

Kuvannikov Yuri

graduate student of Zaporozhye Law Institute of Dnepropetrovsk State University of Interior, Lieutenant, operative agent of crime detection in Krasnogvardeiskiyi department of Dnepropetrovsk municipal government of Public Administration of Interior in Dnepropetrovsk region (Ukraine, Dnepropetrovsk)

**SOME DIRECTIONS OF STRUGGLE AGAINST
SPREADING OF PORNOGRAPHIC MATERIALS**

Annotation

This article examines the questions of preventive measures' applying, which concern the distribution of pornographic materials in Ukraine. The analysis and recommendations of improvement of public policy in this sphere is given. The author emphasizes the necessity to establish the certain conditions of circulation of sexual products in the society.

Analyzing the current status of the problem, we can affirm that there is a simplistic approach to its solution. The struggle against these phenomena, which lasted for a long time only by establishing of restrictive measures in the present conditions of life and development of society, does not give the expected result.

It can be said that in recent years the problem of turnover of the product of sexual content is quite widely discussed. The sexual culture of the society changes, it can become more tolerant and liberal to the lighting and promulgation of this aspect of human life, but the other side of the display of this process is not so desirable, including the fact that quite often it is associated with lack of principles, permissiveness and ignoring the moral norms and standards of Ukrainian society.

Unfortunately today we can state with confidence that we have formed sex industry,

the mass production and distribution of sexual products and services produced or performed for profit (strip bars, «phone sex», all sorts of erotic and pornographic magazines, calendars, brochures, etc.). However we think that there is no reason for raising the panic because this phenomenon is worldwide. It is a part of sexual culture inherent in society and depends on the general cultural level of the given society fulfilling the specific function of settling the certain aspects of social life.

The process of sex industry implementing has both positive and negative points. Because on the one hand, if it exists, it is in demand at some parts of society but on the other hand, it should not offend the moral feelings of other members of society. The problem here is not that this industry as a phenomenon exists and develops, (we just begin the way, which had many, for example, European countries), but to

find a place for it in the public life through the settlement, taking into account the experience of other countries and their own cultural customs, of environment and traditions.

And we must solve this problem taking into account several fundamental aspects. In studying of this problem almost all authors set up the claims to struggle against the spread of pornographic material, to respect constitutional rights regarding freedom of creativity, to satisfy first of all their cultural and spiritual needs as well as freedom to obtain and exchange information, and secondly to protect moral foundations of society and thirdly to emphasize respect for the safety of spiritual development, physical and psychological health, and moral well-being of children in the society of pornographic materials, as well as cult of violence and cruelty.

However the real picture allows to say that total prohibition which existed for a long time concerning any sexual aspects of social life, now causes the other extreme. Liberalization of Ukrainian society and “replacement of state monopoly by ideology including sexual” [1, p. 97] led to that fact that the topic of intimacy has become one of the leading topics in many aspects of social life. Movies, television, press, other publications often use this theme to attract the attention of audiences because at any case sexuality belongs to human nature and almost always attracts interest because the sphere of such demand is at the level of human instincts and psychology. Moreover, what concerns the public institutions (public television, publishing and other media), the main principles of their activities are defined in relevant legislative acts which had been already mentioned. The fact that on television (cable commercial TV), in

media and even just on the counters appear large amount of commercial sexual products (erotic and pornographic) cause anxiety and criticism of society. Its media buying is obtrusive and quite often such products are placed next to the children's magazines. And if we recognize the certain rights of obtaining the desired information (including sexual information), then we must ensure the right of other members of society to be not familiar with information (aesthetic, cultural, moral) that isn't of their interest. Perhaps it is logical to recognize the right of existence of such production but exclude fully the public nature of its distribution, since it was it but not a phenomenon of the existence of such phenomena in general, in our opinion, encroaches on public morality.

So, this problem requires the immediate solving by the state because it is clear that the local authorities who do not have developed at the state level program which would have basic principles and legal and institutional basis of such specific activity as «sex industry», can not execute properly public order protection. Therefore, the first step to solve this problem would be to develop the appropriate public policy in this sphere, the main focus of which would be the setting of sale conditions of sexual products with protection of public morals, physical and psychical health and moral welfare of children.

Today there isn't any standard act which should reflect the problem. Thus, it is declared to prevent the spread of pornographic materials in a number of laws such as «On Cinematography», «On Television and Radio», «On Publishing», «On Print Media». In legislation «On information sovereignty

and informative security» of Ukraine, in the direction of state information policy in order to ensure information security, the protection of Ukrainian national space from the dissemination of distorted and forbidden information products is proclaimed and the legislation notes on the protection of the population of Ukraine from information products that threaten their physical, intellectual, moral-mental health (including pornographic).

To our opinion (as it is evidenced in official data) art.301 of Criminal Code is rarely used. This can be explained either by the imperfection of the law itself or by the lack of specific relationship which is supposed to be protected. But such specific relationship exists. The market, in spite of all the prohibitions, offers a large amount of such products and more recently there appeared a new way of pornography spreading. Next to the porno magazines and video tapes appeared Internet, which almost excludes any control. Demand creates supply and rather big income becomes a powerful incentive for commercial distribution of pornographic material, despite the presence of criminal responsibility for such actions. Thus, criminal prohibition has not achieved the desired results in the struggle against this phenomenon. As the experience of other countries shows, the problem should be controlled in other ways, leaving to the criminal law the protection functions from those forms of pornography, which are indeed characterized by high level of public danger.

Returning to the analysis of main actions of the struggle against spreading of pornographic materials, it is worth to mention once more that to prevent the commission of

any crime is much easier than to eliminate its consequences. However, in order to implement the criminological prevention, it is necessary to define the actions that must be prevented. As already was stated the criminal prohibitions of any action concerning pornographic materials is inappropriate because in some ways it is different to the main postulates and achievements of democratic society.

The location and propagation conditions could be usefully referred to the competence of the authorities and local self-government based on local conditions, customs and traditions. But pornographic products, plot of which includes scenes with minors, animals, scenes of rape and other images of pathological deviations and distortions must be banned. And persons who spread such production must be criminally responsible. To our view such conditions will correspond to the passed law, which must protect social values from the most dangerous forms of attacks on them, and criminological measures of prevention will be proved more effective. There are such sets of Criminology warning as moral and legal. Each of them has its own characteristics [2].

As a rule the essence of moral prevention depends on prevention of possible deviations or violations of moral self-regulation mechanism of specific individual, certain social groups and society in general. Measures of moral prevention on the general social level realizes in proclamation and strengthening of certain moral principles, regulations, which allow the public to orient and guide public life to achieve progress and prosperity.

Moral prevention in the context of the problem has quite a significant importance

taking into account the fact that uncontrolled spread of pornographic materials and objects which popularize violence and cruelty, damage moral standards of society. In this case moral prevention is as close as possible and can be effective in the formation of self-regulation and self-preservation by members of the society. You can even see the link between the functioning of moral prevention and state of moral standards of the society. The state of morality is that base with the help of which the effective prevention of these phenomena can be built.

This problem is understood at the state level too. The deterioration of the general morality of society is one of the main reasons of public, uncontrolled distribution of pornographic materials, and it is recognized by almost all scientists that analyzed this problem. The state makes some steps trying to give due attention and to stabilize the situation in the information space of Ukraine today. In particular it must prevent importation and distribution of pornographic material and works propagandizing violence and cruelty.

However, apart from moral prevention, the proper legal provision of preventive activity is necessary for successful prevention of the crime foreseen by the Criminal Code of Ukraine, article 301. The legal basis should be set and this will allow to realize the assigned tasks more efficiently. As a rule such efficiency is achieved by ensuring of inevitability of punishment or by the fact of the existence of certain legal norm which aims to adjust certain social relations. And, above all, the basic law, which would define the basic principles of state regulation and control of the distribution of sexual products including pornography, must be passed. It is necessary

to form the policy and main principles of the state regulation and control of the distribution of sexual products, which would determine the order and conditions of distribution of these products, which could become the key to the protection of public morality and protection of physical and mental health and moral well-being of minors from the negative influence of pornographic and erotic materials.

But such definition of pornography unreasonably and unnecessarily expands the range of materials, which are truly pornographic. For example, it is not clear on what criteria such activity as «propaganda of light-mindedness concerning sexually transmitted diseases and AIDS» is attributed to pornographic materials. As concerns the recognition of «frankly sexual orientation, which do not correspond to established standards of morality» as pornographic materials, this feature is peculiar to erotic products. Moreover, one can hardly trace the fundamental difference between this definition of pornography as materials of «frankly sexual orientation» and «products which encourage the interest in sex» in general and systematically in case of erotic materials. So the legislation does not fix the clear and common definition of pornography and scientifically substantiated criteria of distinguishing two kinds of products. Such blur of terms would give problems by determining of the legal mechanism for regulating sexual products and so will no longer promote the correct application of law in practice.

The separate question is protection of moral wellbeing, mental and physical health of children and minors from negative influence of pornographic material.

And if recently the problem was only in the protection of minors from negative influence of pornographic material, now preventive measures must be directed to two vectors:

1. To prevent the distribution of pornographic material within minors;

2. To prevent the attracting of minors to any action of import, manufacture, distribution, and forcing minors to participate in the creation of such production. To our opinion the regulatory measures in this case are not enough and applications both general and individual prevention are necessary to struggle these phenomena. General prevention measures foresee criminal liability for any action with pornographic material, which are involved or committed against minors. However, the existence of law, which prohibits the corresponding actions, can not be an effective instrument for prevention of these phenomena. This can be achieved only by proper application of law and this means that law enforcement must respond properly in each case of the commission of such acts, detect and prevent such actions and court must set the sentence. It is important that every case of committing such acts against minors must be punished.

The reasons and conditions that promote the commission of the crime (article 301) are: shortcomings of family and school upbringing, lack of proper sexual education and upbringing, neglect, homelessness, lack of control by parents, it concerns the cases of production of pornographic materials involving minors. To our opinion, only joint efforts of the state and public can have an effective influence on these factors. Thus, the priority of children's rights to free speech must be fixed at the state level.

It can be expressed in the establishment of the necessary forms of state and public control over observance of the media the current legislation to prevent the spread of pornography through these means. For example, it can be the establishment of appropriate types of legal responsibility of media (as juridical persons) and their employees for violation of law, which aims at the legal protection of minors.

Increasing of sexual culture and sex education should be done by school system and parents. This can be achieved by introducing of special courses of sex education and sex education in the family in the curriculum; these are the main measures of struggle against sexual corruption, one of the forms of which is distributing of pornographic works among the minors. Lanovenko notes that «this preventive activity should begin in early period of sex education of minors in the family and then at school» [3, p.141], we support this view expressing the hope that the sooner it will happen, the more optimistic results we can expect from it.

As concerns the lack of educational and pedagogical control and inauspicious social status of minors (homelessness, neglect, etc.), which is used for forcing the children to participate in the creation of pornographic materials, it has deep social roots and is actually a specific manifestation of deterioration of the general economic situation in the country. Improving the social protection of children should be the main direction of government's policy.

Thus, we examined the measures of prevention, which refer to general preventive measures including the general-level social

prevention (including the measures aimed at the improving of the society's morality, legal provision of the regulation of pornographic materials distribution, etc.) and preventive measures aimed at the separate social groups (measures aimed at the preventing of spreading of pornographic material within minors and forcing them to the creation of pornographic materials).

At the individual level the preventive measures can be applied to the persons who have certain sexual deviations and perversions, for satisfying which they apply «child» pornography or corrupt the minors by distributing among them pornographic material. Revelation and psychological correction of these shortcomings may become the key for preventing the commission of crimes in future.

Literature:

1. Кримінологія. Спеціалізований курс лекцій зі схемами (Загальна та Особлива частини). Навчальний посібник. - Київ: Атіка, 2001.- 368 с; Всеволодів В. Проблема профілактики злочинності в законодавстві України // Нова політика.- 1998.- № 2.- С.58-59.
2. Пристанская О. В. Правовая защита несовершеннолетних в сфере массового сексуального просвещения // Журнал российского права. - 2000. - №1. – С. 42-52.
3. Лановенко И. И. Теоретические основы ранней профилактики половых преступлений. - К, 1997. – 204 с.