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**Protection versus autonomy:
The newest developments in age of consent legislation in Europe and China**

**Guangxing Zhu
INTERVICT, Tilburg University**

**Protection versus autonomy:
The newest developments in age of consent legislation in Europe and China**

Proefschrift

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Chapter 1 Introduction

1. Introduction

Young people's early engagement into sex is a social issue in Western industrialized countries (De Irala et al., 2014). The arguably widespread phenomenon of early sexual initiation among youngsters is often (disapprovingly) reported on in the media. Newspaper reports with captivating titles such as: "teenagers losing their virginity at 15"¹, "European Sex Survey: Teens from Germany, Iceland Ditch Virginity Early"², "40 percent of Russian girls lose virginity before reaching age of consent"³ suggest that nowadays, young people have their sexual debut at an earlier age than previous generations, and they link this early sexual initiation with negative consequences for the youngsters involved, thereby (possibly) fueling the "moral panic" surrounding young people's sexuality (McCreery, 2004; Prior, 2013; Brennan & Epp, 2015).

In academia, many studies are also focused on the trends of young people's early sexual engagement, and the relationship between early sexual initiation and various adverse consequences. For instance, early sexual initiation is related with increased risk of sexually transmitted infections and pregnancy, deficit in condom use (Espada et al., 2014), increase in depressive symptoms, lower education attainment by early adulthood, greater sex partner accumulation (Madkour et al., 2014), et cetera. In addition, research has shown that early sexual

¹ Roger Ingham, "Teenagers losing their virginity at 15". BBC News, 23 June, 2000.

<http://news.bbc.co.uk/2/hi/health/801872.stm> (accessed 7 February, 2018)

² "Teens from Germany, Iceland Ditch virginity early". Spiegel Online, 14 December, 2006.

<http://www.spiegel.de/international/european-sex-survey-teens-from-germany-iceland-ditch-virginity-early-a-454492.html> (accessed 7 February, 2018)

³"40 percent of Russian girls lose virginity before reaching age of consent". The Moscow Times, 27 May, 2014.

<https://themoscowtimes.com/articles/40-percent-of-russian-girls-lose-virginity-before-reaching-age-of-consent-35849> (accessed 7 February, 2018)

initiation has a positive correlation with risky behaviors including smoking, drug and alcohol use, antisocial behavior such as being violent, lying, stealing and running away from home (Kastbom et al., 2015). Generally speaking, children are vulnerable when it comes to sexuality and therefore their early sexual engagement has raised lots of concerns and anxieties among parents, teachers, academics, and policy makers. Although the vulnerability of children, especially the young children, in sexual relations is socially constructed as well as biological (Meyer, 2007), mostly these concerns and anxieties are based on the human construction of childhood, which, as a notion, was developed in the 16th century and then reinforced since the Industrial Revolution, as will be explained in the following section.

2. Industrialization and childhood

According to historians such as Phillipe Aries (1962) childhood is a human construction which was regarded as a distinct phase of human development as off the 16th century. Prior to that, children were considered to be similar to adults and they were expected to act like adults in various areas of daily life -- dressing like adults do, sharing the burden of work in the family, minding their manners, and being punished for social transgression with the same severity as adults would be (Carpenter et al., 2014; Minge-Kalman, 1978). Children at that time generally behaved independently in many ways and they “joined in with the work and amusements of people generally, as soon as they physically could” (Mayall, 2013). There was no special protection and treatment of children. For instance, child labor is nowadays prohibited by legislation across the world and Article 32 of the Convention on the Rights of the Child explicitly provides that children have the right “to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s

health or physical, mental, spiritual, moral or social development”.⁴ But child labor used to be commonplace in the 16th century (Minge-Kalman, 1978).

Also in other areas of social life children were on a same footing with adults. An illustration thereof is the status of child victims of sexual abuse. In her book, *A new approach to the history of violence: “sexual assault” and “sexual abuse” in Europe, 1500-1850*, Francisca Loetz (2015) examined the court records in Zurich from 1500 to 1850 and she found that children, as the victims of sexual assault or sexual abuse, enjoyed no special protection and were expected to behave and reason like adults. Children at that time, well-bred children in particular, were considered competent to know that certain touching or behavior was improper and should be refused. Actually, the law expected children to resist sexual advances by word and deed. Furthermore, when the sexual abuse case was heard, the court made no distinction between the questioning of adults and the questioning of children. It was quite common for children being asked by the court to describe the physical acts of the sexual assault in detail in order to convince the court with their arguments. There was no awareness at that time that this line of questioning could cause secondary harm to the child victims. At the same time, statements made by children were in principle as valid as those of adults. Although the defense for the accused might cast doubt on the child’s statements, just pointing out the young age of the child did not suffice to make the account unreliable. Loetz (2015) concluded that in legal practice, the “age of childhood” did not exist in Zurich until 1850. The treatment of children in sexual abuse cases within the Zurich courts seems to support Aries’ finding that before the notion of childhood was constructed, there

⁴ “ Convention on the Rights of the Child”, United Nations Human Rights Office of the High Commissioner, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed 5 February, 2018)

was no distinction between the treatment of children and adults in various fields of social life including the legal field.

However, with the development of industrialization and the coming into being of modern manufactories, especially in the second stage of the Industrial Revolution, the demand for specialized jobs that could only be handled by skilled and qualified laborers increased (Minge-Kalman, 1978). As a result thereof, child labor became to be seen as an anachronism (Hayes & Carpenter, 2013) and many industrial countries began to enact laws to prohibit child labor and establish a national compulsory education system, under which children were rescued from the labor force and sent to schools so that they could be trained to acquire the professional skills necessary for industrial production (Minge-Kalman, 1978). By the end of the nineteenth century, most of the countries in Western Europe and the United States had established their own national educational system (Minge-Kalman, 1978). The focus of children's daily life was shifted from working in a factory to receiving education in schools.

The industrialization also changed the parent-child relationship. Prior to industrialization, the rampant plagues and diseases resulted in very high infant and child mortality rates, therefore "emotional attachment to children was not a viable option and parents tended to have as many children as possible to 'hedge their bets'" (Hayes & Carpenter, 2013). According to Hayes and Carpenter (2013), the combination of children's emancipation from the labor force and the decreasing rates of infant and child mortality made people begin to have children for personal satisfaction, and the previous economic return parents attached to and expected from children was then substituted by affection, care and love *per se*. So by the twentieth century, childhood had become a distinct life phase in which "children were nurtured and loved for themselves, rather than for what they could return economically" (Hayes and Carpenter, 2013).

The change from the traditional extended family to the modern nuclear family, which usually consisted of two parents and their children also facilitated this new attitude towards children. According to Aries, before the eighteenth century, (noble) families lived in great houses in which children and adults, masters and servants shared the space together; a space in which they furthermore maintained various social relations with people such as relatives, friends, protégés, and debtors. By the eighteenth century, the emergence of the nuclear family gradually gained territory and families enjoyed more privacy than before. Simultaneously children were increasingly subject to special attention and affection from their parents, which, to some extent, also contributed to the segregation of children from adults (Aries, 1962).

3. Childhood and sexuality

As mentioned above, against the background of the Industrial Revolution, the introduction of school, and the emergence of the “modern family”, childhood became separated from adulthood, and became “a distinct period of life with its own institutions and practices” (Mayall, 2013; Norozi and Moen, 2016). One of the most important characteristics of institutionalized childhood is the “protective exclusion of children from public life, and consequently from what adult society is” (Bühler-Niederberger, 2010). This protective exclusion was based on a characterization of children as innocent, vulnerable, dependent, incompetent, powerless, and in need of special protection and treatment in various fields of social life, including sexuality (Robinson, 2013). Correspondingly, these characteristics warrant a particular treatment of children under law and much ensuing legislation was premised upon the idea that children are innocent and in need of protection from the harm and dangers from the adult world (Fischel, 2010). So in the middle and upper classes in Western European society, it was gradually accepted that children had different

rights and responsibilities because of their young age (Carpenter et al., 2014). These developments explain, inter alia, how the modern legal age for driving, drinking alcohol, and voting came into being. Such laws, made by adults, require children to attain a certain age limit to engage into different sectors of social life. This is also applicable when it comes to sexual relations.

Sexuality began to be considered as an exclusive realm for adults from which children had to be protected, for instance with the help of the establishment of an “age of consent”. To preserve the innocence of children and to protect children from being sexually corrupted, abused or exploited by predatory adults, the mechanism of “age of consent” was adopted by more and more national legislators in Europe, especially in the recent 200 – 300 years (Graupner, 2004). The “age of consent” refers to the age, according to national legislation, at or above which it is legal to have sex with a child (Waites, 2005). Having sexual relations with children under such age limit is illegal, even if the children gave their consent. It is the adult partner who is punishable by criminal law, the child him- or herself is inculpable and is automatically considered a victim. In other words, the widespread adoption of age of consent makes sexual relations with children under a certain age limit illegal. It is the presumptive innocence and incompetence of children and childhood that society – including media reporters, legislators, judges, scholars and parents – adopted to justify and call for greater protection for young people and more strict sanctions for those desiring them (Fischel, 2010). According to Carpenter et al. (2014), “[t]his way of thinking about children is a relatively recent phenomenon, disseminated by the rising middle class of the nineteenth century and informed by an intensified emotional investment in the child and a fear of sexual corruption”.

4. The modern framing of children as active agents

The social category of childhood, as a human construction, which emerged from beliefs, ideologies, cultures and values has undergone vast changes over time (Norozi & Moen, 2016). Although initially framed as vulnerable, innocent and in need of protection, this interpretation of childhood was challenged during the 1970s, when the notion of a child as an active social actor and agent was developed in childhood studies (Norozi & Moen, 2016).⁵ Extensive psychosocial and cognitive studies on adolescents' maturity confirmed "the growing capabilities of adolescents to engage in more autonomous thought and behavior, along with the developmental benefits of doing so" (Ruck et al., 2016). So next to the prevalent belief that children are in need of protection, there was growing awareness of children's need for autonomy and agency as well, at least for children who are of a certain age. But to what extent a child can exercise his or her agency as a social actor is still under exploration by scholars. This presents significant challenges for policy makers and researchers.

As a result, the traditional distinct demarcation between childhood and adulthood was criticized by lots of scholars as it – counterintuitively – may also create danger to children and inadvertently contribute to children's vulnerability to sexual abuse and exploitation (Herring, 2012). For instance, Jenny Kitzinger's study (1997) showed that sometimes the extreme rhetoric surrounding the innocence and purity of children plays a role in "reinforc(ing) their desirability as sexual objects". Robinson (2013) indicated that "child innocence is a commodity exploited in child pornography, where innocence becomes titillation and the perception of 'forbidden fruit' fuels the desire". What is more, this construction of childhood is adult-centric and concluded from the

⁵ Childhood study, or children's study, has been an important sub-branch of sociological study and it mainly studies children aged from 0 to 18 years by utilizing knowledge from various disciplines (Mayall, 2013).

adult's point of view (Egan & Hawkes, 2008), without taking the children's feelings and experiences into account, possibly undermining children's agency in too large an extent and justifying inappropriate paternalistic intervention in the lives of children. So a reconstruction of the common interpretation of children and childhood was called for by more and more contemporary scholars such as Alan Prout (1990); Judith Levine (2002) and Jenny Kitzinger (1997). One of the most prominent characteristics of the new paradigm they advocated was that children should be active participants, not only in the construction of their own social lives but also in the construction of society as a whole (Prout & James, 1990). This means, inter alia, that when it comes to the regulation of children's sexuality, the legislation should take young people's attitudes and their actual behavior in practice into consideration. In this regard, the sexual culture and sexual practice among youngsters are worthy of the attention of legislators, for instance, when making laws related with children's sexuality.

It is within this context that it becomes important to realize that children below the age of 18 years do not form a homogeneous group and that older children are distinctly different from younger children. While it is clearly inappropriate to have sex with a 5-year-old child, allowing consensual sex with a 17-year-old child may be more acceptable. Although this book adopts the definition of a "child" as provided by the UN Convention on the Rights of the Child, namely "a human being below the age of eighteen years",⁶ it recognizes that rather than a binary classification – child versus adult – a classification that distinguishes (at least) three categories – child versus adolescent versus adult – seems more appropriate in this respect (Graupner, 2005). But there is no clear-cut boundary of adolescence. For instance, as to the beginning of

⁶ In fact, the full definition contained in the UN Convention reads that a child is a "human being below the age of eighteen years (*unless under the law applicable to the child, majority is attained earlier*)" [italics, GZ].

adolescence, a biologist would pay more attention to the attainment and completion of puberty, a lawyer would look instead at different age boundaries designated by law, while an educator might put focus on the different timing that children are enrolled into school, and all of these age boundaries might vary significantly across different countries and areas (Steinberg, 1993). Although some social scientists divide adolescence into three stages: early adolescence (age 11 to 14), middle adolescence (age 15 to 18) and late adolescence (age 18 to 21), this classification is mainly based on the way in which people are grouped in educational institutions and the referential significance of this differentiation is limited and the different age classifications are quite variable when it comes to other areas (Steinberg, 1993). Given this ambiguous definition of adolescence, throughout the book, reference will be made to “children” if the entire heterogeneous groups of persons below the age of 18 years is meant. If reference is made to older children for (some of) which consensual sex could be considered (more) appropriate, the term “adolescent” is used.⁷

5. Aim and relevance of the research

As mentioned at the beginning of this section, the issue of young people’s early sexual initiation has been a concern in Western countries for a long time (Teitler, 2002). As regard to the legislation, the legal age of consent for sexual engagement with young people has undergone significant changes as well. An important question is then whether the age of consent legislation can strike an appropriate balance between protecting children from sexual abuse and exploitation, on the one hand, and respecting their sexual autonomy and self-determination and

⁷ However, even within the group of adolescents, certain subgroups – younger and older adolescents – could be distinguished for which consensual sex could be considered appropriate or inappropriate.

permitting their sexual expression and exploration during their transference into adulthood, on the other hand. This balance can furthermore change over time, depending on factors such as prevalent (cultural, ideological or religious) attitudes towards child sexuality and child autonomy, fear of crime, or high-profile criminal cases involving child sexual abuse. That national legislators struggle with striking the right balance, can be witnessed from the fact that many of them keep making changes to the age of consent: It is not self-evident at what age children are considered competent enough to genuinely consent to sex.

That there is no universally agreed upon definition of the ‘appropriate’ age of consent, is furthermore demonstrated by the fact that this balancing act in the establishment of the national age of consent has led to various outcomes in different jurisdictions. Many national legislators have recently adapted their age of consent-laws, but the outcomes are still widely dispersed. For instance, the age of consent was raised from 14 to 16 in Russia in 2003,⁸ from 14 to 15 in Iceland in 2007,⁹ from 12 to 18 years in 2013 in Vatican City,¹⁰ and from 13 to 16 years in 2015 in Spain.¹¹ Different from these jurisdictions, Northern Ireland lowered its age of consent from 17 to 16 years in 2008.¹² What is more, many jurisdictions have also changed their age limits for

⁸ Age of consent in Europe, see more at https://en.wikipedia.org/wiki/Ages_of_consent_in_Europe#cite_note-109 (accessed 1 February, 2018)

⁹ Age of consent in Europe, see more at https://en.wikipedia.org/wiki/Ages_of_consent_in_Europe#cite_ref-43 (accessed 1 February, 2018)

¹⁰ “Vatican city raises age of consent from 12 to 18 following scandals”, Gaystarnews, 12 July 2013, <https://www.gaystarnews.com/article/vatican-city-raises-age-consent-12-18-following-scandals120713/#gs.0U4RR1l.=5blqGw> (accessed 1 February, 2018)

¹¹ “Spain raises marrying age from 14 to 16”, BBC News, 23 July 2015, <http://www.bbc.com/news/world-europe-33636920> (accessed 1 February, 2018)

¹² “Northern Ireland age of consent to be lowered”, BBC News, 20 November 2007, http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/7104052.stm (accessed 1 February, 2018)

homosexual sex, as well as the age limit for sex within certain relationships such as those between a teacher and a pupil, or a guardian and a ward.

Given these diverse changes in the field of age of consent legislation in European jurisdictions, it is interesting to try and find out whether there are general, comparative trends in this respect. Do the recent changes in age of consent legislation point towards an increase or decrease in the general age of consent? A related question is whether there are any clues about the legislators' attitudes towards childhood sexuality based on these legislative changes. And if we compare the national legislative changes to one another, are these laws converging or diverging? A converging trend might point to a growing (universal) consensus about the 'appropriate' age of consent.

Legal scholars worldwide have written extensively on issues surrounding age of consent, with particular attention being paid to the national legislation in (Anglo-Saxon) jurisdictions such as the US, Canada, Australia, etc. A comprehensive study on the age of consent laws in the whole of Europe is quite rare. Although in 1997 the Austrian scholar Helmut Graupner conducted a comparative study of the age of consent legislation in 59 European jurisdictions, supplemented with an overview of age of consent laws in other jurisdictions as well, given the tremendous revisions in many jurisdictions thereafter, his research is now outdated. A new updated research in this field is warranted in order to grasp the state of the art in contemporary Europe.

Apart from the increase or decrease of the general age of consent, in some jurisdictions, they also changed the age limit for different sexual behaviors, either on grounds of the gender or the sexual orientation of the sexual partners involved. For instance, according to Graupner's study published in 2004, the age of consent at that time was 16 for vaginal intercourse, 13 for heterosexual anal intercourse, and 18 for homosexual anal intercourse in Cyprus. In Bosnia-Herzegovina and Kosovo, there was a total ban on anal intercourse between men while the age

limit for engaging in other sexual contact was set at 14. However, in 2016, the newest age of consent was changed into 14 years in Bosnia-Herzegovina and Kosovo and 18 years in Cyprus (Graupner, 2004), regardless of the different sexual behaviors, the gender or sexual orientation of the partners involved. Before the revision, these jurisdictions used to set different ages of consent either on grounds of the gender or sexual orientation of the sexual partners involved and this approach can be termed as a “gender-specific” approach. The term gender-specific covers both the distinction that age of consent laws make between the age at which sex with men and with women is allowed (difference based on gender as such) and the distinction between hetero- and homosexual sex (difference based on the combination of genders and sexual orientations of the sexual partners involved).

The distinction of age limits for sexual behaviors based on the gender or sexual orientation of the people involved is related with the emphasis on young women’s chastity and the discrimination towards (male) homosexuality (Zhu and Van der Aa, 2017). However, with the feminist critique of gender inequality and the development of gay liberation movement since the second half of last century, the traditional gender-specific approach in the field of sexual offence legislation was called into question. For instance, in 2016, the three jurisdictions mentioned before all choose to adopt a uniform age of consent regardless of the gender or sexual orientation of the people involved. This approach can be termed as a “gender-neutral” approach. Actually, by the end of last century, the principle of gender-neutrality became accepted as a standard for legislation drafting, at least in most English-speaking jurisdictions (Williams, 2008). From Graupner’s research (2004) we can tell that the gender-specific approach was present in more than one fifth of the European jurisdictions in 2004. Given the various changes on age of consent legislation in many European jurisdictions thereafter, whether or to what extent this trend of using a gender-

neutral approach -- making no distinction between males and females, heterosexuality and homosexuality -- in the age of consent law has been spread across on the European continent is still unknown. Therefore a study that can fill in the gap of knowledge in this field is warranted.

In addition, from the late 1970s and 1980s onwards, feminists began to interpret child sexual abuse in terms of the inherent power differential between adults and children, under which children were considered as incapable of providing informed consent (Angelides, 2004). According to Angelides (2004), this feminist argument about children's powerlessness and incapability of giving informed consent have structured every influential analysis of child sexual abuse since 1980s (Angelides, 2004). Against this background, in some particular relationships, such as that between a teacher and a student, or a guardian and a ward, the inherent power differential is more conspicuous than that of random adult-child relationships. The obvious power asymmetry puts the child in a more dangerous position as the adult has a great advantage to abuse his or her special status to get the child's consent to sex. Graupner (2004) has termed these relations as "relations of authority", and it refers to the relations between adult and child where there is a particular institutional power inequality. Some jurisdictions choose to set a higher age of consent for sex within an authority relationship, while in other jurisdictions, there are no special provisions. The higher age of consent for sex within authority relationship extends the special protection the law provides to children because the adult in position of authority needs to wait for a longer time to be allowed to have sex with a child under the influence of his/her authority. Therefore, the question of the trends in the national legislators' approach in dealing with adult-child sex within authority relations is also a topic of this study.

In addition, in the field of childhood study, many sociologists have written abundantly on the historical construction of childhood, and how childhood study, as a relatively young branch of

sociology, has defined a new theoretical perspective on children and childhood and therefore stimulated rich and multifaceted empirical research, thereby influencing policy makers in their views of and strategies towards children. However, far less has been written on the intersection of legal regulation of children's sexuality and findings from childhood studies. So far, there has not been an effort by scholars to provide an analysis based on childhood studies to help understand the rationales behind the age of consent legislation and then offer a critical perspective towards the various changes of age of consent legislation in recent decades. Partially on account of this research deficiency, the legal changes on age of consent legislations are often taken for granted to better protect children while the European legislators' attitudes towards childhood sexuality were never reflected upon.

This leads to the first main research question:

1. What are the current trends in national age of consent laws and legislators' attitudes towards child sexuality on the European continent?

In order to answer this main question, various sub-questions need to be looked into:

- 1) What are current trends in national age of consent laws on the European continent when it comes to the establishment of:
 - a. The general age limit for having sex with children?
 - b. The age limit for hetero- and homosexual sex with children of different genders?
 - c. The age limit for sex with children in authority relationships?
- 2) What can we deduce from (recent changes to) national age of consent laws when it comes to the legislators' attitudes towards child sexuality on the European continent?

Up to now there is a lot of literature available on Western (child) sexuality and age of consent laws, but they are mainly Anglo-Saxon and – to a lesser extent – European oriented. Corresponding studies on other continents and jurisdictions, including China, are scarce. Besides the aforementioned various law revisions in many European jurisdictions, the Chinese legislator has also amended the age of consent laws in China recently. Since the last century, despite its own indigenous characteristics, the Chinese legal system has been greatly influenced by legislation and legal theory stemming from Western countries and Chinese legislators keep a close eye on new developments in Anglo-Saxon and European Continental jurisdictions to see whether these developments deserve following in China (Lubman, 2000; Zhu and van der Aa, 2017). Given this background, one trend identified in Europe – gender-specific versus gender-neutral—will also be examined in China to see, after the revision, how the current age of consent legislation in China relates to trends identified on the European continent. This leads to the second main research question of this study:

2. How does the current age of consent laws in China relate to the trend identified on European continent when it comes to the characteristic of gender-specificity versus gender-neutrality?

The comparison of the gender-specificity in age of consent legislation between Europe and China will be conducted by answering the following sub-questions:

- 1) What are the rationales behind the traditional gender-specific approach in the age of consent legislation in Europe and what are the deficits of this approach?
- 2) Do the latest changes in age of consent legislation in Europe point towards a gender-specific or gender-neutral approach?
- 3) Are Chinese laws relating to age of consent gender-neutral or gender-specific?

However, it is not only interesting to pay attention to national *legislation* in this respect. Contemporary scholars advocate that we need to take heed of children's behavior *in practice* as well, in order to come to a more substantiated conclusion on the appropriate age of consent. For instance, Archard (1998) suggests that when lawmakers are setting age boundaries for certain behaviors, they should pay attention to the ages at which most children are choosing to engage in that particular behavior. This also applies to childhood sexuality. Obviously, knowing the age at which children engage in sex in practice is only one factor in establishing a national age of consent – other factors play a role as well – but it can nevertheless be an important argument in favor of legislative change (or not) in this respect. For instance, if a large majority of the young population were to engage in sex before the legal age of consent, that raises all sorts of normative and other questions. Should the higher age of consent aiming at protecting children from sexual abuse give way to the children's behavior in practice? If so, in what way should age of consent law be adjusted? If not, then how to deal with the gap between the law in the books and practice? Although the definitive answer to all these complicated questions falls outside the realm of this PhD thesis, it will try to provide an overview of the extent to which young people indeed have their sexual initiation at an early age in contemporary Europe, and how their sexual behavior relates to the recent legislative changes in age of consent laws. These insights can help guide future debates on age of consent laws.

3. What are the current trends in the timing of young people's first sexual initiation in Europe and how does the timing of their first sexual initiation relate to the recent legislative changes in the field of age of consent legislation?

The sub-questions which need to be answered read as follows:

- 1) What are current trends in the timing of young people's first sexual initiation in Europe?
 - a. What are the current trends in the timing of young people's first sexual initiation in general?
 - b. Are there gender-differences in the current trends in the timing of young people's first sexual initiation?
- 2) How does their timing of first sexual initiation in practice relate to the recent legislative changes in the field of age of consent?

The third research question only focuses on Europe and does not include information on the timing of the first sexual initiation of Chinese minors. The reason why China was not incorporated in the third research question had nothing to do with lack of relevance – in fact, an empirical study into the sexual behavior of Chinese children is well overdue – but with the lack of (readily available) empirical data.

6. Outline of the thesis

The approach taken in this thesis is multi-disciplinary rather than purely legal or empirical. It does not seek to determine *the appropriate* age of consent: Provided that such an age of consent exists, this would depend on so many contextual, religious, cultural and other factors that it would lead to different outcomes per jurisdiction. Determining an appropriate age of consent would therefore be too ambitious. Instead, the thesis seeks to explore what values and rationales behind the age of consent legislation should be considered and weighed cautiously. Moreover, it challenges the existing age of consent legislation not just on theoretical grounds but also on grounds of young people's engagement into sex in practice. As a result, this thesis will focus on

both the legislative dimension (the first two research questions) and the practice dimension (the third research question).

The main body of this thesis is composed of four articles, of which two have been published in international peer reviewed journals, one is currently revised and the fourth is still under review.¹³ This thesis begins by first identifying the changes in age of consent legislation on the European continent in recent decades in Chapter 2. In this chapter, the age of consent laws in the 59 European jurisdictions studied by Graupner in 1997 (updated in 2004) were re-collected and re-analyzed. Chapter 2 mainly focuses on three elements: 1) the general age of consent for having sex with children; 2) whether the age limit is the same for homosexual and heterosexual sex; and 3) whether there exists a higher age limit for sexual encounters in authority relationships. After that the data of 2004 and 2016 were compared in all three areas in order to establish 'trends'.

The change of the age of consent legislation could reflect the legislators' attitudes towards child sexuality. Following the identification of the trends in Chapter 2, Chapter 3 tries to deduce the attitudes of European law makers implied by the changes on the issue of childhood sexuality. It first explores how "childhood" was historically constructed, and then how the notion of childhood sexuality underwent changes in different time periods. After this, four different but also intersected discourses of children's sexuality are explained, as well as the pros and cons of each discourse. By juxtaposing these discourses against the trends identified in the previous chapter, the implicit European national law makers' attitudes towards childhood sexuality were brought to light. Both the advantages and disadvantages of these attitudes will be discussed thereafter. This chapter ends with a discussion of the legislators' (seeming) unfamiliarity with or

¹³ This was the situation on 22 March, 2018.

indifference to the newest development in sociology, within childhood study in particular, and how this unfamiliarity or indifference could (possibly) thwart the original efforts of protecting children from sexual abuse and sexual exploitation by predatory adults.

Chapter 4 extends the review of trends in age of consent legislation with a focus on gender-specificity versus gender-neutrality. It begins with tracking the history and modern development of the age of consent legislation in Europe before the twenty-first century. The relationship between age of consent and the construction of childhood is demonstrated in this chapter. Then it examines the main rationale – the stereotypical roles of males and females -- that underlies the traditional gender-specific approach in the age of consent legislation and explains why male homosexual relations, lesbianism and sexual relationship between a female adult and a young male are not covered by the traditional gender-specific approach. Nonetheless, this gender-specific approach in age of consent legislation has limits and consequently, as the chapter shows, it was subjected to much criticism, for instance by academics. The chapter summarizes the criticism against a gender-specific approach and examines whether the latest changes in age of consent legislation in Europe point towards to a gender-specific or gender-neutral approach. It turns out that it is a trend for European law makers to adopt a gender-neutral approach in their age of consent legislation, i.e., the gender of the sexual participants does not affect the legal consequences of the sexual activities, and both males and females, either in heterosexual or homosexual relations, enjoy protection to the same extent. Based on this benchmark, the age of consent legislation in China is examined to see whether it is gender-neutral as most of the European jurisdictions. This chapter ends with the discussion of what lessons China can learn from Europe in this respect.

Chapter 5 looks more particularly at the trends of young people's sexual initiation in practice. With the help of a systematic review various peer-reviewed articles were selected and examined to see whether the trend of a declining age of first sexual initiation, which was already identified by scholars since 1950, continued in the 21st century. The analysis of the articles points to a further decline in the age of first sexual initiation. In addition, a comparison was made between the timing for male and female's first sexual initiation. Data were assembled to see if there is any obvious trend on the timing of first sexual initiation between the two different genders. This chapter highlights the gap between the age of consent legislation in the books and the actual sexual initiation of young people in practice in Europe.

Chapter 6 presents a summary of the findings of this study, provides an answer to the research questions, and discusses the results and their implications for future research.

Reference

- Angelides, S. (2004). Feminism, child sexual abuse, and the erasure of child sexuality. *GLQ: A Journal of Lesbian and Gay Studies*, 10(2), 141-177.
- Brennan, S., & Epp, J. (2015). Children's Rights, Well-Being, and Sexual Agency. In A. Bagattini and C. Macleod (Ed.), *The Nature of Children's Well-Being* (pp. 227-246). Dordrecht: Springer.
- Bühler-Niederberger, D. (2010). Introduction: Childhood Sociology—Defining the State of the Art and Ensuring Reflection. *Current Sociology*, 58(2), 155-164
- Burgen S. (2015, July 23) Spain Raises Age of Consent from 13 to 16. *BBC News*. Retrieved from <http://www.theguardian.com/world/2013/sep/04/spain-raises-age-of-consent>
- Carpenter, B., O'Brien, E., Hayes, S., & Death, J. (2014). Harm, responsibility, age, and consent. *New Criminal Law Review: In International and Interdisciplinary Journal*, 17(1), 23-54.
- De Irala, J., Osorio, A., Ruiz-Canela, M., Carlos, S., & Lopez-del Burgo, C. (2014). Informing youth about the age of sexual initiation using means or percentages. *Health communication*, 29(6), 629-633.
- Egan, R. D., & Hawkes, G. L. (2008). Imperiled and perilous: Exploring the history of childhood sexuality. *Journal of Historical Sociology*, 21(4), 355-367
- Espada, J.p., Morales, A. & Orgiles, M. (2014). Sexual risk in adolescents depending on the age of sexual debut. *Acta Colombiana de Psicología*, 17(1), 53-60.
- Fischel, J. J. (2010). Per Se or Power-Age and Sexual Consent. *Yale Journal of Law and Feminism*, 22(2), 279 - 341.

Graupner H. (2004). Sexual consent: The criminal law in Europe and outside of Europe. *Journal of Psychology & Human Sexuality*, 12(2/3), 111–171.

Graupner H. (2005). The 17-year-old child. *Journal of Psychology & Human sexuality*, 16(2/3), 7-24

Hayes, S., & Carpenter, B. (2013). Social moralities and discursive constructions of female sex offenders. *Sexualities*, 16(1-2), 159-179.

Herring, J. (2012). Vulnerability, children and the law. In M. Freeman (Ed.), *Law and childhood studies*. pp. 243-264. Oxford: Oxford University Press.

Inhham R. (2000, June 23), "Teenagers losing their virginity at 15". *BBC News*. Retrieved from <http://news.bbc.co.uk/2/hi/health/801872.stm> (accessed 7 February, 2018)

Kastbom, Å. A., Sydsjö, G., Bladh, M., Priebe, G., & Svedin, C. G. (2015). Sexual debut before the age of 14 leads to poorer psychosocial health and risky behaviour in later life. *Acta Paediatrica*, 104(1), 91-100.

Kitzinger, J. (1997). Who Are You Kidding? Children, Power, and the Struggle against Sexual Abuse. In Prout, A., & James, A. (Ed.), *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*, pp. 161-185. London: Falmer Press.

Lubman S., Bird in a cage: Chinese law reform after twenty years. *Northwestern Journal of International Law & Business*, 20, 383-423

Levine, J. (2003). *Harmful to minors: The perils of protecting children from sex*. New York: Thunder's Mouth Press.

- Loetz, F. (2015). *A New Approach to the History of Violence: "Sexual Assault" and "Sexual Abuse" in Europe, 1500-1850*. Leiden: Brill.
- Madkour, A. S., De Looze, M., Ma, P., Halpern, C. T., Farhat, T., Ter Bogt, T. F., Ehlinger V.; Gabhainn, S. N., Currie C. & Godeau, E. (2014). Macro-level age norms for the timing of sexual initiation and adolescents' early sexual initiation in 17 European countries. *Journal of Adolescent Health*, 55(1), 114-121.
- Mayall, B. (2013). *A History of the Sociology of Childhood*. London: Institute of Education Press.
- McCreery, P. (2004). Innocent pleasures? Children and sexual politics. *GLQ: A Journal of Lesbian and Gay Studies*, 10(4), 617-630.
- Meyer A. (2007). The Moral Rhetoric of Childhood. *Childhood*, 14(1), 85-104.
- Minge-Kalman, W. (1978). The industrial revolution and the European family: the institutionalization of 'childhood' as a market for family labor. *Comparative Studies in Society and History*, 20(3), 454-468.
- Norozi, S. A., & Moen, T. (2016). Childhood as a social construction. *Journal of Educational and Social Research*, 6(2), 75.
- Philippe Ariès. (1962). *Centuries of childhood: a social history of family life*. New York: Knopf.
- Potts A. (2013, July 12) Vatican City Raises Age of Consent from 12 to 18 Following Scandals. *Gaystarnews*, Retrieved from <http://www.gaystarnews.com/article/vatican-city-raises-age-consent-12-18-following-scandals120713/#gs.0U4RR1I>
- Prior, S. (2013). Scary Sex: The Moral Discourse of Glee. In B. Fahs, M.L. Dudy and S. Stage (Ed.), *The Moral Panics of Sexuality*, pp. 92-113. London: Palgrave Macmillan.

Prout, A., & James, A. (1997). *Constructing and reconstructing childhood: Contemporary issues in the sociological study of childhood*. London: Falmer Press.

Robinson, K. H. (2013). *Innocence, knowledge and the construction of childhood: The contradictory nature of sexuality and censorship in children's contemporary lives*. London: Routledge.

Ruck, M. D., Keating, D. P., Saewyc, E. M., Earls, F., & Ben-Arieh, A. (2016). The United Nations Convention on the Rights of the Child: Its relevance for adolescents. *Journal of Research on Adolescence*, 26(1), 16-29.

Teitler, J. O. (2002). Trends in youth sexual initiation and fertility in developed countries: 1960-1995. *The Annals of the American Academy of Political and Social Science*, 580(1), 134-152.

Waites, M. (2005). *The age of consent: young people, sexuality and citizenship*. London: Palgrave Macmillan.

Williams, C. (2008). The end of the 'masculine rule'? Gender-neutral legislative drafting in the United Kingdom and Ireland. *Statute law review*, 29(3), 139-153.

Zhu, G., & van der Aa, S. (2017). A comparison of the gender-specificity of age of consent legislation in Europe and China: Towards a gender-neutral age of consent in China? *European Journal on Criminal Policy and Research*, 23(4), 523-537.

"Convention on the Rights of the Child", United Nations Human Rights Office of the High Commissioner, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed 5 February, 2018)

Age of consent in Europe, In *Wikipedia*, retrieved February 1, 2018, from https://en.wikipedia.org/wiki/Ages_of_consent_in_Europe#cite_note-109

Age of consent in Europe, In *Wikipedia*, retrieved February 1, 2018, from https://en.wikipedia.org/wiki/Ages_of_consent_in_Europe#cite_ref-43

“Northern Ireland age of consent to be lowered”, *BBC News*, 20 November 2007. Retrieved from http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/7104052.stm (accessed 1 February, 2018)

“Teens from Germany, Iceland Ditch virginity early”. *Spiegel Online*, 14 December, 2006. <http://www.spiegel.de/international/european-sex-survey-teens-from-germany-iceland-ditch-virginity-early-a-454492.html> (accessed 7 February, 2018)

“40 percent of Russian girls lose virginity before reaching age of consent”. *The Moscow Times*, 27 May, 2014. <https://themoscowtimes.com/articles/40-percent-of-russian-girls-lose-virginity-before-reaching-age-of-consent-35849> (accessed 7 February, 2018)

Chapter 2 Trends of age of consent legislation in Europe: A comparative study of 59 jurisdictions on the European continent

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Abstract

Over the past few decades, many national jurisdictions on the European continent have revised their age of consent legislation. A comparison of the age of consent laws of 59 jurisdictions in 2004 and 2016 revealed three important developments to have taken place during the past 12 years. The first trend – to raise the general age of consent and abolish very low ages of consent (<14 years) – signals that nowadays much greater emphasis is placed on the protection of children against negative and premature sexual experiences. This protectionist approach, however, comes at a cost: a higher statutory age of consent can restrain children in their sexual autonomy. The second trend emerging from the comparison was the full and complete equalization of the age of consent for homosexual and heterosexual relations. While in 2004, 1/3rd of the studied jurisdictions still had discriminatory provisions for homo- or heterosexual sex, all of them have now adopted laws that are neutral regarding the sexual orientation of the partners involved. The third trend is to create a higher age limit for sexual behaviors in relationships of authority or dependence. This acknowledgement of the need for increased protection of minors in relationships characterized by a power imbalance deserves following by jurisdictions that have not distinguished a different age of consent for authority relations (yet).

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1. Introduction

In every society, the development of children is marked by a series of age-graded social and legal boundaries governing the timing of transitions from one social, economic, or personal status to the next (Dixon-Mueller, 2008). One such transition is the passage from the non-sexual child into the juvenile authorized to engage in sexual activity. When it comes to sexuality, the age of sexual consent is usually referred to as the age of consent (Waites, 2005). It is an important legal mark that symbolizes when young people are considered capable to take their own responsibility and give their “free and full consent” to sex (Dixon-Mueller, 2008).

Article 2 of the Directive 2011/92/EU (Combating the sexual abuse and sexual exploitation of children and child pornography) defines ‘age of sexual consent’ as the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child. This definition captures one aspect of the concept of age of consent, i.e. a prohibition to engage in sexual activity with young children, including both female and male children. For sexually active adults or older children, this means they should exclude children under the particular age limit from the range of their bedpartners, otherwise they will be held liable for committing a criminal offence, putting them at risk of criminal prosecution and conviction.

The other aspect of sexual consent relates to the sexual autonomy of young children. From the perspective of the children, as long as they are under the age of consent, they are considered incompetent to give valid consent to sexual activities. This does not mean that they themselves violate the law when engaging in sexual activity – criminal liability is only reserved for the older party involved (Dixon-Mueller, 2008) – but it does mean that they have to reach a certain age boundary before they can make their own legally valid decisions regarding sex with other people (Robertson, 2015). So the age of consent is not only meant to deter an adult to have sex with children under a specific age, but it is also an indication of children’s sexual autonomy.

Although the first law defining an age of sexual consent already came into force in 1275, in the Statute of Westminster in England (Waites, 2005), the widespread feeling of having to devise an age of consent is a relatively new development, only spanning the past 200 to 300 years

(Graupner, 2000). According to Stephen Robertson's research, by 1880, many western nations had established an age of consent, typically setting that age at 12 or 13 years (Robertson, 2015). At this moment, all jurisdictions on the European continent have their own age of consent legislation. A 1997 study that compared the national consent-provisions, however, revealed that there are wide discrepancies as to the actual age at which a child is considered old enough to have sexual relations, ranging from 12 in Vatican City to 18 in Turkey (Graupner, 2005). Yet other jurisdictions decided not to adopt one single age of consent – a single cut-off point after which all sexual acts were allowed – but to take a gradual approach instead, classifying different ages of consent for different sexual behaviors and contexts. In these countries, children are, for instance, allowed to have vaginal sex at the age of 16, but have to wait until their 18th birthday to have anal intercourse. It seems that the determination of the age of consent and the designation of the range of protection is heavily influenced by people's ideas on the cognitive development of children (§2) and also related to their thoughts on homosexual (in)equality in matters pertaining to sexuality (§3).¹⁶

2. Age of consent and childhood

The introduction of the age of consent is closely related to the more generic construction of childhood, or the general demarcation between a child and an adult. Centuries ago, in Western societies no distinct difference was made between the treatment of a child and an adult (Waites, 2005). In fact, before the Middle Ages, the concept of childhood did not even exist in Western countries (Aries, 1962). As a consequence, it was perfectly acceptable for children of that time to engage in all of the activities adults were engaged in, such as drunkenness, sexual relations, etcetera (Carpenter et al., 2014). Thus, 'children' were not considered to be a distinct social category different from adults. However, with the development of schools, the idea of the family,

¹⁶ The age of consent can also be influenced by people's ideation of gender. Some jurisdictions offer different protection based on the gender of the children protected by such provisions, with some jurisdictions establishing *higher ages of consent* for girls than boys (Graupner, 2005). This falls outside the scope of the current article, but will be discussed in Zhu, G. & Van der Aa, (forthcoming). The gendered dimension of age of consent laws: Towards gender-neutral provisions in Europe.

and other concepts associated with these two developments (Mayall, 2013), the concept of childhood and the classification of children as a separate and distinctive category from adults took shape between the fourteenth and eighteenth centuries (Carpenter et al., 2014).

From then on, children in the Western societies were seen as innocent, helpless, and vulnerable to dangers from the adult world, and concerns for the protection of their vulnerability helped spur the coming about of various child protection laws and numerous criminal offences designed to safeguard children from the many dangers they face (Herring, 2012).

One such danger involves children's premature engagement in sexual activity. For young children to engage in sexual activity too early is considered dangerous, first of all, because they do not have the necessary social knowledge and experience to understand the meaning of sexuality and its potential adverse consequences, such as sexually transmitted diseases, unwanted pregnancy, abortion and emotional harm. They are, for instance, less able to evaluate the disruptive shifts in their own life course, which would result from becoming a parent and could detach them from their peers (Waites, 2005). A second reason why children need protection in this respect is because of the power imbalance in the adult-child relationship. Adults can sexually exploit and abuse young children very easily, with young children themselves being unaware of this exploitation. In general, young children are 'situated in a structurally disadvantaged position within the social hierarchy, particularly vulnerable in relation to many of the risks attendant on sexual behavior' (Waites, 2005). This reality requires that young children deserve special protection and an age of consent is a powerful tool to achieve this goal. It is within the historically developed social construction of the 'innocent child' that 'the age of consent laws were passed through most parliaments in the Western world' (Carpenter et al., 2014).

However, the construction of childhood has changed over time and thus views about children's sexuality are subject to change as well. Lately, more and more academics have begun to criticize the way the law and the media portray children as being vulnerable, saying it undermines children's agency and justifies inappropriate paternalistic interventions in the lives of children (Herring, 2012). Some research has furthermore shown that the vulnerability rhetoric itself even creates danger for the children (Herring, 2012). For example, Jenny Kitzinger's (1997) study

showed that sometimes the extreme rhetoric surrounding the innocence and purity of children plays a role in 'reinforc(ing) their desirability as sexual objects'. Ashwini Tambe (2011) contends that 'the modern age of consent typically connotes the age at which a society deems sexual relations acceptable, rather than the age at which a young person has the capacity to have sexual relations'. In addition, dozens of studies have shown that young children's engagement in sexual behavior in reality is inconsistent with the age of consent legislation in countries such as the UK, US and Australia (Klettke and Mellor, 2012; Keating, 2012). Most teenagers in these countries start their sexual behavior earlier than permitted by law (Klettke and Mellor, 2012). In the United Kingdom, for example, a national survey found that the average age of their first sexual experience was 14 for girls and 13 for boys, despite the legal age of consent being set at 16 (Keating, 2012).

3. Age of consent and homosexuality

Although the term 'age of consent' has been in use in the English-speaking world for a long time, its contemporary meaning is different from its original one. The early notions of age of consent were exclusively aimed at heterosexual behaviors, for homosexual behavior used to be considered a disease and was totally forbidden, or at least strictly controlled (Crompton, 2004). Because of the total ban, the age of consent did not apply to homosexual encounters: these were prohibited regardless of the age of the partners involved. However, even when the total ban was lifted, and the age of consent became relevant for homosexuals as well, there were still signs of discriminatory views regarding homosexual contacts. One of the most conspicuous signs of this discrimination is that there are two separate ages of consent distinguishable by the gender or sexual orientation of the people involved. Under this approach, the homosexual age of consent is usually higher than the heterosexual one. Another manner in which the discriminatory attitude towards gay and lesbian sex is expressed is by establishing a higher age of consent for sexual acts that are (stereotypically) more popular amongst homosexuals, such as a higher age of consent for anal intercourse.

However, with the rise of the feminist, gay liberationist and sexual libertarian movements in recent decades, more and more people began to call for equality in the field of sexualism through lobbies, protests and campaigns. This, for instance, resulted in the deletion of homosexuality from the International Classification of Diseases by the World Health Organization in 1993 (Cheney, 2004). It also had significant effect on the national age of consent legislation of Western European countries which began amending their laws and establishing a uniform age of consent for heterosexual and homosexual acts in the 1970s (Graupner, 2005). Despite these harmonizing developments and despite the growing awareness of the importance of having an age of consent that is neutral regarding sexual orientation, each jurisdiction changed its legislation at its own pace and the method they adopted to amend the age of consent varied greatly.

4. The goal of the study

Nowadays, all jurisdictions on the European continent have their own age of consent legislation, but the content of these laws varies tremendously from one jurisdiction to the other. In 1997 (with an update in 2004) the Austrian researcher Helmut Graupner (2000) tried to map the different national provisions regarding age of consent on the European continent (59 different jurisdictions in total). In addition, he also studied the age of consent laws in several jurisdictions outside of Europe (18 jurisdictions in total). His inventory of age of consent laws was based on a thorough analysis of each jurisdiction's related provisions of criminal law, commentaries to the criminal law, case-law of the courts and other literature, which were collected from the Ministries of Justice and from University law school in each jurisdiction. Graupner's (2000) research provided an excellent overview of the age of consent legislation in Europe at that time and can therefore be considered "by far the most extensive, detailed, systematic and recent international comparative survey of age of consent laws" (Waites, 2005).

Based on the data he collected, Graupner, for instance, discovered that jurisdictions have a different approach to sex with underage persons. He divided the approach of age of consent legislation into two different categories: the single-stage system and the multistage system. The

single-stage system only adopts one minimum age limit and it applies to all kinds of situations without consideration of other factors. As soon as the child reaches that particular age, all sexual acts are allowed¹⁷.

The multistage system, in contrast, distinguishes between various situations and ages of consent. Typically, there is an absolute minimum age limit, meaning that sexual activity with a child below that age is always prohibited, regardless of the nature of the acts or the context within which these acts took place. However, children above that age are not automatically exempted from protection, because there are certain situations stipulated in law in which another, higher age of consent applies. This can, for example, be the case in relationships of authority, such as a teacher having sex with his or her pupil.

Although Graupner's study was unique in its comprehensiveness and yielded many relevant results, it is already somewhat outdated, for over the past decades, various European jurisdictions have amended their age of consent laws. For instance, in Northern Ireland, the enactment of the 2008 Sexual Offence Order resulted in the age of consent being reduced from 17 to 16 years.¹⁸ Other changes include the age of consent being raised from 13 to 16 years in 2013 in Spain¹⁹ and from 12 to 18 years in 2013 in Vatican City.²⁰

When it comes to the equalization of homo- and heterosexual ages of consent, the recent 'Homophobia 2015'²¹ study on legal issues related to sexual orientation reports that unequal age of consent for same and different sex sexual acts now 'only' exists in 8% of the UN states. Unfortunately, this report exclusively focused on homosexual behavior and the data was

¹⁷ "All sexual acts" here refers to normal consensual sexual acts, thus sexual acts that are specially regulated by law such as rape, prostitution, are excluded from this article.

¹⁸Age of Consent Lowered to 16, *Belfast Telegraph* (20 November 2007) available online at <http://www.belfasttelegraph.co.uk/news/age-of-consent-lowered-to-16-28069099.html>

¹⁹ Spain Raises Age of Consent from 13 to 16. *The Guardian* (4 September 2013) available online at <http://www.theguardian.com/world/2013/sep/04/spain-raises-age-of-consent>

²⁰ Vatican City Raises Age of Consent from 12 to 18 Following Scandals. *Gaystarnews* (12 July 2013) available online at <http://www.gaystarnews.com/article/vatican-city-raises-age-consent-12-18-following-scandals120713/#gs.0U4RR1I>

²¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association: A. Carrol & L.P. Itaborahy, State Sponsored Homophobia 2015: A World Survey of Laws: Criminalisation, Protection and Recognition of Same-sex Love (Geneva; ILGA, May 2015)

gathered from studying a limited number of countries. As a consequence, this report cannot be generalized and considered to represent the whole trend in Europe.

Because Graupner's most recent study dates from almost twelve years ago – years during which several changes were implemented in national age of consent laws – his study no longer reflects the state-of-the-art in age of consent legislation. More recent reports are of no avail either, given that they contain fragmented information, focusing on same sex laws or on few jurisdictions only. As a result, the current situation of the age of consent legislation in Europe is unclear.

The goal of this study is to take Graupner's study as a basis and update it in order to provide a state-of-the-art overview of age of consent laws and to distinguish certain trends that have occurred over the past 12 years in this field. By comparing the current age of consent legislation with the data documented by Graupner, this study will present the changes on age of consent legislation during the past twelve years and identify new trends.

We will focus on three aspects of the age of consent: 1) We will first examine the general age of consent to see if there is a trend to raise or decrease the general age of consent. 2) This study will also analyze the trends related to homosexual ages of consent to see if these are now everywhere the same as the heterosexual ones. 3) Lastly, Graupner divided the approach of age of consent legislation into two categories: the single-stage system and the multistage system. By assessing the percentages of changes of jurisdictions that nowadays adopt a multi- or single-stage system, and comparing them to Graupner's study, we can assess whether there is a new trend in relation to this issue as well.

In §5 the methods used for collecting information on domestic age of consent laws is described, followed by a description of the results and trends in §6. The *normative* assessment of the established trends – whether these are good or bad developments – will be discussed in the concluding paragraph (§7).

5. Methods

By taking the existing research results of Graupner as a starting point we compared these result with our findings, identified the changes and then summarized the trends. In Graupner's research, the age of consent legislation in 59 European jurisdictions was recorded and tabulated. The results were published three times on different occasions: first in German in 1997, then in English in the years 2000 and 2004, respectively. Among these three published versions, the 2004 version, *Sexual consent: The Criminal Law in Europe and Outside of Europe*, which was published in the *Journal of Psychology & Human Sexuality*, contained the most updated data. As a consequence, the data from this article were chosen as a benchmark to compare contemporary laws with.

Graupner's study included a total of 59 jurisdictions in Europe and we tried to update the information for all 59 jurisdictions based on their (most recent) domestic legislation. In Graupner's overview study, use was *inter alia* made of national legal experts who commented extensively on their respective legal systems. This time, however, there was no ongoing research project that allowed for such an approach. Instead, another approach was used, combining online information with (brief) consultation of national legal experts. Our methodology can be summarized in four consecutive steps:

- 1) As the age of consent in each jurisdiction is usually embodied in its sexual offence legislation, most of the newly collected data are extracted from the most recent versions of domestic Criminal Codes or national sexual offence Acts. The other kinds of sources beyond these codified texts, such as case law and judicial interpretation, were excluded from the range of this study because of their scattered location and the difficulty of getting them altogether. Due to linguistic barriers, most interpretations of national laws were based on their English versions which could be found online. If the national provisions were only available in French, German or Dutch, the English translations were provided by the authors or native speakers.

The (English legislation of) provisions on age of consent could be found online for 46 jurisdictions. Among them, 30 were from the website www.legislationonline.org, 10 from the official website of the national government and 6 from other online sources (see table I below).

2) In our search, we tried to look for as many official sources as possible – such as national Criminal Codes, websites of Ministries of Justice, government websites – in order to obtain the most reliable and in-depth information. However, if an English version of the sexual offences law was not available online, we had to resort to ‘grey sources’ for information, such as online news reports. The information on 1 jurisdiction (Cyprus) is extracted from news reports.

3) For some jurisdictions, no information or only information of questionable reliability (e.g., Wikipedia) could be found online. When that was the case, we sought help from national legal experts such as law professors, PhD candidates in law and public prosecutors and asked them to provide us with information on the legal provisions relating to this topic. In the end, we received the required information from 6 more jurisdictions (Croatia, Greenland, Italy, Portugal, Spain and Ukraine), so the data in these 6 jurisdictions are directly collected from the corresponding legal experts.

4) If it was impossible to gather the necessary information, even after exhausting all of the means above, we referred to the information from Wikipedia. There were 4 jurisdictions (Greece, Guernsey, Monaco and San Marino) for which we had to rely on the data from this internet source.

All information regarding age of consent legislation was collected before the end of April, 2016. In the end, we managed to collect and update information on age of consent laws from 57 out of the 59 jurisdictions that Graupner had included. For 2 jurisdictions (Faroe Islands and Vojvodina) no information could be retrieved. The distribution of the general sources of the data is demonstrated in Table I .

Table I : The distribution of the general sources of the data

The general source of the data		Number of the jurisdictions
Online English legislation	The website of Legislationonline	30
	Corresponding official website	10

	Other online resources	6
Online news report		1
Legal expert		6
Wikipedia		4

As to the content of the data, we focused on three elements: the general age of consent; whether the ages of consent are the same for homosexual and heterosexual sex, and whether countries apply a single- or a multistage system.

With regard to the latter, Graupner distinguished between two situations that can indicate the presence of a multistage system: the presence of ‘seduction’ provisions and/or the presence of domestic provisions on sexual contact in relations of authority. With ‘seduction’ he meant sexual contact with adolescents in which the initiative was taken by the older partner, or in which children’s sexual self-determination were interfered with but ‘the interference did not reach the intensity needed for the enforcement of the offenses on sexual violence’ (Graupner, 2000). However, as most of the jurisdictions do not have a provision on the ‘seduction’ of youth, at least they did not in 1997, and because the definition of ‘seduction’ seems somewhat ambiguous and overlapped with the definition of ‘authority’, Graupner’s study provides a precarious basis for a reliable comparison. We therefore decided to leave the ‘seduction’ provisions aside and only focused on the existence of special provisions on sexual contact in relations of authority as an indicator for a multistage system. These authority provisions place additional restrictions upon sexual behavior where there is a particular institutional power inequality, for example, in the case of sexual relations between a teacher and his or her pupil. In some countries, the age of consent in authority relationships is higher than the general age of consent, but not every jurisdiction has this kind of special provision. We therefore examined which jurisdictions have special provisions for age of consent in authority relationships in their criminal laws.

6. Results

The detailed information on the three elements of age of consent (general age of consent, different age of consent for homosexual sex, and higher age of consent for authority relationships) is shown in Table II, in which all the 59 jurisdictions are ordered alphabetically and the original source of the national data is footnoted. Where the table reads ‘no’, this means the codified texts did not contain a particular provision on authority relationships. When it says ‘unknown’, we could not find the original legal provisions, and had to rely on secondary sources instead, which often made no mention of different ages of consent for authority relationships. Because we cannot conclude with certainty that these jurisdictions have a single-stage system – perhaps the secondary sources were incomplete – we decided to leave this in the middle and fill out that we do not know whether authority relationships carry a different age of consent or not (‘unknown’).

Table II Overview of the current age of consent legislation in Europe

	General age of consent	Age of consent for authority relationship
Albania ²²	14, but it’s also a crime to have sex with a female child who is not sexually matured ²³	no
Andorra ²⁴	16 ²⁵	18 ²⁶

²² Criminal Code of the Republic of Albania (1995, amended 2013), (English version) available at: <http://www.legislationline.org/documents/section/criminal-codes/country/47> (accessed 10 December 2015).

²³ Article 100 of the Criminal Code of the Republic of Albania: “Having sexual or homosexual relations with children that are less than 14 years old, or with a female child, who is not sexually matured, is punished by imprisonment from seven to fifteen years”.

²⁴ The New Criminal Code of Andorra (French version) available at: https://www.unodc.org/tldb/pdf/Andorra/AND_Penal_Code_FR.pdf (accessed 29 April 2016)

²⁵ Article 147 (1) of the Andorran Criminal Code: “He who has a sexual relationship with a person under the age of fourteen years old (...) will be punished with (...)” [translation – SvdA] But, according to news from

²⁶ Article 148 (1) of the Andorran Criminal Code: “He who has a sexual relationship with a person older than fourteen years, but less than eighteen years while finding himself in a situation of superiority will be punished with (...)”[translation – SvdA]

Armenia ²⁷	16 ²⁸	no
Austria ²⁹	16 ³⁰	18 ³¹
Azerbaijan ³²	16 ³³	no
Belgium ³⁴	16 ³⁵	18 ³⁶

²⁷ Criminal Code of the Republic of Armenia (2003) (English version), Available at <http://www.legislationline.org/download/action/download/id/1655/file/bb9bb21f5c6170dad5efd70578c.htm>/preview (accessed 10 December 2015). Article 141 provides: “Sexual intercourse or other sexual acts with a person obviously under 16, by a person who reached 18 years of age (...) is punished with (...)”

²⁸ Article 141 the Criminal Code of the Republic of Armenia: “Sexual intercourse or other sexual acts with a person obviously under 16, by a person who reached 18 years of age (...) is punished with (...)”

²⁹ Criminal Code of the Republic of Austria (German version), available at http://www.legislationline.org/download/action/download/id/4868/file/Austria_CC_as_of_%2004.11.2013_de.pdf (accessed 10 December 2015) The English translation was provided by Lukasz Dziedzic, an Austrian PhD candidate from Tilburg University.

³⁰ Article 206 of the Criminal Code of the Republic of Austria:” (1) Whoever commits intercourse or comparable sexual acts on minors (<14 years) shall be punished with imprisonment from one to ten years”. Article 207b (1):” Whoever commits a sexual act on a person younger than 16 who for whatever reason lacks the capacity for sexual self-determination by abusing this lack of capacity and making use of his/her superiority of age, or whoever induces such a person to commit such acts on a third person, or to allow them to be committed on the person by him/her or a third person, shall be punished with(...)” [translation –Lukasz Dziedzic]

³¹ Article 207(2) of the Criminal Code of the Republic of Austria:” Whoever commits a sexual act on a person younger than 18 by exploiting a coercive situation, or whoever induces such a person to commit such acts on a third person, or to allow them to be committed on the person by him/her or a third person, shall be punished with(...)”. [translation –Lukasz Dziedzic]

³² Criminal Code of the Azerbaijan Republic (2000) (English Version), Available at <http://www.legislationline.org/download/action/download/id/1658/file/4b3ff87c005675cfd74058077132.htm>/preview (accessed 10 December 2015)

³³ Article 152 of the Criminal Code of the Azerbaijan Republic, “The sexual relations or other actions of sexual nature, committed by a person who has reached 18, with the person who is wittingly known as person who has not reached 16, is punished by (...)” .

³⁴ Criminal Code of Belgian (Dutch version) available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1867060801&table_name=wet (accessed: 29 April 2016)

³⁵ Article 372 of the Belgian Criminal Code: “Every act of indecent behavior, commissioned without the use of violence or threat on or with the help of a child of the male or female gender below the age of sixteen, will be sentenced (...) “. [translation – SvdA]

³⁶ Article 372 of the Belgian Criminal Code: ‘The violation of decency, without violence or threat by a blood relative in the first degree or adoptive parent committed on or with the help of a minor, even if this person has reached the age of sixteen (...) will be punished (...). This penalty will be imposed if the perpetrator is either the brother or sister of the victim or every other person in a similar position in the family, or either person who frequently or occasionally cohabits with the victim and has a position of authority over the victim.’ [translation – SvdA]

Bosnia-Herzegovina ³⁷	14 ³⁸	18 ³⁹
Bulgaria ⁴⁰	14 ⁴¹	18 ⁴²
Belarus ⁴³	16 ⁴⁴	no
Croatia ⁴⁵	15 ⁴⁶	18 ⁴⁷
Cyprus	18 ⁴⁸	no

³⁷ Criminal Code of the Federation of Bosnia and Herzegovina, Available at <http://www.legislationline.org/documents/section/criminal-codes> (accessed 10 December 2015)

³⁸ Article 207 (1) of the Criminal Code of the Federation of Bosnia and Herzegovina (2003, amended 2011), “Whoever has sexual intercourse, or sex acts tantamount to sexual intercourse, with a child, shall be punished(...)”. Article 2(9), “A child, as referred to in this code, is a person who has not reached fourteen years of age”.

³⁹ Article 205(2): “Any instructor, educator, guardian, adoptive parent, step-parent or any other person who, by abuse of his status, has sexual intercourse with a juvenile, shall be punished by(...)”. Article 2(10): “A juvenile, as referred to in this code, is a person who has not reached eighteen years of age”.

⁴⁰ Criminal Code of the Republic of Bulgaria (1968, amended 2010), Available at: <http://www.legislationline.org/documents/action/popup/id/8881/preview> (accessed 10 December 2015)

⁴¹ Article 151(1) of the Criminal Code of the Republic of Bulgaria, “A person who has sexual intercourse with a person who has not completed the age of 14 years, (...), shall be punished (...)”.

⁴² Article 151(2): “When the criminal act under para 1 is done with a minor individual and through the use of the state of dependency or surveillance, the penalty (...)”. Article 31(2) provides “minor” in the code refers to person who has reached 14 years of age but under age of 18.

⁴³ Criminal Code of the Republic of Belarus (1961, with alterations and additions as for May 1, 1994), (English version) from the website of United Nations Office on Drugs and Crime. Available at https://www.unodc.org/tldb/pdf/Belarus/BYE_Crim_Law_EN.pdf (accessed 10 December 2015)

⁴⁴ Article 117 of the Criminal Code of the Republic of Belarus, “A sexual intercourse with a person who is known to the culprit to be under sixteen shall be punishable (...)”.

⁴⁵ The information comes from an English translation of the Croatian Criminal Code (2013) provided by Reana Bezic (Croatian PhD candidate).

⁴⁶ Croatian Criminal Code, Article 158(1): “Whoever engages in sexual intercourse or performs a sexual act equated with sexual intercourse with child under the age of fifteen, (...) shall be sentenced to (...)”.

⁴⁷ Article 159(1): “Whoever engages in sexual intercourse or performs a sexual act equated with sexual intercourse with a child over the age of fifteen with whose upbringing, education, minding, spiritual guidance or care he/she has been entrusted, (...) shall be sentenced (...)” Article 87(7) indicates that ‘child’ means a person who has not reached the age of eighteen years.

⁴⁸ The Cypriot Criminal Code was not available online. According to a new item on <http://cyprus-mail.com/2013/12/17/honour-for-activist-who-battled-two-decades-for-gay-rights/>, the heterosexual age of consent used to be 16 while the homosexual consent age was 18. In 2002, the government equalized the age of consent for heterosexuals and homosexuals to 17. However, according to a more recent news item, the age of consent has recently been extended to 18 years. (<http://cyprus-mail.com/2014/06/20/cyprus-gets-tough-on-sex-offenders-as-house-passes-new-law/>).

Czech ⁴⁹	15 ⁵⁰	18 ⁵¹
Denmark ⁵²	15 ⁵³	18 ⁵⁴
Estonia ⁵⁵	14 ⁵⁶	no
Faroe Islands	unknown	unknown
Finland ⁵⁷	16 ⁵⁸	18 ⁵⁹
France ⁶⁰	15 ⁶¹	18 ⁶²

⁴⁹ Criminal Code of the Czech Republic (2007) (English version) from the website of Council of Europe, Available at http://www.coe.int/t/dlapil/codexter/Source/country_profiles/legislation/CT%20Legislation%20-%20Czech%20Republic%20Criminal%20Code.pdf (accessed 10 December 2015)

⁵⁰ Criminal Code of the Czech Republic, article 242(1):" Anyone who has sexual intercourse with a person under the age of fifteen years, or who sexually abuses such person in any other manner, shall be sentenced to (...)" .

⁵¹ Article 243:" Anyone who abuses the dependence of a person under the age of eighteen years or a person entrusted to his charge by including such person to take part in extra-marital intercourse, or who otherwise sexually abuses such person by exploiting his or her dependence, shall be sentenced (...)" .

⁵² Danish Criminal Code (2005) (English version), Available at https://www.unodc.org/tldb/pdf/Denmark_Criminal_Code_2005.pdf (accessed 10 December 2015)

⁵³ Danish Criminal Code, Article 222(1):"Any person who has sexual intercourse with a child under the age of 15 shall be liable to (...)" .

⁵⁴ Article 223:" Any person who has sexual intercourse with a person under the age of 18 who is his adopted child, step-child or foster child, or who has been entrusted to him for instruction or education, shall be liable to (...)" .

⁵⁵ Criminal Code of the Republic of Estonia (2001, amended 2013) (English version), Available at http://www.legislationline.org/download/action/download/id/4707/file/Estonia_Penal%20Code_am2013_en.pdf (accessed 10 December 2015)

⁵⁶ Criminal Code of the Republic of Estonia, article 145:"An adult person who engages in sexual intercourse with a person of less than 14 years of age shall be punished (...)" .

⁵⁷ Criminal Code of the Republic of Finland (1889. Amended 2012) (English version), Available at http://www.legislationline.org/download/action/download/id/4723/file/Finland_CC_1889am2012_en.pdf (accessed 10 December 2015)

⁵⁸ Criminal Code of the Republic of Finland, Chapter 20-Section 6 (1):"A person who by touching or otherwise performs a sexual act on a child younger than sixteen years of age, said act being conducive to impairing his or her development, or induces him or her to perform such an act, shall be sentenced for sexual abuse of a child to imprisonment for (...)" .

⁵⁹ Chapter 20-Section 5- (1)-(1):"A person who abuses his or her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his or her right of sexual self-determination, or into submission to such an act, (1) a person younger than eighteen years of age, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender, (...) shall be sentenced to (...)" .

⁶⁰ Criminal Code of the French Republic (2005) (English version). Available at http://www.legislationline.org/download/action/download/id/3316/file/France_Criminal%20Code%20updated%20on%2012-10-2005.pdf (accessed 10 December 2015)

⁶¹ Criminal Code of the French Republic, article 227-25:" The commission without violence, constraint, threat or surprise of a sexual offence by an adult on the person of a minor under fifteen years of age is punished (...)" .

⁶² Article 227-27:"Sexual acts committed without violence, constraint, threat or surprise on a minor aged over fifteen and not emancipated by marriage are punished by (...) 1. Where they are committed by a legitimate,

Georgia ⁶³	16 ⁶⁴	no
Germany ⁶⁵	14 ⁶⁶	16 ⁶⁷
Gibraltar ⁶⁸	16 ⁶⁹	18 ⁷⁰
Greece ⁷¹	15	unknown
Greenland ⁷²	15	18
Guernsey	16 ⁷³	unknown
Hungary ⁷⁴	14 ⁷⁵	no

natural or adoptive ascendant or by any other person having authority over the victim.” In France, the term minor refers to persons under the age of eighteen.

⁶³ Criminal Code of Georgia (1999, amended 2011) (English version), Available at http://www.legislationline.org/download/action/download/id/4262/file/GE_CriminalCode_amDec2011_En.pdf (accessed 10 December 2015)

⁶⁴ Article 140 of the Criminal Code of Georgian, “Major’s sexual intercourse, homosexuality, lesbianism or other sexual contact distorted in from at the previous knowledge of the offender with one under sixteen years, shall be punishable (...)”.

⁶⁵ Criminal Code of the Federal Republic of Germany (1971, amended 2013) (English version). Available at http://www.legislationline.org/download/action/download/id/6115/file/Germany_CC_am2013_en.pdf (accessed 10 December 2015)

⁶⁶ Criminal Code of the Republic of Germany section 176(1): “Whoever engages in sexual activity with a person under fourteen years of age (child) or allows the child to engage in sexual activity with himself shall be liable to (...)”.

⁶⁷ Section 174 (1): “Whoever engages in sexual activity (...) 2. With a person under eighteen years of age who is entrusted to him for upbringing, education or care or who is his subordinate within an employment or a work relationship, by abusing the dependence associated with the upbringing, educational, care, employment or work relationship, (...) shall be liable to (...)”

⁶⁸ Crimes Act 2011 from the website of Laws of Gibraltar, available at <http://www.gibraltarlaws.gov.gi/articles/2011-23o.pdf> (accessed 10 December 2015)

⁶⁹ Article 221 of the Crimes Act 2011 provides that a person aged 18 or over commits an offence if he engages in sexual activity with a person under 16.

⁷⁰ Article 228 of the Crime Act 2011 provides that a person aged 18 or over (A) commits an offence if he engages in sexual activity with a child under 18(B) and A is in a position of trust in relation to B.

⁷¹ The Greek Criminal Code (in English) could not be found online. This information was subtracted from Wikipedia.

⁷² The information were provided by Zara Illum Petersen, a senior prosecutor from the Greenland Police.

⁷³ The Guernsey Criminal Code could not be found online. This information was subtracted from Wikipedia.

⁷⁴ Criminal Code of the Republic of Hungary (2012) (English version) Available at <http://www.legislationline.org/download/action/download/id/1678/file/67e349cefebd3f5b3b30f9cb0065.pdf> (accessed 10 December 2015)

⁷⁵ Criminal Code of the Republic of Hungary, section 198: “Any person who engages in sexual activities with a person under the age of fourteen years, or persuade such person to engage in sexual activities with another person is guilty of a felony punishable (...)”.

Iceland ⁷⁶	15 ⁷⁷	18 ⁷⁸
Ireland ⁷⁹	17 ⁸⁰	no
Isle of Man ⁸¹	16 ⁸²	18 ⁸³
Italy ⁸⁴	14	16
Jersey ⁸⁵	16 ⁸⁶	no
Kosovo ⁸⁷	16 ⁸⁸	18 ⁸⁹

⁷⁶ Penal Code of the Iceland (2007) from the website of the Ministry of the Interior of Iceland, Available at <http://eng.innanrikisraduneyti.is/laws-and-regulations/nr/119>, (accessed 10 December 2015)

⁷⁷ Penal Code of the Iceland, article 202:” Any person who has sexual intercourse or other sexual relations with a child under the age of 15 shall be imprisoned for (...)”.

⁷⁸ Penal Code of the Iceland, article 201:” Any person who has sexual intercourse or other sexual relations with a child under the age of 18 who is his or her adopted child, step-child, foster-child or the child of his or her cohabiting partner, or is bound to him or her by similar family relationship in direct line of descent, or with a child who has been committed to his or her authority for education or upbringing, shall be imprisoned for (...)”.

⁷⁹ Criminal Law (Sexual offences) Act 2006 from the website of electronic Irish Statute Book (eISB), Available at <http://www.irishstatutebook.ie/eli/2006/act/15/enacted/en/print> (accessed 10 December 2015)

⁸⁰ Criminal Law (Sexual offences) Act 2006, article 3(1):” Any person who engages in a sexual act with a child who is under the age of 17 years shall be guilty of an offence (...)”.

⁸¹ Sexual Offences Acts 1992 and 2006 from the Isle of Man Legislation Web Site, Available at http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1992/1992-0006/SexualOffencesAct1992_1.pdf (accessed 10 December 2015)

⁸² Sexual Offences Acts 1992 and 2006, Article 4(2):”Any person who has sexual intercourse with a person under the age of 16 shall be guilty of an offence and liable on conviction (...)”.

⁸³ Article 9A:” It shall be an offence for a person aged 18 or over (...) to commit a sexual act with a person under that age”.

⁸⁴ The information comes from Hervé Belluta, an Italian professor in criminal law.

⁸⁵ Sexual Offences (Jersey) Law 2007 from the official website of the Jersey Legal Information Board, Available at <http://www.jerseylaw.je/Law/Display.aspx?url=LawsInForce/htm/lawfiles/2007/L-02-2007.htm> (accessed 10 December 2015)

⁸⁶ Sexual Offences (Jersey) Law 2007. Article 2 (1)- **【 Meeting a child following sexual grooming etc 】** :” A person aged 18 or over (A) commits an offence if (a) having met or communicated with another person (B) on at least 2 earlier occasions, (b) (...), (c) B is under 16; and (d) A does not reasonably believe that B is 16 or over.”

⁸⁷ Criminal Code of the Republic of Kosovo (2012) (English version) from the website of Republic of Kosovo Assembly. Available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf> (accessed 10 December 2015)

⁸⁸ Criminal Code of the Republic of Kosovo, Article 230 -1: “Whoever subjects another person to a sexual act without such person’s consent shall be punished by (...)”. Article 228 -1:” Term ‘consent’ means the voluntary agreement of a person who has reached the age of sixteen years to engage in the sexual act in question”.

⁸⁹ Article 239-1”Whoever subjects another person to a sexual act in one or more of the following circumstance shall be punished by (...) 1.3 By abusing his or her position or authority over a victim who is between the age of 16 and 18 years and who is entrusted to the perpetrator for upbringing, education or care”.

Latvia ⁹⁰	16 ⁹¹	no
Liechtenstein ⁹²	14 ⁹³	no
Lithuania ⁹⁴	16 ⁹⁵	no
Luxembourg ⁹⁶	16 ⁹⁷	no
Macedonia ⁹⁸	14 ⁹⁹	18 ¹⁰⁰

⁹⁰ Criminal Code of the Republic of Latvia (2000, amended 2013) (English version), Available at http://www.legislationline.org/download/action/download/id/4795/file/Latvia_CC_am2013_en.pdf (accessed 12 December 2015)

⁹¹ Criminal Code of the Republic of Latvia, article 161: "For a person who commits a sexual act, or pederastic, lesbian or other unnatural sexual acts of gratification, with a person who has not attained the age of sixteen years (...) the applicable punishment is (...)".

⁹² Criminal Code of the Principality of Liechtenstein, available at <http://www.legislationline.org/download/action/download/id/3149/file/Liechtenstein%20Criminal%20Code%20GERMAN.pdf>

(accessed 10 December 2015) . The provisions was translated from German by Lukasz Dziedzic, an Austrian PhD candidate from Tilburg University.

⁹³ Article 205(1) of the Criminal Code of the Principality of Liechtenstein: " Whoever commits intercourse or comparable sexual acts on minors (<14 years) shall be punished with imprisonment from one to ten years".

⁹⁴ Criminal Code of the Republic of Lithuania (2000, amended 2010) (English version) , Available at http://www.legislationline.org/download/action/download/id/4302/file/Lithuania_CC_am2010_en.pdf (accessed 10 December 2015)

⁹⁵ Criminal Code of the Republic of Lithuania, article 151(1): " A person who has sexual intercourse or otherwise satisfied his sexual desires with a minor upon offering, promising to provide or upon providing to him in consideration money or a consideration of another form, in the absence of characteristic of a rape, sexual assaults or sexual abuse, shall be punished by...". Although codified information was lacking, according to this news item: <http://www.mirror.co.uk/news/uk-news/what-age-consent-around-world-2802173>, the age of consent in Lithuania is 16.

⁹⁶The Criminal Code of the Grand Duchy of Luxembourg (French version), available at: http://www.legilux.public.lu/leg/textescoordonnes/codes/code_penal/codepenal.pdf (last accessed 29 April 2016).

⁹⁷ Article 372 (3) of the Luxembourg Criminal Code: " Every violation of decency, committed against or with the help of a child of one or the other sex, aged less than 16 years old, will be punished (...). [translation – SvdA].

⁹⁸ Criminal Code of the Republic of Macedonia (1996, amended 2009) (English version), Available at <http://www.legislationline.org/documents/action/popup/id/16066/preview> (accessed 10 December 2015)

⁹⁹ Criminal Code of the Republic of Macedonia, article 188: " A person who commits statutory rape or some other sexual act upon a juvenile under 14 years of age shall be punished (...)".

¹⁰⁰ Article 189(2) provides: " A teacher, educator, adoptive parent, guardian, stepfather, doctor or some other person who by misusing his position commits statutory rape or some other sexual acts upon a juvenile older than fourteen years of age, who was entrusted to him for study, education, custody or care, shall be punished (...)". Article 72 defines juvenile as a person under the age of eighteen.

Malta ¹⁰¹	18 ¹⁰²	no
Moldova ¹⁰³	16 ¹⁰⁴	no
Monaco ¹⁰⁵	15	unknown
Montenegro ¹⁰⁶	14 ¹⁰⁷	18 ¹⁰⁸
Netherlands ¹⁰⁹	16 ¹¹⁰	18 ¹¹¹

¹⁰¹ Criminal Code of the Republic of Malta (1854, amended 2014) (English version), Available at <http://www.legislationline.org/download/action/download/id/1686/file/0816eb16b97d8ec2fcffe28c1438.pdf> (accessed 10 December 2015)

¹⁰² Criminal Code of the Republic of Malta, article 204C (1):" Whoever takes part in sexual activities with a person under age shall, on conviction, be liable to imprisonment for (...)". "Person under age" refers to person under the age of eighteen.

¹⁰³ Criminal Code of the Republic of Moldova, (2002, amended 2009) (English version). Available at <http://www.legislationline.org/download/action/download/id/3559/file/Criminal%20Code%20RM.pdf> (accessed 10 December 2015)

¹⁰⁴ Article 174(1) of the Criminal Code of the Republic of Moldova "Sexual intercourse other than rape as well as any other acts of vaginal or anal penetration committed with a person certainly known to be under the age of 16 shall be punished (...)".

¹⁰⁵ The Monacan Criminal Code was not available online. This information was subtracted from Wikipedia.

¹⁰⁶ Criminal Code of the Republic of Montenegro (2003, amended 2004) (English version). Available at <http://www.legislationline.org/documents/action/popup/id/4168/preview> (accessed 10 December 2015)

¹⁰⁷ Criminal Code of the Republic of Montenegro, article 206:" Anyone who performs sexual intercourse or an equal act with a child shall be punished (...)". Article 142(8):" A child shall be considered a person who has not reached the age of fourteen".

¹⁰⁸ Article 207(2):"A teacher, instructor, guardian, adoptive parent, stepfather, stepmother or some other person who by abuse of his/her position or authorities performs sexual intercourse or an equal act with a minor entrusted to him for teaching, education, custody and taking care, shall be punished by (...)". Article 142(9):"A juvenile/minor shall be considered who has reached the age of fourteen but not the age of eighteen".

¹⁰⁹ Criminal Code of the Netherlands (English version) from the website of European Judicial Training Network (ejtn), Available at http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf (accessed 10 December 2015)

¹¹⁰ Criminal Code of the Netherlands, Section 245:" Any person who, out of wedlock, engages in lewd acts comprising or including sexual penetration of the body with a person who has reached the age of twelve years but not yet sixteen years shall be liable to (...)".

¹¹¹ Section 248a provides:" Any person who, (...) by abuse of the authority arising from de facto relationship, intentionally induces a person, whom he knows or has reasonable cause to suspect is under the age of eighteen years, to engage in lewd acts or to tolerate such acts performed by him, shall be liable to (...)".

Norway ¹¹²	16 ¹¹³	18 ¹¹⁴
Poland ¹¹⁵	15 ¹¹⁶	no
Portugal ¹¹⁷	14	18
Romania ¹¹⁸	15 ¹¹⁹	18 ¹²⁰
Russia ¹²¹	16+ sexually mature ¹²²	no
San Marino ¹²³	14	unknown
Serbia ¹²⁴	14 ¹²⁵	18 ¹²⁶

¹¹² Criminal Code of the Kingdom of Norway, Available at http://www.legislationline.org/download/action/download/id/3523/file/Norway_General_Civil_Penal_Code_1902_amended_2005-eng.pdf (accessed 12 December 2015)

¹¹³ Criminal Code of the Kingdom of Norway, Section 196: "Any person who engages in sexual activity with a child who is under 16 years of age shall be liable (...)"

¹¹⁴ Section 199 provides: "Any person who engages in sexual activity with a foster-child, child in his care, step-child or any other person under 18 years of age who is under his care, or subject to his authority or supervision, shall be liable to (...)"

¹¹⁵ Polish Penal Code, Available at http://web.archive.org/web/20070413010314/http://www.era.int/domains/corpus-juris/public_pdf/polish_penal_code2.pdf (accessed 12 December 2015)

¹¹⁶ Polish Penal Code, article 200-(1): "Whoever subjects a minor under 15 years of age to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of (...)"

¹¹⁷ This information comes from Ana Ferreira, a lawyer and researcher working for the Portuguese association of victim support (APAV).

¹¹⁸ Criminal Code of the Republic of Romania, Available at http://www.legislationline.org/download/action/download/id/5895/file/Romania_Criminal_Code_am2012_EN.pdf (accessed 12 December 2015)

¹¹⁹ Criminal Code of the Republic of Romania, article 220-(1): "Sexual intercourse, oral or anal sex, as well as any act of vaginal or anal penetration committed with a juvenile aged 13 to 15 shall be punishable by (...)"

¹²⁰ Article 220 (3) provides: "The act set by par.(1), committed by a person of age with a juvenile aged 13 to 18, when the former abused their authority or influence over the victim, shall be punishable by (...)"

¹²¹ Criminal Code of the Russian Federation (1996, amended 2012) (English version). Available at http://www.legislationline.org/download/action/download/id/4247/file/RF_CC_1996_am03.2012_en.pdf (accessed 10 December 2015)

¹²² Criminal Code of the Russian Federation, Article 134 (1): "Sexual intercourse committed by a person who has reached the age of eighteen years of age with a person who has not reached the age of sixteen years and sexual maturity shall be punishable (...)"

Article 134(2): "Pederasty or lesbianism in respect of a person who has not reached sixteen years of age and sexual maturity effected by a person who has reached eighteen years of age, shall be punishable (...)"

¹²³ The Criminal Code from San Marino was not available online. This information was found on Wikipedia.

¹²⁴ Criminal Code of the Republic of Serbia (2005, amended 2012) (English version). Available at http://www.legislationline.org/download/action/download/id/5480/file/Serbia_CC_am2012_en.pdf (accessed 10 December 2015)

¹²⁵ Criminal Code of the Republic of Serbia, article 180: "Whoever has sexual intercourse or commits an equal act against a child, shall be punished (...)". Article 112(8): "A child is a person under fourteen years of age"

¹²⁶ Article 181(2): "Teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude a juvenile entrusted to him for

Slovakia ¹²⁷	15 ¹²⁸	18 ¹²⁹
Slovenia ¹³⁰	15 ¹³¹	no
Spain ¹³²	16	18
Sweden ¹³³	15 ¹³⁴	18 ¹³⁵
Switzerland ¹³⁶	16 ¹³⁷	18 ¹³⁸

learning, tutoring guardianship or care, shall be punished (...)" . Article 112(10) provides that a juvenile is a person who has not reached eighteen years of age.

¹²⁷ Criminal Code of the Slovak Republic (2005) (English version), Available at http://www.legislationline.org/download/action/download/id/3763/file/Slovakia_CC_2005_en.pdf (accessed 12 December 2015)

¹²⁸ Criminal Code of the Slovak Republic, Section 201:"Any person who has sexual intercourse with a person under fifteen years of age, or who subjects such person to other sexual abuse, shall be liable to (...)" .

¹²⁹ Section 202 provides:" Any person who makes a person under eighteen years of age to have an extramarital intercourse, or who otherwise subjects a person to sexual abuse, (a) if such person has been placed under his care or custody, or has been dependent on him, (...) shall be liable to (...)" .

¹³⁰ Criminal Code of the Republic of Slovenia (2008) (English version), Available at http://www.legislationline.org/download/action/download/id/3773/file/Slovenia_CC_2008_en.pdf (accessed 12 December 2015)

¹³¹ Criminal Code of the Republic of Slovenia, Article 173-(1):"Who has sexual intercourse or performs any lewd act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to (...)" .

¹³² The information comes from Carolina Villacampa Estiarte, a Spanish professor in criminal law.

¹³³ Swedish Penal Code (2013) (English version), available at http://works.bepress.com/cgi/viewcontent.cgi?article=1028&context=christoffer_wong (accessed 13 December 2015)

¹³⁴ Swedish Penal Code, Chapter 6, Section 4, paragraph 1 : "A shall be sentenced for rape of a child to imprisonment of (...) if A

— obtains sexual intercourse with a child under fifteen years of age(B) or

— undertakes another sexual act with B that is comparable to sexual intercourse in view of the seriousness of the violation (...)" .

¹³⁵ Chapter 6, section 4, paragraph 2 provides:" The same shall apply if A commits an act described in para.1 with a child who has attained fifteen but not eighteen years of age and who is

— an offspring of A, or

— under the fosterage of A or is in a similar relation to A, or

— under the care or supervision of A in accordance with the decision of a public authority."

¹³⁶ Criminal Code of the Swiss Confederation (1937, amended 2014) (English version) Available at http://www.legislationline.org/download/action/download/id/5686/file/Swiss_CC_1937_am2014_en.pdf (accessed 12 December 2015)

¹³⁷ Criminal Code of the Swiss Confederation, article 187:"Any person who engages in sexual act with a child under 16 years of age, or, incite a child to commit such an activity, or involves a child in a sexual act, is liable to (...)" .

¹³⁸ Article 188 provides:" Any person who commits a sexual act by exploiting his or her relationship with a minor who is dependent on him due to a relationship arising from the minor's education, care or employment or another form of dependent relationship (...) is liable to (...)" . A definition of 'minor' could not be found, but from article 61(5) of the Criminal Code ("If the offender was convicted of an offence committed before he was 18 years of age, the measure may be implanted in an institution for minors") can be inferred that in Switzerland, a minor means a person under eighteen years of age.

Turkey ¹³⁹	18 ¹⁴⁰	no
UK: England & Wales ¹⁴¹	16 ¹⁴²	18 ¹⁴³
UK: Northern Ireland ¹⁴⁴	16 ¹⁴⁵	18 ¹⁴⁶
UK: Scotland ¹⁴⁷	16 ¹⁴⁸	18 ¹⁴⁹
Ukraine ¹⁵⁰	16 (sexually mature) ¹⁵¹	no

¹³⁹ Criminal Code of the Republic of Turkey (2004) (English version), Available at

<http://www.legislationline.org/documents/action/popup/id/6872/preview> (accessed 12 December 2015)

¹⁴⁰ Criminal Code of the Republic of Turkey, article 104-(1):" Any person who is in sexual intercourse with a child who completed the age of fifteen without using force, threat and fraud, is sentenced to (...)" . " Child" refers to persons under the age of 18.

¹⁴¹ Sexual Offences Act 2003 from the website of The National Archives, which is the official archive and publisher for the UK government. Available at <http://www.legislation.gov.uk/ukpga/2003/42/contents>, (accessed 12 December 2015)

¹⁴² Sexual Offences Act 2003, Article 9-(1):" A person aged 18 or over (A) commits an offence if – (a) he intentionally touched another person (B), (b) the touching is sexual, and (c) either—(i) B is under 16 and A does not reasonably believe that B is 16 or over, or (ii) B is under 13".

¹⁴³ Sexual Offences Act 2003, article 16 is about "Abuse of position of trust: sexual activity with a child". The child here refers to a person under 18.

¹⁴⁴ Sexual Offences (Northern Ireland) Order 2008 from the website of The National Archives, which is the official archive and publisher for the UK government., Available at <http://www.legislation.gov.uk/asp/2009/9/contents> (accessed 12 December 2015)

¹⁴⁵ Sexual Offences (Northern Ireland) Order 2008, article 16-(1):"A person aged 18 or over (A) commits an offence if—(a)he intentionally touches another person (B), (b) the touching is sexual, and (c) either –(i) B is under 16 and A does not reasonably believe that B is over 16 or over, or (ii) B is under 13".

¹⁴⁶ Sexual Offences (Northern Ireland) Order 2008, article 23 is about the crime of "abuse of position of trust: sexual activity with a child". The child here refers to person under 18 years of age.

¹⁴⁷ Sexual Offences (Scotland) Act 2009 from the website of The National Archives, which is the official archive and publisher for the UK government., Available at <http://www.legislation.gov.uk/asp/2009/9/contents> (accessed 12 December 2015)

¹⁴⁸ Sexual Offences (Scotland) Act 2009, Article 28, 29 30 provides if a person(A) who has attained the age of 16 years having intercourse with a child (B) who has not attained the age of 16 years, or engaging in penetrative sexual activity with or towards B, or engaging in sexual activity with or towards B, commits an offence.

¹⁴⁹ Sexual Offences (Scotland) Act 2009, Article 42 provides that if A, who has attained the age of 18 years, —intentionally engages in a sexual activity with or directed towards another person("B") who is under 18, and —is in a position of trust in relation to B, then A commits an offence.

¹⁵⁰ Criminal Code of Ukraine (2001, amended 2010), (English version). Available at <http://www.legislationline.org/download/action/download/id/1709/file/18691871f696ac66b9fe4d9a4fdd.htm/preview> (accessed 10 December 2015)

¹⁵¹ Criminal Code of Ukraine, Article 155:"Sexual intercourse with a sexually immature person, shall be punishable (...)" . Although the exact age limit of a "sexually immature person" is not defined in the Ukrainian Criminal Code, we were informed by Tetiana Mihaylichenko, who holds a post-doctorate position at the National University "Yaroslav the Wise" Law Academy of Ukraine that a sexually immature person is a person under 16 years of age.

Vatican City ¹⁵²	18 ¹⁵³	no
Vojvodina	unknown	unknown

To examine the trends of age of consent legislation in the past twelve years, we compared the original data from Graupner’s research to the newly collected information. Below we discuss three trends.

6.1. Raising the general age of consent

In Graupner’s research, the age of consent in Europe varied widely from jurisdiction to jurisdiction, ranging from 12 in Vatican City to 18 in Turkey. After the age of consent was raised from 12 to 18 in Malta and Vatican City, there was not a single European jurisdiction left with an age limit below 14 years old. So under current legislation, the range of age categories is less dispersed, only ranging from 14 to 18 years old. This suggests at least a harmonizing trend. Whether the average age of consent *is actually higher*, however, can only be concluded based on a comparison of the pre- and post-Graupner domestic laws.

The problem is that not all domestic laws can be subjected to a one-on-one comparison. This had to do with the fact that 15 jurisdictions used to have *more than one* general age of consent, often based on the gender and sexual orientation of the people involved (more on those jurisdictions in § 6.2). In Cyprus, for instance, the lowest age of consent used to be 13 years (for anal heterosexual sex), while persons had to be 18 years or older to consent to anal homosexual sex.¹⁵⁴ Nowadays, Cyprus only has one general age of consent (18 years), and so do the other 14 jurisdictions. In comparing these 15 jurisdictions, we took the lowest age of consent mentioned

¹⁵² Supplementary Norms on Criminal Law Matters from the website of the Vatican City State. Available at <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/Law%20N.%20VIII%20-%20Supplementary%20Norms%20on%20Criminal%20Law.pdf> (accessed 13 December 2015)

¹⁵³ Supplementary Norms on Criminal Law Matters, article 4-(a): “‘minor’ means every human being below the age of eighteen years”. Article 8 provides that whoever engages in sexual acts with a minor is punished by different penalties according to the different age of the child victim

¹⁵⁴ In fact, in Cyprus, there even used to be a third age of consent (16 years) for vaginal intercourse.

in Graupner’s study (in the example of Cyprus 13 years) and compared it to the most recent age of consent (now 18 years) to see whether the age of consent was raised or lowered.¹⁵⁵ The justification for choosing the lowest age of consent as a benchmark is the following: Before they changed the law, Cypriots were allowed to have at least *some forms of sex* with a child of 14 years or older. After the legislative changes, all sexual relations with persons below the age of 18 were prohibited. This is an indication that in Cyprus the protective paradigm has won terrain at the expense of the sexual autonomy of the child.

The results of the juxtaposition of the 2004 and 2016 laws are shown in Table III. Results indicates that eleven jurisdictions including Cyprus, Kosovo, Moldova, Russia, Croatia, Iceland, Lithuania, Malta, Slovenia, Spain, and Vatican City have raised their previous age of consent. Only Northern Ireland lowered its age of consent from 17 to 16 years.

Table III Jurisdictions that changed their general age of consent after 2004

jurisdiction	Age of consent in 2004	Age of consent in 2016	Type of change
Moldova	14	16	raise
Russia	14	16	raise
Croatia	14	15	raise
Cyprus*	13	18	raise
Iceland	14	15	raise
Lithuania	14	16	raise
Kosovo*	14	16	raise
Malta	12	18	raise
Slovenia	14	15	raise
Spain	13	16	raise
N-Ireland	17	16	lower

¹⁵⁵ This approach is also used by Graupner himself when he tries to establish the percentage of jurisdictions where sexual relations are legal in a certain age group.

Vatican City	12	18	raise
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* In Cyprus and Kosovo, they used to have multiple ages of consent, the lowest being 13 years (Cyprus) and 14 years (Kosovo).

In addition, table IV shows the numbers and percentages of jurisdictions that adopted a certain age limit in 2004 and 2016. Currently, the average age of consent in the studied jurisdictions is 15.47 years, which is an increase compared to the average of 14.63 years in 2004.¹⁵⁶ Also, when it comes to the distribution of the ages of consent, more jurisdictions are opting for higher age categories. For instance, while the age limit under or equal to 14 years accounted for almost half the jurisdictions in 2004 (48%), nowadays, however, only a quarter (23%) of the jurisdictions allow for consensual sexual relationships with 14-year-olds.

Table IV Distribution of ages of consent in 2004 and 2016

Age limit	Number and percentage in 2004	Number and percentage in 2016
≤ 14	28 out of 59 (48%)	13 out of 57 (23%)
≤ 15	41 out of 59 (70%)	26 out of 57 (46%)
≤ 16	58 out of 59 (98%)	52 out of 57 (91%)
≤ 17	59 (100%)	53 out of 57 ((93%))
≤ 18	59 (100%)	57 out of 57 (100%)

¹⁵⁶ For jurisdictions that used to have more than one age of consent in 2004, we took the lowest age of consent allowing (some forms of) consensual sexual relations. In addition, we excluded jurisdiction that adopted “sexual maturity” as the standard of age of consent.

6.2 Equalizing the age of consent for homo- and heterosexual sex

The newly collected data show that in 2016 all studied European jurisdictions only have one general age of consent. In 2004, however, there were 15 jurisdictions that either adopted different ages of consent for sexual behaviors, based on the gender or the sexual orientation of the partners involved, or that had a total ban on certain sexual behaviors. These 15 jurisdictions were Albania, Bulgaria, Belarus, Cyprus, Faroe Islands, Gibraltar, Guernsey, Ireland, Isle of Man, Jersey, Portugal, Serbia, Scotland, Bosnia-Herzegovina and Kosovo. In many of these jurisdictions, they either explicitly distinguished between hetero- and homosexual acts – spelling out in their laws that different rules applied to (male) homosexual or heterosexual sex – or the distinction was more implicit by adopting a higher age of consent or a total ban for sexual behaviors that affected the gay community disproportionately, e.g., a higher age of consent for anal intercourse.¹⁵⁷

From the analysis, Scotland and the Faroe Islands were excluded because the different ages of consent were unrelated to sexual orientation (Scotland) or because there was a lack of comparative material (Faroe Islands),¹⁵⁸ leaving 13 jurisdictions for further analysis. The comparison of the general age of consent in 2004 and 2016 in these 13 jurisdictions are demonstrated in Table V which shows that all of them have now adopted a uniform age of consent, regardless of the sexual orientation of the persons involved. Only in Albania does an additional requirement need to be met in case the minor is a female – in addition to her being at least 14 years old, she also has to be sexually mature – but this does not relate to homo- or heterosexuality. Furthermore, jurisdictions that used to have a total ban on certain types of sex,

¹⁵⁷ Although in some jurisdictions the total ban on anal sex only applied to heterosexual couples (e.g., Gibraltar, Jersey).

¹⁵⁸ Scotland used to have different ages of consent as well, but these had nothing to do with the distinction between hetero- and homosexuality, because the higher age limit of 18 for anal intercourse in Scotland had already been repealed in 2000, and the only remaining inequality referred to the fact that for man/girl relations, the age limit for the girl was 16, while for woman/boy relations the limit was the boy's individual biological maturity (Graupner, 2005). The Faroe Islands were excluded from this analysis as well, due to the unavailability of current legislation online.

have now lifted that ban. These developments bear witness to the equalization of ages of consent for gay and heterosexual sex across the European continent.

Table V Equalization of homo- and heterosexual age of consent after 2004

	2004	2016
Albania	14 for heterosexual sex 18 for male and female homosexual sex	14; but if the child is female, she should be sexually mature
Bulgaria	14 for heterosexual sex, 16 for male and female homosexual sex when the older person is under 18, 18 for male and female homosexual sex when the older person is 18 or above	14 + the child should understand the essence and meaning of the act,
Belarus	'Sexual maturity' for vaginal, oral, anal intercourse, 18 for male homosexual sex No limit for other sexual contacts,	16
Cyprus	16 for vaginal intercourse, 13 for heterosexual anal intercourse 18 for homosexual anal intercourse Other sexual acts: individual capacity to give informed consent is decisive	18
Gibraltar	16, Male homosexual relations between persons over 18 are an offence if more than two persons are present	16

	Heterosexual anal intercourse is punishable whatever the age of the partner may be	
Guernsey	16 for vaginal intercourse; Total ban on heterosexual anal intercourse; Male homosexual relations between persons over 18 are an offence if more than two persons are present.	16
Ireland	17 for vaginal intercourse and anal intercourse with girls and boys, 15 for all other kinds of (heterosexual and lesbian) contact	15
Isle of Man	21 for anal intercourse; 16 for other kinds of heterosexual contacts; Male homosexual relations between persons over 21 are an offence if more than two people are present	16
Jersey	Heterosexual anal intercourse is punishable; 16 for vaginal intercourse; 21 for anal intercourse between males, 16 for other male homosexual contacts;	16
Portugal	14 for heterosexual sex; 14 for male homosexual sex when the older person is under 18;	14

	16 for male homosexual sex when the older person is 18 or above;	
Serbia	18 for anal intercourse; 14 for all other kinds of sexual contact	14
Bosnia- Herzegovina	Total ban on anal intercourse between men; 14 for other kinds of sexual contact.	14
Kosovo	Total ban on anal intercourse between men; 14 for other kinds of sexual contact.	16

6.3. Increasing attention for authority (more multistage systems)

As discussed above, the most important indicator that distinguishes between multi- and single-stage system is the existence of provisions on sexual contact in relations of authority. Relations of authority are also classified as relations of trust, or relations of dependence. In 2004, there were 25 jurisdictions in Europe that had no special provisions on age of consent in authority relationships, as shown in Table VI. The newly collected data shows that 5 of those 25 jurisdictions (Bulgaria, Gibraltar, Isle of Man, England & Wales, and Northern Ireland) have now amended their legislation and added provisions on age of consent for authority relations into their criminal laws. Given the fact that jurisdictions that already applied higher ages of consent to authority relationships back in 2004 have not changed their approach – none of them returned to a single-stage system – this indicates that the multistage system is gaining popularity.

Table VI Age of consent for sexual relationships under authority

	2000	2016
Albania	no	no
Armenia	no	no

Azerbaijan	no	no
Bulgaria	no	18
Georgia	no	no
Moldova	no	no
Ukraine	no	no
Cyprus	no	no
Estonia	no	no
Gibraltar	no	18
Greenland	no	unknown
Guernsey	no	unknown
Ireland	no	no
Isle of Man	no	18
Jersey	no	no
Latvia	no	no
Lithuania	no	no
Luxembourg	no	no
Malta	no	no
Monaco	no	unknown
San Marino	no	unknown
Turkey	no	no
England & Wales	no	18
Northern Ireland	no	18

7. Discussion

Different jurisdictions adopt different criteria when choosing a particular age as their age of consent and the approach to choose the criteria can sometimes come across as somewhat arbitrary (Kourany et al., 1986). Although physically speaking, children in modern times are

“hitting puberty earlier than ever”,¹⁵⁹ their physical maturity does not automatically imply intellectual and emotional maturity (Tambe, 2011). Despite their physical precociousness, children below a certain age may not be able to understand the meaning and consequence of the sexual behavior, increasing their likelihood of becoming victimized by predatory adults.

In the absence of conclusive empirical research in the field of child sexual development, that helps determine the exact age above which children in a particular culture and context are (in general) cognitively mature enough to genuinely consent to sex, domestic legislators remain heavily influenced by other factors as well, such as cultural practice, political lobby, international legal and political developments, gender ideology and ideas pertaining to homosexuality. This explains the wide variety of ages of consent and the different approaches to homosexual sex and sex in authority relationships.

However, while jurisdictions may diverge in their own opinion as to the right age of consent, they all share one common emphasis: their ambition to protect children from harm and exploitation (Wong, 2006). When selecting a particular year to mark the age of consent, the higher the age limit is set, the more protection the law provides to young children, as it prolongs the time children enjoy legal protection. But a protectionist approach comes at a price: the higher the age limit, the less sexual autonomy children can enjoy. National legislators will always have to balance these two important factors in determining the exact age of consent.

In order to map the results of this balancing act, and establish the latest trends, we have examined the most recent laws of 57 jurisdictions on the European continent and compared them to the statutory ages of consent of 2004. The first trend is that on average, the age limit has increased significantly from 14.63 years in 2004 to 15.47 years in 2016. This also shows from the changes in the distribution of the ages of consent. In 2004, for instance, almost half (48%) of the European jurisdictions allowed consensual sexual relations with 14-year-old children, while

¹⁵⁹ Why Kids Are Hitting Puberty Earlier Than Ever. *Health US News* (17 April 2015) available online at <http://health.usnews.com/health-news/health-wellness/articles/2015/04/17/why-kids-are-hitting-puberty-earlier-than-ever>; Early Puberty: Why Are Kids Growing up Faster? *The Guardian* (13 June 2012) Available online at <http://www.theguardian.com/society/2012/oct/25/early-puberty-growing-up-faster>

nowadays this is legal in only a quarter (23%) of studied jurisdictions. At the same time, there seems to have been a harmonizing trend regarding the range of age categories. The range is less dispersed, with no more ‘outliers’ in the lower categories (12 and 13 years). All of these changes indicate that national legislators are gradually extending the prohibition of having sex with young children, and that in the ongoing debate over the prioritization of the conflicting values ‘protection’ versus ‘sexual autonomy’ the scales have now tipped in favor of a protectionist approach. The comparison shows that the protection paradigm, which is visible throughout society, has also encroached upon the field of child sexualism. Over restrictive rules, however, can be an expression of paternalistic sentiments – trying to ‘mould’ children into the ideal of the innocent and non-sexual persona that has no basis in reality – rather than an approach that genuinely addresses *children’s need* for protection. Within criminal law, there is no room for legal paternalism or legal moralism (Ashworth, 2006). Especially in countries where the age of consent is set at 17 years or more, one should wonder whether children are not disproportionately restricted in their sexual self-determination.

The comparison also highlighted a second, unequivocally positive, trend: that more and more jurisdictions have abolished the different ages of consent for heterosexual and homosexual sex. This demonstrates that legislators are abandoning some of their earlier prejudices about homosexuality (and sometimes heterosexuality). While unequal age limits were still prevalent in 2004 – one-third of the European jurisdictions made a distinction between heterosexual and homosexual behaviors – nowadays all the 57 studied jurisdictions have adopted one single age of consent. This trend is the continuation of a movement that started in the 1980s and was supported by international legislation and concurring opinions of European criminological and sociological experts (Helfer, 1990). The European Courts of Human Rights, for instance, had ruled at least three times that a total ban on homosexual behavior violates the European Convention on Human Rights¹⁶⁰, and in 1997, the European Commission on Human Rights held that a higher age limit for homosexual behavior constitutes a violation of the Convention as well¹⁶¹. Our study

¹⁶⁰ *Dudgeon V. the United Kingdom*, 22 October 1981; *Norris v. Ireland*, 26 October 1988; *Modinos v. Cyprus*, 22 April 1993.

¹⁶¹ *Sutherland v. the United Kingdom* (striking out) [GC], no. 25186/94

confirms that these rulings have landed on fertile ground and that gay rights are now more firmly established, at least when it comes to the equalization of the age of consent on the European continent.

The third trend in age of consent legislation relates to sex within authority relationships. Compared to the situation in 2004, there are now five more jurisdictions that have incorporated a multi-stage system by adding provisions relating to age of consent for authority (trust, dependency) relationships. This is a positive development as well, since consent to different sexual activities requires different kinds or levels of competence, and ‘the appropriate age for each competence will be set at a higher or lower point’ (Archard, 1998). It is a legitimate choice to adopt a higher age of consent in relationships of authority such as that between a teacher and a pupil, or a guardian and a ward, because of the power imbalance between the child and the adult and the dependence of the child upon the adult. This particular feature makes it more difficult for the child to provide free and full consent to sexual relations with his or her ‘superior’. A higher age of consent could serve as a powerful weapon against sexual abuse in these kind of authority relationships. The growing popularity of the multistage system during the past 12 years should therefore be welcomed.

Our research has shown that the age of consent is not a static feature of national laws that, once established, remains unchanged forever. Even in the relatively short time span between Graupner’s research and our update, many changes have taken place on the national level, clearly showing the dynamic nature of the topic at hand. We consider this a positive development. Ever changing times with ever changing sexual morals require flexibility on the part of the national legislators to guard the fine balance between being overprotective and too permissive in the matter of child sexuality. Nowadays the protective paradigm seems to have gained popularity at the expense of the individual autonomy of the child. Apart from excessively strict laws, this is not necessarily a negative development, as long as certain conditions are adhered to. An important factor is also how these laws are effectuated in practice. Whether the self-determination of children is disproportionately affected not only depends on the statutory age of consent, but also on the vigor, flexibility and common sense with which these laws are enforced. Although it is

important to send a clear message to adults that there are significant risks involved in having sex with psychologically premature children, in the individual case, there should be room for flexibility. Especially when there is only little age disparity between the persons involved, or when the child almost reaches adulthood, a too strict enforcement of age of consent laws may undeservedly bring innocuous behavior within the realm of criminal law. The manner in which public prosecutors use their discretion as to whether or not prosecute sexual crimes in the individual case, could form an important corrective on (too) protectionist laws.

8. Limitations

This study has several limitations. The first limitation had to do with its primary reliance on online information. Despite the fact that a lot of legislation is now digitalized, there are always a risk that there is no online information available or that the online information does not reflect the actual, up-to-date situation. For instance in the current study, online information was lacking for Vojvodina and the Faroe Islands. For some other jurisdictions, no official (English) version of the criminal law provisions was published on the internet, forcing us to rely on secondary, possibly less reliable sources (e.g., Wikipedia or unofficial translations). A second limitation relates to the fact that our conclusions were predominantly based on codified information (e.g., Criminal Codes or Sexual Offence Acts). There was no possibility to take heed of other, possibly relevant sources, such as case law or policy documents. As a result, the findings may not reflect the actual situation in the described jurisdictions with 100% accuracy. A third limitation had to do with language and linguistic barriers. While English, German, Dutch and French websites were accessible, our understanding of information in other languages was much more limited. Although we tried to compensate this deficiency by resorting to native legal experts for help, chances are that certain facts or legal technicalities got 'lost in translation'. Despite these limitations, the results do provide an overview of the newest trends in age of consent legislation in the last 12 years and contribute to a better understanding of national legislators' attitudes towards age of consent in Europe.

Reference

- Archard, D. (1998). *Sexual consent*. Colorado: Westview Press.
- Aries P. (1962). *Centuries of Childhood: A Social History of Family Life*. New York: Alfred A. Knopf
- Ashworth A., *Principles of Criminal Law* (fifth edition) (Oxford: Oxford University Press, 2006) pp.30
- Burgen S. (2013). *Spain Raises Age of Consent from 13 to 16*. Retrieved from <http://www.theguardian.com/world/2013/sep/04/spain-raises-age-of-consent> (accessed 6th April, 2015)
- Carpenter, B., O'Brien, E., Hayes, S., & Death, J. (2014). Harm, responsibility, age, and consent. *New Criminal Law Review: In International and Interdisciplinary Journal*, 17(1), 23-54.
- Carroll, A., & Itaborahy, L. P. (2015). State sponsored homophobia 2015. A world survey of laws: criminalisation, protection and recognition of same-sex love, Geneva: International Lesbian, Gay, Bisexual. *Trans and Intersex Association*.
- Cheney V.T. (2004), *The Sex Offenses and their Treatments: The Problem—The Solution—Commentary*. Bloomington: AuthorHouse.
- Crompton, L. (2003). *Homosexuality and civilization*. Cambridge: The Belknap Press of Harvard University Press.
- Dixon-Mueller, R. (2008). How young is “too young”? Comparative perspectives on adolescent sexual, marital, and reproductive transitions. *Studies in family planning*, 39(4), 247-262.
- Freeman, M. (Ed.). (2012). *Law and childhood studies: Current legal issues* (Vol. 14). Oxford: Oxford University Press.
- Graupner, H. (2000). Sexual consent: The criminal law in Europe and overseas. *Archives of Sexual Behavior*, 29(5), 415-461.

Graupner, H. (2005). Sexual consent: The criminal law in Europe and outside of Europe. *Journal of Psychology & Human Sexuality*, 16(2-3), 111-171.

Helfer, L. R. (1990). Finding a consensus on equality: The homosexual age of consent and the European Convention on Human Rights. *New York University Law Review*, 65, 1044 -1100.

Herring, J. (2012). Vulnerability, children and the law, in Freeman M., ed., *Law and Childhood Studies: Current Legal Studies* (Vol. 14), pp. 243-263. Oxford: Oxford University Press.

Keating H. (2012). 'When the Kissing has to Stop: Children, Sexual Behavior, and the Criminal Law', in Freeman M., ed., *Law and Childhood Studies: Current Legal Studies* (Vol. 14), pp.264-280. Oxford: Oxford University Press.

Kitzinger, J. (1997). Who are you kidding? Children, power and the struggle against sexual abuse. In A. James A. & Prout A. Ed., *Constructing and reconstructing childhood*, pp. 161-185. London: Falmer Press.

Klettke, B., & Mellor, D. (2012). At what age can females consent to sexual activity? A survey of jury-eligible Australians. *Psychiatry, Psychology and Law*, 19(2), 198-208.

Kourany, R. F., Hill, R. Y., & Hollender, M. H. (1986). The age of sexual consent. *Journal of the American Academy of Psychiatry and the Law Online*, 14(2), 171-176.

Mayall, B. (2013). *A History of the Sociology of Childhood*. London: Institute of Education Press.

McAleese D. (2007) *Age of consent lowered to 16*, Retrieved from

<http://www.belfasttelegraph.co.uk/news/age-of-consent-lowered-to-16-28069099.html>

(accessed 6th April, 2015).

Potts A. (2013) Vatican City Raises Age of Consent from 12 to 18 Following Scandals. Retrieved from <http://www.gaystarnews.com/article/vatican-city-raises-age-consent-12-18-following-scandals120713/#gs.0U4RR1I> (accessed 6th April, 2015).

Robertson S., 'Age of Consent Laws', available online at <https://chnm.gmu.edu/cyh/case-studies/230>, (accessed 6th April, 2015).

Tambe, A. (2011). Climate, race science and the age of consent in the League of Nations. *Theory, Culture & Society*, 28(2), 109-130.

Waites, M. (2005). *The age of consent: Young people, sexuality and citizenship*. London: Palgrave Macmillan.

Williams Z. (2012). *Early Puberty: Why Are Kids Growing up Faster?* Retrieved from <http://www.theguardian.com/society/2012/oct/25/early-puberty-growing-up-faster> (accessed 6th April, 2015)

Woodham C. (2015). Why Kids Are Hitting Puberty Earlier Than Ever. Retrieved from <http://health.usnews.com/health-news/health-wellness/articles/2015/04/17/why-kids-are-hitting-puberty-earlier-than-ever>; (accessed 6th April, 2015)

Wong, J. P. (2006). Age of consent to sexual activity in Canada: Background to proposed new legislation on "age of protection". *The Canadian Journal of Human Sexuality*, 15(3/4), 163-169.

Chapter 3 European legislators' attitudes towards childhood sexuality from the perspective of age of consent legislation

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Abstract:

Childhood sexuality is a culturally constructed notion which has constantly been subjected to change. The various constructions of childhood sexuality represent different attitudes towards children's engagement in sex. As a substantial factor in regulating children's sexuality, a country's age of consent legislation is an important indicator of the national legislator's attitudes towards childhood sexuality. This study summarizes four main discourses around child sexuality, ranging from traditional constructions that solely focus on protecting the child's 'innocence' to modern notions that provide more leeway for children to explore their sexuality. By juxtaposing these discourses against the current age of consent laws in 57 European jurisdictions it appears that national law makers in Europe are still mainly influenced by the traditional construction of childhood sexuality, which results in various negative consequences. It is recommended that legislators take the latest findings of other disciplines into account and reflect on the rationales behind their legislation.

1. Introduction

The regulation of children's sexuality is a complex issue for legislators worldwide. This has to do with the delicate balancing act between two competing entitlements of children: Protecting them from adult sexual abuse and exploitation on the one hand; and respecting children's sexual autonomy and self-determination on the other. There is always a tension between these two competing aspects and it is difficult to conciliate them in a satisfactory manner.

The quintessential example of where national legislators have to strike a balance between child sexual autonomy and protection from abuse can be found in legislation concerning the age of consent. Article 2 of the Directive 2011/92/EU (combating the sexual abuse and sexual exploitation of children and child pornography) defines 'age of sexual consent' as the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child. Put another way, the age of consent refers to 'the age at which a person is legally able to understand and agree to consensual sex'¹⁶² and is typically one of the most controversial areas of sexual offence legislation.¹⁶³ This particular age limit not only delineates the legal boundaries of children's capacity to consent to sex, but also expresses the legislator's attitudes towards the relationship between children and sexuality, notably the degree of acceptability of children's engagement in different kinds of sexual activities.

When it comes to the relationship between children and sexuality, various discourses can be discerned under which children are accorded different levels of accessibility to sexuality. While some discourses, for instance, depart from the assumption that children are generally asexual beings and place exclusive emphasis on protection against sexual abuse, other discourses are more accepting of the fact that children can have sexual needs too and try to create more room for their sexual exploration and self-determination. By introducing these different discourses and then juxtaposing them against the current trends in age of consent legislation in Europe, this

¹⁶² S. James, 'Romeo and Juliet Were Sex Offenders: An analysis of the Age of Consent and a Call for Reform', (2009) 78 *UMKC Law Review* 241-262

¹⁶³ H. Keating, "'When the Kissing Has to Stop': Children, Sexual Behavior, and the Criminal Law", in M. Freeman (eds), *Law and Childhood Studies: Current Legal Issues* (Oxford University Press, 2012) at 264

article tries to find out what kind of discourse is dominant on the European continent and what the national legislators' attitudes are towards children's sexuality.

In order to do this, this article first provides a brief historical overview of (the notion of) childhood and childhood sexuality (section 3). The aim of this overview is not to relativize the importance of (having) a concept of childhood, but to demonstrate that there is no 'natural' concept of childhood or a 'natural' age of consent. This section is followed by a description of four different discourses around children' sexuality (section 4). After this, the trends of age of consent legislation in Europe over the last 12 years are described (section 5) and an analysis is given of which discourse is deployed by the European legislators (section 6). The article concludes with a reflection on the legislators' choices and implications for future law making regarding age of consent (section 7).

However, before elaborating on national age of consent laws and attitudes of legislators underpinning these laws, a few words need to be said on the definition of child used in this article and the distinction between young children and adolescents. These definitional issues will be discussed in the following section (section 2).

2. Definition of "child" and "adolescent"

In 1989, the UN Convention on the Rights of Child defined a child as "a human being below the age of eighteen years (unless under the law applicable to the child, majority is attained earlier)".¹⁶⁴ Since then this concept was widely accepted by many scholars and law makers around the world. For instance, in the European Union Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, article 2 also defines a child as "any

¹⁶⁴ " Convention on the Rights of the Child", United Nations Human Rights Office of the High Commissioner, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed 5 February, 2018)

person below the age of 18 years". People aged 0-18 years are also the main object of childhood studies.¹⁶⁵

It is, however, important to realize that children below the age of 18 years do not form a homogeneous group and that older children are distinctly different from younger children. While it is clearly inappropriate to have sex with a 5-year-old child, allowing consensual sex with a 17-year-old child may be more acceptable. Rather than a binary classification – child versus adult – a classification that distinguishes (at least) three categories – child versus adolescent versus adult – seems more appropriate in this respect.

For this reason, there are also many scholars making a distinction between “children” and “adolescents”, with the former indicating minors in young childhood while the later refers to minors in transition from young childhood into adulthood.¹⁶⁶ In comparison with younger children, adolescents are close to adulthood.¹⁶⁷

But there is no uniform or clear-cut boundary of adolescence. Although some social scientists divide adolescence into three stages: early adolescence (age 11 to 14), middle adolescence (age 15 to 18) and late adolescence (age 18 to 21), this classification is mainly based on the way in which people are grouped in educational institutions.¹⁶⁸ The referential significance of this differentiation is limited and the different age classifications are quite variable when it comes to other areas.¹⁶⁹ For instance, as to the beginning of adolescence, a biologist would pay more attention to the attainment and completion of puberty, a lawyer would look instead at different age boundaries designated by law, while an educator might put focus on the different timing that

¹⁶⁵ V. Morrow, ‘Understanding children and childhood’, (2011), Center for Children and Young People: Background Briefing Series, no.1. (available at https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1027&context=ccyp_pubs, accessed 19 March, 2018)

¹⁶⁶ L. Steinberg, *Adolescence* (McGraw-Hill, Inc, 1993). What is worth mentioning here is that the word *adolescence* derived from the Latin verb *adolescere*, which means “to grow into adulthood” and therefore adolescence, or adolescent, is always related with the period of transition in biological, psychological, social and economic sense.

¹⁶⁷ E. S. Scott, “The legal construction of adolescence”, (2000) 29 *Hofstra Law Review* 547.

¹⁶⁸ L. Steinberg, *Adolescence* (McGraw-Hill, Inc, 1993)

¹⁶⁹ L. Steinberg, *Adolescence* (McGraw-Hill, Inc, 1993)

children are enrolled into school, and all of these age boundaries might vary significantly across different countries and areas.¹⁷⁰

Given this unclear definition of adolescence, this study chose to use the term “child” to refer to people who are under the age of eighteen and not considered adults. But in order to make a distinction between (very) young and older children, the word “adolescent” is used to refer to a comparatively older child who has entered puberty but is still in the transition to adulthood, without defining clear-cut age limits as to when adolescence begins exactly.

3. The history of childhood sexuality

3.1 *The construction of childhood*

When talking about children’s sexuality, it is inevitable to start with the construction of childhood, the theory of which was first developed by the French historian Philippe Ariès.¹⁷¹ His book, *Centuries of Childhood*, has been a significant influence on many subsequent studies on children and childhood. In this book, Ariès puts forth the claim that childhood, as a concept, is a human construction. He demonstrates that up until the 15th century, children were considered as miniature adults and there was no obvious distinction between children and adults. At that time, children could do everything adults could, such as wearing the same clothes, playing the same games, drinking alcohol, engaging in sexual relations, sharing the work burden of the family, etcetera. Also with regard to the legislation, there was no distinction between the treatment of adults and that of children.¹⁷² Children were not perceived as sexually innocent and psychologically delicate, implying that sexual contacts between children and adults (e.g., stroking of genitals, sharing beds) were considered normal and acceptable behavior.¹⁷³ However, with the decrease in infant mortality, the emergence of the modern nuclear family, and the increase of

¹⁷⁰ L. Steinberg, *Adolescence* (McGraw-Hill, Inc, 1993)

¹⁷¹ P. Ariès, *Centuries of Childhood: A Social History of Family Life* (Alfred A. Knopf, 1962)

¹⁷² M. Waites *The Age of Consent: Young People, Sexuality and Citizenship* (Palgrave Macmillan, 2005);

¹⁷³ B.Carpenter, E. O’Brien, S. Hayes and J. Death, ‘Harm, Responsibility, Age and Consent’, (2014) 17 *New Criminal Law Review* 23

class stratification, parents began to treat children with more interest and affection.¹⁷⁴ Simultaneously, the establishment of the modern educational system also contributed to the segregation of children from the adult world. These are all reasons why the relatively new concept of childhood came into being around the seventeenth century. From then on, childhood was perceived as a distinct phase of human life and children were constructed as innocent, dependent, incompetent, powerless and vulnerable. Being linked to the construction of childhood in general, the notion of childhood sexuality also underwent certain changes, which will be elaborated on in the next section.

3.2 The history of childhood sexuality

When it comes to the societal perceptions regarding childhood sexuality, Sterling Fishman provided a rudimentary historical outline in 1982.¹⁷⁵ According to his research, little concern was paid to child sexuality prior to the seventeenth century. It was only in the eighteenth century, against the backdrop of proper child-rearing being an urgent subject among the urban middle classes, that child sexuality began to be condemned – first by theological, then by medical moralists – as sinful, (physically) harmful, or pathological. In the nineteenth century, this condemnation was intensified and upgraded to the societal level, meaning that child sexuality, masturbation in particular, was not merely an individual problem, but also a social evil which needed to be eradicated by rigorous measures.¹⁷⁶ It was also during this period that, with the establishment of school system in most (Western) European countries, the control of childhood sexuality became institutionalized.¹⁷⁷ In his work the *History of Sexuality*, Michel Foucault made the point that ‘precocious sexuality was presented from the eighteenth century to the end of the nineteenth century as an epidemic menace that risked compromising not only the future health of adults but the future of the entire society and species’.¹⁷⁸ In the twentieth century, however,

¹⁷⁴ P. Ariès, *op cit*

¹⁷⁵ S. Fishman, ‘The History of Childhood Sexuality’, (1982) 17*Journal of Contemporary History* 269

¹⁷⁶ Fishman (1982), *op cit*

¹⁷⁷ Fishman (1982), *op cit*

¹⁷⁸ M. Foucault, *History of Sexuality* (Pantheon books, 1978)

with the advent of Sigmund Freud's theory of infantile sexuality, the attitude towards child sexuality completely changed with childhood sexuality now being seen as 'a normal and natural expression of the infant and child, the suppression of which creates both individual and social problems'.¹⁷⁹

The works of Sigmund Freud mark a new era of understanding child sexuality and Freud has been commonly credited for 'inventing' childhood sexuality.¹⁸⁰ As a result, twentieth century scholars and experts from various fields and disciplines (e.g., sociologists, psychologists, anthropologists, criminologists and legal scholars) began to use their corresponding expertise to publicly and explicitly acknowledge child sexuality as a normal and natural reality.¹⁸¹

Although the periodization by Sterling Fishman provided an important angle through which to understand the changing conceptualizations of childhood sexuality in history, it was conducted at the beginning of 1980s. Ending up with Freudian theory, it has missed the various surging social movements and other new development since then. Fortunately, the research conducted by Steven Angelides has provided a detailed overview of the development of the notion of child sexuality after Freud. According to Angelides, people's attitudes towards childhood sexuality in the twentieth and twenty-first century could not simply be represented by Freudian theory and the social perception of childhood sexuality has – again – undergone some nuanced transformations.¹⁸²

Angelides acknowledges that, with Freud 'inventing' childhood sexuality, the social atmosphere towards children's sexuality began to be more lenient than before. This could, for instance, be witnessed in the acceptance of child-adult sexual relationships. Angelides found that prior to the 1980s, there was a period during which sexual encounters between children and adults was considered harmless by lots of scholars, and that there were even various groups in Western

¹⁷⁹ Fishman (1982), *op cit*

¹⁸⁰ R. Egan and G. Hawkes, 'Imperiled and Perilous: Exploring the History of Childhood Sexuality', (2008) 21 *Journal of Historical Sociology* 355

¹⁸¹ S. Angelides, 'Feminism Child sexual abuse, and the erasure of child sexuality', (2004) 10 *GLQ A Journal of Lesbian and Gay Studies* 141

¹⁸² Angelides (2004) *op cit*

Europe and America advocating intergenerational sex and lobbying for the lowering or abolition of the legal age of consent.¹⁸³ However, this lenient attitude towards children's sexuality was not always advantageous for the children themselves. Gradually, the lenient atmosphere turned against minors and the child-victim in the adult-child sexual relationship was condemned as the initiator and seducer, while the adult was portrayed as the harmless victim of the child's seductiveness.

From the late 1970s and 1980s onwards, feminists began to counter this trend of child-blaming in the adult-child sexual relationship by reinterpreting child sexual abuse in terms of the inherent power differential between adults and children, under which children were considered as incapable of providing informed consent.¹⁸⁴ According to the feminist reinterpretation, a truly informed consent requires two preconditions: 1) that a person knows what it is (s)he is consenting to, and 2) that a person must be at liberty to consent (or refuse).¹⁸⁵ When it comes to the child's sexuality, children lack the corresponding knowledge to understand the meaning, social context and consequences of their decision, especially regarding sexual encounters with adults, hence, even if the child appears to have given consent, it is not a truly informed consent, especially in the case of young (non-adolescent) children. According to Angelides, this feminist argument about children's powerlessness and incapability of giving informed consent have structured every influential analysis of child sexual abuse since 1980s.¹⁸⁶ As an important part of child sexual abuse legislation, the age of consent legislation has been inevitably influenced by this feminist theory.

4. Discourses of children's sexuality

The fact that the history of childhood sexuality represented the different conceptualizations of children's sexuality in particular chronological periods does not mean that each

¹⁸³ Angelides (2004) *op cit*

¹⁸⁴ Angelides (2004) *op cit*

¹⁸⁵ Angelides (2004) *op cit*

¹⁸⁶ Angelides (2004) *op cit*

conceptualization just belongs to that particular historical period. Especially nowadays, various constructions of children's sexuality exist alongside each other in Western countries and Robinson summarized three hegemonic discourses around childhood and sexuality.¹⁸⁷ Brennan & Epp provided a further analysis of these three, traditional discourses and detected a fourth, emerging discourse.¹⁸⁸ In this section, the four main discourses provided by Robinson and Brennan & Epp will be explained, demonstrating the different perceptions of children's sexuality.

4.1 Asexual innocents

The first discourse considers children as asexual and innocent, and it is based on the socially constructed binary relationship between children and adults, in which children are considered as a distinct social category, separate from adults. Within this discourse, physiological sexual maturity is seen as marking the boundary between childhood and adulthood, and sexuality is the exclusive realm of adults.¹⁸⁹ Before entering adulthood, child sexuality is considered as immature or non-existent while adult sexuality is conceived as mature.¹⁹⁰ At the same time, being emotionally, physically and psychologically underdeveloped, children are considered incapable of understanding or dealing with adult matters such as sexuality. The combination of innocence with lack of adult sexual knowledge requires that children need to be protected, while adults - who are constructed as mature, knowledgeable and competent – constitute the perfect guardians of the children's innocence.

Being considered asexual innocents, this discourse does not allow for children to be 'sexual agents' and whenever their sexuality is mentioned, it is always described within the narrative of protection.¹⁹¹ As Brennan & Epp point out, there is no room here to recognize that 'children may have an interest in exploring, developing, or expressing their sexuality as semi-autonomous

¹⁸⁷ K.H. Robinson, 'Childhood and Sexuality: Adult Construction and Silenced Children', in J. Mason and T. Fattore (eds), *Children Taken Seriously: In Theory, Policy and Practice* (Jessica Kingsley, 2005), at 66-76

¹⁸⁸ S. Brennan and J. Epp, 'Children's Rights, Well-Being, and Sexual Agency', in A. Bagattini and C. Macleod (eds), *The Nature of Children's Well-Being: Theory and Practice* (Springer, 2014), at 227-246

¹⁸⁹ D. Gittins, *The Child In Question*. (Palgrave Macmillan, 1998)

¹⁹⁰ Robinson (2005) *op cit*

¹⁹¹ Egan & Hawkes (2008) *op cit*

sexual agents who can be involved in their own protection but who nonetheless remain children who deserve and benefit from adult help and guidance'.¹⁹² In other words, the protection of innocent, vulnerable children is achieved at the cost of crediting no sexual agency to the children themselves. According to Robinson, this discourse is 'the most pervasive and influential discourse around childhood and sexuality',¹⁹³ which permeates Western society and impacts severely on child-related education, pedagogy, legislation and policy in western countries.

4.2 Binary: Innocent children versus knowing children

The second discourse intersects with the first one. In this view, while still admitting children are innocent, it further develops that child innocence is a state which can be corrupted. Therefore, it creates a dichotomy between children as 'innocent (pure) children' and 'knowing children'.¹⁹⁴ The first case is consistent with the situation in the first discourse while the latter, 'knowing children', refers to children whose innocence or purity has been lost or stolen by premature exposure to sexuality.

Based on the first discourse, child innocence is an important signifier of the boundary between children and adults and the transgression of this boundary will jeopardize the child's chance to be considered a child.¹⁹⁵ If children are not well-protected and exposed to sexuality, then they are morally corrupted and their innocence and purity are no longer existent. As a result, they are categorized as 'knowing children', which refers to 'those who should be, but are no longer children'.¹⁹⁶ By the same token, children who have been sexually abused are not considered innocent anymore, rather, they are viewed as 'sullied, dirty and as useless children'.¹⁹⁷ Therefore, children who are sexually knowledgeable – including children who have been sexually abused – cannot equally enjoy the special protection that the other, innocent children are granted. This

¹⁹² Brennan & Epp (2014) *op cit*

¹⁹³ Robinson (2005) *op cit*

¹⁹⁴ Brennan & Epp (2014) *op cit*

¹⁹⁵ Gittins (1998) *op cit*

¹⁹⁶ Brennan & Epp (2014) *op cit*

¹⁹⁷ Robinson (2005) *op cit*

discourse can be exemplified by the British Sexual Offence Act (1956) and the Street Offences Act (1959) that criminalized underage prostitutes rather than treat them as victims in need of protection, despite the fact that they had not reached the legal age of consent yet.¹⁹⁸

The knowing children within this discourse are considered as threats to individual others and to the social order at large.¹⁹⁹ There is even a more extreme sub-branch of this discourse which divides children into 'little angels' and 'little vixens'.²⁰⁰ Children classified as little vixens, or 'Lolitas', are young girls who take the initiative to seduce male adults, hence they are held responsible for the adult-child sexual relationship. Meanwhile, the male adults are constructed as harmless, unsuspecting victims of the child's seductiveness. This construction of child-adult sexual relationship takes the responsibility away from the adult's behavior and transfers it to children involved. According to Robinson, this dichotomy 'is constituted in the binary relationship of Madonna/whore' and it is reinforced through Freud's use of the 'seductive child' and childhood fantasy.²⁰¹

4.3 Moral panic: sexual beings in need of strict control

The third discourse acknowledges that children are sexual beings and it focuses more on the moral panic of the adult world towards child sexuality. 'Moral panic' is a term coined by Stanley Cohen and it refers to the situation in which 'a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests',²⁰² which exactly demonstrates adults' perception of child sexuality. Although children in this discourse are acknowledged as sexual beings, in the view of adults, their sexual activity is outright premature

¹⁹⁸ C. Piper, 'Historical Constructions of Childhood Innocence: Removing Sexuality', in E. Heinze (eds) *Of innocence and Autonomy* (Dartmouth Publishing, 2000), at 26-45

¹⁹⁹ Brennan & Epp (2014) *op cit*

²⁰⁰ Robinson (2005) *op cit*

²⁰¹ Robinson (2005) *op cit*

²⁰² S. Cohen, *Moral Panics and Folk Devils: The Creation of the Mods and Rockers* (McGibbon and Kee, 1972)

and irresponsible sexual behavior.²⁰³ The moral panic resulting from this stance caused child sexuality to be constructed as 'inherently dangerous, deviant, and in need of regulation'.²⁰⁴

Proponents of this discourse are also supporters of the abstinence sex education and they often highlight dangers of precocious sexuality by using inflammatory language, fueling the adults' fear and anxiety for children's sexuality. These fears and anxieties result in the perception that adults should strictly regulate and surveil children's sexual activity at all costs. Under this discourse, children who have engaged in sexual activities are considered 'kids gone wrong' and 'out-of control', and parents or schools are often held responsible for the children's wrongness because they did not take their responsibility to teach the children well enough and protect them from the outside dangers.²⁰⁵ The emphasis on control and protection negates children's sexual needs. Although children in this discourse are perceived as sexual beings, they are positioned as non-autonomous objects of adult attention and credited little or no agency regarding their own sexuality.

In addition, since the 1960s, there has been a growing awareness of child sexual abuse in Western countries, and the private and public anxieties have intensified efforts to enhance children's (public) safety from pedophiles, which further justifies the regulation and surveillance in the name of protecting children's sexuality from harmful influences.²⁰⁶ Against this background, the contemporary Western society is more vigilant to the possibility of child (sexual) abuse and is more dedicated to its prevention than ever before.²⁰⁷

²⁰³ Brennan & Epp (2014) *op cit*

²⁰⁴ S. Prior, (2013) 'Scary Sex: the Moral Discourse of Glee', in: B. Fahs, M.L. Dudy and S. Stage (eds) *The Moral Panics of Sexuality* (Palgrave Macmillan,2013), at 92-113

²⁰⁵ Brennan & Epp (2014) *op cit*

²⁰⁶ K. Robinson, *Innocence, Knowledge and the Construction of Childhood* (Routledge, 2013)

²⁰⁷ D. Archard, *Sexual Consent* (Westview Press,1998)

4.4 The common characteristics of the three discourses

Although the emphasis of these three discourses is different, they do share some common characteristics. To a certain degree, these three discourses are intersected and each of them influences more or less the laws regulating child sexuality in Europe.

The first, most notable commonality is that these discourses are all based on the human construction of childhood as a distinct category from adulthood. The notion of childhood is, furthermore, always linked with the concept of innocence, 'which is equated with purity, naivety, selflessness, irrationality, and a state of unknowingness, or of being less worldly – all of which characterize the child as vulnerable'.²⁰⁸ As far as sexuality is concerned, children are assumed 'inappropriate'²⁰⁹ to get involved in sex and children's sexuality, which is different from adult sexuality, is constructed as innocent, immature and in need of broad protection from being harmed by outside dangers. It is within this binary construction of childhood and adulthood that children's dependence, incapability, and powerlessness is assumed and surveillance and regulation by adults is justified.²¹⁰ Therefore, within these three discourses, no matter whether they are being acknowledged as sexual beings or not, children's sexual engagements are considered as socially unacceptable and inappropriate by adults. And once children's behaviors transgress the dominant construction of childhood sexuality and its concomitant mystiques of innocence and purity, 'children may find themselves outside the classification and protection of childhood itself'.²¹¹

The second common characteristic is that these three discourses are all adult-centric and concluded from the point of view of adults, without taking the children's feelings and experiences into account. They only shed light on adult expectations and fears for children's sexuality, with children's sexual agency and sexual subjectivity being neglected or denied. Children's expressions of sexual subjectivity are even perceived as abhorrent and results in calls for broader social

²⁰⁸ Robinson (2013) *op cit*

²⁰⁹ S.I. McClelland and L.E. Hunter, 'Bodies That Are Always Out of Line: A Closer Look At "Age Appropriate Sexuality"', in B. Fahs, M.L. Dudy and S. Stage (eds), *The Moral Panics of Sexuality* (Palgrave Macmillan, 2013), at 59-76

²¹⁰ Robinson (2013) *op cit*

²¹¹ Egan & Hawkes (2008) *op cit*

control to impede further damage.²¹² It is against this background that social fears over children's sexuality are exacerbated and culminate in social moral panics.²¹³ Under these three discourses, children's rights, particularly sexual rights, are often framed as the right of protection against sexual exploitation without taking heed of their (arguably) equally important right of sexual agency.²¹⁴

Ironically, however, because the three discourses use the innocence rhetoric, they may, to a varying degree, create danger for the children²¹⁵ and inadvertently contribute to children's vulnerability to sexual abuse and exploitation.²¹⁶ Gradually, the three discourses have therefore received more and more criticism by scholars from different fields. Kitzinger's study, for instance, showed that sometimes the extreme rhetoric surrounding the innocence and purity of children plays a role in 'reinforc(ing) their desirability as sexual objects'.²¹⁷ Robinson indicated that 'child innocence is a commodity exploited in child pornography, where innocence becomes titillation and the perception of 'forbidden fruit' fuels the desire'.²¹⁸ Scraton also warns that we should be aware of and alert to the damages done to children by adults under the guise of protection and through the idealization of childhood.²¹⁹

In addition, more than one researcher points out that the protection narrative is sometimes used to serve adults' interests.²²⁰ Within the binary construction of childhood and adulthood, the relationship between children and adults is a hierarchical power relationship, in which children are subordinate to the adults. Based on this, adults are criticized for taking advantage of the

²¹² Egan & Hawkes (2008) *op cit*

²¹³ P. McCreery (2004) 'Innocent Pleasure? Children and Sexual Politics', (2004) 10 *GLQ A Journal of Lesbian and Gay Studies* 617

²¹⁴ Egan & Hawkes (2008) *op cit*

²¹⁵ J. Herring, 'Vulnerability, Children and The Law', in M. Freeman M (eds), *Law and Childhood Studies* (Oxford University Press, 2012), at 243-264

²¹⁶ Robinson (2005) *op cit*

²¹⁷ J. Kitzinger, 'Who Are You Kidding? Children, Power, and The Struggle Against Sexual Abuse', in A. James and A. Prout (eds), *Constructing and Reconstructing Childhood* (Falmer Press, 1997), at 161-185

²¹⁸ Robinson (2005) *op cit*

²¹⁹ P. Scraton, 'Whose "childhood"? What "crisis"', in P. Scraton (eds), *'Childhood' in 'Crisis'?* (UCL Press, 1997), at 167-190

²²⁰ Egan & Hawkes (2008) *op cit*; Robinson (2013) *op cit*; J. Herring (2012) *op cit*; P. Jenkins P, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (Yale University Press, 2004)

power imbalance to construct children as innocent and vulnerable, and sometimes even to exaggerate their innocence and vulnerability purposely, in order to justify pervasive adult' intervention, control and surveillance. Herring, for instance, claims that children's abilities are down-played by adults and children's vulnerability are often exaggerated and distorted to achieve adult purposes.²²¹ He is skeptical about the adult portrayal of children as especially vulnerable and he emphasizes that vulnerability is 'the common lot of humanity'.²²² As the work of Egan & Hawkes demonstrates, the need to protect children from sexuality sometimes acts as a smokescreen for other social interventions that go far beyond the interests of the children themselves.²²³ For instance, (conservative) politicians sometimes utilize the concept of childhood innocence to "instigate moral panic in order to maintain the hegemonic discourse of childhood and the normative social order in societies".²²⁴ Jenkins also believes that it is a strategy for people from different fields including social welfare agencies, feminists, psychiatrists and psychotherapist, religious and moralistic groups, and politicians, to purposely exaggerate threats to children's sexual safety to serve their own interests.²²⁵ This point is also reiterated by Kerry Robinson who argues that 'around the world, discourses of childhood and childhood innocence have been successfully employed to foster moral panic for political gains by social and moral conservatives'.²²⁶ As a result, something missing from these discourses is the voices of children themselves.

Nowadays, children – particularly adolescents – generally reach sexual maturity in the physiological sense long before their sexual activity becomes socially and legally acceptable.²²⁷ The fact that many teenagers in Anglo-Saxon jurisdictions, like the UK, US and Australia, start their engagement in sexuality earlier than permitted by law also demonstrates the inconsistency

²²¹ J. Herring (2012) *op cit*

²²² J. Herring (2012) *op cit*

²²³ Egan & Hawkes (2008) *op cit*

²²⁴ Robinson (2013) *op cit*

²²⁵ P. Jenkins P (2004) *op cit*

²²⁶ Robinson (2013) *op cit*

²²⁷ D. Gittins, *The Child In Question* (Palgrave Macmillan, 1998)

between legislation and the experiences of children.²²⁸ In the UK, for instance, a national survey found that the average age of their first sexual experience was 14 for girls and 13 for boys, despite the legal age of consent being set at 16.²²⁹

Taken together, the blanket construction of innocence and vulnerability surrounding childhood and sexuality legitimizes the adults' intervention in children's sexual engagement, while this adult-centric intervention, in turn, reinforces the constitution of childhood as innocent and vulnerable, which may create a danger for children and possibly make them more vulnerable. In order to solve this problem, some scholars have suggested that we should stop the adult-centric approach of the construction of childhood and re-construct childhood sexuality by criticizing and deconstructing the traditional ones,²³⁰ providing children a more participatory context supported by a positive rights agenda.²³¹

4.5 A new emerging discourse

With more and more scholars beginning to consider the three above-mentioned discourses as problematic in that it makes childhood sexuality inconceivable and socially unacceptable, a new discourse has emerged that treats children as persons with some degree of sexual agency and autonomy. Different from the previous discourses, this new discourse supports that 'sexuality may be a good of childhood' and that 'children have some degree of sexual agency that ought to be supported in order to support their well-being'.²³²

The proponents of this discourse also acknowledge that children, in particular adolescents, are in the process of maturing physically, cognitively, socially and emotionally, just as the three previous discourses do.²³³ However, the biggest difference, which makes this discourse distinct

²²⁸ G. Zhu and S. Aa, 'The trends of age of consent legislation in Europe: A comparative study of 59 jurisdictions on the European continent', (2017) 8 *New Journal of European Criminal Law* 14

²²⁹ H. Keating (2012) *op cit*

²³⁰ J. Kitzinger (1997) *op cit*

²³¹ P. Scraton (1997) *op cit*

²³² Brennan & Epp (2014) *op cit*

²³³ Brennan & Epp (2014) *op cit*

from the previous three ones, lies in the fact that it grants children (some) autonomy over their sexuality. Although the proponents of this discourse acknowledge that less mature children do need protection from adults and sometimes from themselves, they emphasize that the immaturity of children should not negate their autonomy, and protection should not be understood strictly in opposition to this autonomy.²³⁴ According to them the claim that children are asexual and that sexuality is not relevant to them is one of the myths existing in relation to childhood and sexuality that should be dispelled.²³⁵ They do not say children should be sexual in any particular way, rather, they argue that sexuality is an important part of children's well-being and certain kinds of bodily exploration and self-pleasure are essential and valuable. Therefore, once children have the desire to explore their sexuality, it should be supported and respected, rather than controlled and surveilled. In addition, the exponents of this discourse criticize that the discussions of children's sexuality under the previous three discourses are 'forward looking', always focusing on children's right to develop into a sexual being in the future at the expense of children's rights to express or to enjoy their current sexuality by considering it as potentially harmful.²³⁶ So one of the significant features of this discourse is that it pays more attention to children's current sexuality and its discussion of children's right to sexual expression is placed in the key of children's well-being rather than potential harm.

As mentioned before, the regulation of children's sexuality always has to grapple with the tension between the need to protect children from sexual abuse and the need to respect their equally important right of sexual autonomy. In this regard, the first three discourses can be categorized as the protection-oriented approach, while the fourth discourse - by considering both protection and respect of autonomy simultaneously - can be categorized as the 'protection + autonomy' approach.

5. Children's sexuality and age of consent

²³⁴ Brennan & Epp (2014) *op cit*

²³⁵ Robinson (2013) *op cit*

²³⁶ Brennan & Epp (2014) *op cit*

5.1 The relationship between children's sexuality and age of consent

The cultural construction of innocent and vulnerable childhood separates children from adults and brings in the necessity of protecting children from dangers of the outside world. Against this background, it is logical that in modern society the legislation sets up various age limits for children to engage in different activities, such as voting, driving, drinking, etcetera. Thus children's development is marked by a series of age-graded social and legal boundaries governing the timing of transition from one social, economic, or personal status to the next²³⁷ and children need to cross over the line to legal adulthood at different ages for different purposes.²³⁸ With regard to sexuality, age of consent, which refers to the age at which children are considered capable of giving their consent to sexual activities, is one of the most effective instruments invented by law makers to regulate children's sexuality and protect children from being sexually abused by predatory adults.

Because of Ariès' research, it is now generally accepted that childhood is not a universal constant or natural category, but rather an ever-shifting concept. By the same token, the regulation of children's sexuality in the Western world, --the age of consent legislation in particular-- also changes over time. Although an age of consent statute first appeared in England in the Statute of Westminster in 1275,²³⁹ the wide acceptance of setting such an age limit for children's engagement in sexual activities was an invention of the past 200-300 years,²⁴⁰ which is in line with Ariès' argument that there used to exist no distinction between children and adults in various areas including sexual relations. The new invention of age of consent in the recent 200-300 years also supports Fishman's finding that it was in the nineteenth century that the control of childhood sexuality became institutionalized.

²³⁷R. Dixon-Mueller, 'How Young Is "Too Young"? Comparative Perspectives On Adolescent Sexual, Marital and Reproductive Transitions', (2008) 39 *Studies in Families Planning* 247

²³⁸ E.S. Scott, 'The Legal Construction of Adolescent', (2000) 29 *Hofstra Law Review* 547

²³⁹ M. Waites (2005) *op cit*

²⁴⁰ H. Graupner, 'Sexual Consent: The Criminal Law In Europe And Outside of Europe', (2004) *Journal of Psychology & Human Sexuality* 111

Now all contemporary European jurisdictions have their own age of consent legislation, but the detailed content of these laws varies enormously across the different jurisdictions.²⁴¹ And even within the same jurisdiction, the age of consent legislation differs in various historical periods, because the age of consent legislation in a particular time is significantly influenced by the construction of child sexuality in that period. For instance, the previously mentioned UK Sexual Offence Act 1956 and Street Offences Act 1959 that criminalized underage prostitutes was probably influenced by the second discourse that dichotomizes children into ‘innocent children’ and ‘knowing children’.²⁴² The lobby for the lowering or abolition of age of consent in America and Western Europe in last century, on the other hand, may have been influenced by the Freudian theory of acknowledging child sexuality as a normal and natural reality.

5.2 Trends in age of consent legislation in Europe

Research has indicated that how we perceive and understand children and childhood affects the way societies treat and engage with children in everyday life and practice.²⁴³ The reverse may be equally true: The way we treat children is a demonstration of how we perceive and understand them. So if we like to know more about the society’s perception of (the acceptability of) child sexuality, age of consent legislation can be a useful source of information. It can help answer questions such as: what are the attitudes of European legislators towards children’s sexual engagement? How do they understand children and their sexuality? Which discourse around childhood sexuality introduced in the previous section do they choose to ground their legislation? A recent research undertaken by the author in exploring the trends of age of consent legislation in 57 European jurisdictions could provide important clues that can help answer these questions. In 1997, Helmut Graupner conducted a comparative research on age of consent legislation in Europe and updated it in 2004. In 2016, the data were updated once again by re-collecting the

²⁴¹ G. Zhu and S. van der Aa (2017) *op cit*

²⁴² C. Piper (2000) *op cit*

²⁴³ V. Morrow (2011) *Understanding Children And Childhood* (Southern Cross University, 2011)

newest age of consent legislation in 57 of the original 59 jurisdictions.²⁴⁴ Taking Graupner's 2004 study as a benchmark, the age of consent laws of 2004 were compared with those of 2016, and certain obvious changes were found. The examination of the changes that had occurred during the past 12 years, resulted in the identification of three discernible trends regarding age of consent legislation in Europe, which will be introduced in detail in this section. Together with qualitative information on the rationale behind certain legislative changes, these trends provide some insights into the current law makers' attitudes towards children's sexuality.

5.2.1 Trend 1: Raising the general age of consent

In some jurisdictions, legislators only set one general age limit and it is absolutely illegal to have sex with children under this age. This age limit applies to all situations without considering other factors. Once the child reaches that particular age, all sexual acts are allowed.²⁴⁵ While in other jurisdictions, apart from the general age limit, the law makers set a higher age limit to place additional restrictions upon sexual behaviors where there is a particular institutional power inequality, for example, in the case of sexual relations between a teacher and his or her pupil. This kind of relation is classified as relations of authority, which sometimes is phrased as 'relations of dependency' or 'relations of trust', and the age limit in these situations is termed as 'age of consent for authority relationship'. In our recent research, we first examined the changes that had occurred to the general minimum age limit. By juxtaposing and comparing the general age of consent in 2004 with that in 2016, it was found that twelve jurisdictions had changed their minimum age limit for sexual relations, and that the predominant trend was to *increase* the general age of consent (See table 1). While the ages of consent in 2004 were based on the article by Graupner, Appendix 1 contains a list with sources from which the national ages of consent in 2016 were derived.

²⁴⁴ See G. Zhu and S. Aa (2017) *op cit*

²⁴⁵ 'All sexual acts' here refers to normal *consensual* sexual acts. Sexual acts that are specially regulated by law such as rape and prostitution are excluded from this article.

Table 1 Jurisdictions that have changed their general age of consent in 2016²⁴⁶

jurisdiction	Age of consent in 2004	Age of consent in 2016	Type of change
Moldova	14	16	raise
Russia	14	16	raise
Croatia	14	15	raise
Cyprus*	13	18	raise
Iceland	14	15	raise
Lithuania	14	16	raise
Kosovo*	14	16	raise
Malta	12	18	raise
Slovenia	14	15	raise
Spain	13	16	raise
N-Ireland	17	16	lower
Vatican City	12	18	raise

* In Cyprus and Kosovo, they used to have multiple ages of consent, the lowest being 13 years (Cyprus) and 14 years (Kosovo).

Among these changes, 11 jurisdictions – Cyprus, Kosovo, Moldova, Russia, Croatia, Iceland, Lithuania, Malta, Slovenia, Spain, and Vatican City – have raised their general age of consent. Only Northern Ireland lowered its age limit from 17 to 16 years. The tendency to increase the age of consent is also evidenced by the average age of consent in all the jurisdictions under study. The average age of consent in 2016 was 15.47 years, which is an increase compared to the average of 14.63 years in 2004.²⁴⁷ Also when it comes to the distribution of the age of consent, more and more jurisdiction are opting for higher age categories. For instance, while the age limit

²⁴⁶ This table comes from the research 'Trends of age of consent legislation in Europe: A comparative study of 59 jurisdictions on the European continent'.

²⁴⁷ G. Zhu and S. Aa (2017) *op cit*

under or equal to 14 years accounted for almost half the jurisdictions in 2004 (48%), nowadays only a quarter (23%) of the jurisdictions on the European continent allow for consensual sexual relationships with 14-year-olds. As to the rationale behind these recent legal changes to age of consent law, some qualitative (secondary) evidence could be found.²⁴⁸ In the case of Spain, for instance, which raised its age of consent from 13 to 16 years, in 2009, the main rationale behind this reform was to “protect children from abuse and exploitation”.²⁴⁹ This quote clearly underlines the protective paradigm.

What is interesting in this respect is the “spontaneous” harmonizing incentive that comes from the fact that national legal systems have different ages of consent and the fear that a low age of consent could attract sexual predators from abroad. When the age of consent in Spain was raised from 13 to 16, Ana Mato, the Span’s minister of health and social affairs to a parliamentary committee confirmed that the new higher age will “(better) match other European countries”.²⁵⁰ By the same token, Russian legislators raised their age of consent from 14 to 16 in 2002 to better protect Russian children from being lured into the sex trade.²⁵¹ Official from the Russian parliament, Svetlana Goryacheva, chairwoman of the State Duma's women, children and youth affairs committee, explained that Russia intended to eliminate the difference of age of consent between Russia and other countries, because these differences “make it hard to protect the country’s children”.²⁵² They continued by saying that “if we do not take measures, pedophiles of all stripes will flock to Russia...”²⁵³ There is a risk that foreign sexual predators or human traffickers would cross borders in order to enjoy protection from the more lenient Russian system.

²⁴⁸ In order to fully understand all arguments that played a role in the legislative changes, one should access primary sources, e.g., parliamentary documentation in the native language. Unfortunately, that fell outside the scope of this article.

²⁴⁹ F. Govan, “Spain to raise age of consent from 13 to 16”, (2013) *The Telegraph* (available at <https://www.telegraph.co.uk/news/worldnews/europe/spain/10089339/Spain-to-raise-age-of-consent-from-13-to-16.html>, accessed on 21 March 2018)

²⁵⁰ F. Govan (2013) *op cit*

²⁵¹ P. Graff, “Duma votes to raise age of consent to 16”, (2002) *The Moscow Times* (available at <http://old.themoscowtimes.com/sitemap/free/2002/6/article/duma-votes-to-raise-age-of-consent-to-16/245588.html>, accessed on 21 March 2018)

²⁵² P. Graff, (2002) *op cit*

²⁵³ P. Graff, (2002) *op cit*

Vatican City, on the other hand, used to have the lowest age of consent in Europe, which was 12 years. However, after a series of child sex scandals within the church were exposed, the Vatican age of consent was raised to 18 in 2013, which is now the highest in Europe.²⁵⁴ From these cases we can deduct that the protection of children from sexual abuse and exploitation is the main rationale that prompted European legislators to raise their domestic age of consent.

5.2.2 Trend 2: Equalizing the heterosexual and homosexual age of consent

The second identified trend is that more and more European legislators have abolished the different ages of consent for heterosexual and homosexual sex. In 2004, unequal age limits were still prevalent. There were 13 jurisdictions (Albania, Bulgaria, Belarus, Cyprus, Gibraltar, Guernsey, Ireland, Isle of Man, Jersey, Portugal, Serbia, Bosnia-Herzegovina and Kosovo) making a distinction between people's engagement into heterosexual and homosexual behaviors, which almost amounted to one fifth of all Europe jurisdictions. The distinction between heterosexuality and homosexuality could be explicit – by specifying in their legislation that different rules applied to (male) homosexual or heterosexual sex – or the distinction was more implicit by setting a higher age limit or a total ban for certain sexual behaviors that (arguably) affected the gay community disproportionately, e.g., a higher age of consent for anal intercourse. However, in 2016, all of these 13 jurisdictions had abandoned this distinction and adopted a uniform age of consent without considering the sexual orientation of the person involved (See table 2). Moreover, jurisdictions that used to have an outright ban on anal sex or homosexuality, have now lifted that ban.

These developments witnessed the equalization of age limits for homosexual and heterosexual sex across the European continent, which could not have been achieved without the support of legislation from the international level. For instance, the European Court of Human Rights has ruled in many cases that the criminalization of homosexuality or a higher age of consent for

²⁵⁴ A. Potts, "Vatican City raises age of consent from 12 to 18 following scandals", (2013) Gay Star News (available at <https://www.gaystarnews.com/article/vatican-city-raises-age-consent-12-18-following-scandals120713/#gs.jVnVe1M>, accessed on 21 March 2018)

homosexuality violated the European Convention on Human Rights,²⁵⁵ and in 1997, the European Commission of Human Rights held that a higher age limit for homosexual behavior constitutes a violation of the Convention as well.²⁵⁶ In the case of *S.L. v. Austria* in 2003, for instance, which revolved around the fact that the Austrian legislation had criminalized consensual sex between adult men and adolescents aged 14 to 17, the European Court of Human Rights required the State to pay the applicant non-pecuniary damage for barring 14 to 17 year old adolescents from having consensual sexual contact with adult men (above the age of 18).²⁵⁷ The overwhelming equalization of heterosexual and homosexual ages of consent in current Europe could not be achieved without these distinguished cases.

Table 2 Distinction of heterosexual and homosexual age of consent in 2004 and 2016²⁵⁸

	2004	2016
Albania	14 for heterosexual sex 18 for male and female homosexual sex	14; but if the child is female, she should be sexually mature
Bulgaria	14 for heterosexual sex, 16 for male and female homosexual sex when the older person is under 18, 18 for male and female homosexual sex when the older person is 18 or above	14 + the child should understand the essence and meaning of the act,
Belarus	‘Sexual maturity’ for vaginal, oral, anal intercourse, 18 for male homosexual sex No limit for other sexual contacts,	16

²⁵⁵ See *Dudgeon v. the United Kingdom*; *Norris v. Ireland*; *Modinos v. Cyprus*; *L. and V. v. Austria*; *S.L. v. Austria*; *Woditschka and Wilfling v Austria*; *B.B. v UK* 200; *F. L. vs. Austria* 2005; *Thomas Wolfmeyer vs. Austria* 2005; *H.G. & G.B. vs. Austria* 2005; *R.H. vs. Austria* 2006; *E.B. et al vs Austria* 2013

²⁵⁶ See *Sutherland v. the United Kingdom*, [Application No. 25186/94, 1 July 1997]

²⁵⁷ See *S.L. v. Austria*. [Application No. 45330/99, 9 April 2003];

²⁵⁸ This table comes from the research ‘Trends of age of consent legislation in Europe: A comparative study of 59 jurisdictions on the European continent’. In Appendix 2, an overview is provided of the sources from which the 2016 information was derived.

Cyprus	16 for vaginal intercourse, 13 for heterosexual anal intercourse 18 for homosexual anal intercourse Other sexual acts: individual capacity to give informed consent is decisive	18
Gibraltar	16, Male homosexual relations between persons over 18 are an offence if more than two persons are present Heterosexual anal intercourse is punishable whatever the age of the partner may be	16
Guernsey	16 for vaginal intercourse; Total ban on heterosexual anal intercourse; Male homosexual relations between persons over 18 are an offence if more than two persons are present.	16
Ireland	17 for vaginal intercourse and anal intercourse with girls and boys, 15 for all other kinds of (heterosexual and lesbian) contact	15
Isle of Man	21 for anal intercourse; 16 for other kinds of heterosexual contacts;	16

	Male homosexual relations between persons over 21 are an offence if more than two people are present	
Jersey	Heterosexual anal intercourse is punishable; 16 for vaginal intercourse; 21 for anal intercourse between males, 16 for other male homosexual contacts;	16
Portugal	14 for heterosexual sex; 14 for male homosexual sex when the older person is under 18; 16 for male homosexual sex when the older person is 18 or above;	14
Serbia	18 for anal intercourse; 14 for all other kinds of sexual contact	14
Bosnia-Herzegovina	Total ban on anal intercourse between men; 14 for other kinds of sexual contact.	14
Kosovo	Total ban on anal intercourse between men; 14 for other kinds of sexual contact.	16

5.2.3 Trend 3: Setting a higher age limit for sexual encounters in authority relationships

The third trend is that more and more European legislations have adopted a higher age limit for adult-child sexual encounters in authority relationships. As mentioned before, relations of authority are also qualified as relations of trust, or relations of dependence and they refer to situations in which a power imbalance exists, such as that between a teacher and a pupil, or a guardian and a ward. With regard to these relations, some legislators chose to set only one

general age of consent which applies to all circumstances, regardless of the context within which the sexual acts took place. Other law makers, however, chose to place additional restrictions upon sexual engagements under authority relations by setting a higher age limit, meaning that children above the general age of consent are not automatically exempted from protection: They can only have sexual encounters with people in authority relations by the time they reach the higher age limit, otherwise their consent is not valid in the legal sense and would put the adult sexual partner at the risk of criminal prosecution and conviction. To sum up, there are two methods in regulating child sexuality in authority relationship: Either setting one general age of consent applying to all situations, or setting two different age limits (a general age of consent for normal situations and a higher age limit for authority relationships).

Compared to the situation in 2004, there were five more jurisdictions in 2016 that had added provisions relating to the age limit for authority (trust, dependency) relationships in their age of consent legislation (Bulgaria, Gibraltar, Isle of Man, England & Wales, and Northern Ireland). These five jurisdictions used to have a single age limit applicable to all situations. After adding a higher age limit for authority relations, the laws in these five jurisdictions provided more protection to children than before, as people in position of authority need to wait for a longer period before being allowed to have sex with children who are under the influence of their authority. As to the jurisdictions that already had a higher age limit for authority relations in 2004, they continued their approach and none of them abolished the distinction between age of consent for normal situations and age of consent for authority relationships.

6. Analysis

As discussed before, it is difficult to set the age of consent in a jurisdiction because legislators have to strike a reasonable balance between protecting children from sexual abuse and respecting their right of sexual autonomy. The first trend of age of consent legislation, raising the general age of consent, seems to suggest that European legislators are currently paying more attention to the 'protection' approach. Because, the higher the age of consent is set, the more

protection law provides to children as it prolongs the time children enjoy this particular legal protection. However, the higher the age limit is set, the less autonomy children can enjoy. One can deduct from the trend of raising the general age limit and from qualitative materials reporting on the rationale underlying these changes that protection ambitions have gained territory at the expense of autonomy. The degree to which European law makers accept children's engagement in sexuality is lower than before. When we compare this to the four discourses on children's sexuality mentioned in the previous part, we can conclude that it is probably the traditional construction of innocent and vulnerable childhood and child sexuality that inspired the trend of raising the age of consent in Europe.

Piper contended that 'a socially prevalent image (of childhood)... does influence and encourage public action and justifies particular state policies'.²⁵⁹ The trends of age of consent legislation in Europe reflect how the traditional, deep-rooted and pervasive construction of vulnerable, innocent children exerts influence on the European law makers and justifies their choice for more control and surveillance on children's sexuality. The traces of the first three (protection) discourses of children's sexuality can be found behind this trend. Although the lopsided attention to protection has proven to have various negative consequences, it is still the concern for protecting innocent and vulnerable childhood sexuality, rather than respecting children's sexual autonomy that prompted the legislators to make these changes.

The third trend, which indicates that more and more European legislators are adopting a higher age of consent for authority relationships, demonstrates that European legislators are gradually extending the prohibition of having sex with children, as the adoption of the higher age limit makes it more difficult for children to freely consent to sexual relations with their 'superiors'. As explained before, in order to counter the trend of child-blaming for adult-child sex, feminists began to reinterpret child sexual abuse by emphasizing the inherent power imbalance between adults and children and their elucidation of 'informed consent' have structured every influential analysis of child sexual abuse since the 1980s.²⁶⁰ Chances are that the trend to create a higher

²⁵⁹ C. Piper (2000) *op cit*

²⁶⁰ Angelides (2004) *op cit*

age of consent for authority relationships is influenced by the feminist conceptualization of child sexual abuse and informed consent.

Although the feminist reinterpretation made a great contribution in countering society's tendency of blaming the child for the child-adult sexual relationship, its emphasis on the power asymmetry, on the other hand, reinforces the differentials between child and adult, and sexuality is still taken as the dividing line between childhood and adulthood. Thus, instead of empowering children's corresponding sexual autonomy, the feminist reinterpretation actually has been criticized for erasing children's sexuality under the binary construction of childhood and adulthood.²⁶¹ Placed within the key of the four discourses, this trend demonstrates that, in the competition of children's protection and autonomy, the European legislators are inclined to pay more attention to protection and there is no sign that children's sexual autonomy attracts similar concerns.

Protection and autonomy should be understood as communicating vessels, and the scale should be tipped to one side, depending on particular circumstances. For instance, "children" under the age of 18 make up a heterogeneous group composed of children in different developmental phrases. Despite the difficulties of categorizing them into different groups, at least there should be a differentiation between young children and older adolescents, otherwise the implementation of the same criteria for sexual protection and abuse leads to absurd and dangerous consequences.²⁶² For the former, the scale should tip towards protection, while for the latter, given the current situation of overemphasis of protection and its corresponding adverse consequences, perhaps the scale should tip towards autonomy to avoid more negative effects.

The third trend related with authority relationships is also a particular situation that warrants special attention. As the inequality of power and status is characteristic of the authority relationship, adults in a position of authority could easily abuse their position to secure sexual compliance from the child under their influence. This feature substantially increases the risk of

²⁶¹ Angelides (2004) *op cit*

²⁶² H. Graupner, 'The 17-year-old Child', (2005) 16 *Journal of Psychology & Human Sexuality* 7-24

the child not being able to genuinely consent to sex. Because of the even more conspicuous power asymmetry between the adult and child in such situations, they deserve special (stricter) regulation by law. Although it is important to respect adolescents' sexual autonomy and allow them to explore their sexuality, the greater risk of sexual exploitation in authority relationships warrants a stricter approach. So in this regard, the scale tipping towards protection here is reasonable and the trend of increasing attention for authority by setting a higher age of consent for authority relationships is commendable as it prolongs the protection for children in such special circumstances.

However, the new emerging discourse, which tries to provide some room for sexual agency, may have had an influence as well. This is best shown in the second trend of equalizing the age of consent for hetero- and homosexual sex. Nowadays (homosexual) minors are granted more autonomy in exploring their sexual orientation than people under previous legislation that set a higher age of consent for homosexual activity. Homosexual children no longer need to wait longer than their heterosexual peers to be able to engage in sexual activities. This trend not only demonstrates that young homosexuals are enjoying more sexual autonomy than before, but also expresses the legislators' attitudes towards children's engagement in different kinds of sexual activities. The European law makers have abandoned their previous prejudice and discrimination towards homosexuality, at least when it comes to equalization of age of consent in the legal text, and young children's autonomy over their own sexual orientation is allowed and respected to a higher degree than before. This trend is a positive development and we can see the connotation of the new emerging discourse here.

7. Discussion

In the field of childhood studies it has been broadly acknowledged by researchers that there has been a growing contradiction in Western notions of childhood and maturity.²⁶³ As far as child

²⁶³ S. Livingston, *Young People and New Media: Childhood and the Changing Media Environment* (SAGE Publications, 2002)

sexuality is concerned, in the cultural and psychological domains, children seem to be growing up faster,²⁶⁴ whereas in the legal framework, children attain the status of being capable of engaging into sex ever later than before. There is empirical evidence of the fact that, in some countries, teenagers start their sexual behavior earlier than permitted by law. Against this backdrop, it is questionable whether it is just to intensify the control over children's sexuality — e.g., by raising the age of consent— without taking into account the children's actual needs and behaviors. We can tell from the trends in age of consent legislation during the past 12 years that the European legislators have a preference for the protection of children from sexuality. Obviously, protecting children from sexual abuse is a worthy goal and age of consent legislation is a powerful tool in obtaining that goal. But the lack of the children's voices and participation in the discussions surrounding age of consent legislation, and the negation of the children's sexuality from the adult's point of view might have various negative consequences and, what is worse, may, according to certain scholars, even contribute to making children more vulnerable to sexual abuse. Whether there is an actual connection between the innocence-paradigm and an increased risk of child sexual abuse needs to be investigated further, but the possibility that over-protective laws might inadvertently help preserve the exact behavior they wish to counter does warrant attention.

It is not the intention of this study to provide a specific age limit that is assumed appropriate for European legislators to adopt, rather, this research is committed to draw the attention of the law makers to the fact that certain assumptions underlying the current legislation, i.e., the blanket and homogeneous discourse of childhood and childhood sexuality, ought to be questioned. While many scholars are already skeptical about the traditional construction of an innocent, vulnerable childhood and have proved its various negative effects, the European law makers should also be vigilant to the rationale—the same construction of childhood—that their legislation has been based on. With regard to children's sexuality, as long as the binary construction of childhood versus adulthood and the concomitant adult-centric construction of child sexuality prevail, it will continue to be inconceivable, unacceptable and even scary for adults to acknowledge that

²⁶⁴ S. Livingston (2002) *op cit*

children may be sexual, may enjoy sex as adults do and thus should be accorded corresponding autonomy. But the fear and panic will not simply go away if we pretend these possibilities do not exist.²⁶⁵

Lots of forces come into play when setting a particular age of consent in one jurisdiction, and during this process, the legislators should not turn a blind eye to the developments of other disciplines, such as childhood studies and child sexuality studies. Take the second trend, the equalization of homosexual and heterosexual age of consent, as an example. This progressive achievement could not have taken place without the legislators' references to the updated medical and psychological expertise that had made various contributions to the de-stigmatization of homosexuality.²⁶⁶ In this sense, this research provides an understanding of how the hegemonic discourses around childhood and sexuality impact significantly on the age of consent legislation in European jurisdictions, and it is intended to draw the legislators' attention to the assumptions underlying and rationales behind these laws.

²⁶⁵ W.S. Rogers and R.S. Rogers (2005) 'What Is Good And Bad Sex For Children', in M. King (eds) *Moral Agendas for Children's Welfare* (Routledge, 2005), at 136-149

²⁶⁶ M. Waites (2005) *op cit*

Reference list

- Angelides, S. (2004). Feminism, child sexual abuse, and the erasure of child sexuality. *GLQ: A Journal of Lesbian and Gay Studies*, 10(2), 141-177.
- Archard, D. (1998). *Sexual consent*. Colorado: Westview Press.
- Aries, P. (1962). *Centuries of Childhood: A Social History of Family Life*. New York: Alfred A. Knopf.
- Brennan, S., & Epp, J. (2015). Children's Rights, Well-Being, and Sexual Agency. In Bagattini A. and Macleod C. (Ed.), *The Nature of Children's Well-Being*, pp. 227-246. Dordrecht: Springer.
- Carpenter, B., O'Brien, E., Hayes, S., & Death, J. (2014). Harm, responsibility, age, and consent. *New Criminal Law Review: In International and Interdisciplinary Journal*, 17(1), 23-54.
- Cohen, S. (1972). *Moral Panics and Folk Devils: the Creation of the Mods and Rockers*. London: MacGibbon and Kee.
- "Convention on the Rights of the Child", United Nations Human Rights Office of the High Commissioner, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed 5 February, 2018)
- Dixon-Mueller, R. (2008). How young is "too young"? Comparative perspectives on adolescent sexual, marital, and reproductive transitions. *Studies in family planning*, 39(4), 247-262.
- Egan, R. D., & Hawkes, G. L. (2008). Imperiled and perilous: Exploring the history of childhood sexuality. *Journal of Historical Sociology*, 21(4), 355-367.
- Fishman, S. (1982). The history of childhood sexuality. *Journal of Contemporary History*, 17(2), 269-283.
- Foucault, M. (1978). *History of Sexuality*. New York: Pantheon books.
- Gittins, D. (1998). *The child in question*. New York: Palgrave Macmillan.

Govan, F. (2013). Spain to raise age of consent from 13 to 16. *The Telegraph*. Retrieved from <https://www.telegraph.co.uk/news/worldnews/europe/spain/10089339/Spain-to-raise-age-of-consent-from-13-to-16.html>, accessed on 21 March 2018)

Graff, P. (2002). Duma votes to raise age of consent to 16. *The Moscow Times*. Retrieved from <http://old.themoscowtimes.com/sitemap/free/2002/6/article/duma-votes-to-raise-age-of-consent-to-16/245588.html>, accessed on 21 March 2018)

Graupner, H. (2000). Sexual consent: The criminal law in Europe and overseas. *Archives of Sexual Behavior*, 29(5), 415-461.

Graupner, H. (2005). The 17-year-old Child. *Journal of Psychology & Human Sexuality*, 16, 7-24.

Graupner, H. (2005). Sexual consent: The criminal law in Europe and outside of Europe. *Journal of Psychology & Human Sexuality*, 16(2-3), 111-171.

Herring, J. (2012). Vulnerability, children and the law, in Freeman M., ed., *Law and Childhood Studies: Current Legal Studies* (Vol. 14), pp. 243-263. Oxford: Oxford University Press.

James S. (2009). Romeo and Juliet Were Sex Offenders: An analysis of the Age of Consent and a Call for Reform, *UMKC Law Review*, 78, 241-262.

Jenkins, P. (2004). *Moral panic: Changing concepts of the child molester in modern America*. New Haven: Yale University Press.

Keating H. (2012). 'When the Kissing has to Stop: Children, Sexual Behavior, and the Criminal Law', in Freeman M., ed., *Law and Childhood Studies: Current Legal Studies* (Vol. 14), pp.264-280. Oxford: Oxford University Press.

Kitzinger, J. (1997). Who are you kidding?: Children, power and the struggle against sexual abuse. In A. James A. & Prout A. Ed., *Constructing and reconstructing childhood*, pp. 161-185. London: Falmer Press.

Livingstone, S. (2002). *Young people and new media: Childhood and the changing media environment*. London: SAGE Publications

McClelland, S. I., & Hunter, L. E. (2013). Bodies that are always out of line: A closer look at “age appropriate sexuality”. In Fahs B., Dudy M.L. and Stage S. (Ed.) *The Moral Panics of Sexuality*. pp. 59-76. London: Palgrave Macmillan.

McCreery, P. (2004). Innocent pleasures? Children and sexual politics. *GLQ: A Journal of Lesbian and Gay Studies*, 10(4), 617-630.

Morrow V. (2011), *Understanding children and childhood*. Center for Children and Young People: Background Briefing Series, no.1. (Retrieved from https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1027&context=ccyp_pubs, accessed 19 March, 2018)

Piper, C. (2000). Historical constructions of childhood innocence: removing sexuality. In Heinze E. (Ed.) *Of innocence and autonomy: children, sex and human rights*, pp.26-45. Aldershot: Dartmouth Publishing.

Potts A. (2013, July 12) Vatican City Raises Age of Consent from 12 to 18 Following Scandals. *Gaystarnews*, Retrieved from <http://www.gaystarnews.com/article/vatican-city-raises-age-consent-12-18-following-scandals120713/#gs.OU4RR1I>

Prior, S. (2013). Scary Sex: The Moral Discourse of Glee. In Fahs B., Dudy M.L. and Stage S. (Ed.) *The Moral Panics of Sexuality*. pp. 92-113. London: Palgrave Macmillan.

Robinson, K. H. (2005). Childhood and sexuality: Adult constructions and silenced children. In Mason J. and Fattore T. (Ed.), *Children taken seriously: In theory, policy and practice*. pp. 66-76. London and Philadelphia: Jessica Kingsley Publishers.

Robinson, K. H. (2013). *Innocence, knowledge and the construction of childhood: The contradictory nature of sexuality and censorship in children’s contemporary lives*. London: Routledge.

Rogers, W. S., & Rogers, R. S. (1999). What is good and bad sex for children? In King M. (Ed.) *Moral agendas for children's welfare*, pp. 136-149. London: Routledge

Scott, E. S. (2000). The legal construction of adolescence. *Hofstra Law Review*, 29, 547- 598.

Scraton, P. (1997). Whose “childhood”? What “crisis”? In Scraton P. (Ed.), *“Childhood” in “Crisis”*, pp.167-190. Pennsylvania: UCL Press.

Steinberg L. (1993), *Adolescence*. New York: McGraw-Hill, Inc.

Waites, M. (2005). *The age of consent: Young people, sexuality and citizenship*. London: Palgrave Macmillan.

Zhu, G. and Van der Aa, S. (2017). The trends of age of consent legislation in Europe: A comparative study of 59 jurisdictions on the European continent’, *New Journal of European Criminal Law*, 8. 14-42.

Chapter 4 A comparison of the gender-specificity of age of consent legislation in Europe and China: Towards a gender-neutral age of consent in China?

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Abstract:

Age of consent-- the age at which young people are considered legally competent to consent to sexual activities—is an important weapon invented by law makers to protect young children from being sexually abused and exploited by predatory adults. In this study, a comparison of the age of consent legislation in 2004 and 2016 in Europe reveals that it is a trend for European law makers to adopt a gender-neutral approach in their age of consent legislation, i.e., the gender of the sexual participants does not affect the legal consequence of the sexual activity and both male and female children, either in heterosexual or homosexual relations, enjoy protection to the same extent. Then the age of consent legislation in China is deeply examined to see whether it is gender-neutral as most of the European jurisdictions do. Based on the previous introduction and analysis of Europe and China, this paper concludes that the gender-neutral trend identified in Europe could be instructive for China’s future age of consent legislation.

Keywords:

Age of consent · gender-neutral · gender-specific · child sexual abuse · childhood · Chinese criminal law

1. Introduction

According to Article 2 of the Directive 2011/92/EU (Combating the sexual abuse and sexual exploitation of children and child pornography), age of consent means “the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child”, and the “child” here refers to “any person below the age of 18 years”. The importance of such provision of age limit is that the consent of people under the age limit to engage in sexual activity does not count in the legal sense, thus making the adult sexual partner liable to criminal prosecution and punishment. Through the implementation of age of consent legislation, the legislators try to protect young people, both female and male, from sexual abuse and sexual exploitation by predatory adults. The idea is that criminalization works as a deterrent against engaging in sexual activities with children below the statutory age limit.

Nowadays, all jurisdictions on the European continent have their own age of consent provisions (Zhu & Van der Aa, 2017) and they are usually embodied in national Criminal Codes or dedicated sexual offences Acts. A comparison of the age of consent laws in all jurisdictions on the European continent revealed that, although detailed legislation varied significantly from one jurisdiction to another, a large majority of jurisdictions share one common characteristic: They have adopted a *gender-neutral* approach when setting the age limit for young people, without indicting the gender or sexual orientation of the sexual participants, which means that both male and female children, either in heterosexual or homosexual relations, enjoy protection to the same extent. However, an examination of the history and background of age of consent legislation in Europe in different eras brought to light that the gender-neutrality of age of consent laws in current Europe was a new invention of the last century and that the widespread application of this approach in national legislation has only been achieved in recent decades.

In China, the legal system and its development has been deeply impacted by legislation and legal theory stemming from Western countries (Xu, 2006). This Western legal influence on Chinese law can be traced back to the eighteenth century and in current China, the Westernization of its law still continues (Ren, 1997). A scholar even concluded that “the modernization of law in China is mainly about transplanting Western laws, although it doesn’t mean one hundred percent of

Westernization” (Hao, 1993). Although the Chinese criminal law system contains many indigenous characteristics, it is safe to conclude that the Chinese legislator is greatly inspired by Western legal systems and keeps a close eye on new developments pertaining to (criminal) law in Anglo-Saxon and European Continental jurisdictions to see whether these developments deserve following in China. Considering that the gender-neutral approach in age of consent legislation in Europe was a relatively new development, this raises interesting questions on the current situation in China: Was China influenced by the changes in Europe and has it adopted a gender-neutral age of consent law as well? And what about another, related aspect of age of consent, such as neutrality or specificity towards homosexual relations? Is the current age of consent legislation in China in line with that in Europe? A comparison of the age of consent legislation in Europe and China will provide answers to these questions.

To offer a comparison, this article will first provide an overview of the age of consent legislation in Europe before the 21st century in Part II. We will explore when the notion that children below a certain age needed statutory protection against (predatory) sexual activities was conceived and describe the wide acceptance of age of consent laws in Europe in the last century, followed by a discussion on why the approach adopted in Europe at the time was gender-specific, rather than gender-neutral. This part will end with a description of the criticism towards the gender-specific approach. Part III is a detailed comparison of age of consent legislation in 2004 and 2016 in Europe, which allows for the identification of certain trends in age of consent laws on the European continent regarding their neutrality/specificity towards gender and homosexuality. The comparison leads to the conclusion that the traditional gender-specific approach, which was still prevalent in certain European jurisdictions in 2004, has been supplemented by a neutral one. Part IV examines the current age of consent legislation in the People’s Republic of China to see whether it is gender-specific and what its stance is towards homosexuality. Based on the previous introduction and analysis of Europe and China, Part V ultimately suggests what China could learn from Europe and which approach its future age of consent legislation should ideally adopt.

2. An overview of the gendered age of consent legislation in Europe before the 21st century

2.1. *Age of consent and the construction of childhood*

The history of age of consent legislation in Europe is inseparable from the construction of childhood, the theory of which was first developed by the French historian Philippe Aries (1962) in his book, *Centuries of Childhood*. Aries put forth the claim that childhood, as a concept, was a human construction. He indicated that up until approximately the 15th century, children were considered as miniature adults and there was no obvious distinction between children and adults. Children at that time could do everything that adults could, such as wearing the same clothes, playing the same games, drinking alcohol, engaging in sexual relations, etc. With regard to the legislation, there was no obvious distinction between the treatment of adults and that of children (Waites, 2005). Research shows that sexual contacts between children and adults (e.g., touching of the genitals, innuendo, sharing a bed, and casual nudity) were socially accepted at that time (Carpenter, O'Brien, Hayes and Death, 2014). It was the emergence of the 'modern family' and the introduction of school (in the sixteenth and seventeenth century) that, together, brought about the segregation of children from the adult world (Aries, 1962; Mayall, 2013). From then on, childhood was perceived as a distinct phase of human life and children were constructed as innocent, dependent, incompetent, powerless, and vulnerable, especially in relation to sexual activities.

As a consequence, this construction brought in the need to protect children from dangers of the adult world. Age of consent, which refers to the age at which children are considered capable of giving their consent to sexual activities, is one of the most powerful weapons invented by legislators to regulate children's sexuality and protect children from being sexually abused by predatory adults. The examination of the history of age of consent laws demonstrates that the wide acceptance of setting such an age limit for children's engagement in sexual activities only emerged during the past 200-300 years (Graupner, 2004). This supports Aries' finding that, in earlier centuries, there used to exist no distinction between children and adults in various areas including sexual relations.

2.2. *Age of consent and the stereotypical roles of males and females*

Although the widespread adoption of age of consent laws in Europe only occurred during the last 200 to 300 years, the first age of consent statute dates much further back: The Statute of Westminster in England from 1275 stipulates: “The King prohibiteth that none do ravish ...any Maiden within age” and “within age” referred to the age of 12 (Waites, 2005). Obviously, this age of consent provision only applied to protect “maiden”, which refers to “chaste” females, usually of a higher class. No comparable protection for males could be discerned during the same period. This type of gender-specific age of consent legislation evolved from the historical perception of women and girls as “special property in need of special protection” (Oberman, 1994). At that time, great importance was also attached in (English) society to a young woman’s chastity, because it had significant monetary value. Given that (virgin) women were sold in marriage, depriving them of their virginity could negatively impact the father’s chances of collecting a bride price. As a consequence, statutory rape at that time was mainly a property crime (Eidson, 1980). However, there was no similar concern for the male’s chastity. The different attitudes towards female’s chastity and male’s chastity reflected “a set of attitudes known as the sexual double standard” (Eidson, 1980), according to which women were judged more harshly than men for engaging in the same behaviors. Under this double standard, a man’s sexual engagement with a woman was always normal and even positive and status enhancing (Nelson and Oliver, 1998). Conversely, the same premarital sexual activity by a woman was considered as immoral and promiscuous (Nelson and Oliver, 1998), which always represents a loss of virtue and degradation. The high value attached to women’s chastity and the underlying rationale for the special protection of females provide a vivid exemplification of female subordination within the traditional patriarchal family and their lack of social status in society, which was deeply rooted in the stereotypical notions people entertained of males and females. According to this traditional gender stereotype, females were considered as passive, submissive, dependent and weak, while males were perceived as active, aggressive, independent and strong. Correspondingly, this stereotype also endowed different characteristics to each gender when it comes to the issue of

sexuality. Males were thought to be sexually active and aggressive, occupying a dominant position in the sexual relations with females (Nelson and Oliver, 1998). On the contrary, females were constructed as sexually passive and reactive, “totally devoid of sexual feelings, desires or needs” (Edwards, 1981) and they were considered to assume a submissive position in heterosexual relations. The fact that female sexuality was not defined in its own right but was instead regarded in response to male sexuality results in the assumption of women being “incapable of perpetrating any form of sexual activity, and by extension incapable of committing any sexual offences” (Edwards, 1981). The aggressiveness of the male sexuality, on the other hand, implied a threat and danger to the sexually passive females. Accordingly, this led to the conclusion that females, especially underage females, were in need of special protection due to their passivity and disadvantaged position in sexual relations.

To sum up, this dichotomous construction of gendered sexuality gave birth to the assumption that “males will aggressively corrupt and exploit innocent young females unless deterred by criminal penalties” (Eidson, 1980), which was one of the important rationales for gender-specific sexual offence legislation, such as gender-specific definitions of rape. As age of consent provisions were a component of the sexual offence legislation, this rationale also applies to the gender-specific age limit for young people’s engagement in sexual activities. The traditional gendered age of consent legislation based on the assumption of “*male aggressor/female victim*” in sexual relations, to some extent, perpetuated the sexual double standard and reinforced the construction of females as weak and passive and males as dominant and aggressive.

But the fact that age of consent laws used to be gendered had another consequence too. The dominant representation of *heterosexuality* embodied in the age of consent legislation, for instance, completely ignored sexual activities that did not match the stereotypical construction of sexuality. Possibly, the heterosexuality embodied in the age of consent legislation made a contribution to deter male adults from sexually abusing young females. However, the gendered “*male aggressor/female victim*” assumption for age of consent legislation does not encompass all situations of child abuse that can occur in real life. Homosexual relations and the situation in which a female aggressor abuses a male victim were, for instance, overlooked.

A. Male homosexual relations

Although the heteronormative approach embodied in the traditional age of consent legislation excluded homosexual behaviors from being regulated by the age limit, this did not necessarily exempt these behaviors from criminal liability. On the contrary, an overview of the history of homosexuality in Europe demonstrates that same-sex sexual activities, gay sexual acts in particular, used to be criminalized, even in consensual situations (Waites, 2005). The diffusion of Christianity across Europe during the Middle Ages, accompanied with the strongly defined, dichotomous gender roles, caused the overt hostility towards homosexuality (Pickett, 2009). As Christianity only condoned procreation-oriented sex, sexual activities for any other purposes, gay homosexual acts in particular, were considered sinful and worthy of total annihilation (Rubin, 1984). For example, historians have found that the execution of male homosexuals for committing sodomy by both the church and secular authorities were quite common in Medieval Europe, including Switzerland, Spain, France, and Italian cities (Crompton, 2004). The persecutions of homosexuals were intense and included various inhumane and cruel punishments, such as burning, beheading, hanging, and starving homosexuals to death. Louis Crompton (2004), an expert researching the history of homosexuality worldwide noted: "To look back on the history of homosexuality in the West is to view a kaleidoscope of horrors". In a hostile context like this, there was no room for the possibility of setting age of consent for male homosexuals, since the behavior was prohibited for all ages.

This longstanding hostility towards homosexuality has changed in recent times in Europe. With the increasing role of science in European societies (approximately from the 17th century onwards), a more naturalistic and secular perspective on sexuality, one that was less directly attached to theology and procreation, gradually replaced the traditional Christian theological interpretation of sex (Pickett, 2009). This change, however, did not necessarily mean the total acceptance and equal treatment of homosexuals. In the late nineteenth century, the idea of homosexuality as a disease or sickness emerged and then gradually dominated the twentieth century (Weeks, 2000). In the UK, for instance, "medical evidence" demonstrated in the middle of the twentieth century that an individual's sexual inclination and orientation were not fixed

until the age of 16. This, in turn, influenced the UK legislator to select the age of 16 as the minimum conceivable age limit for sexual engagement that could be accepted by the public at that time (Waites, 2005). However, since male homosexuals were still considered as irrational and unable to resist deviant sexual desires (Waites, 2005), it was firmly believed that extra judicial legal constraint was required. As a result, the homosexual age of consent was finally set at the age of 21 in 1967²⁶⁷, which was higher than the age limit of 16 years for other sexual behaviors. This discrepancy between the age of 21 and 16 still reflected the discrimination against homosexual groups in modern times. But instead of not having an age of homosexual consent – because the behavior was prohibited as such – they introduced a higher age of consent.

B. Lesbianism

With regard to lesbian sexual behaviors, the European legislators and law enforcement were comparatively lenient or even indifferent. After examining the regulation of homosexuality in Europe, Bailey (1955) found that homosexual acts used to be penalized heavily and savagely when committed by men, while sexual acts between women were practically ignored, both in medieval and modern times.

Although lesbian acts used to be a capital crime in many European countries (Crompton, 2004), these laws were only seldom enforced in practice in Europe (Waites, 2002). In the Dutch Republic (1581-1795), for instance, lesbianism was a capital crime, but there were no records of execution found during that period (Crompton, 2004), whereas laws regulating consensual sexual acts between women was practically lacking in the UK (Waites, 2002). This demonstrates the indifference of law makers and law enforcement towards lesbianism, an indifference confirmed by Herzog's (2011) survey of trends in the history of sexuality in twentieth century Europe. She too concluded that lesbianism has always been considered less threatening than gay homosexuality, therefore attracting fewer efforts at regulation and control.

²⁶⁷ The Sexual Offences Act 1967 decriminalized homosexual acts in private between two men. However the age of consent for homosexual was set at 21, whereas the age of consent for heterosexual acts was 16.

It is hypothesized that this lenience towards sexual acts between women – again – reflected the stereotypical denial of female sexuality (Edwards, 1981). According to Waites (2002), the reasons for the lack of age of consent for lesbians “include widespread beliefs in essential sex differences and the passivity of female sexuality, which rendered same-sex contact between women invisible or unthreatening”. In such a historical setting of denying and ignoring the female’s sexuality, it was understandable that the age for consent for sex between females was absent for a long time.

C. Sexual relationship between a female adult and a young male

Not only the age of consent for male and female homosexuals was ignored by law makers in history, but also the age limit for the female adult and young male sexual relationship was absent from the laws regulating sexuality. Again, this was the result of the prevailing understandings of stereotypical roles of males and females. As mentioned before, due to the social construction of active and aggressive male sexuality, males were the primary objects of legal control in the history (Edwards, 1981). By contrast, the wide-accepted female sexual passivity resulted in the assumption that females were incapable of perpetuating any sexual activities, not to mention committing sexual offences towards males. So the perpetrator of a sexual offence could only be male, while females were seen only in the role of victims. It was unimaginable that a male could be sexually offended by a female. As a direct result of this assumption, there was no need to protect males from female sexual assault, just like there was no need to protect the wolf against the lamb. By the very exclusion of females from the definition of sexual perpetrators, there was no need to draft an age of consent for sexual relationships between adult females and young males.

The emphasis of the traditional construction of dichotomous gender system and the worship of the passivity of women, especially in sexual matters, had a long-term effect in the sexual offence legislation. According to Edwards (1981) the social construction of female’s sexual passivity has influenced the various sexual offences’ statutes during the nineteenth and twentieth centuries. Well until the 20th century, most crimes of a sexual nature were still considered sex specific in

the sense that they could only be committed by a male offender to a female victim. Consequently, for a long time, the age of consent statutes only aimed to protect young females while young males were being excluded.

2.3. Criticism on the gender-specific approach in age of consent legislation

In spite of the long-lasting gendered stereotype in history, modern Europe has witnessed significant changes in the field of sexuality and gender. Since the Industrial Revolution, when women began to join the labor force and making a more visible contribution to both the family and society, lots of campaigns were initiated by feminists to acquire equal treatment and rights of females and males in different fields of social life. Inter alia, there were increasingly loud calls for drafting legislative texts in a gender-neutral language, which aimed at redressing the socio-economic differences and imbalances caused by the long-standing discrimination against women (Williams, 2008).

In addition, the industrialization and urbanization that occurred in Western Europe redefined family relations, gender roles, and notions related to sexuality (Rubin, 1984). Against this background, the gay liberation movement emerged in the late 1960s and early 1970s. Heavily influenced by the feminist critique of gender inequality, they too sought to transform social attitudes towards same-sex relationships and advance equal treatment of homosexuality to heterosexuality in social life (Waites, 2005). Both the total ban on homosexuality and the higher age of consent for homosexual behavior were under attack. Such unequal laws were perceived as a form of discrimination as they stigmatized same-sex relations by their suggestion that “the consequences of same-sex acts are more serious and take a greater degree of maturity” (Pickett, 2009). Therefore, there was a call for a gender-neutral language to substitute the traditional gender-specific language in the field of sexual offence legislation.

Gradually, the principle of gender-neutrality, also being referred to as “gender-inclusive” or “non-sexist”, became accepted as a standard for legislation drafting at the end of last century, at least in most of the *English-speaking* jurisdictions (Williams, 2008). Whether and to what extent this

trend of using gender-neutral language by adopting neutral approach towards both males and females, heterosexuality and homosexuality in drafting age of consent laws has spread across other countries on the European continent will be elaborated on in the next part of this article.

3. Towards a gender-neutral approach in the 21st century in Europe

To examine what approach the European legislators have adopted and whether certain trends can be discerned, an overview of the detailed age of consent provisions in Europe is needed. In 1997, Graupner conducted a comparative survey on age of consent laws in Europe, which he updated in 2004. In a follow-up study conducted in 2016 (Zhu & Van der Aa, 2017), the age of consent provisions of 57 of the original 59 jurisdictions were re-collected. The juxtaposition and comparison of the corresponding laws of 2004 with those of 2016 will provide more insight into the trends regarding gender-specificity and approach towards homo- or heterosexuality in age of consent laws in 21st century Europe.

Already in 2004, most of the 59 jurisdictions studied by Graupner had adopted a neutral approach in their age of consent legislation, making no distinction between heterosexuality and homosexuality and/or between boys and girls. Still there were no less than 15 jurisdictions that – to some extent – held onto the specific approach (see table I). This amounted to one-fifth of all European jurisdictions and they were still setting different ages of consent limits according to the gender and/or sexual orientation of the people involved.

Based on Table I , the manifestations of a gender-specific approach can be divided into three different categories:

1) The first category makes an explicit distinction between homosexual and heterosexual sex. Sometimes, all sexual behaviors between homosexuals are bound to a higher age of consent (e.g., Albania and the Faroer Islands), whereas other jurisdictions have linked the higher age of consent or a total ban to certain homosexual or heterosexual behaviors only (e.g., Cyprus). Another difference is that while some jurisdictions indiscriminately attach a higher age of consent to both male and female homosexual acts (e.g., Albania or Bulgaria), others focus on male homosexuality

only (e.g., Gibraltar, Guernsey). A remarkable finding is that in some jurisdictions, it is heterosexuals who are restricted more by the age of consent legislation, for instance in Gibraltar and Guernsey where heterosexual anal intercourse is prohibited whatever the age of the partners. All of these explicit distinctions between homo- and heterosexual activities are a blatant violation of equal sexual rights for (gay) homosexuals, but sometimes also for heterosexuals. Thus, some authoritative organizations in Europe has outlawed this explicit distinction between homosexuality and heterosexuality since the end of last century. The European Courts of Human Rights, for instance, had ruled at least for three times that a total ban on homosexual behaviors violates the European Convention on Human Rights and in 1997, the European Commission on Human Rights held that a higher age limit for homosexual behaviors constitutes a violation of the Convention as well.²⁶⁸

2) The second category makes an *implicit distinction between heterosexuality and (male) homosexuality*, by adopting a higher age of consent for certain sexual acts that affect the gay community disproportionately, e.g., a higher age of consent for anal intercourse. Such implicit distinction was, for instance, present in the Isle of Man and Serbia, where anal intercourse carried a higher age of consent.

3) The third category makes an *explicit distinction between the two genders*, regardless of whether the sexual contact is homo- or heterosexual. This approach of setting different age limit based on nothing more but the gender of the young participants was only found in Scotland. After the higher age limit of 18 for male homosexual acts was repealed in 2000, the only inequality left was embodied in the fact that the age of consent for man/girl relations was 16, whereas for woman/boy relations, the boys needed to attain sexual maturity (Graupner, 2004).

Table I Distinction of heterosexual and homosexual age of consent in 2004 and 2016

	2004	2016
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²⁶⁸ See *Dudgeon V. the United Kingdom*, 22 October 1981; *Norris v. Ireland*, 26 October 1988; *Modinos v. Cyprus*, 22 April 1993; *Sutherland v. the United Kingdom* (striking out) [GC], no. 25186/94

Albania	14 for heterosexual sex 18 for male and female homosexual sex	14; but if the child is female, she should in addition be sexually mature
Bulgaria	14 for heterosexual sex, 16 for male and female homosexual sex when the older person is under 18, 18 for male and female homosexual sex when the older person is 18 or above	14 + the child should understand the essence and meaning of the act
Belarus	'Sexual maturity' for vaginal, oral, anal intercourse, 18 for male homosexual sex No limit for other sexual contacts,	16
Cyprus	16 for vaginal intercourse, 13 for heterosexual anal intercourse 18 for homosexual anal intercourse Other sexual acts: individual capacity to give informed consent is decisive	18
Gibraltar	16, Male homosexual relations between persons over 18 are an offence if more than two persons are present Heterosexual anal intercourse is punishable whatever the age of the partner may be	16
Guernsey	16 for vaginal intercourse; Total ban on heterosexual anal intercourse;	16

	Male homosexual relations between persons over 18 are an offence if more than two persons are present.	
Ireland	17 for vaginal intercourse and anal intercourse with girls and boys, 15 for all other kinds of (heterosexual and lesbian) contact	15
Isle of Man	21 for anal intercourse; 16 for other kinds of heterosexual contacts; Male homosexual relations between persons over 21 are an offence if more than two people are present	16
Jersey	Heterosexual anal intercourse is punishable regardless of the age of the partner; 16 for vaginal intercourse; 21 for anal intercourse between males, 16 for other male homosexual contacts;	16
Portugal	14 for heterosexual sex; 14 for male homosexual sex when the older person is under 18; 16 for male homosexual sex when the older person is 18 or above;	14
Serbia	18 for anal intercourse; 14 for all other kinds of sexual contact	14
Bosnia- Herzegovina	Total ban on anal intercourse between men;	14

	14 for other kinds of sexual contact.	
Kosovo	Total ban on anal intercourse between men; 14 for other kinds of sexual contact.	16
Scotland	16 for man/girl relations; Individual sexual maturity for woman/boy relations	16
Faroer Islands	15 for heterosexual contacts; 18 for homosexual contacts	Unknown

Then how is the situation now in these 15 jurisdictions? Based on a comparison between the laws of 2004 and those in force in 2016 (Table I , third column) we can clearly identify the changes that have occurred in the past 12 years in those 15 jurisdictions. The overview shows that of those jurisdictions, only Albania has retained a gender-specific element in its age of consent law (albeit that information on the Faroer Islands was inaccessible). See Table I .

In Albania, according to article 100 of its Criminal Code, it is criminal to have sexual relations with children that are less than 14 years old. At first sight, the age of consent of 14 years is applicable to both boys and girls. However, the stipulation that it is also a crime to have sexual relations “with a female child, who is not sexually matured” indicates that if a girl reaches the age of 14, this does not necessarily result in the legality of sexual relations with her, as sexual maturity is also a prerequisite. How the female child’s sexual maturity needs to be determined is not further elaborated in the Albanian Criminal Code. In contrast, there is no supplementary requirement to sexual relations with boys, which means that once a boy reaches the age of 14, he is sexually accessible in the legal sense. In this regard, the legal standard for young people’s engagement in sexual activities is different for boys and girls in Albania, indicating a gender-specific standard for young people’s engagement in sexual acts.

Apart from Albania, the other thirteen jurisdictions (information on the Faroer Islands was inaccessible) have adopted a single age of consent, making no distinction either between boys and girls, or between heterosexuality and homosexuality. As to the 44 other European jurisdictions that had already adopted a gender-neutral approach in 2004 – and that were therefore not represented in the Table above – not a single jurisdiction has changed its approach since then (i.e., they have remained gender-neutral). We can safely conclude that the gender-neutral approach is overwhelmingly adopted by European law makers in their age of consent legislation. This picture provides a basis with which to contrast the Chinese approach to age of consent, which will be examined in more detail in the following part.

4. Age of consent in the People’s Republic of China

The age of consent legislation in People’s Republic of China (hereinafter PRC) is embodied in article 236 of the Criminal Code of the PRC promulgated in 1997. Contrary to most Western jurisdictions – where age of consent is usually regulated in a separate legal provision – the Chinese age of consent is codified in the crime of rape, which consists of three elements:

Whoever, by violence, coercion or other means, rapes a woman is to be sentenced to no less than three years and no more than 10 years of imprisonment.

Whoever has sexual relations with a girl under the age of 14 is considered to have committed rape and is to be given a heavier punishment.

Whoever rapes a woman or has sexual relations with a girl involving one of the following circumstances is to be sentenced to no less than 10 years of imprisonment, life imprisonment, or death:

(1) rape a woman or have sexual relations with a girl under aggravating circumstances;

(2) rape several women or have sexual relations with several girls;

(3) rape a woman in a public place and in public;

(4) rape a woman with another or more persons;

(5) cause the victim serious injury, death, or other serious consequences.

From the second element of this article – “Whoever has sexual relations with a girl under the age of 14 is considered to have committed rape (...)” – it can be deduced that the age of consent in PRC is 14 years. This is the only statute for age of consent in the Criminal Code of PRC, at least according to Chinese academia. As we will see later on, China has a second age of consent. A literal reading of the article 236 shows that the age limit of 14 years old is only applicable to girls, with boys being excluded from the scope of this provision.

In addition, as the age of consent is embodied in the crime of rape, the gender-specific interpretation of the crime of rape in China inevitably renders the age of consent gender-specific as well. Furthermore, although the word ‘whoever’ in article 236 does not demonstrate the gender of the perpetrator, it is generally accepted in China that the direct perpetrator of rape can only be male, with the roles of females being restricted to those of aiders or abettors if the rape is a joint crime (Zhang, 2011).

The judicial interpretations by the Supreme People’s Court (hereinafter SPC) and the Supreme People’s Prosecutor (hereinafter SPP) substantiate the finding that China has a gender-specific approach towards rape and – consequently – age of consent. These interpretations are an important source of law for judges and prosecutors and are often cited during criminal trials. A close reading of some of these judicial interpretations related to the crime of rape, reveals that they were clearly drafted in terms of a male perpetrator and female victim. For example, in 1988, the SPC, SPP, and the Ministry of Public Security jointly issued a judicial interpretation called “Reply to Issues of Concrete Application of Law on Dealing with Cases of Rape”. At the very beginning of this judicial interpretation, the crime of rape is defined as “the act of having forcible sexual intercourse with a female by violence, coercion and other means, which is against the female victim’s will”. In line with article 236 of the Criminal Code, this definition neglects males as possible victims of rape. The judicial interpretation, furthermore, focused exclusively on a heterosexual context. For instance, in explaining how to deal with sexual abuse within

authoritative relations, the drafters provided examples of fathers sexually abusing their biological or adoptive daughters, without mentioning homosexual abuse or sexual offenses committed by mothers to their sons. This heterosexual mindset can furthermore be witnessed in the instructions to the judiciary staff on how to distinguish between crimes and non-crimes. In these instructions there were many detailed explanations on how to tell rape apart from consensual sexual behaviors of unmarried heterosexual lovers, how to differentiate between rape and heterosexual adultery, how to distinguish gang rape of a female by males from heterosexual promiscuity, etc. All of these stipulations were based on the presumption of males being the perpetrators and females being the victims, which is a direct demonstration of the gender-specific perception of sexual offences in PRC.

Also in Chinese doctrinal literature it is well accepted that the age of consent refers to the heterosexual age limit of 14 years old in article 236, the crime of rape (Su, 2003), and even the Chinese legal scholars' discussion about children's ability to consent to sexual activities are confined to young girl's consent to heterosexual sex (Su, 2003; Luo, 2012; Lao, 2011). As China used to be (arguably, still is) a typical patriarchal society with (hetero)sexuality being male-dominated (Becker, 1999), it left little room for the possibility of males being sexually offended by females, which could explain the absence of an explicit age of consent for boys' sexual engagement with females. However, as we will demonstrate later on, we believe there is a second provision in the Chinese Criminal Code in which an age of consent is stipulated.

As to the regulation of homosexual behavior, there has never been a law explicitly prohibiting homosexual contacts. This can be explained by the fact that – different from Europe - the Chinese have always been more tolerant towards homosexuality (Crompton, 2004). In fact, male homosexuality was even acceptable in ancient China, at least among elites from the upper-class (Ruskola, 1994; Ruan & Tsai, 1987; Kong, 2016). Scholars have found abundant records of male homosexuality in traditional Chinese literature (Ruan & Tsai, 1987), some of which even seem to glorify the behavior. For example, in the famous story of *duanxiu* ("the cut sleeve"), which presented an Emperor's devotion to his male lover: One morning the emperor woke up and wanted to get up, only to find that one of the long sleeves of his gown was trapped under his

sleeping lover. Out of affection for his lover, the emperor cut off his sleeve so as not to disturb him (Ruan and Tsai, 1992).

In contrast to Christian teachings, Confucianism, which was the most influential social and ethical philosophy in Chinese history, had little concern with same-sex behaviors between men. In fact, “its insistence on the seclusion of women and their inferiority, the high value it placed on male friendship, and the closeness of the master-disciple bond it fostered may have subtly facilitated homosexuality” (Crompton, 2004). Scholars assume that there was a similar level of tolerance for lesbianism, at least in large households that consisted of multiple wives and female concubines, slaves or servants (Ruan and Bullough, 1992), where the male head of the large household was unable to pay frequent or equal attention to the sexual needs of all female members of the household (Crompton, 2004).

Still, China’s first Criminal Code – enacted in 1979 and abolished in 1997 – contained a ‘catch-all’ provision in article 160, the crime of hooliganism (*‘liumangzui’* in Chinese), which was generally targeting on behaviors of disrupting social orders and often applied by law enforcers in practice to arrest men engaging in same-sex behaviors as they were perceived as immoral (Crompton, 2003; Ruskola, 1994; Li, 2006). With the coming into force of the new Criminal Code in 1997, this catch-all crime was abolished. The fact that Chinese laws remain silent on the issue of homosexuality has lead one scholar to comment that “the current laws in China neither prohibit homosexuality nor protect its legal status” (Ho, 2010). In fact, sexual offences against men above the age of 14 was not a crime until the recent Amendment IX to the Criminal Law of PRC came into force on August 29th 2015. The absence of homosexuality in legislation also resulted in the absence of an *explicit* age of consent for homosexual activities with children.

But this does not necessarily lead to the legality of homosexual engagement with children. According to article 237 of the Criminal Code, whoever acts indecently against a child under the age of 14 can be prosecuted for the crime of “acting indecently against a child”, which could be translated as child (sexual) molestation. It is important to note that this article also covers consensual sex with children (Zhang, 2011). As the gender of the perpetrator and victim is not indicated in this article, it could be perceived that all sexual activities with children under 14 will

be charged with child molestation, except for a male's (penis-vagina) intercourse with a girl, which would fall under the crime of rape.

Although article 237 of the Criminal Code can be constructed as a second, gender-neutral expression of age of consent, this does not mean that boys and girls receive equal protection. The difference is that a male's sexual intercourse with a girl under the age of 14 will be charged with rape, while all other homosexual and heterosexual activities with either boys or girls under the age of 14 will be charged with child molestation.

What is more, the consequence of sexual engagement with children will be different according to the gender of the partners involved. A male who has sexual intercourse with a girl under the age of 14 will be charged with rape and the maximum punishment could be life imprisonment or even a death penalty. As to the other kinds of sexual engagement with children under the age of 14, no matter whether heterosexual or homosexual, the perpetrator will be charged with child molestation, the maximum punishment of which is just 15 years of imprisonment (see Table II). Another difference is that the age of criminal responsibility varies for the two crimes. According to article 17 of the Criminal Code, the general age of criminal responsibility in China is 16 years old, but children aged between 14 to 16 years old can be prosecuted if they committed severe crimes such as murder, rape, robbery, drug trafficking, etc. In this sense, sexual offences against girls by males are considered a severe crime, setting the age of criminal responsibility for this crime at 14 years, while the other kinds of sexual offences against children are not considered as severe as rape, leading to an age of criminal responsibility of just 16 years. Based on the higher maximum penalty of sexual offences against girls by males and by the fact that the age of criminal responsibility is lower for this type of crime, we conclude that the Chinese legislator is more concerned about the protection of young girls in heterosexual relations than with other types of consensual sex with children (see Table II). It is safe to say the age of consent in China is 14 years old and that it is gender-specific in the sense that it provides more protection to girls in heterosexual relations, which is different from the gender-neutral approach being adopted by practically all European jurisdictions.

Table II Crimes and Penalties in China

Crime	Perpetrator	Victim (under the age of 14)	Sexual behavior	Maximum penalty
Rape	Male (above the age of 14)	girl	penis-vagina intercourse	death penalty
Child molestation	Male (above the age of 16)	girl	all sexual behaviors except penis-vagina intercourse	15 years of imprisonment
Child molestation	Female (above the age of 16)	boy	all sexual behaviors	15 years of imprisonment
Child molestation	Male (above the age of 16)	boy	all sexual behaviors	15 years imprisonment
Child molestation	female (above the age of 16)	girl	all sexual behaviors	15 years of imprisonment

5. Discussion and recommendations

From the analysis above, we can conclude that the gendered dimension of age of consent laws in Europe have been transformed into gender-neutral provisions. In all but one (Albania) jurisdiction, they have now adopted neutral provisions – both in terms of gender and homosexuality – and this is a big stride towards the goal of (sexual) equality for all. In China, however, although it is forbidden to have sexual relations with children under the age of 14, the gender of the participants directly influences the criminal charge – rape or child molestation – the age of criminal responsibility of the perpetrator and the maximum penalty of the crime. Based on these findings we conclude that the age of consent legislation in China has gender-specific elements and is not fully gender-neutral.

Put into the historical context, the development towards gender-neutral age of consent legislation in Europe was the result of (inter alia) a successful lobby by women and gay's rights movements who strived to end the long-lasting discrimination against homosexuality and women and aimed to achieve the goal of "equality for all" (Ellis and Kitzinger, 2002; Christopher, 2008). China does not have a similar historical background. In contrast to the situation in Europe, where the persecution of homosexuals used to be quite common, the social attitudes towards homosexuality in Chinese history were more tolerant (Crompton, 2004). The tradition of tolerance to homosexuality in China could partly explain why there was no public outcry for the equalization of age of consent for homosexuality and heterosexuality as it occurred in Europe.

The current gender-specific provisions on age of consent in China represent the law makers' unequal attitudes towards sexual offenses against homosexual and heterosexual offences against boys. Under the principle of gender neutrality, sex-specific language in legislation should be avoided and this has been accepted by most of the Western countries (Williams, 2008). In this respect, China is lagging behind.

In practice, the gender-neutral approach in Europe is not impeccable, as the traditional gender-specific construction of gender and sexuality still remains omnipresent in society and people's attitudes towards different kinds of sexual offences (Mclean, 2013; Nelson and Oliver, 1998). Some scholars criticized that the gender-neutral legislation in child sexual offence belies the reality of a gendered social construction of sexuality and its corresponding consequences (Nelson and Oliver, 1998). The gender-neutral drafting of legislation, for instance, does not necessarily result in the gender-neutral enforcement of the legislation (Allen, 2002). Although legislators try to create equality in drafting sexual offence legislation, in reality it is possible that "the deeply entrenched patriarchal views takes precedence over written laws despite the (gender-neutral) technique used" (Mclean, 2013).

Still, despite these deficiencies of unbalanced enforcement and persistent social attitudes in practice, the transformation of the age of consent legislation from a gender-specific to a gender-neutral approach in Europe is a positive step, particularly in enhancing equality and changing these social attitudes. Given that the gendered stereotypes and inequality between male and

female have been around for centuries, it is understandable that society needs time to completely accept the new gender-neutral approach, but legislation could be of influence in changing public opinion, if only as a first step. In this sense, European jurisdictions' efforts on the equal protection of boys and girls and equal treatment of heterosexuality and homosexuality in the age of consent legislation should be instructive for China's future legislation.

References

- Allen, T. M. (2002). Gender-neutral statutory rape laws: legal fictions disguised as remedies to male child exploitation. *University of Detroit Mercy Law Review*, 80, 111-126.
- Aries P. (1962). *Centuries of childhood*. New York: Alfred A. Knopf.
- Bailey D. S. (1955). *Homosexuality and the western Christian tradition*. London: Longmans, Green.
- Becker, M. (1999). Patriarchy and inequality: towards a substantive feminism. *University of Chicago Legal Forum*, 21-88.
- Carpenter B., O'Brien E., Hayes S. and Death J. (2014). Harm, responsibility, age, and consent. *New Criminal Law Review*, 17(1), 23-54.
- Crompton, L. (2004). *Homosexuality and civilization*. Cambridge: The Belknap Press of Harvard University.
- Davies, M. (2002). Male sexual assault victims: a selective review of the literature and implications for support services. *Aggression and Violent Behavior*, 7(3), 203-214.
- Edwards, S. (1981). *Female sexuality and the law*. Oxford: Martin Robertson.
- Eidson, R. (1980). The Constitutionality of Statutory Rape Laws. *UCLA Law Review*, 27(3), 757-815.
- Ellis, S. J. and Kitzinger C. (2002). Denying Equality: an analysis of arguments against lowering the age of consent for sex between men, *Journal of Community & Applied Social Psychology*, 12(3), 167-180.
- Graupner H. (2004). Sexual Consent: The criminal law in Europe and outside of Europe, *Journal of Psychology & Human Sexuality* 12(2/3), 111-171.
- Hao, T. C. (1993). The modernization of law in China and the transplant of Western laws. *Jurisprudence*, 9, 1-4.
- Herzog D. (2011). *Sexuality in Europe: a twentieth-century history*. Cambridge: Cambridge University Press.

- Ho, L. W. W. (2011), *Gay and lesbian subculture in urban China*. London and New York: Routledge.
- Kong, T.S.K. (2016). The sexual in Chinese sociology: homosexuality studies in contemporary China. *The Sociological Review* 64(3), 495-514.
- Lao, D. Y. (2011). New reflection on the relationship between the crime of rape and the crime of whore with young girls. *Tsinghua Law Journal* 5(2), 33-47.
- Luo, X. (2012). *The consent in Criminal Law: in the perspective of sexual assault*. Beijing: Law Press.
- Li, Y. (2006). Regulating male same-sex relationship in the People's Republic of China. In Jeffreys E. (Ed.), *Sex and Sexuality in China* (pp.82-101). Abingdon, Oxon: Routledge.
- Mayall, B. (2013). *A history of the sociology of childhood*. London: Institute of Education Press.
- Mclean, V. (2013). Is gender-neutral drafting an effective tool against gender inequality within the legal system? *Commonwealth Law Bulletin* 39(3), 443-454.
- Mueller R. D.(2008). How young is "too young"? Comparative perspectives on adolescent sexual, marital and reproductive transitions. *Studies in Families Planning* 39(4), 247-262.
- Nelson, A. and Oliver P. (1998). Gender and the construction of consent in child-adult sexual contact: beyond gender neutrality and male monopoly. *Gender & Society* 12(5), 554-577.
- Novotny, P. (2002). Rape victims in the (gender) neutral zone: the assimilation of resistance? *Seattle Journal for Social Justice*, 1 (3), 743-756.
- Oberman, M. (1994). Turning girls into women: re-evaluating modern statutory rape law. *Journal of Criminal Law and Criminology*, 85 (1), 15-79.
- Pickett B. L. (2009). *Historical dictionary of homosexuality*. Lanham: Scarecrow Press.
- Ren, X. (1997). *Tradition of the law and law of the tradition: law, state, and social control in China*. Westport, Connecticut: Greenwood Publishing Group.
- Ruan, F.F., Bullough, V.L. (1992). Lesbianism in China. *Archives of Sexual Behavior* 21(3), 217-226.

- Ruan, F.F., Tsai, Y.M. (1987). Male homosexuality in traditional Chinese literature. *Journal of Homosexuality* 14(3/4), 21-34.
- Rubin, G. S. (1984). Thinking sex: notes for a radical theory of the politics of sexuality. In Vance C. S. (Ed.), *Pleasure and danger: exploring female sexuality*, pp. 267-319. Boston: Routledge & Kegan Paul.
- Ruskola, T. (1994). Law, sexual morality, and gender equality in Qing and Communist China. *The Yale Law Journal*, 103 (8), 2531-2565.
- Scott, E. S. (2000), The legal construction of adolescence. *Hofstra Law Review*, 29(2), 547-598.
- Su, L. (2003). Judicial interpretation, public policy and the Supreme People's Court. *Theoretical Jurisprudence* 8, 3-29.
- Vicinus, M. (1992). "They Wonder to Which Sex I Belong": The Historical Roots of the Modern Lesbian Identity. *Feminist Studies*, 18 (3), 467-497.
- Waites, M. (2002). Inventing a 'lesbian age of consent'? The history of the minimum age for sex between women in the UK. *Social and legal studies*, 11 (3), 323-342.
- Waites M. (2005). *The age of consent: young people, sexuality and citizenship*. London: Palgrave Macmillan.
- Weeks J. (2000). *Making sexual history*. Cambridge: Polity Press.
- Williams, C. (2008). The end of the 'masculine rule'? Gender-neutral legislative drafting in the United Kingdom and Ireland. *Statute Law Review* 29(3), 139-153.
- Xu, Z. M. (2006). Conceivable prospect of the study of Chinese law history: to exceed the West or to regress to the native? *Journal of China University Political Science and Law*, 24 (1), 3-15.
- Zhang, M. (2011). *Criminal law*. Beijing: Law Press.

Zhu, G. and Van der Aa, S. (2017). The trends of age of consent legislation in Europe: A comparative study of 59 jurisdictions on the European continent, *New Journal of European Criminal Law*, 8. 14-42.

Chapter 5 Early sexual initiation in Europe and its relationship with legislative change: A systematic review

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Abstract:

Early sexual initiation is often considered risky behavior as it is related with adverse consequences such as sexually transmitted diseases or unwanted pregnancy. Multiple academic studies have demonstrated that in the second half of the 20th century, the age of young people's first sexual initiation decreased in developed countries. However, little research has been conducted on the situation in the *21st century*. By systematically reviewing recent studies on the timing of persons' first sexual initiation in European countries, this article revealed the latest trends in the age of first sexual initiation in Europe: 1) the continuing decline in the new century, and 2) the gender differences in timing of first sexual initiation in non-Nordic countries. These two findings were then compared with the latest trends in age of consent *legislation* in Europe to analyze the relationship between the trends of age of sexual initiation in law and in practice.

1. Introduction

(Too) early sexual initiation among young people is considered an important social issue in Western countries. People engaging in sex at too young an age is often portrayed as dangerous and risky due to the risks of unexpected pregnancy and sexually transmitted disease (Pinquart, 2010). In addition, various scientific studies on young people's sexual activity have demonstrated a relation between early sexual initiation and several other adverse long-term effects, such as the reduced likelihood of initiation of post-secondary education (Spriggs and Halpern, 2008), a greater incidence of regret, anxiety and depression (Jovic, et al., 2014; Kastbom, 2015), a higher risk of being sexually abused in the future (Kastbom, 2015), etc. These adverse consequences not only impact young people's present life, but also continue to negatively influence their later life, sometimes well into adulthood.

As to the term "early sexual initiation", there is no universally accepted definition. Some studies use a "static" definition of early sexual initiation. They generally refer to sexual intercourse before a certain age. For instance, in some studies, early sexual initiation refers to engaging in sexual intercourse before the age of 16 (Jovic, et al., 2014), while other scholars define it as sexual intercourse before or at the age of 14 (Kågesten and Blum, 2015; Madkour et al., 2013). The majority of studies, however, prefer a "dynamic" definition of early sexual initiation by comparing the general characteristics of first sexual initiation (hereinafter: FSI) at the time of the study with the situation before, without defining a clear cut-off point (age) before which they consider sexual intercourse to have been engaged in too soon. This is, for instance, the case in studies that compare the median or average age of FSI between different age cohorts, or studies that compare the different proportions of people from various age cohorts who have experienced FSI at a certain age. By deploying a dynamic definition of early sexual initiation, both of these two methods aim to examine whether sexual initiation among the current youth community takes place at a younger age than that of previous generations.

The reason why FSI is widely studied by scholars is that it plays a pivotal role in adolescents' life, while, for many of them, it signals the first milestone in the process of transition from adolescence into adulthood (Gabrielli and Borgoni, 2007). However, as sexual behavior is not just

a natural act, but also a culturally informed experience which is constructed and significantly influenced by the social-cultural context (Camoletto, 2011), young people's perception and practice of sexuality are also profoundly influenced and shaped by the social and cultural context in which they live (Tolman and McClelland, 2011). Therefore, the characteristics of young people's engagement into sex, including the timing of their first sexual initiation, is influenced by different features according to their different backgrounds.

There are studies that have shown that young people's perceptions about the appropriate age for having their first sexual intercourse are different than that of older age cohorts (Rasanen, 2009; Madkour et al., 2014). Although these two studies did not involve the respondents' actual timing of FSI in practice and only measured the appropriate age for sex *in their perception*, the research finding demonstrated a comparatively more liberal attitude towards sex among the younger respondents. Possibly, this more liberal attitude results in earlier sexual initiation in younger respondents in practice. It is also possible that the more liberal attitude towards sex in younger age cohorts was the result and affirmation of earlier sexual initiation practice within the youth community.

So far, the majority of empirical studies related to (trends in) sexual initiation were focused on the situation in the 20th century. They generally concluded that there was a trend for young people to have their sexual initiation at an earlier age than the previous generations, especially in developed countries (Bozon and Kontula, 2003; Teitler, 2002; Wellings, 2006). Although a minority of studies purport that "no universal trend towards earlier sexual intercourse has occurred" and that "trends towards earlier sexual experience are less pronounced and less widespread than sometimes supposed" (Wellings et al., 2006, p. 1706) – these latter studies encompass multiple continents – including Asia, Africa, Latin America, Australia – and their results do not seem characteristic of the situation in Europe. When it comes to the European continent, there is widespread evidence of the declining age of sexual initiation in lots of countries. Up to now the most recent and comprehensive study on the trends of youth sexual initiation had only included data before 1995 (Teitler, 2002) and there has been no study that attempted to update these findings to include the past two decades. Whether this decline continued into the late 20th century and the early 21st century is still unknown. Therefore, a

comprehensive study examining the trends of European young people's sexual initiation is warranted to fill in this gap in our knowledge.

However, this study is not only interesting from a generic developmental (sexual) psychological or sociological perspective, but it also ties in with important recent legislative developments in the field of regulating young people's sexual behaviors by means of establishing a new legal age of consent. Age of consent, which refers to the age below which it is illegal to have sex with a child, is an important legal mechanism to protect children from the adverse consequences of early sexual initiation, especially sexual engagement with adults. Despite the fact that there is a lack of knowledge on the age of sexual initiation in practice in the past couple of decades, a recent research conducted in 2016 demonstrated that during the past 12 years, many national legislators on the European continent have nevertheless revised their domestic age of consent law and changed their legal age limits for young people's engagement into sex (Zhu & Van der Aa, 2017). This legal study will be elaborated on in section 3.

By taking the characteristics of sexual initiation in practice into account, one can compare the trends in practice to the trends in legislation in the field of sexual initiation in Europe and see whether they line up. In order to make this comparison possible, a systematic review of recent empirical literature on FSI in Europe was conducted to first map the trends of sexual initiation in practice (section 2), followed by an examination of the association between the change of young people's sexual initiation in practice and the change of age of consent legislation (section 3) and a discussion on how to appreciate the two trends (section 4). The article concludes with a discussion of the limitations of the chosen research method (section 5).

2. Trends of sexual initiation in Europe in the late 20th and early 21st century

2.1 *Methods*

In order to establish the most recent trends in FSI in Europe, a systematic literature review was conducted. The search strategy of this review consisted of (1) electronic database searches, (2)

reference list searches of related literature (“snowballing”), and (3) contact with relevant authors whose complete research data was inaccessible online. A total of 12 electronic databases, including ERIC, JSTOR, MedLine, PsycArticles, Psychological and Behavioral Sciences Collection, PsYINFO, Pubmed, SAGE Journals Online, ScienceDirect, Sociological abstracts, Web of Science and Wiley, were systematically searched in July 2017 by using the search terms (*sex* OR intercourse OR coit**) AND (*age OR child* or teen* or adolesce* OR minor OR school* OR you* OR juvenile OR underage OR junior OR boy OR girl*) AND (*debut* OR first* OR initiat**) within the domain of the article titles.

For inclusion in this review, we set several criteria. First, in order to obtain a form of quality assurance, we only included peer-reviewed journal articles. Non-reviewed sources or ‘grey literature’ was excluded from the review. Second, to enable in-depth reading of the articles, the included studies had to be published full-text in English, thereby excluding articles that were only available in abstract or that were published in other languages. Third, because an important objective of this review was to examine the relationship between the change of age consent legislation and the change of young people’s sexual initiation in practice, we chose to only include studies published from January 1st 2004 onwards so that the time frame of the trend identified in this review was identical to that of the article on the legislative trends. In addition, as we want to examine whether the declining trend identified before 1995 continued into the late 20th century and the early 21st century, studies published after January 1st 2004 but only containing data before 1995 were also excluded. Fourth, again to make a comparison with the legislative article possible, we only included studies that (inter alia) researched FSI in 59 jurisdictions located on the European continent (see Graupner, 2004; Zhu and van der Aa, 2017). This choice resulted in the exclusion of studies only focusing on non-European areas. Fifth, we also excluded studies of which the abstract made clear that age of sexual debut was used as a predictor variable to explain other phenomena rather than as an outcome variable in a study that explored trends of sexual initiation. For instance, articles such as “Associations between life contexts and early sexual initiation among young women in France” (Jovic et al., 2014), “Sexual behavior and factors associated with young age at first intercourse and HPV vaccine uptake among young women in Germany: implications for HPV vaccination policies” (Remschmidt et al., 2014), and “Sexual debut

before the age of 14 leads to poorer psychological health and risky behavior in later life” (Kastbom et al., 2015) were irrelevant to the aim of this systematic review after a quick scan of their abstracts and were thus not included. Sixth, in order to examine whether the age of FSI has declined, increased or remained stable, a data-based comparison of the timing of FSI had to be included in the studies. That has to do with the fact that a trend cannot be generated without a comparison. Even though we could identify different average or median age of FSI of a particular country from different studies, the tremendous variety of methodologies adopted by these studies did not allow for direct comparison. Therefore, studies without data-based comparison were excluded.

What followed after the determination of the inclusion criteria was a step-by-step search for relevant literature and data:

- 1) The electronic search yielded a total of 1359 hits. After examining the title, the abstract, and – sometimes – the methodology section of the articles to see whether they were in line with the above-mentioned criteria, particularly with regard to the requirement that the sample at least partly consisted of European jurisdictions, 1299 articles were excluded and the total number of relevant hits was reduced to 60 including duplicates, or 28 unique articles. Of these studies, we read the full articles in-depth, which resulted in 5 articles being excluded due to the irrelevance to the topic of age of FSI and another 5 articles excluded because they contained no comparison between cohorts or between previous (repeat) studies using a similar methodology. In addition, 2 articles were written by the same authors, using the same data sample and were therefore considered here as one study, resulting in a total of 17 studies which focused on the trends of FSI. However, among these 17 articles, 6 of them mentioned the trend by citing the findings of other studies and another 2 had no citation at all, both of which had no data-based comparison and were therefore deleted (no primary research). Another two only reported on the *perception* of the appropriate age of FSI among different age cohorts. Although people’s perceptions are likely to be related to their behavior in practice, there is no one-to-one relationship and our focus was on behavior rather than thoughts. So these two were

excluded on account of this. In the end, there were 7 studies left, which met all the inclusion criteria mentioned above.

- 2) Although some were excluded in the previous step, the reference list of the abovementioned 17 articles that focused on the trends of FSI were examined to identify more eligible literature in order to be as inclusive as possible. This “snowball method” was only applied once, only to these 17 studies, meaning that we did not scan through the reference list of the articles that were obtained through the snowball method. In this step, 9 more studies were found that met the inclusion criteria. In total, 16 eligible studies were included in this review: 7 from the first selection process and 9 from the snowball method.
- 3) In one study (out of the 16 studies) the important data, demonstrated in the form of tables, were missing from its free online publication. In this case, the authors were successfully contacted to acquire the complete data. The other articles already contained this relevant information.

Figure 1 demonstrates the detailed selection process with numbers of studies identified at each stage. The whole selection process was separately conducted by two individual researchers. After the search results were coded, and the interrater reliability of the coding was calculated with the help of Cohen’s kappa (Bryman, 2016). With a Cohen’s kappa of 0.913, the interrater reliability of the current study can be considered very good²⁶⁹ (Bryman, 2016). In the rare case that the two researchers disagreed, it was resolved by a discussion, so that consensus was reached about the final list of included studies.

²⁶⁹ A coefficient of 0.75 or above is considered very good; between 0.6 and 0.75, it is considered good; and between 0.4 and 0.6, it is regarded as sufficient.

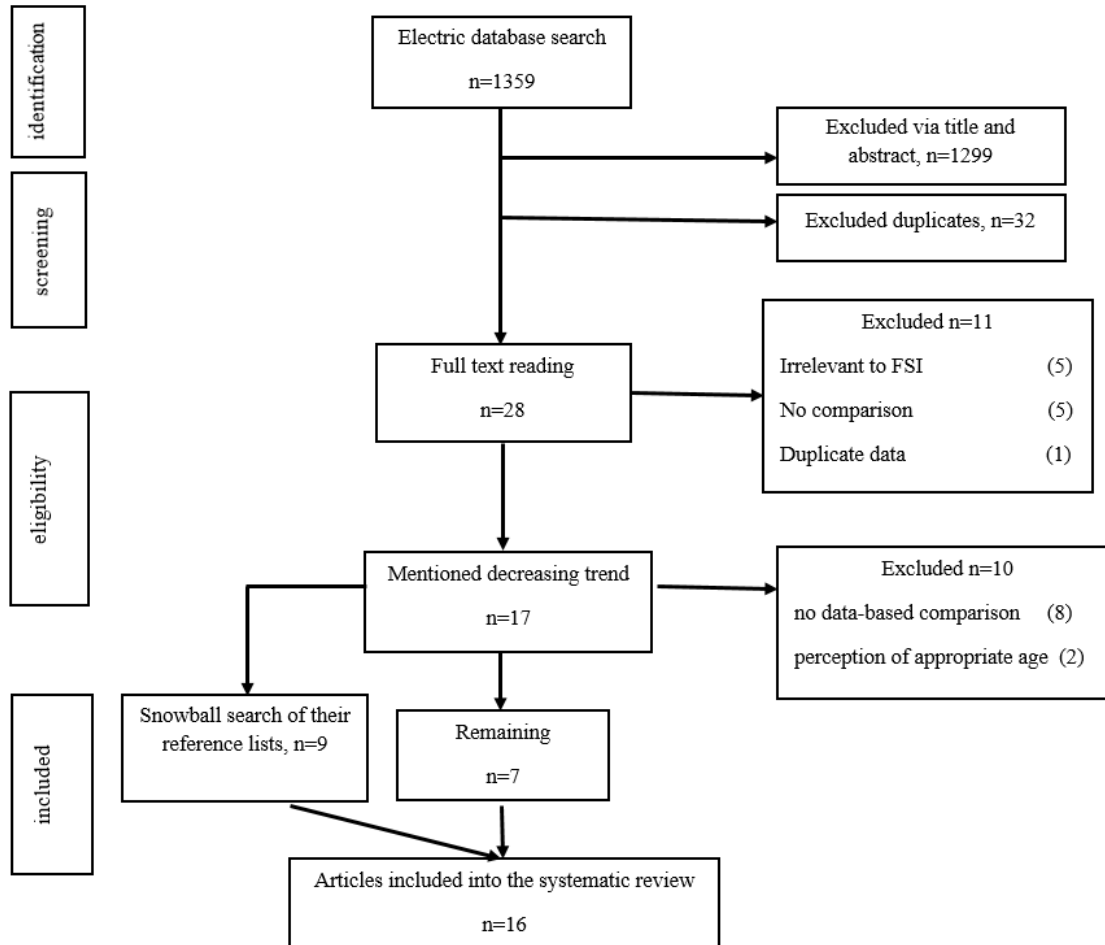


Figure 1. Study selection process with numbers of studies identified at each stage

2.2 Results

Finally, 16 studies were identified that met the inclusion criteria. The name of the authors and other information including publication year, country involved, data collection time, sampling methods and findings are all included in Table 1. The in-depth examination of these studies demonstrated that the declining trend of age of FSI that occurred before 1995 continues in the late 20th and early 21th century.

Table 1. Included studies that describe the trend of sexual initiation in Europe

First author and year published	Country and data collection time	Study design and sampling method (Sample characteristics)	Findings (original quote)
Buttmann et al. (2014)	Denmark 2006 - 2007	The civil registration system was used to select a random sample of 33000 men aged 18-45 years who responded to a self-administered questionnaire. Finally, 22979 eligible men were included in the study and were categorized into three birth cohort: 18-25 years, 26-35 years and 36-45 years.	“Sexual debut at the age of ≤ 14 years was reported by 13.7% of the youngest men, 11.9% of those aged 26-35 years and 10.3% of those aged 36-45 years.”
Camoletto (2011)	Italy 1967 and 2006	Data from two research projects carried out in 2006 are used in this study: a survey on sexual attitudes and behaviour of a national sample of 3000 Italian men and women aged 18–70; and a survey on the sexual lifestyles of a local sample of 1000 young men and women aged 18–29 living in a northern Italian region.	See Figure 1 in the article--Samples interviewed in 1967 (born in 1913-1942) and 2006 (born in 1937-1989). A comparison of the median age at first sexual intercourse (AFSI) by gender and cohorts shows that both women’s and men’s median age of SFI had decreased since 1913.
Gabrielli et al. (2007)	Italy 1995-1996, and 2000-2001	The authors extract from the FFS ²⁷⁰ the sub-samples of more-educated women in the three 5-year-cohorts of women born between 1961-65, 1966-70 and 1971-75, and then compare it with the sample from USS ²⁷¹ .	“Focusing on age at first intercourse, the FFS data show a tendency of the younger cohort to have an earlier sexual debut.”
Hawes et al. (2010)	Britain Literature searches conducted in August 2007 and updated in May 2009	Literature review	“A review of the literature on first sexual intercourse in the United Kingdom reveals a marked decline in the latter half of the 20th century in the age at which young people become sexually active...”
Kagesten (2015)	Sweden 2009	Data were drawn from a national study of youth sexual and reproductive health in Sweden in 2009. ²⁷² 24,000 youth aged 16–28 years were randomly selected and the final sample included 5,605 respondents.	“More than one in five sexually experienced youth reported their sexual debut to occur at or before age 14 ... it was significantly higher than was seen in the 1990s when 16% of youth reported early sexual initiation in Sweden. ... This difference is consistent with a downward trend of age at first sex among youth reported over recent decades both in Europe.”
Klavs et al., (2006)	Slovenia November 1999 – February 2001	Data was from the first National Survey of Sexual Lifestyles, Attitudes and Health in Slovenia, which was conducted by a combination of face to face interviews and anonymous self-administered questionnaires. 849 men and 903 women aged 18-49 years were interviewed. Correspondents were divided into three birth cohort: born between 1950-64; 1965-74; and 1975-82.	“Among both men and women, the reported ages at first heterosexual intercourse have been declining with the more recent birth cohorts” According to Table 1 of this study, below is the percentage of people having first heterosexual intercourse before age 16 for both genders: Born in 1950-64: 13.7% for men, 5.2% for women; Born in 1965-74: 16.2% for men, 5.7% for women; Born in 1975-82: 17.1%, 14.4% for women.
Kuzman et al., (2007)	Croatia 2006	Data were from the Health Behaviour in School-aged Children survey carried out in 2006 in Croatia. The author only used the sub-sample of students aged 15 years old, which consisted of 773 boys and 857 girls.	By citing the results of Health Behaviour in School-aged Children from the 2002/2002 surveys, the author concluded that “the percentage of 15 years old students who reported to have had sexual experience had increased in Croatia between 2002 and 2006 for the boys 23.8% and for the girls 73.1%.”

²⁷⁰ The FFS refers to “the Fertility and Family Survey”, a sample survey conducted by means of an interviewer-administered questionnaire and the sample design was created by the National Statistical Institute. The interview was conducted between November 1995 and January 1996, and the sample comprises 4824 women born between 1946 and 1975.

²⁷¹ The USS refers to the “University Student Survey”, a retrospective nationally representative survey covering 4792 university students (aged between 18 and 26) of economics and statistics, which was conducted in 23 different Italian State Universities during the winter of 2000 and the spring of 2001 through self-completed questionnaires. The respondents were asked to give detailed information on their sexual activity.

²⁷² This study was commissioned by the National Board of Health and Welfare and carried out by the Department of Social Work at the University of Gothenburg in 2009.

Larsson and Tyden (2006)	Sweden 2004	The cross-sectional survey using waiting-room questionnaires was undertaken in 2004 among women visiting the Student Health Centre in a Swedish university town with approximately 380000 university students. 324 women were informed about the survey and finally 315 women returned the questionnaires. Similar studies were performed in 1989 and in 1999, which enabled comparison between the three surveys.	“the mean age for first intercourse was 17.6 in 1999 and 17.4 in 2004.”
Mercer et al. (2013)	Britain author collected data in 2010, 2012 and then compared it with data collected in 1990–91 and 1999–2001	The data were extracted from Natsal-3, National Surveys of Sexual Attitudes and Lifestyles in Britain, in which 15000 adults aged 16-74 years participated in interviews between September 2010 and August 2012. ²⁷³ Respondents were divided into 6 age cohorts, 16-24 years, 25-24 years, 35-44 year, 45-54 years, 55-64 years and 65-74 years and their median age first heterosexual intercourse was calculated and compared.	“The proportion reporting first heterosexual intercourse before age 16 years increased in successive birth cohorts in both men and women.” According to Table 2 of the study, below is the percentage of having heterosexual intercourse before age 16 years for both genders: 16-24 years old: 30.9% for male, 29.2% for female; 25-34 years old: 25.5% for male and 25.1% for female; 35-44 years old: 26.6% for male and 18.1% for female; 45-54 years old: 26.7% for male and 14.3% for female; 55-64 years old: 17.3% for male and 9.9% for female; 65-74 years old: 15.4% for male and 4.0% for female.
Olesen et al. (2011)	Denmark, Iceland, Norway, Sweden 2004-2005	Data came from a large population-based cross-sectional questionnaire study on women’s health and sexual behaviour carried out in Denmark, Iceland, Norway and Sweden in 2004–05. The women were randomly included in the study and they were aged 18– 45 years at the time of enrolment. Altogether 69.486 women participated in the study by responding to a self-administered questionnaire (22 173 from Denmark, 15 025 from Iceland, 16 575 from Norway and 15 713 from Sweden).	According to Figure 1 of the study, the prevalence of young age at first sexual intercourse (age ≤14) was 14.9% for those aged 18-25 years; 10.4% for those aged 26-35 years and 10.1% for those aged 36-45 years.
Rada (2014)	Romania 2011-2012	This research was conducted using a quantitative cross-sectional design. 1215 respondents homogeneously distributed on background, gender, educational level and age group (18-74) were sampled. Items including first intercourse, virginity were included in the questionnaire. The sample was not representative for the whole country.	“The average age at first intercourse decreased as respondent age increased.” “The average age at first intercourse was 16.99 years in the 1988-1994 birth cohort and 19.55 years in the 1938-1952 birth cohort.”
Sanjose et al. (2008)	Spain 2005	The data derive from a cross-sectional study that included a representative sample of the Spanish female general population aged 18-70 years. The data were collected through mail-out questionnaire. 6852 women were included in the study.	1. “Mean age of first sexual intercourse decreased significantly by age with a difference of 5 years between women aged 18 and 25 as compared to those aged 56–70” 2. “Women younger than 25 were 39 times more likely to have an AFSI before age 18 than women over age 55”. 3. According to Table 2 of the study, below is the mean age at first sexual intercourse for respondents of different age groups: Age 18-25 at interview : 18.2; Age 26-35 at interview: 19.8; Age 36-45 at interview: 20.3; Age 46-55 at interview: 21.4; Age 56-7- at interview: 23.8.
Schubotz et al. (2004)	Northern Ireland, 2000 - 2002	Data were collected through self-administered questionnaires, one-to-one interviews and focus-group discussions. 2450 questionnaires were distributed to young people, of which 1268 questionnaires were returned. Overall, 1013 questionnaires were fully completed by young people in the study’s target age group of 14- to 25-years.	Table 2 of the study demonstrates a decline in the median age of first sexual intercourse for the younger age cohorts compared with the older age groups, for both males and females. Below is the median age of first intercourse for respondents of different ages and for both genders: Age 14-15 at interview: 14 for both genders; Age 16-19 at interview: 15 for males and 16 for females;

²⁷³ More details see <http://www.natsal.ac.uk/natsal-3.aspx>

			Age 20-25 at interview: 17 for both genders.
Signorelli (2007)	Italy 2002	Data were from a national survey financed by the National Health Institute in 2002, which was conducted in the provinces of Milan, Parma, Perugia and Bari to assess HIV knowledge and risk behaviour in the Italian general population. A self-administered questionnaire was administered to 2,000 subjects, representative of the Italian population. The sampling was performed by quota with equal proportions of age groups, genders, provinces, and educational level. Of these subjects, 1,000 were women aged between 18 and 49 years.	“the analysis by age cohorts (both males and females) shows a decreasing trend in the age at First Human Intercourse with a median age of 17 of the youngest cohort (18-29 years old) vs. a median age of 18 of the older cohorts.”
Stigumet al.(2010)	Norway 1987, 1992, 1997 and 2002	The data consist of four cross-sectional surveys of sexual behaviour conducted in 1987, 1992, 1997, and 2002. In 1987, a random sample of 10,000 Norwegians, aged 18–60 years, was drawn from the population register by the Central Bureau of Statistics to participate in the sex survey. The data collection was carried out by means of mailed, self-administered questionnaires, followed by two reminders during the ensuing 6 weeks. The study was repeated in 1992 on a new sample of 10,000 persons within the same age span, and in 1997 and 2002 with an age span of 18–49 years.	“The analysis showed a substantial change in age of debut in the cohorts born 1927–1984, with a drop of 1 year for men and 2.3 years for women.”
Wellings et al. (2006)	Italy, Switzerland, France, Britain, Norway 1975-1979, 1995-1999	The main source of data were surveys by MEASURE DHS (Demographic and Health Surveys) project. Some data were extracted from national surveys from the UK, France, and an EU-sponsored series of surveys in western Europe.	“In some industrialised countries, sexual activity before age 15 years has become more common in recent decades.” Figure 1, percentage who had sex before age 15: a comparison between two time points (1975-79 vs. 1995-1999), demonstrates that the percentage has increased in European countries including Italy, Switzerland, France, Britain and Norway.

2.2.1. The age of FSI is still declining

Table 1 shows that 13 European countries were covered by this review: Britain, Croatia, Denmark, Iceland, Italy, Netherlands, Northern Ireland, Norway, Romania, Slovenia, Spain, Sweden, and Switzerland. Among the 16 included articles, only one study (Hawes et al., 2010) used a literature review method by examining all studies on first heterosexual intercourse in the United Kingdom, and the authors finally reached the conclusion that in UK there was a marked decline of the age at which young people become sexually active in the latter half of the 20th century. The reason that this study was included in the final review was that literature review, as a research method, “shares with readers the results of other studies that are closely related to the one being undertaken” (Creswell, 2014). Accordingly, although the authors of this study themselves did not conduct quantitative research and include comparison themselves, this literature review had

taken into consideration a wealth of quantitative findings done by other scholars, the result of which confirmed the trend of earlier heterosexual initiation than before in Britain. Hence this study was included in this review.

Apart from this literature review, the other 15 studies all included primary quantitative data and comparison, according to which the trend of the declining age of FSI in European countries by the end of the 20th, beginning of the 21th century was established. However, the sampling method and the measurement of sexual initiation varied widely among the different studies. Some of them examined, the “average age” or “median age” at which respondents had their first sexual encounter. At the same time, there were also scholars examining the percentage of people who had experienced FSI at or before a certain given age. In accordance with the different measurement being used, these 17 studies were divided into three categories and more detailed information is provided below.

- *Average/mean age of FSI*

Average/mean age of first sexual intercourse was acquired by adding together all respondents’ ages of FSI and then dividing this number by the total number of respondents within the sample. Three cross-sectional studies (Larsson and Tyden, 2006; Rada, 2014; Sanjose et al., 2008) (See Table 1) adopted this measurement. These three studies were conducted in different countries and included different samples, but – using the same statistical measure of average age of FSI – they reached the same conclusion: The average age of FSI for the younger group had decreased. While the studies by Rada (2014) and Sanjose et al. (2008) used a cohort-comparison within the same corresponding data set and covered both genders, the study by Larsson and Tyden (2006) compared two repeated surveys conducted amongst women at different times. In this latter study, the average age of FSI in the female community had decreased from 17.6 years in 1999 to 17.4 years in 2004.

- *Median age of FSI*

Median age of FSI refers to the age before which half of the respondents had experienced their FSI (and after which the other half had their FSI).²⁷⁴ Measuring the median age of FSI is another popular method to assess people's sexual initiation and it was adopted by 5 studies (Camoletto, 2011; Gabrielli et al., 2007; Schubots et al., 2004; Signorelli, 2007; Stigum et al., 2010) in this review (See Table 1). Among these five studies, some of them compared the median age of respondents within a short age span (for instance, 14 to 25 years in Schubots et al.'s study (2004)), while other studies contained a much broader age span (e.g., 18 to 70 years in Camoletto's (2011) study). No matter how diverse the respondents' age, the findings of these five studies all demonstrated that the median age of FSI for the younger cohort had decreased compared to that of the older age groups.

- *Proportion of people who had experienced sex at or before a certain given age*

A third approach was measuring the proportion of respondents who had experienced sex at a certain given age, expressed in percentages rather than age. By comparing the percentages from different age cohorts, or different time periods, this method can also throw light on the trend of people's timing of FSI. In our included studies, seven of them (Buttmann et al., 2014; Kagesten, 2015; Klavs et al., 2006; Kuzman et al., 2007; Mercer, 2013; Olesen et al., 2011; Wellings et al., 2006) adopted this method (See Table 1). Three studies examined the timing of FSI at or before the age of 14, two examined FSI at or before the age of 15, and two examined FSI before the age of 16. Regardless of the chosen 'cut-off point', all 7 studies demonstrated that with time passing by, more and more persons engage in sex at a younger age when compared to older age cohorts or earlier periods.

2.2.2 Women still report a higher age of FSI than men in non-Nordic countries

Apart from the trend of the further decline in the age of FSI mentioned above, another interesting observation was that the early sexual initiation had an obvious gendered dimension, with females being more "conservative" than boys in their timing of FSI in most European countries (except

²⁷⁴ To be more specific, when all the respondents' ages of FSI are ordered, from lowest to highest, the one positioned in the middle, is the median age. If the middle consists of two ages, then the average of these two numbers is the median age.

Norway and Sweden). Among the 16 included articles, 9 of them involved a detailed comparison of the timing of FSI between males and females (see Table 2).

Table 2 Studies including a comparison of the age of FSI between females and males

First author and year published	Country	Comparison between males and females
Schubotz et al. (2004)	Northern Ireland,	"For males the median age of first sexual intercourse was 15 and for females 16".
Wellings et al. (2006)	Italy, Switzerland, France, Britain, Norway	According to the table in this article, among the 5 European countries, only in Norway, the female's median age at first sexual intercourse was lower than that of males. In the other four European countries, the female's median age was always higher than that of males. The data in this study also compared the percentage having sexual intercourse before 15 years between the two genders and it demonstrated a same result--- except for Norway, the percentage of females having sex before the age of 15 years was always lower than that of males in the other four countries.
Klavs et al., (2006)	Slovenia	The data in this study also compared the percentage of males and females having first heterosexual intercourse before age 16 and it showed that female's percentage was always lower than male's percentage in every birth cohort.
Kuzman et al., (2007)	Croatia	"Early sexual experience (sexual experience before the age of 16) reported by 28.6% of the boys and 16.5% of the girls".
Camoletto (2011)	Italy	See Figure 1 in the article---Samples interviewed in 1967 (born in 1913-1942) and 2006 (born in 1937-1989). A comparison of the median age of first sexual intercourse by gender and cohorts shows that the women's median age was always higher than the male's median age in every age cohort.
Mercer et al. (2013)	Britain	According to the table in the article, the percentage of males having heterosexual intercourse before the age of 16 was always higher than that of females in every age cohort.
Rada (2014)	Romania	"A higher proportion of men became sexually active before the age of 17 years than did women"
Stigumet et al.(2010)	Norway	"Comparing median coital debut age in persons born between 1927 and 1984, there has been a drop of 1 year for men and 2.3 years for women. Women in the oldest cohorts reported that they made their debut 0.8 years later than did men, whereas in the youngest cohorts reported their debut 0.5 years earlier than did men"
Kagesten (2015)	Sweden	"Median age of first sex was estimated to be lower for girls at 16 years than boys at 17 years. Among sexually experienced youth, similar weighted proportion of boys (20.2%) and girls (22.5%) reported early sexual experience".

From this Table, we can see that the timing of FSI for males and females was different across the various countries. The first 7 studies all demonstrated that males usually have their sexual debut at a younger age than females, which was displayed by either the younger median age of FSI for males or a higher percentage of boys engaging in sex at (or before) a certain given age (See Table 2).

However, results from the three studies, conducted in Sweden (Kagesten, 2015) and Norway (Stigumet et al., 2010; Wellings et al., 2006), were quite the opposite. These studies showed that the females' median age of FSI was lower than that of males. In Kagesten's study, he also

compared the proportion of early sexual experience (at or below age 14) of both genders and found a higher prevalence of early sexual experience among girls than boys. Wellings (2006) examined both gender's median age at FSI and proportion of having sex before the age of 15 in 5 European countries and the Norwegian results were markedly different from the other four countries (Italy, Switzerland, France and Britain), which, again, indicated that women in Norway had their first sex at a younger age than men.

3. Trends of age of consent legislation in Europe

In 1997, Helmut Graupner conducted a comparative study on age of consent legislation in 59 jurisdiction on the European continent, which he updated in 2004. In a follow-up study conducted in 2016 (Zhu & Van der Aa), the newest age of consent laws of 57 out of the original 59 jurisdictions were collected once more. The juxtaposition of the corresponding provisions of 2004 with those of 2016 yielded three important trends in the field of age of consent legislation in Europe, two of which were highly relevant if we relate them to the findings of the previous section on FSI in practice.

The first trend, relevant to the current study, was that many jurisdictions had revised their domestic legislation, had raised their general legal age of consent and had abolished very low ages of consent (<14 years). (Zhu and van der Aa, 2017). This trend was directly exemplified by the average age of consent, which was raised from 14.63 years in 2004 to 15.47 years in 2016. Also, in 2004, an age of consent under or equal to 14 years accounted for almost half (48%) of the European jurisdictions, whereas in 2016, having a consensual sexual relationship with 14-year-olds was legal in only a quarter (23%) of the European jurisdictions (Zhu and van der Aa, 2017). Among the jurisdictions who had revised the legislation, 11 of them chose to increase their age limit for young people's engagement into sex (Zhu and van der Aa, 2017) and a deeper examination of the materials revealed that the previous legal age of consent in these 11 countries was at or below the age of 14. After the increase, most of the new age limits remained at 15 or

16 years old,²⁷⁵ which was close to the new average age of consent in Europe – 15.47 years. These changes demonstrated that the law makers were gradually extending the prohibition of having sex with children.

The second trend related to the age limit for different gender/sexual orientation. In 2004, there were 15 jurisdictions either adopting different age limits for heterosexual and homosexual sex, or setting different age limits for sex based on the gender of the young participants (Zhu and van der Aa, 2017). This approach of adopting different ages of consent for sexual behaviors, based on the gender or sexual orientation of the partners involved, was termed as “gender-specific”. Twelve years later, all European jurisdictions – with the exception of Albania²⁷⁶ – had adopted one uniform age of consent, without making a distinction between different genders or sexual orientation (“gender-neutral”). The fact that practically all European jurisdictions adopted a gender-neutral approach in their domestic age of consent legislation demonstrated that the legal standard for young people’s engagement into sex was the same for both males and females, homosexuals and heterosexuals, which was a positive step in enhancing equality between the two genders.

4. General discussion and conclusion

In conducting this systematic review, our aim was to identify the trends of the timing of sexual initiation in Europe in the late 20th, early 21st century, after which we could juxtapose these trends to the trends of age of consent legislation to further examine the relationship between the trends in practice and the trends in legislation. 16 peer-reviewed journal articles written in English and published from January 1st 2004 to July 31st 2017 were included into the final review. To our knowledge, this is the most comprehensive systematic review on European people’s timing of sexual initiation so far, achieving a maximum coverage of European countries. The included studies are diverse in lots of aspects, such as target countries, research samples,

²⁷⁵ Among the 11 countries who had increased their legal age of consent, only Cyprus, Malta and Vatican City set their new age limit at age 18.

²⁷⁶ In Albania, the age of consent is 14 years, but if the child is female, she should, in addition, be ‘sexually mature’. This additional qualification is not needed for 14-year-old Albanian boys who engage in sex.

research methods and research timing, but their findings on sexual initiation all pointed to the same trend: a declining age of FSI. None of the 16 included studies demonstrated an increasing or static FSI.

Another significant observation from this review was that – with the exception of Norway and Sweden, males' timing of FSI is still earlier than females', although women's age of FSI has dropped significantly (more so than men's), indicating that women are 'catching up'.

The World Health Organization (WHO) guidelines for adolescent human immunodeficiency virus (HIV) program defines an 'early sexual debut' as having 'vaginal sex for the first time at age 14 or younger' (Lee et al., 2017). However, in this review, there was no such fixed criterion. Every included study had its own definition of (too early) first sexual initiation and its own means of comparison, either among different age groups or different time periods, to map a dynamic change of sexual initiation across Europe. Among the included studies, 8 of them compared the age (in form of either average age or median age) of respondents' FSI and 7 of them compared the percentage of people who had experienced sex at or before a certain given age. The comparison of age demonstrated a decrease in FSI and the comparison of percentage indicated a decrease in FSI in younger age cohorts or more recent time periods, both of which statistically established the trend of a declining age of sexual initiation among the youth community. It seems that young people nowadays engage in first sex earlier, perhaps because of them having a more liberal attitude towards sex and being fettered less by traditional sexual norms.

This decrease in the age of FSI not only existed between (a comparison of) different generations, but was also applicable to different groups of respondents whose ages were not that far apart (not spanning entire generations). The fact that younger generations have their sexual debut earlier than their (grand)parents is demonstrated, for instance, by Saniose et al. (2008; respondents aged 18-70 years), Buttman et al. (2014; respondents aged 18-45 years), and Mercer et al. (2013, respondents aged 16-74 years). Their studies are consistent with prior literature stating that in the 20th century, there has been a reduction in the age of sexual initiation in developed countries since the 1950s (Bozon and Kontula, 1998; Teitler, 2002). What is more, this decreasing trend can also be identified if respondents are involved with lower age differences.

For instance, Kuzman et al. (2007) compared the percentage of 15-year-old students who had sexual experience in Croatia and found a significant increase between 2002 and 2006. Larsson and Tyden's research identified a decrease in the mean age for first intercourse in Sweden from 17.6 in 1999 to 17.4 in 2004 (See Table 1). Another example is Schubotz et al.'s research (2004), who questioned respondents between the age of 14 and 25 years. The examination of the median age of first sexual intercourse demonstrated that the younger the age cohorts, the lower the median age of FSI. Before this review, many researchers found that initiation of sexual intercourse during adolescence was becoming more and more statistically normal among developed countries, such as United States, United Kingdom, France, Sweden, and Canada (Madkour, 2010; Teitler, 2002). This echoes the findings of this review – most of the European countries covered by this review were developed areas.

Apart from the declining age of sexual initiation, another notable change observed in this review was the gender differences in timing of FSI. Except for Sweden and Norway, males' timing of sexual initiation was always earlier than female's in the countries covered by this review. This corresponds to people's perception that the appropriate timing for males to have FSI is also earlier than that of females. In Räsänen's research (2009), for instance, the perception of the appropriate age for girls to have sex reported by the respondents from different age cohorts was always higher than that of boys. This gendered notion of the appropriate age of FSI seems to be related with the traditional sexual double standard, under which males are praised and rewarded for heterosexual contacts, whereas females are discredited and stigmatized for similar behaviors (Kreager, 2009). Against this background, the traditional society usually imposed more restrictions on females' sexual expression, which possibly influenced women's decision to engage in sex at a later time than males (Træen et al., 2011). The finding of widespread earlier timing of FSI for males than females in most involved European countries in this review reflected, to a greater or lesser extent, that although gender equality has been advocated in Europe for many decades, the traditional sexual double standard remains a significant factor impacting on modern people's sexual life.

However, as mentioned before, the situation in Sweden and Norway are exceptions. The unique characteristic of female's earlier sexual initiation timing than males in Sweden and Norway, which

was accounted by three of the included studies in this review, was consistent with prior studies claiming that since 1970s women in Nordic countries began to have their first sexual intercourse at an earlier age than men (Bozon and Kontula, 2003; Stigum et.al, 2010). One important reason for this phenomenon was the long-standing gender egalitarian atmosphere in Nordic countries, in every sphere of society, according to which equality between two genders is highly favored (Bozon and Kontula, 2003; Teitler J.O., 2002; Træen et al., 2011). Possibly, this egalitarian attitude also relates to the comparatively liberal sexual culture in Nordic countries, and based on this, female and adolescent sexuality were “socio-culturally more accepted than in the majority of other Western countries” (Stigum et.al, 2010; Træen et. al., 2011). According to some scholars, this characteristic can also be partly accounted for by the development and easy accessibility of more effective contraceptives in these countries, especially oral contraception, which resulted in the fact that women’s fear of unwanted pregnancy “no longer functioned as a means of controlling and repressing female sexuality” (Herlitz et al., 2010; Stigum et.al, 2010). To some extent, this “catching up” situation identified in Nordic countries might be an indication that the traditional double standard is losing terrain.

When it comes to the legal framing of FSI, a study conducted in 2016 indicated that since 2004, 11 European countries increased their age limit for young people’s engagement into sex (Zhu and van der Aa, 2017). At first sight, the juxtaposition of the increasing age limit in law and the declining age of FSI in practice suggests that the national legislators did not take into account the practical situation among present-day young people. However, a deeper examination of the materials revealed that the previous legal age of consent in these 11 countries was at or below the age of 14. After the increase, most of the new age limit remained at 15 or 16 years old,²⁷⁷ which was close to the new average age of consent in Europe – 15.47 years.

In 2016, 91% of the European jurisdictions set their age limit at the age of 14, 15 and 16 (Zhu and van der Aa, 2017). Nevertheless, the declining age of FSI not only existed among generations, but also among people within smaller age spans, which signals that the decline of age of sexual initiation is a continuous trend, at least in the specific countries involved in this review. Take

²⁷⁷ Among the 11 countries who had increased their legal age of consent, only Cyprus, Malta and Vatican City set their new age limit at age 18.

Sweden as an example, according to the study conducted by Kagesten (2009), the proportion of Swedish people reporting that their sexual debut occurred at or before the age 14 was 16% in the 1990s, but in 2009, the proportion had changed into more than one in five. By comparing the mean age at which Swedish respondents engage in first sex (=17.4 years) in 2004 from Larsson & Tyden's study with the legal age of consent in Sweden (= 15 years), we can see that the mean age of FSI is still above the legal age and people having sex before the legal age still form a minority. However, if the trend of a declining age of FSI continues, the mean age of FSI in Sweden may, at some point, surpass the legal age boundaries and the percentage of people having illegal sex may increase. This scenario could apply to many other European countries in the (near) future as well.

What is worth mentioning here is that, in Swedish Penal Code, Section 14 of Chapter 6 stipulates that "a person ... shall not be held criminally responsible if it is obvious that the act did not involve any abuse of the child in view of the slight difference in age and development between the person who committed the act and the child and the circumstances in general".²⁷⁸ This is can be summarized as "age similarity defense", which makes consensual sex occurred between children of similar ages inculpable. This stipulation indicates that if the early sexual initiation mentioned before were just occurred between children of similar ages that are allowed by law, it is acceptable. However, if the early sexual initiation were occurred between child and another person who has a significant age disparity that are not accepted by law, then the question then is whether we should adjust our moral and legal boundaries to the age at which people in practice experience FSI (e.g., resulting in the lowering of the age of consent) or whether we should try to intervene and stop the age of FSI to continue to decline. As to countries (or jurisdictions) that accept no age similarity defense, such as England and Wales, the tension between the declining trend of age of FSI and the increasing trend of general age of consent is more explicit. At the very least, we need to keep paying attention to future developments in this regard, to see if the age of FSI in practice will continue to decline in the future. Meanwhile, more inter-disciplinary studies

²⁷⁸ Chapter 6 of the Swedish Penal Code, from the Government Offices of Sweden, (available at http://www.government.se/49cd61/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code_unofficial-translation_20140922.pdf, accessed on March 26 2018)

are warranted to further explore the reasonable timing of sexual initiation, which could reduce the social, physiological and emotional harm to young people to a minimum.

Another observation was that the timing of sexual initiation was 'gendered', in the sense that women usually still engage in sex at a later age than men. This also echoes the history of age of consent legislation. As mentioned before, the traditional sexual norm was characterized by its double-standard with females being usually more (legally) restricted than males. Great importance was attached to women's chastity while there was no similar concern for the chastity of men. Correspondingly, the age of consent legislation in many countries used to be gender-specific, only applicable to females, and no comparable restrictions could be found for heterosexual males (Zhu and van der Aa, 2017). Even in 2004, there were still countries with different age limits for males and females, usually extending the female's legal timing of engagement into sex. However, nowadays almost all European jurisdictions have adopted a gender-neutral approach by setting a uniform age limit for both males and females, which is a big stride towards the equality of the two genders, especially in changing the double-standard attitudes towards female's engagement into sex. Possibly, this already has had an effect on the sexual behavior of women. Although it is hard to establish a causal connection between the law and practice, in many countries the age difference of FSI between the two genders seems to be getting smaller.

According to the ecological system theory, an individual's development is influenced by five different systems: the micro system, mesosystem, exosystem, macro-system and the chronosystem, and every contextual factor at these different levels work together to make people behave differently (Bronfenbrenner, 1979). The contextual factors in the macro-system level include the socioeconomic status of the person and/or his family, his nationality, ethnicity, race, religious belief, cultural values, customs, etc. In this regard, the change of legislation from gender-specific to gender-neutral is just a change of one factor from the macro-system and it is far from eradicating all the other factors that influence people's perception and practice of sexual initiation. Hence it is understandable that although European law makers try to create gender equality in drafting age of consent legislation, in reality the deeply entrenched tradition of the sexual double-standard still exerts an important influence on people's perception and practice of

sexual initiation. To some extent, it explains why females in most European countries still tend to have their FSI later than males despite the gender-neutral approach used in written law, under which the age limit for both genders are already equal.

5. Limitations

The review has a number of limitations. The first limitation relates to the included studies. The inclusion criterion of peer-reviewed journal articles written in English may preclude other, possibly relevant studies, such as non-peer-reviewed articles, articles published in other languages, and studies presented in other forms, for instance, reports or books. Second, most of the included studies measuring the age of FSI were based on the respondents' retrospective memory, hence loss of recall may have caused errors with regard to the exact timing of FSI. Another limitation was related to the various methods of comparison contained in different studies. In some articles, the scholars compared the data from two different datasets by using statistical methods (e.g., first transforming the different data into comparable sets). We did not further examine the validity of the comparison as we assumed that the selection of peer-reviewed articles guaranteed reliability of the studies. As a result, the rigor of these kinds of studies was not proved. In addition, the definition of sexual intercourse varied across the included studies and the expressions they used included "first intercourse", "first sexual intercourse", "first heterosexual intercourse", "first human intercourse", "sexual debut", and "have sex". In order to uniform the expression, we used the general term "first sexual initiation (FSI)" in this review. But the "open" definition made it impossible to further explore the detailed characteristics of young people's different sexual behaviors, for instance, the different timing of heterosexual and homosexual initiation. What is more, the included studies did not make a distinction between adult-child sex or sex occurred between children of similar ages that are tolerated by law. The last limitation related to the fact that this review only covered 13 European countries, while some other European countries and areas were absent. As a result, findings of this review may not be generalizable. Hence, a more complete and comprehensive research on sexual initiation covering more European countries is warranted in the future. Despite these

limitations, this systematic review provides the most recent comprehensive overview of sexual initiation in Europe and adds to the growing literature on young people's sexual development.

References

- Bozon, M., Kontula, O. (2003). Sexual initiation and gender in Europe: a cross-cultural analysis of trends in the twentieth century. In Bajos, N., Hubert, M., Sandfort, T. (Eds.), *Sexual behavior and HIV/AIDS in Europe: comparison of national surveys*, pp. 37-67. London: Routledge.
- Brofenbrenner, U. (1979). *The ecology of human development: experiment by nature and design*. Cambridge: Harvard University Press.
- Bryman, A. (2016). *Social research methods*. Oxford: Oxford University Press.
- Buttmaan. N., Nielsen, A., Munk, C., Frederiksen, K., Liaw, K., Kjaer, S.K. (2014). Young age at first intercourse and subsequent risk-taking behavior: an epidemiological study of more than 20000 Danish men from the general population. *Scandinavian Journal of Public Health*, 42, 511-517.
- Camoletto, R.F. (2011). Sexual Beginners: Accounting for First Sexual Intercourse in Italian Young People's Heterosexual Biographies. *Sex Education*, 11, 315-325.
- ChartsBin statistics collector team (2009). Average Age at first sex by Country. Retrieved from <http://chartsbin.com/view/xxj> (accessed 25 September, 2017).
- Creswell, J.W. (2014). *Research design: qualitative, quantitative, and mixed methods approaches*. London: SAGE.
- De Sanjose, S., Cortés, X., Méndez, C., Puig-Tintore, L., Torné, A., Roura, E., Bosch, F.X., Castellsague, X., 2008. Age at sexual initiation and number of sexual partners in the female Spanish population Results from the AFRODITA survey. *European Journal of Obstetrics & Gynecology and Reproductive Biology*, 140, 234-240
- Graber, J.A., Brooks-Gunn, J., Galen, B.R. (1998). Betwixt and between: Sexuality in the context of adolescent transitions. In Jessor, R. (Ed.) *New perspectives on adolescent risk behavior*, pp. 270-316. Cambridge: Cambridge Press.
- Gabrielli, G., Borgoni, R. (2007). Age of first sexual intercourse in Italy: a geographical approach. *Genus*, 63. 149-183.

Graupner, H. (2004). Sexual consent: the criminal law in Europe and outside of Europe. *Journal of Psychology & Human Sexuality*, 16, 111-171.

Hawes, Z.C., Wellings K., Stephenson, J. (2010) First heterosexual intercourse in the United Kingdom: a review of the literature. *Journal of Sex Research*, 47, 137-152.

Herlitz, C.A., Forsberg, M. (2010). Sexual behavior and risk assessment in different age cohorts in the general population of Sweden (1989-2007). *Scandinavian Journal of Public Health*, 38, 32-39.

Irala, J.D., Osorio, A., Canela, M.R., Carlos, S., Burgo, C.L. (2014). Informing youth about the age of sexual initiation using means or percentages. *Health Communication*, 29, 629-633.

Jensen, K.E., Munk, C., Sparen, P., Tryggvadottir, L., Liaw, K.L., Dasbach, E., Nygård, M., Kjaer, S.K. (2011). Women's sexual behavior. Population-based study among 65,000 women from four Nordic countries before introduction of human papillomavirus vaccination. *Acta Obstetrica et Gynecologica Scandinavica*, 90, 459-467.

Jovic, S., Delpierre, C., Ehlinger, V., Sentenac, M., Young, H., Arnaud, C., Godeau E. (2014). Associations between life contexts and early sexual initiation among young women in France. *Perspectives on Sexual and Reproductive Health*, 46, 31-39.

Kågesten, A., Blum, R.W. (2015). Characteristics of Youth with Early Sexual Debut in Sweden. *Archives of Sexual Behavior*, 44, 679-694.

Kastbom, Å.A., Sydsjö, G., Bladh, M., Priebe, G., Svedin, C. (2015). Sexual debut before the age of 14 leads to poorer psychological health and risky behavior in later life. *Acta Paediatrica*, 104, 91-100.

Klavs, I., Rodrigues, L.C., Weiss, H.A., Hayes, R. (2006). Factors associated with early sexual debut in Slovenia: results of a general population survey. *Sex Transm. Infect*, 82, 478-483.

Kreager, D.A. (2009). The sexual double standards and adolescent peer acceptance. *Social Psychology Quarterly*, 72, 143-164.

Kuzman, M., Simetin, I.P., Franelić, I.P. (2007). Early sexual intercourse and risk factors in Croatian adolescents. *Coll Antropol*, 31, 121-130.

Larsson, M., Tydén, T. (2006). Increased sexual risk taking behavior among Swedish female university student: repeated cross-sectional surveys. *Acta Obstetricia et Gynecologica*, 85, 966-970.

Lee, R.L.T., Loke, A.Y., Hung, T.T.M., Sobel H. (2017). A systematic review on identifying risk factors associated with early sexual debut and coerced sex among adolescents and young people in communities. *Journal of Clinical Nursing*. <http://onlinelibrary.wiley.com/doi/10.1111/jocn.13933/pdf> (accessed 7 March 2018).

Madkour, A.S., Farhat, T., Halpern, C.T., Godeau, E., Gabhainn, S.N. (2010). Early adolescent sexual initiation as a problem behavior: a comparative study of five nations. *Journal of Adolescent Health*, 47, 389-398.

Mercer, C., Tanton, C., Prah, P., Erens, B., Sonnenberg, P., Clifton, S., Macdowall, W., Lewis, R., Field, N., Datta, J., Copas, A., Phelps, A., Wellings, K., Johnson, A.M. (2013). Changes in sexual attitudes and lifestyles in Britain through the life course and over time: findings from the National Surveys of Sexual Attitudes and Lifestyles. *The Lancet*, 30, 1781-1794.

Olesen, T.B., Jensen, K.E., Nygård, M., Tryggvadottir, L., Sparén, P., Hansen, B.T., Liaw, K.L., Kjaer, S.K. (2011). Young age at first intercourse and risk-taking behaviours-a study of nearly 65 000 women in four Nordic countries. *The European Journal of Public Health*, 22, 220-224.

Pinquart, M. (2010). Ambivalence in adolescents' decisions about having their first sexual intercourse. *The Journal of Sex Research*, 47, 440-450.

Pires, R., Pedrosa, A.A., Pereira, J., Canavarro, M.C. (2014). Preventing adolescent pregnancy: biological, social, cultural and political influence on age at first sexual intercourse. *The Journal of Primary Prevention*, 35, 239-254.

Radar, C. (2014). Sexual behaviour and sexual and reproductive health education: a cross-sectional study in Romania. *Reproductive Health* 11, DOI: 10.1186/1742-4755-11-48.

Räsänen, P. (2009). Perceptions of adolescents' adulthood entry and sexual initiation in Nordic countries. *International Journal of Sociology and Social Policy*, 29, 401-413.

Remschmidt, C., Fesenfeld, M., Kaufmann, A. M., & Deleré, Y. (2014). Sexual behavior and factors associated with young age at first intercourse and HPV vaccine uptake among young women in Germany: implications for HPV vaccination policies. *BMC Public Health*, 14(1), 1248.

Schubotz, D., Rolston, B., and Simpson, A. (2004). Sexual Behaviour of Young People in Northern Ireland: First Sexual Experience. *Critical Public Health*, 14, 177-190.

Signorelli, C., Colzani, E. (2007). Age at first intercourse and HPV immunization. *Archives of Sexual Behavior*, 48, 37-38.

Spriggs, A.L., Halpern, C.T. (2008). Timing of sexual debut and initiation of postsecondary education by early adulthood. *Perspectives on Sexual and Reproductive Health*, 40, 152-161.

Stigum, H., Samuelsen, S.O., Traeen B. (2010.) Analysis of First Coitus. *Archives of Sexual Behavior*, 39, 907-914.

Teitler, J.O. (2002). Trends in youth sexual initiation and fertility in developed countries: 1960-1995. *Annals of the American Academy of Political and Social Science*, 580, 134-152.

Tolman, D.L., McClelland, S.I. (2011). Normative sexuality development in adolescence: a decade in review, 2000-2009. *Journal of Research on Adolescence*, 21, 242-255.

Træen, B., Stulhofer, A., Landripet, I. (2011). Young and sexual in Norway and Croatia: Revisiting the Scandinavian Versus Mediterranean gendered pattern of sexual initiation. *International Journal of Sexual Health*, 23, 196-209

Wellings, K., Collumbien, M., Slaymaker, E., Singh, S., Hodges, Z., Patel, D., Bajos, N. (2006). Sexual behaviour in context: a global perspective. *The Lancet*, 368, 1706-1728.

Zhu, G., Van der Aa, S. (2017). Trends of age of consent legislation in Europe. *New Journal of European Criminal Law*, 8, 14-42.

Zhu, G., Van der Aa, S. (2017). A comparison of the gender-specificity of age of consent legislation in Europe and China: Towards a gender-neutral age of consent in China? *European Journal on Criminal Policy and Research*, 23, 523-537.

Chapter 6 Conclusion

1. Aim of the thesis

The age of consent legislation, has undergone vast changes in many European jurisdictions. Although a study conducted by the Austrian scholar, Helmut Graupner provided an overview of the age of consent legislation in Europe in 2004, this study was outdated because many jurisdictions had revised their legislations after this study was conducted. Until the publication of this thesis, there was no newly updated study to examine the state of the art of the age of consent legislation in Europe in the 21st century and explore the trends of the changes in recent decades.

In order to understand why the legislation changes it is important to get a better understanding of the European legislators' attitudes towards the issue of children's sex (or childhood sexuality), which are implicitly embodied in the changes. On the one hand, it could help us better understand the rationales behind the legal revisions and (perhaps) predict future legislative developments in this respect. On the other hand, the law makers' attitudes towards childhood sexuality are important because they shed light on the (dis)empowerment of children's autonomy and the attitudes towards sexuality and new social norms more generally. Age of consent legislation is an area of sexual offence legislation in which lawmakers struggle overtly with changing social norms (Waites, 2004). Indeed, the different regulation of age limits for homosexual sex, for instance, is an area in which law makers' constantly changing attitudes were explicitly demonstrated. As a result, age of consent legislation provides particularly rich and fertile insights into the scope of law makers' acceptance of newly emerging social norms. Yet until recently little research had been done to examine the law makers' attitudes behind the changes of age of consent legislation.

In addition to the gap in knowledge about the age of consent legislation in contemporary Europe, there was also a lack of knowledge on young people's sexual initiation in Europe in practice. Social media has reported extensively that the current generation has their sexual initiation at an earlier age than the previous generation, thereby, more or less, fueling the "moral panic" surrounding children's sexuality (Brennan & Epp, 2015). Nevertheless, it had never been systematically examined to see whether this phenomenon could be confirmed by rigorous scientific studies,

and it was unclear to what extent this was really the case in contemporary Europe. Given that multiple studies have proven the relationship between early sexual initiation and various adverse consequences, and given that the age of sexual initiation in practice could provide relevant information for the debates on the “appropriate” age of consent, it is necessary and important to find out at what age youngsters in contemporary Europe are sexually initiated.

The idea behind this thesis was to first shed some light on the state-of-the-art of age of consent legislation, and the legislators’ attitudes towards child sexuality on the European continent and then compare the trends in legislation with the trends of young people’s timing of their first sexual initiation in practice. In addition, the characteristic of gender-specificity versus gender-neutrality of the age of consent laws in China and Europe were examined and compared to see if there was any instructive lesson that China can learn from Europe.

This study focused on the law and practice. The legal dimension of this study included the examination of the age of consent laws in both Europe and China. With regard to Europe, it mainly focused on the recent trends in the field of age of consent laws and the European legislators’ attitudes towards child sexuality that could be deduced from the legislative trends. As to China, the focal point was on the examination of the characteristic of gender-specificity versus gender-neutrality. The practical dimension of this research refers to the trend of European youngsters’ timing of their first sexual initiation in practice. These two dimensions were specified into three main research questions and various accompanying sub-questions:

- 1) What are the current trends in national age of consent legislation and legislators’ attitudes towards child sexuality on the European continent?
 - a. What are current trends in national age of consent laws on the European continent when it comes to the establishment of:
 - i. The general age limit for having sex with children?
 - ii. The age limit for hetero- and homosexual sex with children of different genders?
 - iii. The age limit for sex with children in authority relationships?

- b. What can we deduce from (recent changes to) national age of consent laws when it comes to the legislators' attitudes towards child sexuality on the European continent?
- 2) As to the different ages of consent for different genders and sexual-orientations, what is the newest trend of legislation in Europe and how does the current age of consent legislation in China relate to this trend?
 - a. What are the rationales behind the traditional gender-specific approach in the age of consent legislation in Europe and what are the deficits of this approach?
 - b. Do the latest changes in age of consent legislation in Europe point towards a gender-specific or gender-neutral approach?
 - c. Are Chinese laws relating to age of consent gender-neutral or gender-specific?
- 3) What are the current trends in the timing of young people's first sexual initiation in Europe and how does the timing of their first sexual initiation relate to the recent legislative changes in the field of age of consent?
 - a. What are current trends in the timing of young people's first sexual initiation in Europe?
 - i. What are the current trends in the timing of young people's first sexual initiation in general?
 - ii. Are there gender-differences in the current trends in the timing of young people's first sexual initiation?

The first two questions are related to the legal dimension and the third question is related to the practical dimension. The findings will be elaborated upon in the next section.

2. A synthesis of the findings and reflections

2.1. Legislation

The first legislation dimension in this study is on the trends of age of consent legislation on the European continent in recent years.

<p>1) What are the current trends in national age of consent legislation and legislators' attitudes towards child sexuality on the European continent?</p>

2.1.1. Trends in national age of consent legislation in Europe

This research question was addressed in Chapter 2 by comparing the age of consent legislation in 59 European jurisdictions in 2004 and 2016. This chapter first introduced the study conducted by Graupner on age of consent legislation in 1997 which was updated in 2004, and then juxtaposed the 2004 results with the newly collected data on age of consent legislation in these jurisdiction in 2016 in order to make a comparison. The bringing together of the data in 2004 and 2016 yielded three obvious trends.

(1) It is a trend in Europe to raise the general age of consent and abolish very low ages of consent

By 2016, 12 jurisdictions had revised their general age of consent: 11 of them chose to raise the minimum age limits and only Northern Ireland chose to lower its age of consent from 17 to 16 years. In 2004, the age limit under or equal to 14 years accounted for almost half of the jurisdictions (48%), while in 2016 only a quarter (23%) of the jurisdictions allowed for consensual sexual relationship with 14-year-olds. This trend was also manifested in changes in the average age of consent in Europe, which was 14.63 years in 2004 and 15.47 years in 2016.

(2) It is a trend to equalize the age of consent for homosexual and heterosexual sex

In 2004, there were 15 jurisdictions adopting either different age limits for different sexual behaviors or a total ban on certain sexual behaviors based on the gender or sexual orientation of the partners involved. Some of these jurisdictions explicitly stipulated that different rules applied to (male) homosexual or heterosexual sex, others adopted a higher age of consent or enacted a total ban for certain sexual behaviors that implicitly affected the gay community

disproportionately. In 2016, the age of consent laws in these 15 jurisdictions were collected again to make a comparison. Of the 15 jurisdictions, two jurisdictions were excluded from the comparison because the different ages of consent were unrelated to sexual orientation (Scotland) or because there was a lack of comparative material (Faroe Islands). Results from the remaining 13 jurisdictions demonstrated that they had all opted for a uniform age limit, regardless of the gender or sexual orientation of the people involved. These developments bear witness to the equalization of age of consent for homo- and heterosexual sex across the European continent.

(3) It is a trend to increase attention for relations of authority

While some national law makers chose to set one age limit without distinguishing between different situations, others chose to not only set a general age limit, but also a higher age limit which was specifically designed to regulate sex under relationships of authority, such as that between a teacher and a student, a guardian and a ward, etc. In 2004, there were 25 jurisdictions that had no special provisions on age of consent in authority relationships. However, in 2016, 5 of those 25 jurisdictions had revised their legislation and had added a higher age limit for authority relationships in their criminal law. As to the jurisdictions that had higher age of consent for authority relationships already in 2004, none of them changed this approach. These results indicated that more and more legislators are paying extra attention to age of consent under authority relationships.

2.1.2. Legislators' attitudes towards child sexuality on the European continent

Chapter 3 provided insight into European legislators' attitudes towards child sexuality by utilizing research results from childhood studies. After examining the construction of childhood and the history of childhood sexuality, four different discourses on children's sexuality were categorized: (i) children as asexual innocents; (ii) innocent children versus knowing children; (iii) sexual beings in need of control; and (iv) persons with sexual agency and autonomy. The first three discourses are all based on the binary construction of childhood and adulthood, under which children's dependence, incapability and powerless is assumed and surveillance and regulations by adults is justified. In addition, these three discourses are all adult-centric and concluded from the point of

view of adults, without taking the children's and adolescents' feelings, experience, and need for sexual autonomy into account. As to the regulation of children's sexuality, the most difficult issue law makers have to grapple with is the tension between the need to protect children and youngsters from sexual abuse and the need to respect their equally important right of sexual autonomy. In this regard, the previous three discourses are categorized as having a "protection-oriented approach" while the fourth discourse can be categorized as a "protection + autonomy" approach, which considers both protection and respect of sexual autonomy simultaneously.

The trend to raise the general age of consent is in line with the protection-oriented approach because the higher age limit means more protection as it prolongs the time children and youngsters enjoy particular protection. However, this comes at the cost of their sexual autonomy and sexual self-determination. Especially in countries where the age of consent is set (comparably) high. A too high age limit for children's and youngsters engagement into sex may disproportionately restrict their sexual exploration and sexual autonomy. Another trend identified in Chapter 2 – the increased attention for authority relationships by creating a higher age limit for sexual behaviors under the influence of authority -- was significantly influenced by the feminist re-interpretation of child sexual abuse since the 1980s, which emphasized the inherent power imbalance between adults and children and hence advocated extra protection for children and youngsters under this unbalanced relationship (Angelides, 2004). In this regard, the trend of creating a higher age limit for sexual behaviors in relationships of authority or dependence mainly aims to provide more *protection* for children and youngsters from being sexually exploited by their superiors while there is no sign that their sexual *autonomy* attracts similar concerns. However, with inequality of power and status being characteristic of the authority relationship, the persons in a position of authority could easily abuse their position to secure sexual compliance from the person who is under their influence. This feature increases the risk of the sex not being *genuinely* consented to, especially in the situation in which an adult person with authority has sex with a child. From that point of view, the trend of increasing attention for authority relationships by setting a higher age of consent for authority relationships is commendable as it prolongs the protection for children and youngster in these kind of special circumstances.

However, the third trend – the equalization of the age of consent for homosexual and heterosexual sex—demonstrates that nowadays (homosexual) children are – in certain aspects – granted more autonomy in exploring their sexuality than people under previous legislation that set a higher age of consent for homosexual sex. Homosexual young people today do not need to wait for a longer time than their heterosexual peers to engage into sex. Generally speaking, one could argue that the debate of where the line of age of sexual consent should be drawn is not only about protecting children from sexual abuse and respecting their autonomy and self-determination in sexual matters, but relates to the manner in which adults should treat children more generally. In this sense, the third trend represents a less paternalistic intervention into children’s and youngsters sexual exploration and sexual autonomy, and more leeway for treating them as active agents.

2) How does the current age of consent laws in China relate to the trend identified on European continent when it comes to the characteristic of gender-specificity versus gender-neutrality?

The second trend in age of consent legislation in Europe – the equalization of age of consent for homosexual and heterosexual sex – was the main focus in Chapter 4. It was used to examine whether the current age of consent legislation in China is in line with this trend. Beyond the different age limits for heterosexual and homosexual sex, this chapter also examined the different age limits based on the gender of the child. It first summarized the history of age of consent legislation in Europe and explored why there used to exist various age limits for different sexual behaviors either based on the gender or sexual orientation of the persons involved (gender-specific approach). Then the newest age of consent legislation in 2016 was compared with that in 2004, showing that, with the exception of Albania, all European jurisdictions had adopted a single age of consent, making no distinction between boys and girls, or between heterosexuality and homosexuality (gender-neutral approach). Clearly, on the European continent, the new gender-neutral approach has gained terrain at the expense of the traditional gender-specific approach.

By making a comparison with the situation in China, it was found that the Chinese age of consent is embodied in the provisions of the crime of rape and it refers to the age *a girl* can consent to heterosexual *vaginal* intercourse, which is explicitly gender-specific. In another sexual offence provision it is furthermore forbidden to have sex with children under the age of 14 in China. But sexual activities with children of different genders or involving different behaviors will directly influence the legal consequences. First, of the various sexual behaviors with young children, only vaginal intercourse with a girl under the age of 14 is a violation of the age of consent and constitutes the crime of rape, whereas sexual behaviors with boys under 14 and other non-vaginal- sex with girls under 14 “merely” constitute child molestation. This means that vaginal sex with a girl under the age of 14 has a much more serious criminal qualification than sex with boys (“rape” versus “child molestation”). Second, with rape being the most severe crime in Chinese sexual offence legislation – carrying a maximum penalty of life imprisonment and even allowing for the death penalty while the maximum punishment for child molestation is 15 years imprisonment – the Chinese gender-specific approach also impacts on the (maximum) penalty. Third, to constitute the crime of rape, or a violation of the age of consent, the perpetrator should be male and the victims should be female. So even the gender of the *perpetrator* is relevant under Chinese legislation. Fourth, the age of criminal responsibility is 14 years for rape and 16 years for child molestation, thereby extending criminal responsibility in the case of (gender-specific) rape in comparison to child molestation. These differences demonstrate that the Chinese age of consent legislation is gender-specific and represents the Chinese law makers’ unequal attitudes towards sexual offenses against homosexuals and heterosexual offenses against boys. Considering that the gender-neutral approach has, for very good reasons, been adopted by Europe legislators, China is lagging behind in this respect. Therefore, European lawmakers’ efforts in establishing equal protection of boys and girls and equal treatment of heterosexuality and homosexuality in age of consent legislation should be instructive for China’s future legislation.

2.2. Practice

The practice dimension encompasses the current trends in the timing of young people's first sexual initiation in Europe and how these trends relate to the recent legislative changes in the field of age of consent.

3). What are the current trends in the timing of young people's first sexual initiation in Europe and how does the timing of their first sexual initiation relate to the recent legislative changes in the field of age of consent legislation?

This research question was addressed in Chapter 5 by conducting a systematic review. Twelve online databases were searched to find peer-reviewed English journal articles, published after 1 January 2004, that included a comparison of the age of youngsters' first sexual initiation (hereinafter FSI) in Europe. By applying predetermined inclusion and exclusion criteria, and with the help of a "snowball search" for relevant articles, 16 relevant articles were identified, covering 13 European countries in total. The measurement of FSI in these studies can be divided into three categories: average age of first sexual initiation, median age of first sexual initiation and the percentage of people who had experienced sex at or before a certain given age. The comparison of (median or average) age demonstrated a decrease in age of FSI in more recent years and the comparison of percentage indicated an increase of persons having experienced FSI in younger age cohorts or more recent time periods. Both types of measurements statistically established the trend of a further declining age of sexual initiation among youngsters.

When it comes to gender-differences, 9 articles contained a detailed comparison of the timing of FSI between males and females. An in-depth examination of these 9 studies revealed that, except for Nordic countries, males in European countries generally had their sexual initiation at an earlier age than females, which was displayed by either the younger median age of FSI for males or the higher percentage of boys engaging in sex at (or before) a certain given age (e.g., 14, 15, or 16 years old).

What is the relationship between these trends and the trends of age of consent legislation? First, the declining trend of age of first sexual initiation in practice is opposite with the trend of raising

the general age of consent in legislation. However, due to the limitations of the included articles in the systematic review, we may not be able to generalize the declining age of first sexual initiation identified in the 13 European countries to the whole of Europe. Second, the gender-based timing of FSI for males and females in most non-Nordic countries is probably related to the traditional sexual “double standard” under which men are lauded for their sexual experiences, while women who display the exact same sexual behaviors are frowned upon. It relates to the importance society attaches to female’s chastity while no similar concerns for male’s chastity exists. This double standard also lied at the heart of gendered age of consent legislation that used to exist in many European jurisdictions. As a result, more restrictions were imposed on women in relation to their sexual expression (Kreager, 2009) and it usually caused women to engage in sex at a later time than men. Although the principle of gender equality has been advocated in Western countries for decades, the widespread acceptance of the Europe-wide equalization of age of consent regardless of the gender of the parties involved is of a very recent date. In fact, even in 2016, not all European countries had adopted the same age of consent for both genders. The age of consent for girls in Albania is still stricter than that of boys on account of its stipulation that it is illegal to have sex with children under the age of 14 but it is also a crime to have sexual relations “with a female child, who is not sexually matured”. As a result, the threshold of age of consent is different for females and males. So it is understandable that although European law makers try to create gender equality in drafting age of consent legislation, in reality the deeply entrenched tradition of the sexual double-standard still exerts an overwhelming influence on people’s perception and practice of sexual initiation. To some extent, it explains why females in most European countries tended to have their FSI later than males despite the gender-neutral approach adopted in written law, under which the age limit for both genders are already equal.

2.3. Reflections

Since this study consisted of an examination of both the age of consent for young people’s sexual engagement in law and the timing of their first sexual initiation in practice, it allowed us to assess not only the trends in legislation and practice, but also to examine the interplay between different jurisdictions and between legislation and practice. Although the comparison of different

national laws regarding age of consent and the sexual behavior of youngsters in practice cannot provide a conclusive answer to the question of what age of consent should be considered most appropriate – other (context-specific) factors should be taken into account as well – it does provide national legislators with extra tools to help them search for the right balance between protection and autonomy in the context of age of consent laws. In general, the combination of the analysis of legislation and practice could provide law makers with inspiration and suggestions on factors they should take into account when drafting or revising their age of consent laws.

First of all, although a European Commission spokesperson rightly expressed that “the age of consent would definitely not be an area where the EU would seek to harmonize as it is a core Member State right well beyond the remit of the EU”,²⁷⁹ in practice, it seemed like there was a harmonizing trend going on with more and more legislators opting for similar age limits. Take Spain as an example, when the age of consent in Spain was raised from 13 to 16, Ana Mato, the Span’s minister of health and social affairs to a parliamentary committee, commented that the new higher age will “(better) match other European countries”.²⁸⁰ Because of the risk of sexual predators crossing borders in order to enjoy protection from the more lenient legal systems, it does make sense for national legislators to look at what the other legislators do when revising their domestic age of consent legislation. In fact, it is not only within the EU that “spontaneous” harmonization seems to have taken place, but that the entire European continent has witnessed a converging trend in this respect. For instance, in 2002, the age of consent in Russia was raised from 14 to 16. Official from the Russian parliament, Svetlana Goryacheva, chairwoman of the State Duma's women, children and youth affairs committee, expressed the intention of eliminating the difference of age of consent between Russia and other countries because national differences in that respect “make it hard to protect the country’s children”.²⁸¹ She furthermore

²⁷⁹ P. O'Dwyer, “The age of consent debate: where does Ireland stand?”, from Irish Examiner, April 9, 2014, (available at <https://www.irishexaminer.com/lifestyle/features/the-age-of-consent-debate-where-does-ireland-stand-264694.html> , last visited 22 March, 2018)

²⁸⁰ F. Govan, “Spain to raise age of consent from 13 to 16”, (2013) The Telegraph (available at <https://www.telegraph.co.uk/news/worldnews/europe/spain/10089339/Spain-to-raise-age-of-consent-from-13-to-16.html>, accessed on 21 March 2018)

²⁸¹ P. Graff, “Duma votes to raise age of consent to 16”, (2002) The Moscow Times (available at <http://old.themoscowtimes.com/sitemap/free/2002/6/article/duma-votes-to-raise-age-of-consent-to-16/245588.html>, accessed on 21 March 2018)

remarked that “if we do not take measures, pedophiles of all stripes will flock to Russia...”.²⁸² Judging from this latter remark, they were concerned that the gap of age of consent between Russia and other countries might attract pedophiles to Russia to have sex with Russian children. This might be one of the reasons that prompted the Russian legislators to raise its legal age of consent.

Second, another important finding (or conclusion) of this dissertation is that many European law makers seem to pay more attention to the protection of children from sexual abuse or sexual exploitation, as demonstrated by the trend to raise the general age of consent. On the one hand, taking the underdevelopment of children into account, – in particular young children – it is necessary to protect them from being sexually abused. However, on the other hand, too much protection means an erosion of autonomy. This is particularly true for adolescents who are more mature than younger children. Many studies have suggested that an overemphasis on protection at the expense of adolescents’ autonomy is a wrong track, because it will work against its original intention of protection and make children more vulnerable. Therefore, in order to achieve the goal of the best interests of the child, which was stipulated by article 3 of the Convention on the Rights of the Child, legislators should keep a reasonable balance between protection and autonomy, rather than just focusing on protection and ignoring the autonomy of children and especially adolescents.

Third, as Chapter 3 indicated, the traditional binary construction of childhood versus adulthood should be substituted with a more diversified notion of children. While it is true that very young children need protection from sexual abuse, older children in their adolescence should be empowered with more autonomy to explore their sexuality rather than being absolutely prohibited to engage into sex. This requires legislators to combine research results related with children from different disciplines and have a more comprehensive and updated view of children’s development when making their age of consent laws.

Fourth, it is necessary for legislators to pay more attention to sex when it occurs in authority relationships. Because authority relationships entail an extra power imbalance between adults

²⁸² P. Graff, (2002) *op cit*

and children/youngsters, the latter groups is more at risk of being sexually exploited. The conspicuous power asymmetry between an adult in a position of authority and a child under the influence of this authority substantially increases the risk of the child not being able to genuinely consent to sex with the adult. Therefore, although it is encouraged to empower children, especially adolescents, and perhaps grant them more autonomy to explore their sexuality, this should not be utilized as opening up new possibilities for pedophile or sexual predators to exploit their position of authority.

Fifth, legislators should abandon the differentiation of various age limits based on the participants' gender or sexual orientation. As chapter 4 indicated, the rationales for the different age limits were mainly based on the traditional gender stereotype and discrimination towards homosexuality, both of which have been greatly criticized. The fact that most European legislators have abandoned this differentiation providing both genders equal protection and giving homosexual people more autonomy than before, is a great step forward and should stand out as an example to jurisdictions from other continents and places in the world.

Sixth, the actual age of first sexual initiation among youngster is another important factor that legislators should consider when drafting age of consent legislation. Chapter 5 demonstrated a (further) declining trend of age of first sexual initiation in many European countries. As there is no exact data to show the precise percentage of people who started sex earlier than permitted by law in all different countries, it is difficult to conclude that the current age of consent legislation in Europe is completely detached from practice. But law makers should pay attention to future developments to see if the age of FSI will continue to drop and surpass the legal boundaries.

To sum up, how to provide children as much protection as possible, without impeding on their autonomy too much, is the most important issue every legislator has to grapple with. Although it did not form part of the current thesis, one potentially useful solution is the setting of an age-similarity defense, according to which consensual sex between children of similar ages is not punishable. This mechanism makes a distinction between older adult-child sex and sex between children or adults of similar ages. It respects children's sexual autonomy, provides them with the

necessary leeway for sexual exploration without losing sight of the power imbalance between (older) adults and youngsters.

3. Limitations of the study

Despite the academic and societal relevance of the results, there are several research limitations that need to be taken into account. The primary aim of this study was to investigate the relationship between the trends in age of consent laws and the trends in the youngster' timing of their first sexual initiation, and how they relate to each other. This was investigated with the help of a comparison of age of consent legislation in 59 European jurisdictions in 2004 and in 2016. The newly collected data of age of consent legislation in 2016 was mainly based on online codified information (e.g. criminal codes or sexual offence acts), while other possibly relevant information, such as case law or policy documents was not taken into consideration. Hence there is a possibility that the newly collected data does not represent the actual situation with 100 percent accuracy. In addition, while English, German, Dutch and French websites were accessible, the collection of information in other languages was limited due to linguistic barriers. Although corresponding native legal experts were consulted to compensate this deficiency, there is a chance that certain facts or legal technicalities got "lost in translation". There is furthermore a risk that the original Graupner (2004) study contained similar limitations. Within the framework of this thesis, there was no time to double-check everything.

Furthermore, in the systematic review of the youngsters' timing of first sexual initiation, no standardized definition of "first sexual initiation" was used. That is because the included studies had adopted diverse definitions and the terms they used included "first intercourse", "first sexual intercourse", "first heterosexual intercourse", "first human intercourse", "sexual debut", and "have sex". In order to be as inclusive as possible, all relevant studies were included, no matter how broad or narrow their definition was. The lack of one clear and single definition makes it difficult to distinguish between different kinds of sexual behaviors and between heterosexuality and homosexuality. Moreover, although the systematic review finally covered 13 European countries in total, thereby being the most representative research on the timing of FSI to date,

there was no information on many other European jurisdictions and this might have implications for the generalizability of the results to the whole of Europe.

4. Suggestions for future research

During the process of the data collection, two defenses related with age of consent were identified that were adopted in some jurisdictions. One is the age similarity defense, which refers to the situation that if the ages of the sexual partners involved does not lie too far apart, then the consensual sex will not be considered criminal. For instance, in many jurisdictions (e.g., Russia, France, and Germany) the law requires that only a person aged 18 or above can violate the age of consent and if the older partner is within a certain age limit, the sexual act will not be considered a crime. While in other jurisdictions (e.g., England and Wales, and Northern Ireland), sexual offences against children committed by children or young persons are also punishable, they have further detailed explanations on how to treat child sexual offenders as compared to adult sexual offenders.

The other defense is that the defendant has mistakenly assumed the youngster's age as being above the age limit. This can exempt the defendant from criminal punishment if he/she reasonably believed that the underage child/youngster had attained the legal age of consent. While some jurisdictions have different requirements as to the range of age similarity or to what age the defense of mistake of age could apply, other jurisdictions accept no such defense(s).

Due to the lack of complete data in the 59 jurisdictions, the examination of the trends of age of consent legislation did not include these two elements and so far no research has been done on these two aspects. So future research on these issues could fill in the research gap and provide a more comprehensive overview of the age of consent legislation in Europe. The age similarity defense can also be extended with research on whether the child sexual offenders should be criminalized and the rationales behind it, which may need the support of knowledge from other disciplines. In addition, the examination of the age of consent legislation in the future could also expand to other continents to include more countries so that the research will not only focus on developed Western countries.

As to the timing of youngsters' FSI, this study did not make a distinction between sex between an adult and a youngster and between youngsters themselves nor between heterosexual and homosexual sex. Further research on this aspect could bring to light a more detailed overview of the youngster' situation of sexual engagement and thus provide better background information for law makers to take into consideration.

In addition, what is the appropriate timing for young people to have sex? Where should the legal age boundary be set? Should the criterion be uniform and clear-cut or be dependent on each child's individual development and situation? How to keep a reasonable balance between protecting children from sexual abuse and respecting their sexual autonomy? These are all open questions related with age of consent that could not be answered on the basis of this research alone. Thus more comprehensive knowledge from other disciplines such as psychology, physiology, sociology, sexology, childhood study, cognitive study and neuroscience are needed to better understand child sexuality. This knowledge can provide law makers with more valuable background information when revising the age of consent legislation.

5. Overall conclusion

It is safe to conclude that the declining trend of the age of first sexual initiation before 1995 is a continuous trend, at least in the 13 countries on which we could find data and which were presented in Chapter 5. However, if the trend of declining age of FSI continues, the mean age of FSI may, at some point, surpass the legal age boundaries and the percentage of people having illegal sex may increase. If the age of FSI in practice continues to decrease while the age of consent in law remains the same or continues to increase, the disparity of development direction will make the law more and more divorced from reality. Referring to Fischel (2010) who has indicated: "if many or most young people are first having sex while below the age of consent, our social and legal obligation is not to penalize the sex ... but to protect young people's choices, desires and safety", we can conclude that this research has, to some extent, reflected the possible disparity between legislation and practice in the future if we just let the trends continue without any reflection and intervention. Question then is whether we should adjust our moral and legal

boundaries as to the appropriate age of FSI (e.g., resulting in the lowering of the age of consent) or whether we should try to intervene and stop the age of FSI in practice to continue to decline. Hence we need to keep paying attention to future developments in this regard, to see if the age of FSI in practice will continue to decline in the future. Meanwhile, more inter-disciplinary studies are warranted to further explore the reasonable timing of sexual initiation, which could reduce the social, physiological and emotional harm to young people to a minimum.

In addition, this research also demonstrated that although it has been a trend in the majority of European jurisdictions to set a uniform age of consent regardless of the gender or sexual orientation of the people involved, the long-lasting phenomenon of males' earlier timing of FSI than females' is still prevalent in many non-Nordic countries. As the widespread equality of age of consent for both males and females in legislation in Europe is a new achievement of recent decades, it is understandable that most females are still influenced by the historical inertia of the sexual double-standard and tend to have their FSI later than males. However, the age difference of FSI between the two genders seems to be getting smaller and it a good development that the influence of the deeply entrenched sexual double-standard -- under which great importance was attached to female's chastity and females were usually more (legally) restricted than males -- will probably gradually wane in the future.

In general, the age of consent cannot be fixed once and for all. Indeed, looking through the history of age of consent legislation, we can tell it kept being changed and reformed since the first age of consent statutes came into being. Given the changing sociological context that influence young people's sexual decisions and decision-making capacity (Fischel, 2010), the prevalence of teen sex, the trend of decreasing age to have first sexual initiation among youngsters and the developing reasoning of many young people, the long-lasting and traditional rationales behind the extent age of consent legislation should constantly be rethought and reflected upon. Simultaneously, we strongly suggest that more interdisciplinary research, including legal-sociological research, should be done to explore the best way of respecting young people's sexual autonomy by taking into account young people's development of cognitive ability, psychological and physiological maturity.

References

Angelides, S. (2004). Feminism, child sexual abuse, and the erasure of child sexuality. *GLQ: A Journal of Lesbian and Gay Studies*, 10(2), 141-177.

Brennan, S., & Epp, J. (2015). Children's Rights, Well-Being, and Sexual Agency. In Bagattini A. and Macleod C. (Ed.) *The Nature of Children's Well-Being*, pp. 227-246. Dordrecht: Springer.

Fischel, J. J. (2010). Per Se or Power-Age and Sexual Consent. *Yale JL & Feminism*, 22, 279.

Kreager, D.A., 2009. The sexual double standards and adolescent peer acceptance. *Social Psychology Quarterly*, 72, 143-164.

Teitler, J. O. (2002). Trends in youth sexual initiation and fertility in developed countries: 1960-1995. *The Annals of the American Academy of Political and Social Science*, 580(1), 134-152.

Waites, M. (2005). *The age of consent: young people, sexuality and citizenship* (London: Palgrave Macmillan)

P. O'Dwyer (2014). The age of consent debate: where does Ireland stand? *Irish Examiner*, April 9, 2014, (Retrieved from <https://www.irishexaminer.com/lifestyle/features/the-age-of-consent-debate-where-does-ireland-stand-264694.html>, last visited 22 March, 2018)

F. Govan (2013), Spain to raise age of consent from 13 to 16. *The Telegraph* (Retrieved from <https://www.telegraph.co.uk/news/worldnews/europe/spain/10089339/Spain-to-raise-age-of-consent-from-13-to-16.html>, accessed on 21 March 2018)

P. Graff (2002), Duma votes to raise age of consent to 16. *The Moscow Times* (Retrieved from <http://old.themoscowtimes.com/sitemap/free/2002/6/article/duma-votes-to-raise-age-of-consent-to-16/245588.html>, accessed on 21 March 2018)

About the author

Guangxing Zhu holds a Bachelor's degree in Law (Northwest University of Politics and Law, Xi'an, China, 2010) and a Master's degree in Criminal Law (China University of Political Science and Law, Beijing, China, 2014). In September 2014, she started her PhD-candidacy at the International Victimology Institute Tilburg (Intervict, Tilburg University) with a scholarship from the China Scholarship Council. Here she conducted her research on the newest development of age of consent legislation in Europe and China, of which the results are described in this dissertation.

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