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Judicial Reasoning as a Mechanism for the Legal Protection of Children Against Digital Sexual Abuse and Child Pornography

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Keywords

child pornography,
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Abstract

Objective: to examine the contribution of judicial reasoning to the legislation interpretation, which is aimed at strengthening the legal protection of children against child pornography and digital sexual abuse under the rapid development of cyberspace. The study eliminates the gap in scientific knowledge concerning the possibilities of judicial interpretation as an alternative to the slow process of legislative amendments.

Methods: the main methodological approach is the analysis of court decisions on child pornography and sexual abuse of children from 2018 to 2024. The author used comparative legal analysis and the study of judicial practice in various jurisdictions, including decisions of the European Court of Human Rights, the courts of the USA, Great Britain and Ireland. The research is based on a conceptual analysis of the principle of the child's best interests and its application in judicial practice.

Results: the author proved that judicial reasoning is an effective mechanism for overcoming the limitations of legislative formulations in protecting children from online exploitation. The key areas of judicial reasoning were identified: the expansion of the child pornography concept, the inclusion of contactless forms of sexual abuse, the use of digital technologies to collect evidence, and the priority of the concept of the child's best interests over procedural restrictions. The research confirmed the ability of judicial reasoning to create legal precedents that ensure a more flexible and effective application of existing legislation.

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Scientific novelty: for the first time, the article comprehensively investigated the role of judicial reasoning as a tool for the dynamic interpretation of legal norms of protecting children from digital sexual abuse. The author developed a conceptual model of the interaction between judicial reasoning and the principle of the child's best interests. The study reveals mechanisms of overcoming legislative stagnation through judicial interpretation of legal norms related to modern forms of child pornography in cyberspace.

Practical significance: The study results can be used in judicial practice to substantiate decisions in cases of child pornography, in law-making activities to improve childhood protection standards, and in the practice of law enforcement agencies. The conclusions help to form a more effective justice system that takes into account children's interests. The research can serve as a basis to develop methodological recommendations on using judicial reasoning in cases of minors' protection.

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Introduction

Being the golden core of society, international and domestic legal rules grant children a particular protection that suits their natural weaknesses and inexperience. This legislative protection is a part and parcel of legal systems and shares similar perspectives universally. Nevertheless, the ongoing evolution of communications created a distinctive sphere of human interaction, which is cyberspace. The easy access to this sphere enabled children to use it as a chief method to contact their society members. The immaturity

of children and their inexperience with Internet dangers lured criminals to exploit them to produce illicit online materials, i.e., child pornography. These vulnerabilities qualified children to be targeted by those criminals to achieve perpetrative purposes. Therefore, due to their stagnation and strict wordiness, existing legislation did not suffice to confront this modernised shape of crime because limiting legal interpretation to the direct understanding of legal rules and texts fell apart from providing children with the appropriate protection. Furthermore, the slowness of the legislation amending process makes legal rules incapable of confronting the daily-evolved child pornography.

Therefore, the effectiveness of child legal protection requires support from a rapidly evolving mechanism of legal rule interpretation. A mechanism that can handle each case per se regardless of the status of the legal code. This mechanism is judicial reasoning, which means the judges' utilisation of their interpretive and logical skills to understand and illustrate a legal text according to the circumstances of a single case. Judicial reasoning enables judges to develop legal notions that exceed the wording of legal texts to apply them appropriately in litigation. It is a multi-dimensional method of interpreting legislation according to the circumstances of each case, maintaining its applicability and preventing its uselessness. Judicial reasoning crystallises the judges' successful merging of their knowledge of the law, logical thinking skills, and their realisation of the litigation factual backgrounds. Hence, it is a unique judicial tool to maintain the integrity of legislation by guaranteeing its applicability in litigation.

Bearing in mind the rapidly evolving online child sexual abuse, the research proves the validity of judicial reasoning to provide a suitably developed legislative interpretation regarding child pornography. By judicial reasoning, judges can determine the best interpretation of legislation and transcend the wording of its text to apply a developed legal notion that suits the litigation object. To achieve to research objective, it reviews several judgments of child pornography and child sexual abuse to conclude the judges' approaches to interpreting existing legal rules according to a single case per se. These legal notions are the results of judicial reasoning, which overcomes the deadlock of the current legislation.

1. Child Pornography as a Phenomenon of Evil

The preamble of the 1989 UN Convention on the Rights of the Child (CRC) clarifies the universal obligation to maintain the dignity and humanitarian life of world children. It grants them a specific protection that suits their natural physical and legal weaknesses. By virtue, the Convention prohibits certain activities damaging children's humanitarian well-being. In particular, the Convention calls on states to prevent engaging minors in sexual abuse activities to defend their natural purity which goes against the exploitative feature of those acts (CRC, art. 19). Emphasising the severity of these acts, General

Comment No. 25 (2021, para. 3) points out the primary of providing children with a safe digital environment. The Comment mentions the State Parties' obligations to prevent child sexual abuse glaringly to protect their existence in cyberspace (ibid, paras. 112–113). Thus, these international legal instruments are obvious concerning the prohibition of child sexual abuse, of which child pornography is the major sort.

2. Literature Analysis

The gravity of child pornography drove scholars to analyse and review it from criminal and psychological perspectives. It is referred to as sexual acts including exploitation of a child for the interest of the abuser or another person (Kirk-Provencher & Jeglic, 2023). This conception reflects the core pillars of child pornography:

- acts of a sexual nature, which means engaging minors in sexual contact, regardless of their consent or physical grooming,
- the abused child, who are minors below 18 years old,
- the abuser, who owns power over the victim that enables him to lead the sexual exploitation of the victim,
- and the benefitted, who makes use of child pornography either financially or morally.

It is noted that the rapid evolution of cyberspace communications has increased the ratio of child pornography because its openness facilitated the offenders' reachability to their victims. The offenders manage to exploit innovative technologies, such as avatars and AI software, to catch children online and drive them deep into the darkness of sexual abuse (Noll & Roitman, 2023). Online exploitation jeopardises providing children with a safe environment in cyberspace. Furthermore, the anonymity of internet users grants offenders a powerful camouflage which enables them to broaden their activity sphere universally (Noll & Roitman, 2023). In this case, the child's curiosity to meet strangers is the abusers' golden key to trapping the victims. Nevertheless, cyberspace facilitates legal proceedings against those offenders as it permits law authorities to operate for gathering digital evidence on sexual abuses of children (KletečkaPulker et al., 2023), which enhances prosecutions of the perpetrators and the victims' access to justice. Judicial authorities have succeeded in integrating technologies into legal proceedings, enabling police officers, prosecutors, and judges to search various digital environments for evidence of illegal child sexual abuse to establish the perpetrators' accountability for their deeds and limit their impunity.

Acts including sexual usings of a child are a solid category of child abuse because they contradict the childhood inreadiness for sexual relations (Brunton, 2023). In addition, engaging minors in sexual activities violates society's standards of these activities, which elevates them to be considered child abuse. Brunton (2023) argues that an abused

child usually does not understand the illicit core of the activity and cannot express full obvious consent about it. He notably mentions that 20,4 % of North American children, 28.8 % of Australian children, 18.9 % of African children and 22.4 % of South American children were sexually abused in 2021 (Brunton, 2023). These figures reflect the universal widespread of this evil act against children, which inflicts physical and psychological harm on them. Sexual abuse could have traumatic impacts on a child's mentality and personality because it jeopardises children's conceptions of mortality and appropriate sexual behaviour (Brunton, 2023). Sexualization of childhood deprives the victims of their trust in the protection provided by law and society and taints their purity and innocence. This represents the brutal impact of pornography on children. Needless to say, engaging minors by force in sexual content inflicts severe damage on their physical and mental health; immediate death is a common consequence of this activity (Ali et al., 2024). Notable impacts on the psychological growth of the child's personality and social behaviour as a result of the heinous fear and anxiety the victims endure during the abuse. Moreover, the severity of the abuse consequences is affected by its manner, duration, and broadcast publicly or remains secret (Hébert & Langevin, 2023). All these factors formulate the futural portrait of the victims's social personality and mentality.

3. Contradiction to the Child's Best Interest Concept

Article 3 of the CRC obliges state parties to prioritise the child's best interest when organising their issues. Furthermore, Article 9 permits separating the child from his parents under the requirement of his best interest. This conventional conception of the child's best interest reflects the prominence of this concept regarding society's interactions with the child. This interest is the fundamental core of domestic and international child-relevant policies. Furthermore, General Comment No. 14 (2013) notes that this norm manifests the core values of the CRC because of its obligatory nature on state parties. De facto, granting the child's best interest a primary consideration establishes a legal and logical shield against violations of children's rights. In the same context, The European Commission clarifies that the concept of the best interest of the child (BIC) should be assessed as the primary consideration concerning international, regional, and domestic policies and strategies.¹ Article 24(2) of the Charter of Fundamental Rights of the European Union incorporates BIC to ensure the dignity and prosperity of the EU children. Affirming this concept, the Egyptian Child Law No. 12/1996 grants BIC the same primacy as the CRC (art 3c). Those legal instruments highlight BIC as a determinant of the validity and efficiency of governmental policies that affect children. By virtue, BIC occupies the same order concerning individuals' interactions with children. The legality of one's interaction with a child depends on the interactor's compliance with BIC; violating BIC criminalises the interaction.

¹ Best interests of the child (BIC) (European Commission: Migration and Home Affairs). <https://clck.ru/3MGoCV>

BIC manifests the deliberations taken into account when introducing services or products that concern children (Levesque, 2023). They are controlled by several determinants, e.g., the safety and well-being of the child. BIC serves to guarantee the maximum ratio of the child's favour versus other interests of the society members. To enhance this concept, jurisprudence developed the child's dynamic self-determinism to figure out a decision's compliance with BIC (Eekelaar, 2017; Levesque, 2023). Therefore, children are possessors of rights who are able to determine their best interests and represent their views to society. The purpose of this strategy is to enable abused children to speak out against their perpetrators, particularly in domestic abuse cases. BIC should have a broad legal conception that exceeds the mere maintenance of the child's life to guarantee its quality (Sorbie, 2021). Thus, BIC includes providing children with essential life needs, physical and psychological, through efficient mechanisms that enhance the appropriate quality of those needs.

The previous review of BIC explains how child pornography contradicts this concept. Engaging children in illicit activities, either by force or deception, does not accord with the pure nature of childhood because most of the victims might be unaware of the immorality of the content they have been exploited to produce. Child pornography transfers the victims to illicit productions to be offered solely in dark inhumane markets. According to the affirmed conception of BIC, children have no interest in such activities as they deprive children of the required emotional and social protection. Furthermore, the severe physical and psychological impacts of sexual interactions on children frustrate their normal social and mental growth and deprive them of engaging society as ordinary members. Child pornography introduces distorted personalities to society. Therefore, this evil deed jeopardises the child's well-being and safety which are fundamental values of the inner society. BIC, from a practical perspective, reflects a chief interest of the whole society because children are the core blocks of the society establishment. Consequently, BIC should be the primary legal interest of the whole society when confronting child pornography.

4. Enhancing the Protective Feature of Legal Rules Through the Judicial Reasoning

In general, judicial reasoning is the process by which judges arrive at a decision or judgment in a legal case through the analysis and interpretation of legal rules and the consideration of the case factual background. Judicial reasoning includes confrontation between judges and laws by creative rule-making to formulate a rule of decision or faithful adherence to the existing rules by rule-following approaches. Thus, judicial reasoning encompasses both creative rule-making and faithful rule-following. Judges play a crucial role in shaping legal principles while respecting existing authority. Their decisions impact individual cases and contribute to the evolution of legal doctrine. Judicial reasoning is

the art of balancing between antagonistic interests of litigation parties (Mańko, 2022) seeking the appropriate application of legal rules on the dispute. The judicial balancing between antagonists achieves social, legal, and political objectives since it promotes the trustworthiness of the national judiciary (Mańko, 2022). Therefore, judicial reasoning is the pulsing heart of the judicial process, which crystalizes the judges' knowledge of the law, efficient analytical skills, and capabilities to deliver the best interpretation of legislation.

5. Judicial Reasoning Supports the Best Interpretation of Legal Rules

Judicial reasoning is an effective shield for judges to defend the legitimacy of their rulings; it prevents arbitrary deciding of judgments because judges review the case facts through an analytical perspective under a well-established set of judicial decision-making mechanisms, which proves the judges' efficient knowledge of law and legal facts (Ravarani, 2019). A qualified judgment should be established on efficient reasoning. Furthermore, the judge's interpretation of the law according to each case's circumstances supports their endeavours to reveal the accurate legislative intentions behind the legal rules (Leszczyński, 2020). Those intentions are the true national motivation for the legislation which judges should consider when interpreting them within a specific case context. This approach prevents opportunities for judicial arbitralization or personalisation of their judgements, granting the judicial process an effective impartiality guarantee.

The European Court of Human Rights (ECHR) adopts the proportionality standard to establish the judges' reasoning in several cases. According to the ECHR, proportionality implies maintaining the balance between the individuals' protected legal interests and society's legitimate objectives². Furthermore, proportionality in judicial reasoning strengthens the quality of justice introduced by the judgment (Jaeger, 2019) as it manifests a core pillar of legal certainty and enhances the fairness of the court's rulings. It also portrays the judges' logical analysis strength while interpreting legal rules and contextualising them within the case's factual background in a case-by-case manner.

A golden outcome of judicial reasoning is its support for curing legislative deficiencies through developing a case-by-case interpretation (Małolepszy & Głuchowski, 2023). Activating the judges' analytical and interpretive skills to contextualize a legal rule within litigation enhances overcoming linguistic and applicability difficulties and melts down the rigidity of legislative instruments. Therefore, judicial interpretation of legislation assigns a legislative job to the judges because of their contribution to creating an appropriate

² ECHR Annual Report. (2014). <https://clck.ru/3MGoLh>

and applicable understanding of the legislator's intent. It is a realistic judicial law-making process crystallising the judges' efforts to the accurate application of legal rules (Małolepszy & Głuchowski, 2023). Judicial reasoning and interpretation facilitate this judicial-legislative mission.

Mańko (2022) explains that judicial reasoning is a formulation of legal and logical stages. It begins with the identification of conflicting interests of the dispute parties and then analyzing them to determine the applicable legal rules. Afterwards, the judge should utilize his evaluation skills to find out the most appropriate interpretation of legal rules. Interpretation is the reason for the variety in legislation applications because it depends on the judge's understanding of them within the dispute context. The judge's analysis of the dispute entries contributes chiefly to this interpretation. Then, the judge determines the appropriate interpretive norm generated by this legal and logical judicial thinking mechanism to settle the litigation.

From this model, it is needless to say that judicial reasoning constitutes the generator of legislation interpretation; courts' judgements elaborate on the concepts texted within the legislation, legislative intentions, and their application mechanisms. Thus, judicial reasoning is the illustration of legal concepts. Accordingly, the legal concept of BIC finds its efficient interpretation within judgments on child litigations because those judgments considered BIC a primary when balancing the disputing interests. They constructed a shield of judicial protection for children against perpetrating abuse activities.

6. BIC Through a Judicial Lens

The research in this section reviews a handful of judgements on child pornography and other sexual abuse sorts. These case laws were selected under a criterion that guarantees their suitability to the study objective. The studied case laws are judgments on child pornography-related disputes. They are chronically limited to the period 2018 to 2024 to ensure the modernity of the research results in this rapidly developing area of concern. The analysis and process of scrutiny will determine the objects of these case laws. In addition, an analysis of the rulings will examine the grounds for the decision and the legal norms they entailed.

In *AG v Williams* (2023, paras. 6, 12), a case concerning child sexual abuse, the court discussed the principle of open justice. The judgment decided that the fundamental principle to administer justice in public is not absolute; the court can cast it away according to the plaintiff's interest. BIC implies that sexual abuse hearings should not be in public for the proper application of justice. Thus, it is the ultimate authority of the court to exclude public hearings in those cases³. Furthermore, the court preserved the power to limit publication in this case without prejudice to its authority to conduct private

³ Crown Prosecution Service (CPS). (2019, 17 January). Hearings in Private ('In Camera'). <https://clck.ru/3MGoSg>

hearings (ibid, para. 20). both are management powers intended to provide the child with effective judicial protection. The fundamentality of the courts' protection for children authorizes granting them broad authority to conduct hearings in private (Forde, 2022). This authority is a procedural guarantee of child-friendly justice as it enshrouds the victim with a peaceful tranquil judicial environment that suits the child's psychological needs. The principle of children's private court hearings is a direct application of General Comment 24/2019 objective to provide them with effective justice.

Enhancing the protection of the child's psychology and reputation, the England and Wales Court of Appeal anonymised the names of the offender and the victim since they both were children. In *Bai, R. v* (2022) the judgment did not include the litigation parties' names but it referred to them with separate capitalised letters. Moreover, the court indicated that the severity of the child's crime should not deprive him of the specific legal protection concerning detention and other non-custodial measures (ibid. para. 17). it is a primary guideline of a paramount consideration. Thus, upon assuring the 1st instance court's compliance with the guideline, the appellate circuit dismissed the defendant's appeal. The same principle was adopted in *Barker, R. v* (2023). Thus, considering the child's detention guidelines is a chief pillar of children's judicial protection.

In *State v Hunt* (2020), the court reshaped the traditional understanding of the scope of the defendant's digital device search warrants. While detectives extracted child pornography materials from his laptop according to a search warrant, the defendant urged the court to dismiss this evidence because of the detectives' excess of the warrant scope. Specifically, he claimed that the warrant authorized the detectives to search "for" electronic devices, not search "of" them, which implies finding them and sending them to the ad hoc judicial body without exploring their contents. Consequently, the detectives' exploration and seizure of digital materials stored on the laptop is null and void and, with that, the court should not convict the defendant (ibid, p. 28). The invalidity of evidence-gathering procedures implies the defendant's acquittal according to fundamental legal logic. The court expressed a *prima facie* agreement with the defendant's argument since the traditional rules governing search warrants require ultimate compliance with their wording. Nonetheless, it refuted this argument as it decided that previous US judicial precedents indicated the fruitlessness of this argument; they authorised child pornography evidence revealed by detectives even though the warrant limited its scope to search "for" devices (ibid. p. 32). the severity of engaging minors in this illicit activity justified the court's excessive interpretation of the search warrant. BIC implies overcoming *prima facie* wording odds to enhance children's judicial protection.

Furthermore, the Alabama Court of Criminal Appeals in this case authorized tracking the suspect's IP address to gather evidence of child pornography (ibid, p.19). It could be understood that the court's reasoning contributed to evolving a suitable interpretation

of legislation to BIC, which reflects the prominence of this judgment. Judicial reasoning can recontextualise legal notions to achieve the objectives of BIC. This conclusion accords with the humanitarian mission of the judges. Similarly, a US court permitted using IP addresses to disclose the identity of child pornography perpetrators and reveal their locations for prosecution purposes (*United States v Tagg*, 2018, p. 3). Notwithstanding the judicial affirmation of the personal theme of the defendant's IP address ([Sokol et al., 2020](#)) because it represents its owner's personal data. Therefore, the utilisation of this technique at courts discloses judicial prioritisation of BIC by bypassing the offender's shallow interest in protecting his privacy, represented in the IP address, to reveal his identity and location, favouring the victim's BIC. The courts' attitude indicates the success of judicial reasoning in merging law and technology to achieve justice and the true concept of BIC. Judicial interpretation cures the failure of domestic legal systems to protect individuals' privacy on the Internet, regardless of the existing legislation ([Gilman, 2021](#)) because it contextualises privacy legal rules within a single litigation considering the unique perspectives of each case per se. the Court of Justice of the European Communities affirmed this notion in *SpaceNet (Judgment)* (2022, para. 100) as it transcended the legal protection of IP address entailed in Articles 7 and 8 of the EU Charter and permitted tracking the suspect's IP address in cases of the acquisition, dissemination, transmission or making available online of child pornography to combat sexual abuse of children.

Moreover, in *United States v Tagg*, the court considered that the mere possession of child pornography content reflects the defendant's intent to view and suffices to convict him (*ibid*, p.12; *United States v Miltier*, 2018, para. 85) under 18 U.S.C. § 2252 4(B).

In the same context, the court decided in *United States v. Fall* (2020) that using an intermediary device, owned by another person with bona fide, to temporarily store child pornography content constitutes illegal transportation of this content under 18 U.S.C. § 2252 (*ibid*, para. 396). Furthermore, the court concluded that possessing illicit content of minors on one hard drive and other materials on a separate drive does not constitute multiplicity; the judgment can punish the defendant for each actus reus per se (*ibid*, para. 374) as there was no overlapping between accusations. The court's conclusion accords with the US Supreme Court's explanation of criminal multiplicity in *Rheuben Johnson v State of Kansas* (2019, p. 10).

The judicial utilisation of technology against child pornography has rocketed glaringly. The 5th Circuit of the US Court of Appeals permitted using hash values coinciding as evidence (*United States v. Reddick*, 2018, para.639). The court indicated that matching online distributed child pornography hash values with those found on the defendant's devices suffices to conclude accountability. Hash values comparisons permit concluding the defendant's possession of child pornography with absolute certainty, which is the fruit of incorporating technologies into judicial interpretation.

The Court of Appeal in Northern Ireland Decisions, in *Pacyno, R. v* (2024), concluded that the gravity of creating online child pornography content aggravates the defendants' accountability (ibid, para. 13). The reason for this gravity is the exploitive feature of this activity, which inflicts an inherent harm on the victim. Accordingly, the accusation passes the custody threshold, justifying sentencing the defendants to three years in jail (ibid, para. 15). Considering the psychological harm, upon deciding the punishment, manifests an appropriate moral remedy for victims. Moreover, the anonymity of victims does not prevent the defendants' conviction. Because several child pornography materials image unknown victims, who might be unable to reach justice, the court permitted punishing the perpetrators regardless of the non-identification of victims (ibid, para. 19). Thus, the court's broad interpretation blocked a road to impunity based on the anonymity of online child pornography victims. This broad approach is represented in the court's affirmation of the criminalisation of the mere possession of minors' illicit materials victims (ibid, para. 40). The dependence of judicial reasoning on logic promotes the judges' utilisation of broad interpretive skills to strengthen judicial child protection.

In *Director of Public Prosecutions v M. O'D* (2022), the Irish Court of Appeal considered showing child pornography an aggravating condition of the rape offence that preceded committed by the victim's father (ibid, paras. 22, 33). The defendant's violation of parental responsibility duties justified the court's opinion because of the severe psychological harm he inflicted on the victim. This was a direct interpretation of the obligation included in Article 18 of the CRC on both parents to comply their endeavours in bringing up the child with BIC. Correspondingly, the court resented the defendant to 10-15 years imprisonment.

The US Court of Appeals 4th Circuit affirmed the mere criminalisation of engaging minors in sexual activities, including child pornography, disregarding the victim's consent or the offender's purpose (*United States v. McCauley*, 2020, para. 694). It is established that child consent does not prevent the offender's punishment; the child's protection considerations justify neglecting the minor's expression of consent (Featherstone, 2021). England and Wales Court of Appeal disregarded the child's consent because of the victim's immaturity and lack of life experience (*R v BHL*, 2023, para. 10). Thus, the court does not mitigate the original sentence on the basis of the victim's responsive reaction to the sexual abuse; expressing no resistance by the minor does not constitute a legal consent on the sexual activity. Furthermore, requiring the offender's purpose to convict him restricts attributability in child pornography crimes, which frustrates justice. Thus, the appellate court broadened the interpretation of the specific intent stipulated in 18 U.S.C. § 2251. This intent is found in any moment of the deliberate imaging the child sexual abuse. Then, the prosecution authority is not required to establish evidence of the

offender's intent to produce and distribute illicit child materials (ibid, para. 697). The broad interpretation of this legal text is necessary to enhance the child's judicial protection as it enables judges to overcome legislative wording deadlocks; the supportive effect of the latter for the perpetrators' impunity is needless to say.

Child pornography might not include direct engagement of minors in sexual activities; it might occur without physical contact with the victim (O (Description of Sexual Abuse), 2024, para. 20). Consequently, exposing children to adult pornographic content, even though unintentionally, constitutes sexual abuse under the UK Children Act 1989 (Section 31 (9)) that drove the court to replace the victim's care from her parents to her grandparents. The carers' behaviour violated childcare basics as they did not take proper measures to prevent the victim's exposure to adult pornography (O (Description of Sexual Abuse), 2024, paras. 33, 36). The judgment, through this interpretation, developed the NSPCC Guidance (§ 26)⁴ about children's sexual abuse by adding non-contact activities to this category. According to the court, the Guidance wording does not include newly created sorts of children's sexual abuse which compelled the court to overcome the Guidance direct illustration to cover acts that did not contain direct contact with the victim (O (Description of Sexual Abuse), 2024, paras. 43, 45). The ECHR confirmed the illegality of distributing pornography to children and the urgent need to limit online porn products to adults (PRYANISHNIKOV v. RUSSIA, 2019, para. 61). Thus, physical contact is no longer required to prove child sexual abuse, which enhances children's judicial protection.

In R.B. v. Estonia (2021), the ECHR decided the insufficiency of civil child protection proceedings to defend the victim against sexual abuse (ibid, para. 61). Child sexual abuse is a heinous crime that requires urgent proceedings of criminal law nature. Therefore, in custody litigation, states should provoke criminal investigation proceedings about child sexual abuse allegations. Ancillary investigations by the civil court are not enough against this criminal act. The court vividly indicated that BIC requirements imply this decision under CRC (ibid, paras. 69, 71); an approach to effective child-friendly justice (ibid, para. 88). Thus, BIC is judicially considered the cornerstone of child-friendly justice.

To sum up, the identified judgments enhanced the concept of BIC through judicial reasoning. They merged technical tools and interpretive skills with the existing legal rules to overcome the evolving nature of child pornography and the stagnation of domestic legislation. Therefore, they established a unique mechanism to protect children online, based on judicial reasoning. This mechanism has a flexible theme that adapted the national judiciaries to the technical nature of child pornography and enhanced the national

⁴ National Society for the Prevention of Cruelty to Children. <https://goo.su/bwhWVsv>

courts' ability to prioritise BIC. Consequently, cyberspace has become safer and more secure for children because of overcoming the shortcomings of the relevant legislation. Furthermore, judicial reasoning proves that the prominent theme of the judges' contribution to confronting child pornography is innovation, which enabled them to overcome the legislation stagnation concerning this activity by developing an appropriate understanding of legislation according to each case circumstance. This is the core of judicial reasoning that manifests its contribution to contextualising BIC in legal practice.

Conclusion

In conclusion, the research points out the gravity of online child sexual abuse by engaging innocent minors in child pornography. It is an illicit criminal act violating the purity and innocence of childhood. Because it degrades children's well-being, international legal instruments and national laws prohibit child pornography, ensuring that preventing child sexual abuse is a BIC. This concept is the determinant factor of all policies and decisions that concern the child; its enhancement is the chief objective of judicial and legislative policies.

The research concludes that an ongoing legislation amending process to confront child pornography is not required because judicial reasoning bridges practical gaps caused by legal rules shortcomings. Reasoning delivers the most suitable interpretation of legislation to the judge. Thus, they can contextualise this interpretation within each case according to the concept of BIC. Judicial reasoning is the golden key to overcoming legislation stagnation concerning evolving child pornography. The previewed judgments are evidence of this conclusion because they crystalised the judges' endeavours to reach the perfect application of legal rules in light of the BIC concept.

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Судебная аргументация как механизм правовой защиты детей от цифрового сексуального насилия и детской порнографии

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Ключевые слова

безопасность детей,
детская порнография,
защита детей,
киберпространство,
международное право,
право,
сексуальное насилие,
судебная аргументация,
судебные решения,
цифровые технологии

Аннотация

Цель: исследование направлено на изучение вклада судебной аргументации в толкование законодательства для усиления правовой защиты детей от детской порнографии и цифрового сексуального насилия в условиях быстрого развития киберпространства, устраняя тем самым пробел в научном знании о возможностях судебного толкования как альтернативы медленному процессу внесения законодательных поправок.

Методы: в качестве основного методологического подхода применен анализ судебных решений по делам о детской порнографии и сексуальном насилии над детьми за период с 2018 по 2024 г. Использованы методы сравнительно-правового анализа, изучения судебной практики различных юрисдикций, включая решения Европейского суда по правам человека, судов США, Великобритании и Ирландии. Исследование основывается на концептуальном анализе принципа наилучших интересов ребенка и его применения в судебной практике.

Результаты: установлено, что судебная аргументация представляет собой эффективный механизм преодоления ограниченности законодательных формулировок при защите детей от онлайн-эксплуатации. Выявлены ключевые направления судебного толкования: расширение понятия детской порнографии, включение бесконтактных форм сексуального насилия, применение цифровых технологий для сбора доказательств, приоритет концепции наилучших интересов ребенка над процедурными ограничениями. Доказана способность судебной аргументации создавать правовые прецеденты, обеспечивающие более гибкое и эффективное применение существующего законодательства.

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Научная новизна: впервые комплексно исследована роль судебной аргументации как инструмента динамического толкования правовых норм в сфере защиты детей от цифрового сексуального насилия. Разработана концептуальная модель взаимодействия судебного толкования с принципом наилучших интересов ребенка. Выявлены механизмы преодоления законодательного застоя через судебную интерпретацию правовых норм применительно к современным формам детской порнографии в киберпространстве.

Практическая значимость: результаты исследования могут быть использованы в судебной практике для обоснования решений по делам о детской порнографии, в законотворческой деятельности при совершенствовании норм защиты детей, в правоприменительной практике правоохранительных органов. Выводы работы способствуют формированию более эффективной системы правосудия, учитывающей интересы детей, и могут служить основой для разработки методических рекомендаций по применению судебной аргументации в делах о защите несовершеннолетних.

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