (Bill)
(Registration No. 3055, revised)
Sponsored by Ukrainian
Parliament Members
P. Frolov (ID No. 122),
D. Monastyrskyi (ID No. 019)

LAW OF UKRAINE

On Amendments to Select Legislative Acts of Ukraine Relating to Implementation of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

The Verkhovna Rada [Parliament] of Ukraine resolves:

I. To amend the following legislative acts of Ukraine:

1. In the Criminal Code of Ukraine (Ukrainian Parliament Bulletin, 2001, Nos. 25-26, Title 131):

1) To supplement Article 49 with a new part six to read as follows:

“6. Where a crime punishable under Articles 134, 151¹-156¹, or 301-303 of this Code has been committed against a child or underage person, the terms defined in parts one and two of this article shall run from the day when this victim attains the age of majority or, in the event of the victim’s death, should have attained the age of majority”;

2) In Article 96³:

To supplement part one with a new clause to read as follows:

“5) commission by an agent of a legal entity, acting for and on behalf of this legal entity, of any of the crimes punishable under Articles 152-156¹, 301-303 of this Code against a child or underage person”;

To supplement clause 2 of the note with the numerals “152–156¹” after the numeral “147”, and with the numerals “301–303” after the numeral “262”;

3) To supplement part one of Article 96⁹ with the numerals “152–156¹” after the numeral “147”, and with the numerals “301–303” after the numerals “258–258⁵”;

4) To revise Article 155 to read as follows:

“**Article 155.** Engaging in sexual activities with a person who has not attained the age of sixteen

1. Where an adult engaged in sexual activities involving vaginal, anal or oral penetration of the body of a person who has not attained the age of sixteen, with the use of genitals, a different organ or body part, or any object, this

shall be punishable by restriction of liberty for a term of up to five years or by imprisonment for the same term.

2. The same acts committed in exchange for a monetary or other reward to the victim or a third party, to the next of kin or family members, by a person officially tasked with upbringing or caring for the victim, if they have caused infertility or other severe consequences,

shall be punishable by imprisonment for a term of five to eight years with disqualification from certain positions or activities for a term of up to three years, or without such disqualification.

Note. For purposes of Articles 155 and 156 of this Code, the next of kin or family members shall mean persons defined in clause 1 of part one of article 3 of the Code of Criminal Procedure of Ukraine”;

5) To add a new Article 156¹ to read as follows:

“**Article 156¹.** Solicitation of children for sexual purposes

1. A proposal, including through information and communication systems and technologies, of an adult to meet an underage person who has not attained the age of sixteen for the purpose of committing any of the sexual activities or lewd acts against him or her, where this proposal has been followed by material acts leading to such a meeting,

shall be punishable by restriction of liberty for a term of up to three years or imprisonment for the same term with disqualification from certain positions or activities for a term of up to three years.

2. A proposal, including through information and communication systems and technologies, of an adult to meet an underage person with the intention of getting him or her involved in the production of child pornography, where this proposal has been followed by material acts leading to such a meeting,

shall be punishable by imprisonment for a term of two to five years with disqualification from certain positions or activities for a term of up to three years.

3. The acts mentioned in part one or two of this article, if committed repeatedly or by a group of persons by prior agreement or against a child,

shall be punishable by imprisonment for a term of three to six years with disqualification from certain positions or activities for a term of up to three years.

Note. For purposes of this article and Article 301¹ of this Code, child pornography shall mean any depiction of a child or a person looking like a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for sexual purposes”;

6) In Article 301:

To remove parts four and five;

To revise the note to read as follows:

“**Note.** For purposes of Articles 301 and 301¹ of this Code, income is earned on a grand scale when its amount exceeds the minimum tax-free income of citizens by two hundred or more times”;

7) To add a new Article 301¹ to read as follows:

“**Article 301¹**. Knowingly obtaining access to child pornography, possessing, procuring, importing, producing, selling or distributing child pornography

1. Knowingly obtaining access to child pornography, procuring or possessing child pornography, if committed for sexual purposes,

shall be punishable by arrest for a term of three to six months or restriction of liberty for a term of up to three years or imprisonment for the same term with disqualification from certain positions or activities for a term of up to three years.

2. Importation of child pornography into Ukraine for purposes of selling or distributing it or for purposes of storing, transporting or otherwise moving it for the same purpose,

shall be punishable by imprisonment for a term of seven to ten years with disqualification from certain positions or activities for a term of up to three years.

3. Production, distribution or sale of child pornography or coercion of an underage person into participating in the production of child pornography,

shall be punishable by imprisonment for a term of eight to twelve years with disqualification from certain positions or activities for a term of up to three years.

4. The acts mentioned in part two or three of this article, if committed repeatedly or by a group of persons by prior agreement or generating income on a grand scale or involving coercion of a child into participating in the production of child pornography,

shall be punishable by imprisonment for a term of nine to fifteen years with disqualification from certain positions or activities for a term of up to three years”;

8) To add a new Article 301² to read as follows:

“**Article 301²**. Conducting a sexual performance with the involvement of an underage person

1. Conducting a sexual performance, including through information and communication technologies, with the involvement of an underage person

shall be punishable by imprisonment for a term of five to seven years with disqualification from certain positions or activities for a term of up to three years.

2. Attending a sexual performance with the intention of viewing it, including through information and communication technologies, by a viewer who is aware that the performance involves the participation of a child or underage person,

shall be punishable by imprisonment for a term of three to six years with disqualification from certain positions or activities for a term of up to three years.

3. Recruiting an underage person into participating in a sexual performance, including through information and communication technologies, or coercing an underage person into participation in such a performance with the use of deceit, blackmail, by taking advantage of the person's vulnerable state, or with the use of violence or a threat of violence,

shall be punishable by imprisonment for a term of seven to ten years with disqualification from certain positions or activities for a term of up to three years.

4. The acts mentioned in part three of this article, if committed against a child, shall be punishable by imprisonment for a term of eight to fifteen years with disqualification from certain positions or activities for a term of up to three years.

Note. For purposes of this article, a sexual performance shall mean a public display of products of a sexual nature in any form or a staged performance designed to depict sexual activities”.

2. In the Code of Criminal Procedure of Ukraine (Ukrainian Parliament Bulletin, 2013, Nos. 9-10, No. 11-12, No. 13, Title 88):

1) In part four of Article 28, add the words “or crimes against sexual freedom and sexual inviolability of a child or underage person” after the words “an underage person”, with no further amendments to the text;

2) To supplement part eight of Article 214 after the numerals and words “447 of the Criminal Code of Ukraine” with the words and numerals “or Articles 152-156¹, 301-303

of the Criminal Code of Ukraine (if committed against a child or underage person)”, with no further amendments to the text;

3) To supplement part three of Article 224 after the first sentence with a new sentence to read follows:

“If the person’s age has not been established but there are reasons to believe that the person is a child or underage person, until the age of this person has been established he or she shall be questioned according to the rules prescribed for the questioning of a child or underage person”, with no further amendments to the text.

3. In the Law of Ukraine *On the Protection of Children* (Ukrainian Parliament Bulletin, 2001, No. 30, Title 142):

1) To supplement Article 3 with a new part three to read as follows:

“If the person’s age has not been established but there are reasons to believe that the person is a child, until the age of this person has been established he or she shall be afforded protection to which a child is entitled under this Law and other legislative acts”;

2) To supplement Article 10 with new parts seven through twelve to read as follows:

“Employees of educational, health care, social security, physical education and sports, rehabilitation and recreational institutions, who come in contact with children shall be familiarized with information about the protection of children against all forms of abuse, including domestic violence, exploitation, the worst forms of child labor, or other manifestations of cruelty against children.

The administration of enterprises, institutions, and organizations — irrespective of their forms of ownership and commercial management — that have on their staff any individuals who come in contact with children in their line of work shall inform them from time to time about the protection of children against all forms of abuse and exploitation.

The procedure for arranging and conducting such awareness raising activities and their frequency shall be stipulated in a joint act of the central executive authority tasked with shaping and enforcing public policy in matters of family and children and the Ministry of Internal Affairs of Ukraine.

Awareness raising shall be carried out according to plans drafted annually and approved by regional state administrations in coordination with the central executive authority tasked with shaping and enforcing public policy in matters of family and children and with the relevant divisions of the National Police.

Activities aimed at deterrence and prevention of abuse shall be integrated into targeted nationwide programs of social protection and improvement of the situation of children.

Persons whose details appear in the Uniform Register of Persons Convicted of Crimes Against Sexual Freedom and Sexual Inviolability of a Child shall be prohibited from occupying positions that expose them to contact with children”;

3) To add a new Article 30² to read as follows:

“**Article 30²**. Protection of children who are victims or witnesses of sexual abuse

The state shall protect children who are victims or witnesses of sexual abuse against sexual abuse (including sexual exploitation or abuse committed by their parents or individuals substituting their parents).

Identification of children who are victims of sexual abuse, acceptance and review of complaints and reports about sexual abuse committed against children, and provision of medical, social, and psychological assistance to such children shall be carried out in accordance with the procedure approved by the Cabinet of Ministers of Ukraine.

The central executive authority tasked with shaping and enforcing public policy in matters of family and children, the central executive authority tasked with shaping and enforcing public policy in matters of education and science, the central executive authority tasked with shaping and enforcing public policy in health care, and the Ministry of Internal Affairs of Ukraine shall enact a joint act approving the procedure

for identifying signs of sexual abuse of children, questioning a child who is a victim or witness of sexual abuse, with the use of child-friendly methods.

The central executive authority tasked with shaping and enforcing public policy in matters of family and children, the central executive authority tasked with shaping and enforcing public policy in matters of education and science, and the central executive authority tasked with shaping and enforcing public policy in health care shall create conditions and ensure provision of medical and psychological assistance and the requisite rehabilitation activities for children who are victims or witnesses of sexual abuse.

Organization of operations, staffing, provision of procedural and logistical resources for dedicated premises intended for the questioning (interrogation) of a child who is a victim or witness of sexual abuse with the use of child-friendly methods shall be carried out by specialized services tasked with supporting victims, formed by local executive authorities and local government bodies in the manner prescribed by law”.

II. Final provisions

1. This Law shall take effect from the date immediately following the day of its publication.

2. The Cabinet of Ministers of Ukraine shall:

1) within three months from the effective date of this Law:

bring its normative legal acts into conformity with this Law;

cause the enactment of normative legal acts of ministries and other central executive authorities of Ukraine in order to enforce this Law;

2) within two months from the day of publication of this Law, submit to the Verkhovna Rada [Parliament] of Ukraine for review the proposals to bring legislative acts into conformity with this Law and to enforce this Law.

**Speaker of the Verkhovna Rada [Parliament]
of Ukraine
D.O. Razumkov**