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CHILD PORNOGRAPHY: CRIMINAL LIABILITY UNDER THE LAWS OF FOREIGN COUNTRIES

Child Pornography is the new age aspect of reality. Child pornography is sexual exploitation of under aged Children to Pornography. It is a world wide Issue all countries at this time are facing this in abundance. However all countries share the same strong prohibition towards it even tough the protection level has a huge difference among countries.

In modern countries, there are many problems with prosecuting child pornography. Evidence of this is the improper implementation by many states of international law on this issue - the Agreement on the Cessation of Circulation of Pornographic Publications of May 4, 1910 [1] and the Protocol amending the Agreement on the Suppression of the Distribution of Pornographic Publications, signed in Paris on May 4, 1910, dated May 14, 1949 (The Protocol entered into force for the USSR on May 14, 1949, and the Annex to the Protocol on March 1, 1950) [3], the International Convention for the Suppression of the Circulation of and Trade in Pornographic Publications of September 12, 1923 (USSR July 8, 1935) [2], the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child

Prostitution and Child Pornography of May 25, 2000 (ratified by Ukraine on 3 April 2003) [4], and the Convention on Cybercrime of November 23, 2001 (Ukraine ratified on September 7, 2005) [5].

Analysis of criminal law prohibiting child pornography gives grounds to distinguish two groups of countries that combat this anti-moral phenomenon:

1) states in which child pornography is a separate crime in relation to ordinary pornography or they have criminal liability only for child pornography - Austria, Argentina, Bhutan, Belgium, Great Britain, Hungary, Denmark, Spain, Canada, Colombia, Mexico, Russia, Romania, etc.;

2) countries in which child pornography is a qualifying feature (qualifying composition) of pornography - Andorra, Belarus, Germany, Latvia, Lithuania and others.

Usually, Criminal liability of Foreign countries law states child pornography crimes are included among the predicate offenses that may give rise to a violation of the Federal Racketeer. Special legislation to combat child pornography was first issued in the United States in 1977. In 1980, such laws were passed by Denmark and Sweden, and in 1986 by the Netherlands. However, in most countries it appeared much later (for example, in Austria - in 1994, in Belgium - in 1995, in Finland - in 1998, in Luxembourg and Japan - in 1999, in Colombia and Lithuania - 2000, in Belarus - in 2005). In Russia, a special article 242.1. «Production and circulation of materials or objects with pornographic images of minors» was introduced into the Criminal Code by the Federal Law of December 8, 2003 №162-FZ.

Federal Law on Child Pornography of USA defines child pornography as any visual depiction of sexually explicit conduct involving a minor (persons less than 18 years old). Images of child pornography are also referred to as child sexual abuse images. Federal law prohibits the production, distribution, importation, reception, or possession of any image of child pornography. A violation of federal child pornography laws is a serious crime, and convicted offenders face fines severe statutory penalties [6].

In particular, section 2251 prohibits persuading, inducing, inducing or coercing a minor to engage in outright sexual conduct in order to create visual images of that behavior. Anyone who attempts or conspires to commit an offense concerning child pornography is also subject to prosecution under federal law [6].

Criminal-legal analysis of parts of Art. 301 of the Criminal Code of Ukraine allows to distinguish the following forms of criminal acts covered by «child porn»: 1) importation into Ukraine; 2) manufacturing; 3) storage; 4) transportation or other movement; 5) sales; 6) distribution; 7) coercion to participate in their creation. However, the first four forms of action of the objective party should be carried out only for the purpose of sale or distribution. Based on the fact that the Ukrainian legislator, forming Art. 301 of the Criminal Code of Ukraine, sought to reflect the provisions of the Optional Protocol ratified by the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography [4], we can say with

confidence that he failed to do so. Yes, if provided for in paragraph 1 of Art. 3 of the above-mentioned international legal act, production, distribution, import (import), storage as forms of action that constitute a crime «child porn» are reflected in Art. 301 of the Criminal Code of Ukraine, the distribution, export, supply and sale - is not mentioned in this article of the Special Part of the Criminal Code of Ukraine. Moreover, the construction of this criminal law is overloaded with unnecessary forms of criminal acts. Thus, the term of movement covers a wide range of actions, in particular, transportation, transfer, forwarding, transfer, and so on [7].

The world should be working strongly on prevention method even though it is helped by extended Technology its hard nearly impossible to enforce legal law. Highlighting the significance of social objects which it produces in the world. Case studies and observational trails are the main methods to come down to a point to state prevention is key to stop this disaster.

Contrary to the fast growing of child pornography cases legislation is not enough, neither at international, nor at national level. It has to be implemented effectively and sufficient resources need to be given for its enforcement. The ultimate solution to this problem according to different cases lies in a systematized uprooting of this problem, which has to start from the family itself. This has to study by giving space to their kids, and providing them with an environment where they can share anything and everything with their parents. Laws can punish the guilty, but actual change and finishing of this problem from its very root can happen only from grassroots level changes.

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VIOLATION OF THE RIGHT TO DEFENSE: INTERNATIONAL LAW AND THE EXPERIENCE OF FOREIGN STATES

The right of a person to defense is one of the oldest independent social institutions, in the process of development of which the bar itself emerged as a separate human rights body, the task of which is to provide legal assistance to citizens. The further development of society has led to the combination of these social institutions due to the objective need and subjective desire of citizens to defend their legitimate rights and interests. The realization of the right of a person to protection is evidence of the democratic development of society, which in various forms implements the inalienable human right to qualified protection of their rights in the judicial process in which it is a party.

Everyone who has been charged shall be presumed innocent until proved guilty according to law. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Giving a suspect or accused person the opportunity to defend himself or herself, as well as to receive qualified legal assistance from a lawyer, is part of modern human rights standards. Thus, Part 3 of Article 14 of the International Covenant on Civil and Political Rights of 16 December 1966 guarantees such entities sufficient time and opportunity to prepare their defense, to communicate with their chosen defenders, to provide opportunities to defend themselves personally or through an elected defender [1]. Similar provisions in the context of ensuring a fair trial are contained in Part 3 of Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950 [2].

Article 48 «Presumption of innocence and right of defence» of the Charter of Fundamental Rights of the European Union of 07 December 2000 declares: «1. Everyone who has been charged shall be presumed innocent until proved guilty according to law. 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed» [3].

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows: