

POLICY COMMENTARY

Commercial Sexual Exploitation of Children in the Western Balkans – Regional Vulnerabilities and Legal Responses

Kristina Amerhauser and Ruggero Scaturro

GI-TOC, AT

Corresponding authors: Kristina Amerhauser (kristina.amerhauser@globalinitiative.net);
Ruggero Scaturro (ruggero.scaturro@globalinitiative.net)

Commercial sexual exploitation of children (CSEC) is receiving necessary attention around the world, but the phenomenon remains underreported in the Western Balkans. Through the first part of this paper the authors set out to provide an overview of the knowledge base of the risks and vulnerabilities of the Western Balkans to CSEC. They underline that there is a clear need for more quality and quantity of data. Indeed, the lack of awareness of key actors in the child protection system makes the region further vulnerable to CSEC. In the second section of the paper, the authors then provide a brief analysis of the Western Balkans' relevant legal commitments at the international and regional levels, and an overview of how sexual exploitation of children is covered in national law. It concludes that efforts to define and regulate CSEC in compliance with international standards need to be accompanied by a better implementation of such norms, as well as by an efficient allocation of resources aimed at increasing awareness and collaboration among the stakeholders concerned.

Keywords: commercial sexual exploitation of children; Western Balkans; legal frameworks; organized crime; human trafficking; child sexual abuse material

Introduction

Commercial sexual exploitation of children (CSEC) is a topic of global concern. According to a widely accepted definition, CSEC refers to the sexual exploitation of a child by an adult in exchange of a payment in money or in kind to the child or to one or more third parties, often a family member (ILO 2007; Kethineni & Lerner 2014; Development Services Group, Inc. 2014). Article 1 of the 1989 United Nations Convention on the Rights of the Child defines a 'child' as 'every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier' (UN 1990).

CSEC refers to a range of crimes and activities, including but not limited to the production, transfer, and distribution of child sexual abuse material (CSAM), the trafficking of a child for sexual exploitation, sexual exploitation in travel and tourism, and child marriage (Chase & Statham 2005; ILO 2007; ECPAT International 2015). CSEC should be distinguished from sexual violence or abuse as the latter does not require the exchange of cash or other rewards (Chase & Statham 2005). Child trafficking for sexual exploitation takes place at local, national, or international levels, and virtually every nation in the world is impacted to some extent by this industry (Kethineni & Lerner 2014).

Yet, despite international recognition of the problem and increased understanding of the negative impact on children's development and the harm caused to society more broadly, there exists little research on the phenomenon in the Western Balkans (GI-TOC 2021a). Across the six countries of the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo,¹ Montenegro, North Macedonia, and Serbia) CSEC cases are only

¹ References to Kosovo in this report are made without prejudice to positions on status and are in line with UNSCR 1244/1999 and the advisory opinion of the International Court of Justice on Kosovo's declaration of independence.

scarcely reported in the media. Government data is not comprehensive and often not comparable across countries due to the lack of uniform systems of data collection and analysis (GI-TOC 2021a). Although in recent years international organizations such as UNICEF or the OSCE as well as civil society organizations (CSOs) working on issues related to human trafficking (including ECPAT) have been devoting greater analysis and effort to address different components of the problem (Ali 2020; Dunja et al 2019; Hazizaj & Maksutaj 2009; Kuzmanović et al. 2019; Mcquade, Rexha & Trimi 2020; Nickolds & McKillop 2020; Sathyanarayanan 2018), almost all of these CSOs focus on the phenomenon on a national level, and fail to tackle CSEC from a regional standpoint.

The purpose of this article is to review what is currently known about CSEC in the Western Balkans and to assess the legal tools in place addressing the phenomenon internationally, regionally, and nationally. Given CSEC's often transnational nature, this article argues that it is vital to look at the vulnerabilities to CSEC from a cross-regional perspective. For this purpose, it first looks at the different manifestations of CSEC and its prevalence in the Western Balkans. Secondly, it sheds light on the regional vulnerabilities, with particular attention to the lack of awareness and knowledge of key actors in the six countries' child protection systems. Thirdly, this paper provides an overview of the legal framework in place and concludes that, although Western Balkans' legal instruments comply with international standards, there is an increased need for the criminal justice system to tackle CSEC through a holistic approach that includes the collaboration and cooperation of all the stakeholders concerned.

CSEC in the Western Balkans

The wars of former Yugoslavia, poverty, unemployment, and the collapse of the social welfare systems have significantly contributed to the regional vulnerability to human trafficking in the Western Balkans (Surtees 2008; Žegarac, Baucal & Gvozden 2005). In fact, CSEC is not a new phenomenon in the Western Balkans, or more broadly Southeast Europe, as the region suffers from a long history of trafficking for sexual exploitation, especially of women and girls (Surtees 2008; UNODC 2020; US State Department 2020).

Today, the Western Balkans are a region of origin, transit, and destination of human trafficking, including CSEC, which manifests itself in several interconnected forms (GRETA 2016, 2017, 2018a, 2018b, 2020, 2021; US State Department 2020). Recorded cases comprise the sex trafficking of minors; sexual exploitation in venues such as brothels, bars, and strip clubs and exploitation of children in travel and tourism. Reports from Albania and Montenegro suggest, for instance, that children in these countries are brought to touristic cities (particularly on the coast) during the summer for sexual exploitation in hotels and motels (GI-TOC 2021a:24).

Child marriage, especially among ethnic minorities, as well as the creation and distribution of CSAM, also take place in the region. With regards to child marriage, one of the most prominent examples is the so-called 'Hamidovic case' from 2015, which also showed close overlaps to sex trafficking. In this case, a Bosnian national was found guilty of trafficking more than 500 Roma girls from Bosnia and Herzegovina to France and many of the girls were forced into marriage with members of criminal networks (Court of Bosnia and Herzegovina; SEE-Obs 2021). The creation and distribution of CSAM in the region includes but is not limited to the recording, live-streaming, sharing and downloading of materials depicting sexual exploitation of children (GI-TOC, 2021a). In North Macedonia, for example, a group of more than 7,000 users was created in early 2020 on the mobile app Telegram with the aim of sharing abusive material of women and children (Stojkovski 2021). There are also various overlaps between different forms of CSEC and interlinkages to other forms of exploitation, including labour exploitation and begging, but the number of known cases remains limited, likely due to widespread underreporting (GI-TOC 2021a; US State Department 2020).

There are currently no comprehensive and reliable estimates of the true number of CSEC victims in the Western Balkans (nor globally), particularly given the covert nature of the phenomenon and the lack of awareness of CSEC across the region (Albanese 2007; GI-TOC 2021a; Franchino-Olsen 2019; Miller-Perrin & Wurtele 2017). Nevertheless, the annual trafficking report by the US State Department provides a helpful overview of the current situation. It states that in 2019, governments and NGOs in Serbia identified 24 child victims of trafficking; in Kosovo they identified 15 child victims; in North Macedonia they identified 4 child victims and 85 potential victims; Albania identified 67 potential child victims and Bosnia and Herzegovina identified 36 potential victims. Montenegro did not identify any (potential) child victims of trafficking in 2019. The majority of (potential) victims identified were subject to sexual exploitation (US State Department 2020).

While these numbers may seem low, the number of CSEC cases around the world appears to be growing, not least due to the fast development of the Information and Communication Technology (ICT) sector and the consequent vast expansion of production and distribution of CSAM (Albanese 2007; Bird et al. 2020).

Already in 2005, Chase and Statham warned about the spread of tech-facilitated CSEC as new technologies opened new opportunities to potential offenders to access and groom children and to provide them with quick and effective mechanisms to sell, share, and transfer child abuse material (Chase & Statham, 2005). To give an idea of the magnitude of the phenomenon, the number of CSAM increased from just over 3,000 reports in 1998 to more than 45 million in 2018 and more than 750,000 predators are estimated to be online at any given moment (ICMEC 2017; Keller & Dance 2019).

The Western Balkans appear to be no exception. The Albanian domain .al is the third highest in Europe with regard to the hosting of indecent images of children (and the eighth highest in the world) and Albania alone receives between 5,000 and 20,000 annual requests from international partners indicating possession, distribution, production, and use of CSAM (Ali et al. 2020:12). Serbia seized more than 15 terabytes of abusive material in 2019 alone (MoI of Serbia 2019), further underlining the clear existence of CSEC in the region, particularly in digital environments.

Western Balkans’ vulnerabilities to CSEC

In spite of the continuous number of recorded CSEC cases, understanding CSEC dynamics and Western Balkan’s vulnerabilities to the phenomenon remains an arduous task. Numerous reports analyse the risk profile of children particularly vulnerable to CSEC, and most studies find that although victims of CSEC are a heterogeneous group and that in principle children from any socioeconomic or ethnic background can become victim of CSEC, there are a number of common vulnerabilities that can be identified (Chase & Statham 2005; Wright Clayton & Krugman & Simon 2013; Miller-Perrin & Wurtele 2017). **Table 1** summarizes various levels of risk factors applicable to the Western Balkans.

In the Western Balkans, children with a disadvantaged socio-economic background, of ethnic minorities and children on the move appear to have a larger vulnerability to CSEC (GI-TOC 2021a). In particular, low levels of education – only 2 out of 5 Roma children receive education in a segregated school and only 1 in 3 complete secondary school in Bosnia and Herzegovina (World Bank 2013) – as well as low social mobility – employment rates of the Roma community range between 11–22% (Müller 2020) – make many Roma children vulnerable to various forms of exploitation, both within the community and by organized criminal networks operating in the Western Balkans and beyond (GI-TOC 2021a:32). Unaccompanied minors are continuously exposed to different safety and security risks as basic needs of migrants are barely met in reception centres across the Western Balkans (UNHCR). Lack of proper documentation of both children on the move and Roma children, low levels of awareness of the different forms of CSEC and widespread underreporting make it difficult to identify victims (GI-TOC 2021a:33; GRETA, 2016, 2017, 2018a, 2018b, 2020, 2021). In addition, although studies have shown that most victims are female, the number of male victims of CSEC is not to be underestimated (Chase & Statham 2005; Development Services Group, Inc. 2014; GRETA 2016, 2017, 2018a, 2018b, 2020, 2021; US State Department 2020).

The Western Balkan region’s vulnerability stems from the limited knowledge and capacity of key stakeholders in the child protection system to address the different manifestations of CSEC, including the extensive overlaps to other forms of exploitation. The widespread use of the internet and the increasing number of tourists in the region facilitate the development of new trends of CSEC and allow for the diversification of recruitment and forms of exploitation (GI-TOC 2021a). As in other countries, governmental actors in the

Table 1: Risk factors of CSEC.

Macro-economic environment and system-level factors	<ul style="list-style-type: none"> • Lack of effective child protection systems. • Societal and cultural norms. • Sexualization of children in media and commercial products. • Racial and ethnic discrimination.
Peer- and community-level factors	<ul style="list-style-type: none"> • Peer pressure. • Marginalized neighbourhoods. • Community cohesion and norms constituting sexual behaviour, consent, and coercion.
Individual- and family-level factors	<ul style="list-style-type: none"> • Record of child neglect/maltreatment/family violence. • Low levels of education. • Poverty. • Psychogenic issues. • Lesbian, Gay, Bisexual, and Transgender (LGBT).

Source: Wright Clayton & Krugman & Simon 2013.

Western Balkans often do not acknowledge the magnitude of the problem or the underreported nature of CSEC, not least because of the limited technical expertise to identify the different CSEC manifestations, and the consequent sporadic cases of CSEC investigated and prosecuted (Ali et al. 2020; GI-TOC 2021a; Kethineni & Lerner 2014).

In a comprehensive study conducted in 2021, The Global Initiative Against Transnational Organized Crime (GI-TOC) analysed the Western Balkans' child protection infrastructure and suggested that although all countries have national referral mechanisms in place to facilitate the reporting and processing of suspected CSEC cases, the systematic implementation of child protection responsibilities across the administrative levels, as well as limited financial, human, and technical resources remains a challenge. It also shows that law enforcement and the judiciary have varying degrees of expertise, especially on tech-facilitated exploitation (GI-TOC 2021a).

Table 2 shows the current (limited) law enforcement capacity and resources that governments of the Western Balkans devote to counter tech-facilitated CSEC in the Western Balkans. As can be observed below, most countries do not have specialized staff, departments, or trainings on tech-facilitated CSEC. Indeed, Serbia appears to be the only country in the region with an adequate number of professionals working on the topic. Judicial capacity to deal with tech-facilitated cases is believed to be inadequate in Albania, Bosnia and Herzegovina, Montenegro, and Serbia (GI-TOC, 2021a: 46).

In collaboration with public institutions, civil society in the region is at the forefront of the fight against CSEC, and many CSOs are actively engaged on the ground in projects ranging from awareness raising campaigns to child victim assistance and shelter provision. Nevertheless, public-non-profit partnerships to improve local capacity-building of NGOs and of their staff to identify and deal with potential victims remain low. For instance, international standards on partnerships set at the Lanzarote Convention include the establishment of hotlines to facilitate the first direct contact with potential child victims (Council of Europe, 2012). Yet, Montenegro and North Macedonia² do not have a hotline mechanism for the reporting of illegal or inappropriate content (GI-TOC, 2021a: 52).

The private sector is another crucial stakeholder in the fight against CSEC as it is directly located at both online and offline locations where exploitation takes place. By complying with industry regulations, global best practices and self-imposed due diligence standards, businesses can play a key role in mitigating the risk of CSEC (GI-TOC 2021a: 53ff; UNODC, 2021:18). For example, the tech sector, unlike any other business sector, has the potential to provide innovative solutions for vulnerable communities, survivors, anti-trafficking actors, policy makers and also the business community to leverage existing tools addressing human trafficking (BSR 2019). Yet, while many have been vocal in their commitment to child protection, experience shows that companies have been largely unwilling to prioritize child safety over profits (Salter &

Table 2: Overview of law enforcement and judicial capacity and training related to tech-facilitated CSEC.

Note: 'Partial compliance' of Bosnia and Herzegovina in this context is due to the fact that in Republic of Srpska capacity and training were found to be adequate but not so in the Federation of Bosnia and Herzegovina and Brcko District.

	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Adequate number of staff working on tech-facilitated CSEC cases.	No	Partially	Contradicting information	No	No	Yes
Specialized staff or department for tech-facilitated CSEC cases.	No	Partially	Yes	No	No	No
Training and education for staff working on tech-facilitated CSEC cases.	No	Yes	Yes	Yes	No	Partially by INTERPOL
Police capacity is adequate	No	No	Yes	No	Yes	No
Judicial capacity is adequate	No	No	Yes	No	Yes	No

Source: GI-TOC 2021a: 46.

² Kosovo did not supply any information with regards to its hotlines (GI-TOC 2021a: 52).

Hanson 2021:730ff). Nevertheless, there are some good practices from regional private entities in the ICT sector: for example, tech companies in North Macedonia have put in place automated screening technology for inappropriate content, and ICT companies in Albania and Serbia provide education and training for staff to work on CSAM reports (GI-TOC, 2021a).

In addition, the international travel and tourism sector has a long history of targeted engagement to combat child sexual exploitation and participates in multi-stakeholder initiatives to elaborate and implement policies to prevent CSEC (The Code 2021). Nevertheless, there is little awareness of CSEC across the industry in the Western Balkans. Few hotels have guidelines and protocols on how to respond to CSEC and initiatives depend mostly on the training of individual staff. Only few international hotel chains are part of The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (The Code), an international initiative to prevent CSEC. In Bosnia and Herzegovina, Kosovo, and North Macedonia, no local businesses have signed The Code. Across the Western Balkans, the private sector also reported little engagement with local police and government representatives as well as civil society on how to raise awareness and tackle the phenomenon (GI-TOC 2021a: 55f).

The Legal Framework

The criminal justice system plays a central role in the protection and prosecution of CSEC. Indeed, key stakeholders, including but not limited to international and regional organizations, academia, civil society, the private sector, and governments, have often emphasized the importance of compliance with international standards and treaties, as well as promoted the harmonization of laws and regulations (Development Services Group, Inc. 2014; Dushi 2018; GI-TOC 2021a; ILO 2007; Simonovic 2014). The following section aims to illustrate Western Balkan countries' compliance with selected key international and regional legal protection mechanisms against child trafficking, sexual abuse, and commercial sexual exploitation and looks at how these countries regulate it at the national level, with a specific focus on the provisions enshrined in criminal codes.

International Level

There are several international frameworks, conventions and protocols addressing CSEC as it is regulated within international human rights principles and international law. Key international tools relevant to the Western Balkans are the United Nations Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Pornography (CRC-OP-SC). In addition, key provisions are also to be found at the United Nations Convention against Transnational Organized Crime (UNTOC) and the Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo protocol).

The CRC entered into force in 1990 and with 194 states parties it is the most signed and ratified international human rights treaty. Albania ratified the convention in 1992; Bosnia and Herzegovina and North Macedonia in 1993; Serbia in 2001, and Montenegro in 2006.³ In its first article, the Convention defines 'the child' as any person under the age of 18, unless the legal age of majority is reached earlier. It also obliges states to take all necessary measures to protect children from all forms of violence, such as physical or mental violence, injury, neglect, abuse, or exploitation, including sexual abuse (UN 1989). Article 34 further stresses that states should take all appropriate national, bilateral and multilateral measures to prevent inducement or coercion of a child to engage in any unlawful sexual activity; the exploitation of a child in prostitution or any other unlawful sexual activity; or the exploitation of a child in pornographic⁴ performances and materials (UN 1990: art. 34).

The Optional Protocol on the Sale of Children, Child Prostitution and Pornography entered into force in 2002 and was ratified by Bosnia and Herzegovina and Serbia in 2002; North Macedonia in 2003; Montenegro in 2006; and Albania in 2008. The Protocol promotes a holistic approach to the suppression of trafficking of CSEC and CSAM (UN 2000b). Article 3 requires states to ensure that their criminal codes criminalize the offer, extradition, or acceptance of a child for the purpose of sexual exploitation, transfer of organs of the child for profit, involvement of the child in forced labour; the offer, obtainment, procurement, or provision

³ Kosovo is not a member of the United Nations and therefore it is not entitled to sign nor ratify any of the UN treaties.

⁴ At international, regional and national levels, conventions and criminal codes often regulate CSAM as 'child pornography'. However, for consistency with international practitioners' guidelines, the authors avoid the usage of the term 'pornography' associated with children and refer to such phenomenon as CSAM.

of a child for prostitution; production, distribution, dissemination, import, export, offer, sale, or possession of a child for the purposes of CSAM (UN 2002: art 3).

In addition, according to the Protocol, states have to adopt effective measures to protect the rights and interests of child victims at all stages of the criminal justice process and strengthen international cooperation by multilateral, regional, and bilateral arrangements to prevent, detect, investigate, prosecute, and punish the perpetrators (UN, 2002: art 10).

CSEC is also covered within the context of the UNTOC regulations on human trafficking. Entered into force in 2003, UNTOC defines human trafficking as a 'serious crime' constituting an offence punishable by a maximum deprivation of liberty of at least four years or more (UN 2001: Art. 2). The Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo protocol) supplements the Palermo Convention and has the purpose to help prevent and combat trafficking in persons paying particular attention to women and children, stipulate protection and assistance to the victims of such trafficking with full respect for their human rights, and promote cooperation among states parties in order to meet those objectives (UN 2000). Serbia ratified the UNTOC in 2001; Albania and Bosnia and Herzegovina in 2002; North Macedonia in 2005 and Montenegro in 2006.

Regional Level

Together with international frameworks, regional conventions provide important standards to combat sexual exploitation of children and often have a direct impact on relevant national legislation. Regional conventions are binding agreements between states in a given geographic area, which help localise and contextualise international norms and standards, and are key in setting out parameters to formulate working definitions with widespread acceptance (Simonovic 2014).

In Europe, the Council of Europe plays a vital role in defining best practices to combat CSEC, especially through the 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), the 2005 Convention on Action against Trafficking in Human Beings and the 2001 Convention on Cybercrime (the Budapest Convention). The first reinforces the principles enshrined in the CRC, the second reinforces key human rights principles and provides a series of rights for human trafficking victims, while the third addresses CSEC within the context of cybercrime. All the three conventions have been signed and ratified by Albania (2009, 2007, and 2002) Bosnia and Herzegovina (2012, 2008, and 2006), Montenegro (2010, 2008, and 2010), North Macedonia (2012, 2009, and 2004), and Serbia (2010, 2009, and 2009).⁵

The importance of the 2007 Lanzarote Convention lies in the fact that it first defines a 'child' as any person under the age of 18 (so does the CRC), but also goes a step further as it obliges states to take the necessary legislative measures on a variety of matters: prevention of violence against children, protection and assistance of victims, implementation of programmes of intervention and provisions of substantive criminal law criminalizing child sexual abuse and child prostitution, CSAM and the solicitation of children for sexual purposes (Council of Europe 2007). Thereby it is important to note that the offences covered by the Lanzarote Convention represent a *minimum* consensus, implying that establishing higher standards within a state's domestic legal framework is encouraged (GI-TOC 2021b).

The Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005 and goes beyond the international minimum standards as it strengthens the provisions on victim protection and provides for a series of rights to victims of trafficking, such as the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, among others. In addition, the Convention sets out for a unique monitoring system aimed at supervising the implementation of the obligations contained in it. The system consists of two pillars: the Committee of the Parties and the Group of Experts on Action against Trafficking in Human Beings (GRETA) (Council of Europe 2021).

The 2001 Budapest Convention regulates internet safety, and particularly deals with infringements of copyright, computer-related fraud, CSAM and security violations. It provides for a series of procedures – such as the search of computer networks and interception – de facto making it the only binding international instrument on this issue (Council of Europe 2001). It also serves as a tool for any country developing comprehensive national legislation against cybercrime, including CSAM (GI-TOC 2021b).

⁵ Although Kosovo closely collaborates with the Council of Europe on a number of relevant topics, it is not a full member state of the organization.

National level

The Western Balkan countries have not only ratified the relevant international frameworks, conventions and protocols addressing CSEC, but also introduced elements to prevent and combat CSEC into their criminal codes, particularly within human trafficking provisions, and family and cybercrime laws. Nevertheless, there are also significant gaps in national legislations, including in defining some of the key terms.

There is no coherent definition of ‘the child’ across the Western Balkans. **Table 3** shows that only Kosovo and North Macedonia follow the CRC definition and define the child as any individual under the age of 18 (CCK 2019: Art 113; CCNM 2009: Art 122). Bosnia and Herzegovina, Montenegro and Serbia differentiate between children (individuals under the age of 14) and juveniles or minors (individuals under the age of 18) (CCBiH 2003: Art 1; CCM 2003: Art 142; CCS 2005: Art 112). There is no definition provided in Albania’s criminal code; however, there are references to the age of 14 as the threshold for a child (CCA 1995). Further, the legal practice across the region also shows that the legal framework lacks adequate implementation. This section focuses on how national criminal codes punish commercial sexual exploitation, including its tech facilitated forms (CSAM), and given its practical importance in the region also comprises child abuse. The emphasis on penalties rather than constituent elements of the various offenses facilitates the regional comparison and allows for a visualization of how countries have incorporated international guidelines into national law.

CSEC in National Law

In the Western Balkans, CSEC is not recognized as a separate offence in the national legal frameworks and is generally considered and punished in the context of national anti-trafficking norms within national criminal codes (GI-TOC 2021b). With the exception of Bosnia and Herzegovina, all countries regulate CSEC either through their general anti-trafficking legislation or with anti-trafficking regulations focusing specifically on minors or children.

Penalties on human trafficking vary across the Western Balkans. In Bosnia and Herzegovina, the crime is punished with a minimum of five years of imprisonment on the national level, in the Federation of Bosnia and Herzegovina and in Brcko District, while in the Republic of Srpska, human trafficking perpetrators are punished with a minimum of three years of deprivation of liberty (CCFBiH 2003: Art 210a; CCBD 2003: Art 207a; CCRS 2017: Art 145).⁶ Montenegro and Serbia set the minimum threshold to one and three years respectively (CCCM 2003: Art 444; CCS 2005: Art 388); North Macedonia a minimum of four years (CCNM 2009: Art 418b) and Kosovo a minimum of five years (CCK 2019: 165). In Albania, the minimum threshold is set at eight years of imprisonment (CCA 1995: Art 110a). This shows that although all countries, but Kosovo have ratified the UNTOC Convention, some still do not fully comply.

All countries in the Western Balkans understand the trafficking of children as a more severe form of trafficking in human beings. This is also reflected in higher penalties: 10 to 20 years in Albania; 5 to 15 in Kosovo; 2 to 19 in Montenegro; and 8 to 20 in North Macedonia (CCA 1995: Art 128b; CCK 2019: Art 228;

Table 3: Age thresholds used for the definition of child and minor or juvenile in the Western Balkans.

Country	Definition of child and minor/juvenile	
	Under 14	Under 18
Albania	N/A	N/A
Bosnia and Herzegovina	child	juvenile
Kosovo	–	child
Montenegro	child	minor
North Macedonia	–	child
Serbia	child	minor

Source: Criminal codes of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

⁶ The legal framework in Bosnia and Herzegovina is extremely complex due to the country’s government systems. It has four criminal codes: the national criminal code; the criminal codes of Republika Srpska and the Federation of Bosnia and Herzegovina; and the criminal code of Brcko District as a self-governing administrative unit. According to the European Bank, today only a small number of laws are adopted at the national level and entity laws often date back to former Yugoslavia. Source: European Bank, <https://cutt.ly/VnJT5Pf>.

CCM 2003: Art 444; CCNM 2009: Art 418d). Serbia sets a five-year minimum duration of imprisonment for the trafficking of children (CCS 2005: Art 388).

Bosnia and Herzegovina constitutes again a special case: at the national level, CSEC is regulated within the anti-human trafficking law of the national criminal code which punishes the crime with a minimum of 10 years imprisonment (CCBiH 2003: Art 186). However, similarly to the human trafficking penalties outline above, differences exist at entity level: while the Federation of Bosnia and Herzegovina and Brcko District are in line with national legislation, the criminal code of Republic of Srpska establishes a lower threshold of only five years of imprisonment (CCRS 2017: Art 145–146).

Table 4 below summarizes the penalties used to punish human trafficking and CSEC in the region.

Tech-Facilitated CSEC

Tech-facilitated CSEC refers to the different forms of CSEC which are facilitated by the use of the internet and technology more broadly. The criminal codes of all Western Balkan countries have specific provisions on tech-facilitated CSEC either within their criminal codes or as special acts within anti-cybercrime laws and these specifically refer to the production, possession, and distribution of CSAM. Nevertheless, the criminalization of tech-facilitated exploitation remains sporadic and additional efforts to comply with CRC-OP-SC provisions are required in a number of countries.

Republic of Srpska (as the only entity of Bosnia and Herzegovina to do so), Kosovo, North Macedonia, and Serbia differentiate between the abuse of a child in the production of CSAM materials and the possession and distribution of such materials, with more severe penalties established for production-related offences. Penalties vary widely: in North Macedonia the production and possession of CSAM are punished with imprisonment of 5 to 20 years and 5 to 8 years respectively, while in Serbia the same offences are punished with maximum 8 and 3 years of imprisonment respectively (CCNM 2009: Art 193a; CCS 2005: Art 185). Kosovo does not criminalize online child grooming (GI-TOC 2021b).

Albania does not specifically define CSAM-related offences in its criminal code (GI-TOC 2021b). Further, Albania and Montenegro do not differentiate between production, possession and distribution of CSAM and while the first punishes the offence with 3 to 10 years of imprisonment, the criminal code of the second establishes penalties with imprisonment ranging from six months to maximum five years (CCA 1995: Art 117; CCM 2003: Art 211b).

Table 5 below displays the years of imprisonment for the production, possession, and distribution of CSAM set forth in the criminal codes of the countries under analysis.

Child Abuse

As defined in the introduction, child abuse is not part of CSEC. Yet, it plays a central role in the legal practice of the Western Balkans as due to lack of awareness and expertise of law practitioners many CSEC and tech-facilitated exploitation cases are in fact prosecuted as child abuse (GI-TOC 2021b).

In the Western Balkans, all national criminal codes have provisions on the ‘sexual abuse of children’. In principle, three specific acts fall under this umbrella definition: sexual intercourse, sexual assault/violence,

Table 4: Years of imprisonment for CSEC-related offences provided for by national criminal codes of the Western Balkan countries.

Offence	Years of imprisonment in the countries of the Western Balkans (average)					
	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Trafficking in human beings	8–15	5+ (BiH) 5+ (FBiH) 5+ (Brcko District) 3+ (Republika Srpska)	5–12	1–10	4+	3–12
Trafficking of a child	10–20	10+ (BiH) 10+ (FBiH) 10+ (Brcko District) 5+ (Republika Srpska)	5–15	3+	8+	5+

Source: Criminal codes of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

and rape. Looking at the criminal codes in more detail, key differences can be observed: for example, while the offence ‘sexual intercourse with a child’ is punished with imprisonments ranging from 1 to 15 years on average in Albania, Montenegro and Serbia; in Bosnia and Herzegovina, the offence is punished differently in each administrative entity, ranging from a minimum of six months in Republic of Srpska to life imprisonment in the Federation of Bosnia and Herzegovina, depending on aggravating factors (CCA 1995: Art 100; CCFBiH 2003: Art 204; CCRS 2017: Art 172; CCBD 2003: Art 204; CCM 2003: Art 205; CCS 2005: Art 180).

Sexual intercourse with a child is not explicitly mentioned in the criminal codes of Kosovo and North Macedonia (GI-TOC 2021b) but the offence is instead regulated under the offense ‘sexual assault of a child’, punished in both countries with 10 to 20 years of imprisonment (CCK 2019: Art 229; CCNM 2009: Art 188). Sexual assault is also regulated in the criminal code of Albania, where it is punished with 5 to 25+ years of imprisonment (CCA 1995: Art 107). Furthermore, penalties significantly vary depending on aggravating factors related to the age of the victim (with thresholds set usually at an age of approximately 14 or 15 years), the modus operandi (one vs. multiple perpetrators) and the consequences of the crime (in case of pregnancy of the child or death) (GI-TOC 2021b). In North Macedonia, for instance, if sexual assault of a child results in severe bodily harm or is perpetrated by multiple adults, the minimum is raised from 10 to 15 years of imprisonment (CCNM 2009: Art 188). In Republic of Srpska sexual assault of a child is punished with up to 10 years in prison for children older than 15 years and can result in life imprisonment for the sexual assault of younger children (CCRS 2017: Art 172–173). The crime is not included as a separate independent criminal offence in the legislation of the Federation of Bosnia and Herzegovina and Brcko District, Montenegro, and Serbia (GI-TOC, 2021b).

The ‘rape’ offence of a child is punished with a minimum of 3 to 15 years in Bosnia and Herzegovina, while in Kosovo (for victims up to 14 years of age), Montenegro, and Serbia the offence is punished with a minimum of 10 years of imprisonment. In Albania and North Macedonia rape is not included as a separate criminal offence and falls under the offense ‘sexual assault/violence’ (GI-TOC 2021b). **Table 6** below shows how the three offences are punished in the region.

Table 5: Years of imprisonment for CSAM offences provided for by national criminal codes.

Offence	Years of imprisonment in the countries of the Western Balkans (ranges)					
	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Production of child CSAM	3–10	1–5 (FBiH and Brcko District) 1–10 (Republika Srpska)	5–15	6 months–5	5–20	1–8
Possession and distribution of CSAM		1–8 (Republika Srpska)	1–10		5–8	6 months–3

Source: Criminal codes of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

Table 6: Years of imprisonment for selected offences provided for by national criminal codes of Western Balkan countries.

Offence	Years of imprisonment in the countries of the Western Balkans (average)					
	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Sexual intercourse with a child	7–15	1+ (depending on aggravating factors)	N/A	3–12+ (depending on aggravating factors)	N/A	5–12
Sexual assault, violence, or abuse	20+ (minor up to 14y) 5–15 (minor up to 18y)	1–life (juvenile up to 15y) 6m–10 (minor up to 18y)	10–20	N/A	10–20	N/A
Rape	N/A	3–15	10+ (child up to 14y) 5–15 (child up to 18y)	10+	N/A	10+

Source: Criminal codes of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

The legal practice

The previous section has shown that Western Balkans countries except Kosovo have ratified existing international and regional conventions and protocols addressing CSEC. The analysis has also shown that all countries have criminal law provisions regarding sexual exploitation in the broadest sense, suggesting general compliance with international standards. Yet, CSEC is not always recognized as a separate criminal offence and court cases and legal practice show that the implementation of international, regional, and national regulations remains limited. There are key differences in the penalties of sexual exploitation related offences across the Western Balkans, leading to uneven regional criminal law protection of children in the region.

Looking at verdicts across the region, it quickly becomes clear that local legal practice falls short of the multifaceted and complex realities of CSEC in the Western Balkans. Instead, cases are often considered and punished as ‘child abuse’, violations of ‘custom and tradition’ within family law regulations, or ‘other kinds of abuse’ under the law on rights and protection of the child under the national anti-trafficking legislation and action plans (GI-TOC 2021b: 5). This is particularly true for cases of child marriage but also relates to the production, possession and distribution of CSAM. In Albania for instance the cybercrime unit investigated 61 alleged cases of CSAM over the course of 6 years but concluded that none of them were genuine cases and therefore did not trigger any criminal proceeding (Sulstarova et al. 2019: 77).

An analysis of CSEC verdicts in the region also shows that there are not only few convictions but, in many instances, perpetrators only received the minimum of the prescribed penalty. For example, in Bosnia and Herzegovina most penalties of the 21 convictions for CSAM production/possession in 2018 were at the lower end of those permitted, some even below the minimum sentence (GI-TOC 2021b). Similarly, in Kosovo a foreign citizen was found guilty of the same crimes in 2019 and sentenced to only one year in prison – the minimum penalty (Klan Kosova 2020). The analysis of court cases in Bosnia and Herzegovina indicates that the court more frequently recognizes mitigating rather than aggravating circumstances (GI-TOC 2021b: 37).

Among other findings, analysis of CSEC verdicts in the Western Balkans also indicate that online sexual exploitation of children is not given the same weight as physical exploitation (GI-TOC 2021b). As previously observed, the penalties for the production, possession, and distribution of CSAM are lower than for human trafficking offenses. For example, with the exception of Kosovo, which punishes child trafficking and the production of CSAM equally (5 to 15 years of imprisonment in both cases) (CCK 2019: Art 165 and 232); the Albanian criminal code establishes imprisonment from 10 to 20 years for child trafficking and penalties from 3 to maximum 10 years for the production of CSAM (CCA 1995: Art 128b and 117) and Serbia punishes child trafficking with a minimum of five years of imprisonment, while the production of CSAM is punished with the imprisonment of at least one year and the penalty of the distribution of CSAM can be as low as six months (CCS 2005: Art 388 and 185b).

This is nothing new or specific to the Western Balkans. In fact, regulatory frameworks often lag behind new trends of CSEC and technological innovations, leaving legislative loopholes and gaps and making these crimes particularly difficult to investigate and prosecute (GI-TOC 2021b). Some countries in the region have already sought to adapt their existing legal frameworks to address the challenges of responding to tech-enabled trafficking. According to the GI-TOC, Albania, Bosnia and Herzegovina and Serbia have either stated their intention to amend the relevant legislation (although the timeframe is unknown) or acknowledge that specific amendments to address tech-facilitated CSEC remain necessary (GI-TOC 2021b).

Conclusion

CSEC is not a new phenomenon in the Western Balkans, but this paper has shown that there continues to be little information and awareness on the topic across the region. In addition, this paper has underlined that the key stakeholders of the child protection system have limited knowledge and capacity and are also given insufficient resources to deal with CSEC.

This paper has argued that international, regional, and national legal frameworks vitally contribute to preventing and punishing CSEC in the Western Balkans. Yet, it has also shown that although international principles are broadly reflected in national law, there continue to be key gaps – especially in the implementation of these frameworks. CSEC is not always recognized as a separate criminal offence in the legal framework and penalties vary across many countries, leading to an uneven regional criminal law protection of the children.

CSEC is a quickly changing phenomenon, not least because of the development of new technologies which facilitate the production, possession, and distribution of CSAM. Therefore, there is a clear need for the criminal justice systems as a whole to rapidly catch up with the realities on the ground in the Western Balkans.

Moving forward, it will be important for the countries of the region to live up to their international commitments and close any existing legislative loopholes. Addressing and preventing CSEC will require collaboration and cooperation: within countries by cooperation between governments, civil society and the private sector; between the countries of the region; and with international partners in intergovernmental organizations and the private sector particularly the tourism and tech industries. Victims of CSEC need and deserve efforts to help their recovery and reintegration into society and children need enhanced protection in order to not fall victim to tech-facilitated exploitation. The Western Balkans is opening itself to the world in terms of trade, tourism, and connectivity. It should guard against opening itself and its children to online exploitation.

Competing Interests

The authors have no competing interests to declare.

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