

Committing Child Pornography (Section 348 of Greek Penal Code)

by Eleni Gabeta

translated by Nancy Rapti

The forms of committing the crime of child pornography are prescribed in the first paragraph of the current Section 348A Greek Penal Code (GPC), as amended by law 3625/2007. More forms are defined, which always refer to child pornographic material as an object of the punishable act. In paragraph 3 of the same Section,¹ the same acts are punished when they concern pornographic material related to the abuse of the juvenile's vulnerable position. In order to understand the forms of criminal activity, it might be advisable to set out the following thoughts.

The pornographic material's preparatory work² takes place either through original production via any means or reproduction. In fact, according to other states' case law (e.g. United Kingdom), the internet 'downloading' is included within the notion of preparatory work for producing pornographic material.³ In other words, the 'consumer' of the digital pornographic material becomes necessarily its producer too, since this use technically demands the production of new copies of the same value as the original image.⁴

The above forms of committal do not present any difficulty in their perception, in contrast to the terms of possession and circulation. The criminal's control over the material is considered as possession,⁵ in order to be able to ascertain by his own will the material's existence and actually dispose of it, even if it is only for personal use and not for any further disposal. The punishment of possession for personal use and not for profit is deemed necessary, since it is directly related to children's sexual abuse, not only because it boosts the respective 'market' but also because it is used to lure the potential victim, when he/she is juvenile, and break his/her resistance. Because it is easier for the criminal to lure the child, if he convinces him/her that

other juveniles participate in such activities as well, and finally lead him to commit such acts.⁶

The main problem of the interpretation of possession is found in whether the notion also includes the mere view of the material without its storage into hardware devices, an act which if happened in the pre-digital age, it would be really difficult to be considered as possession. However, this would mean that the crime of pornographic material possession is also committed by innocent internet users who, by opening their e-mail, are viewers of such images which some cunning people might have send them without their consent. Moreover, equally justified questions emerge from the notion of pornographic material's circulation. The act of material's disposal to the public is considered as circulation. However, the problem lies in whether a minimum number of people is required among which the material should be circulated before the crime is established or the mere act of giving it to a certain person is sufficient. Because of the distinct definition of sale/disposal of the pornographic material, the act of rendering it accessible should be rather considered as circulation, if not to an indefinite number of people, at least to more than one person (e.g. display onto a website or portal).⁷

The above forms of the crime's committal refer to Section 348A GPC, as it was amended by the recent law 3625/2007. After the amendment new forms of committing the crime are introduced, such as the publication rendering the material accessible to an indefinite number of people, the demonstration, the import or export of the material, the offer and the simple transmission of information about the committal of the above acts even orally. According to these amendments, the committal of the above acts via a personal computer or internet is additionally introduced as a special form of crime. Besides, cell phones may be considered as personal computers, given its technological evolution and capability of internet surfing. The imposition of a more serious penalty is justified because of the easy internet access. The pornographic material traffic through internet becomes not only easier and safer for the offender -since it offers anonymity and confidentiality- but

also more available to the public, since internet allows cost effectively its easy access worldwide.

Endnotes

¹ 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, (Athens: Nomiki Vivliothiki Publications) (2007), pp. 32 and 57.

² *Ibid.*, p. 56.

³ According to Bowden decision [see A. Gillespie, *Sentences for Offences Involving Child Pornography*, *Criminal Law Review* (2003), p. 81] the ‘downloading’ of pornographic images was considered as an act of making relative material. This is a view which has been theoretically questioned.

⁴ G. Nouskalis, ‘Child Pornography: Critical Issues of Section 348A Greek Penal Code’ (Πορνογραφία ανηλίκων: τα κρίσιμα ζητήματα του άρθρου 348Α ΠΚ), (2006) 7 *Poiniki Dikaïosini Journal*, p. 908.

⁵ Greek Supreme Court (Areios Pagos) 48/99 *Journal of Greek Jurists*, 373.

⁶ D.Kioupi, A Ioannidou (ed.), *op.cit.*, p. 78.

⁷ G. Nouskalis, *op. cit.*, pp. 908 et seq.