

Child Pornography through Internet and beyond

Introduction- Phenomenology- Legal Right

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In an attempt to approach the phenomenon of child pornography on the internet, one may easily realize that it is gradually growing, both in international community and Greece. This is the case because the internet itself makes possible the simultaneous diffusion of information to many people worldwide. Consequently, new challenges arise for the confrontation of an existent problem at international, communal and national level, which constantly grows and seriously threatens organised societies. Under article 2(c) of the Optional Protocol to the UN Convention on the Rights of the Child, child pornography is defined as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”¹

In order to illustrate the Greek legislator’s view towards the problem, one could mention the following: under the basic form of child pornography, in Section 348A para. 1 of the Greek Penal Code (GPC), as the above Section was amended by the latest law 3625/2007, whoever intentionally produces, distributes, publishes, shows, introduces to Greece or exports, transports, offers, sells or in any other way disposes, buys, gets, obtains or possesses child pornographic material or diffuses or transmits information on the committal of the above acts, is punished with minimum imprisonment of one year and the pecuniary penalty of ten thousand to one hundred thousand Euros. In para. 4 of the above Section, it seems that two versions of the crime are prescribed and punished as felonies, i.e., with minimum imprisonment of twenty years or even with life imprisonment if the act caused the juvenile’s death. The former concerns a crime of harm –namely, a crime which results in the harm of a legal right– against certain juveniles and of a ‘general risk’ at the same time, i.e., a

crime which results in the risk of only one legal right, juvenility. The latter variation of the crime constitutes a particularly aggravated form of the above crime, when it occurs a heavy bodily damage or death of a certain juvenile.² Under the above law 3625/2007, in paragraph 2 of the above Section (348A) the committal of pornography ‘via electronic computer or internet’ was prescribed, which also constitutes an aggravated form of the crime and is punished with minimum imprisonment of two years and pecuniary penalty of fifty thousand to three hundred thousand Euros.

At this point one should note another interesting amendment which was brought by law 3625/2007: the element of gaining profit for the act’s committal was deleted from para. 1. Hence, nowadays it is not required any more the existence of the above element for establishing culpability, which, however, results in the gravest punishment of the act according to the new para. 4 of the same Section.

In order to perceive better the provision in question, a research is required about the protected legal right of Section 348A GPC.

The GPC places Section 348A in the chapter of crimes against sexual freedom, and thus one could claim that this provision protects sexual freedom. Nonetheless, some academics³ support that this Section does not protect sexual freedom and juvenility, because in this Section there are also prescribed acts which do not constitute sexual abuse. Hence, it is endorsed that the act itself does not endanger the above legal rights, if there is not any self-governed action by a person violating them. Under this prism, the provision seems to punish the stimulation as violation of juvenility under 184A GPC.⁴ In other words, one could refer to the case of provocation to commit a crime, where public order is the violated legal right.

According to a different view the protected legal right of child pornography concerns the juvenile. Child pornography constitutes a prevalent form of their sexual abuse. Consequently, as long as one considers that juvenile’s protection comes first according to Section 348A- both as users and as victims of those producing and circulating pornographic material- one may support that the protected legal right is juvenility in the above provision.⁵

Endnotes

¹ See D.Kioupi, A Ioannidou (ed.), CHILD PORNOGRAPHY ON THE INTERNET (*Η παιδική πορνογραφία στο διαδίκτυο*), Maragopoulou Institute for Human Rights, Series of Group of Young People, 2007, (Athens: Nomiki Vivliothiki), (2007), pp. 41-42.

² G. Nouskalis, 'Child Pornography: Critical Issues of Section 348A Greek Penal Code' (*Πορνογραφία ανηλίκων: Τα κρίσιμα ζητήματα του άρθρου 348Α*), (2006) 7 *Poiniki Dikaiosini Journal*, pp. 908 et seq.

³ Regarding the distinction of crimes in basic, mitigated and aggravated forms, see M. Kaiafa-Gbandi/E. Simeonidou-Kastanidou (eds.), MANOLEDAKIS CRIMINAL LAW: NUTSHELL OF GENERAL PART (Articles 1-49 Greek Penal Code), (Athens-Thessaloniki: Sakkoula Publications), (7th edition, 2005), pp. 383 et seq.

⁴ See Symeonidou-Kastanidou, *The Human Trafficking in International Level and its Penal Treatment in Greek Law (Η εμπορία των ανθρώπων στο διεθνές περιβάλλον και η ποινική της αντιμετώπιση στο ελληνικό δίκαιο)*, in E. Kosmidou- Kastanidou/ Chr. Kosmidis/ G. Dimitrainas (eds.), THE RECENT LAW 3064/2002 ON TRAFFICKING OF HUMAN BEINGS (Ο ΝΕΟΣ ΝΟΜΟΣ 3064/2002 ΓΙΑ ΤΗΝ ΕΜΠΟΡΙΑ ΑΝΘΡΩΠΩΝ), (Athens – Thessaloniki: Sakkoula Publications and Jurists' Society of Northern Greece) (2003), p. 46.

⁵ G. Nouskalis, *op. cit.*, pp. 908 et seq.