



EXPERIENCE OF FOREIGN COUNTRIES ON CRIMINOLOGICAL ASPECTS OF THE CRIME OF DISCLOSING INFORMATION THAT DEGRADES A PERSON'S HONOR AND DIGNITY AND REVEALS CONFIDENTIAL ASPECTS OF HUMAN LIFE

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Abstract: This article provides a comparative analysis of the experience of developed foreign countries regarding the crime of disclosing information that degrades a person's honor and dignity and reveals confidential aspects of human life. It discusses the specific features of the social danger of this crime, the causes leading to its commission and their legal consequences, as well as some issues arising in current judicial and investigative practice.

Keywords: comparative analysis, USA, Germany, France, revenge pornography, private life, human life, confidential information, and punitive measures.

The large-scale reforms taking place in the legal policy of our state are contributing to further harmonization of criminal and criminal procedure legislation with universally recognized standards and norms of international law. In our opinion, the emergence of such a process is natural. The reason is that states participating in the current process of global integration face similar problems in the field of law related to combating crime.

According to the French scholar M. Ansel, foreign experience allows lawyers to discover new ideas, better understand the legal system of their own state, and identify its distinctive features in comparison with other legal systems[1].

Considering the existence of specific approaches to classifying criminal proceedings in different countries worldwide, and based on the aforementioned opinion, we deem it appropriate to examine in our research an approach based on unifying existing legal systems into legal families. As S.N. Gordeev noted, a scientifically-based analysis of foreign countries' experiences helps identify the strengths and weaknesses of the national system[2].

Foreign experience regarding the crime of distributing or threatening to distribute non-consensual nude photos and videos of a person's body or genitals provides important legal and practical lessons for Uzbekistan. Below is a brief analysis of legislation, penalties, and methods of combating this crime in different countries, as well as conclusions about potential benefits for Uzbekistan.

California legislators passed a law on "revenge pornography." According to this law, posting photos or videos of someone's intimate body parts online without their consent is considered a crime. The Revenge Pornography Act is enshrined in Section 647 (J) (4) of the California Penal Code and is often regarded as a type of non-consensual pornography[3].

In other words, "revenge pornography" refers to the practice of posting someone's personal photos online for revenge. This law is a powerful tool for prosecutors to protect victims who have been discredited by someone they previously trusted.

The revenge pornography law also criminalizes the dissemination on the Internet of a person engaging in sexual intercourse or performing sexual acts without their consent. PC

647 (j) (4) is similar to privacy invasion laws in that it prohibits the secret recording or filming of sex-related videos without a person's knowledge or consent.

Privacy violation laws differ from revenge pornography laws in that the victim initially consented to take photos or videos of sexual content, with the understanding that they would remain private, but later another person distributes them without permission.

In many cases, revenge pornography is disseminated by posting sexually explicit images and videos online without the victim's knowledge or permission. This type of crime, or sexting, often occurs after a relationship ends badly, and former partners, usually men, try to seek revenge.

If you are accused of vengeful pornography, you should immediately contact a criminal defense lawyer. For a better understanding of the Revenge Pornography Act, please pay attention to the following general information:

Criminal Code 647 (J) (4) - Definition of Revenge Pornography

California Criminal Code 647 (j) (4) defines the crime of PC revenge pornography as follows:

"Whoever deliberately disseminates images of a specific person's genitals or images depicting them engaged in sexual intercourse, homosexuality, oral sex, sexual intercourse, or self-satisfaction, knowingly causing serious psychological suffering if these images were agreed upon or understood to be private, is guilty of vengeance pornography." [4]

It should be noted that the "part of the genital body" includes any part of the genitals, the anus, and for women, any part of the breasts that is clearly visible through open or clothing. "Intentional dissemination" of an image is understood as its personal dissemination, organization, special request, or deliberate inducement of another person to disseminate it.

In order to be found guilty of the crime of vengeful pornography under Article 647 (J) (4) of the Criminal Code, the prosecutor must prove all the elements of the crime, except for any reasonable suspicions:

First, you may have retained an image of a particular person's intimate part of the body or the state in which they are engaged in sexual intercourse, sexual violence, oral intercourse, or masturbation;

Secondly, there was a mutual agreement between you and that person that these images would remain private;

Thirdly, you intentionally disseminated this image;

Fourthly, you knew that the dissemination of this image would cause serious emotional suffering to the person;

Fifthly, the depicted victim must have indeed suffered serious mental anguish.

It should be noted that the law on retaliatory pornography also applies in cases where the dissemination of the image may lead to persecution by a third party.

In other words, if the dissemination of the image does not serve a legitimate purpose, it is carried out knowingly by a reasonable person, who believes that the behavior directed at the victim is disturbing or alarming.

If you are found guilty of a sexual crime of revenge pornography in violation of Article 647 (J) (4) of the California Criminal Code, you are considered to have committed a crime.

Penalties for the first offense include imprisonment in the county jail for up to 6 months, a fine of up to \$1,000, and a suspended sentence for the crime. If you are a repeat offender,

have previously violated privacy, or if the victim is a minor, the penalties are imprisonment in the district prison for up to one year and a fine of up to \$2,000.

It should be noted that if the victim of vengeance pornography is a minor, you may face accusations of child pornography in California.

Article 201a of the German Criminal Code is aimed at protecting the inviolability of private life, in particular, it defines as a crime the encroachment on the sphere of a person's strictly private life through unauthorized photography or the dissemination of images. This article is especially important at a time when, as a result of the development of modern technologies, especially the widespread use of mobile devices and the Internet, cases of illegal distribution of personal images are increasing. The main purpose of the article is to protect the personal inviolability, reputation, and private life of a person. This article also covers crimes related to the distribution of nude images or images depicting personal circumstances.

The article consists of five clauses, each of which regulates a specific type of offense.

"Violation of privacy through photography"

(1) Imprisonment or fine of up to two years may be imposed in the following cases:

Taking unauthorized photographs of another person at home or in a specially enclosed room, or transferring these photographs, thereby violating their private life;

Taking or distributing a photograph depicting someone's helpless or vulnerable state without permission and thereby violating their private life;

Using a photo taken in the above cases and showing it to another person;

Knowingly showing an authorized photo (if it belongs to one of the above types) to others without permission, violating the private life of the person in the photo.

(2) If someone shows a photo that seriously damages another person's reputation to others without permission, they will receive the same punishment.

(3) A nude photo of a child under 18 years old:

Takes or offers for sale to others in exchange for money;

Taking money for oneself or for another person is punishable by imprisonment or a fine of up to two years.

(4) The above provisions (including subparagraph 2 of paragraph 1, subparagraphs 3 and 4, as well as paragraphs 2 and 3) shall not apply if they serve such important purposes as reporting on art, scientific works, teaching, news, or historical events.

(5) Photographs, cameras, or other technical devices used in the crime may be confiscated. Applies the rule of § 74a"[5].

Paragraph 1 is aimed at protecting the most important frontiers of private life. Here, "residential premises" or "specifically protected from the evil eye" refers to places where a person feels safe and whose private life should be inviolable, such as a house, bedroom, bathroom, or similar secret places. For example, if someone photographs another person in a bathroom without permission, this falls under this clause.

In the second subparagraph, the concept of "unfavorable condition" is important. This includes images depicting a person's helpless, vulnerable, or defenseless state (e.g., sleep, intoxication, injury). Such images can damage a person's reputation or bring shame upon them.

The third and fourth subparagraphs are related to the distribution or display of images to third parties. Even if the image was taken with permission (for example, a photo taken in a private relationship), its subsequent dissemination without permission is considered a crime.

This is especially true in cases of so-called "revenge porn," where a former partner distributes images online for revenge.

For example: if a person takes an unauthorized photo of another person in their bedroom and posts this image on social networks, they can be punished in accordance with § 201a, paragraph 1.

Paragraph 2 considers the unauthorized dissemination of any image that harms a person's public reputation as a crime. These images don't necessarily have to be associated with nudity, but they should damage an individual's status or respect in society. For example, this clause includes the distribution of a photo depicting a person in a disgraceful state (for example, in a state where they fell while drinking alcohol).

The main purpose of this clause is to prevent a person from being disgraced. If the dissemination occurs in the media or on the Internet, the severity of the crime is assessed as higher, as the damage reaches a wider range.

Example: if someone distributes a video showing another person in a disgraceful state in a WhatsApp group and damages the person's reputation, they may be held liable under this clause.

Paragraph 3 specifically regulates crimes involving nude images of minors (under 18 years of age). This article is aimed at protecting children from sexual exploitation and is one of the most important protective measures in German legislation.

The phrase "for a fee" is important here, because the commercial use of these images (for example, selling or posting on pornographic websites) makes the crime more serious. However, the article considers it a crime to take such images not only for commercial purposes, but also for personal use, if it is unauthorized.

Example: if someone takes a nude photo of a 16-year-old teenager with the intention of selling it online, they will be punished under this clause. At the same time, obtaining such an image without permission for a personal collection is also a crime.

Paragraph 4 establishes essential exceptions to the application of this Article. This clause serves to balance public interests with the protection of private life. For example, if an image is used in a work of art, scientific research, or to cover current news, it is not considered a crime if it serves the public interest.

However, this exception has strict conditions: the use of the image must be truly artistic, scientific, or informational, and harm to privacy must be minimal. For example, if a journalist disseminates a depiction of a political figure's personal life solely for public benefit (e.g., as evidence of corruption), this clause may exempt them from liability.

Example: If nude images in a historical documentary are used to explain historical events, it is not considered a crime.

Paragraph 5 regulates the confiscation of instruments of crime. This clause serves to prevent the recurrence of the crime. For example, if the criminal used a smartphone or camera, these devices can be confiscated. Article 74a of the Criminal Procedure Code defines the judicial procedure for confiscation proceedings, which ensures a fair trial.

Article 201a plays an important role in protecting private life and serves to prevent the illegal distribution of personal images in the modern world. It ensures not only personal inviolability, but also the reputation of the individual and the protection of minors. The exceptional clauses of the article maintain legal balance, taking into account the interests of art, scientific research, and the public.

In German legislation, this article was introduced in 2011, and subsequently improved in accordance with modern needs in 2017 and 2021. This article is especially relevant at a time when cases of distribution of personal images on social networks and internet platforms have increased.

Article 226-1 of the French Criminal Code, aimed at protecting privacy, criminalizes the unauthorized recording or distribution of a person's confidential words or images in private space. This article serves to strengthen the right to privacy guaranteed in the French constitution. The main purpose of the article is to protect the personal inviolability of the individual, especially in cases of confidential conversations and images taken in a private environment.

The article covers two main crimes: writing/transferring confidential words and unauthorized acquisition of images in private places. At the same time, the article pays special attention to the issue of consent, that is, if the person does not object to the action, it can be interpreted as his consent. The article is set forth in the following wording:

"Intentional harm to the privacy of another person by any means may be punishable by imprisonment for up to one year and a fine of 45,000 euros in the following cases:

1. Hearing, recording, or transmitting words spoken privately or confidentially without the author's consent;
2. Taking, recording, or transmitting an image of a person in a private space without their consent.

If the actions specified in this article were performed in the presence of interested parties and with their knowledge, and they did not object to this, then their consent is considered to be given"[6].

Clause 1 is aimed at protecting a person's confidential conversations. "Words spoken privately or in private" refers to conversations between specific individuals, usually not spoken in a public setting. For example, a phone conversation between two friends, a conversation on a personal meeting, or conversations in a family setting fall into this category.

For the act to be qualified as a crime, it must be intentional, i.e., the person must have received or distributed such a recording intentionally. The recording method doesn't matter: it could be a hidden microphone, phone app, or other device. Distribution, on the other hand, includes actions such as transferring the recording to a third party, posting it on social networks, or publishing it in the media.

Example: if someone secretly records a friend's private conversation and shares this recording in a WhatsApp group, they may be held liable under this clause. If the recording was taken only for personal use, but not distributed, it is still considered a crime, since the recording itself was unauthorized.

This clause protects the individual's right to freely express themselves through confidential conversations. French courts take a strict approach to this issue, and even recordings made by journalists are considered a crime if they do not serve the public interest.

Clause 2 is aimed at protecting the image of the individual in the personal environment. "Personal space" usually refers to situations where a person is in their home, bedroom, bathroom, or other private places. These places are considered as an environment in which a person feels safe and protected from the evil eye.

The crime is not limited to nude images. For example, unauthorized photographing of a person in civilian clothes in a private environment is also included in this clause, if it violates

the person's privacy. Distribution can be in the form of posting on social networks, sending to friends, or mass publication.

If someone secretly photographs another person from a house window and spreads this image on the Internet, they may be punished under this clause. At the same time, if the photograph was taken for a private collection, but not distributed, this is also a crime, since the photographing itself was unauthorized.

This provision protects the individual's right to feel free in their personal environment. In French law, the inviolability of private life is based on Article 8 of the European Convention on Human Rights, which implements these international obligations.

"If the actions specified in this article were performed in the presence of interested parties and with their knowledge, and they did not object to it, then their consent is considered to have been given"[7].

This part of the article clarifies the issue of consent. If the person is aware of the recording or photographing and does not object to it, it is interpreted as their consent. For this, the individual must have the opportunity to resist. For example, consent is not considered if a person is subjected to violence or threats and cannot resist.

This condition partially protects journalistic activity, taking into account public interests. For example, if a journalist writes an interview at a public event and the participants do not object to it, it is not considered a crime. However, in a private environment, such consent is much more difficult to predict, since in private places people feel more protected.

If someone is openly recording a video in a circle of friends and no one objects, this is considered as consent. However, if the person is unaware of the hidden camera, there can be no talk of consent.

The condition of consent serves to balance the right to privacy with the right to freedom (for example, freedom of the press). French courts consider each case separately and carefully check whether the person has genuine consent.

This article was developed in accordance with Article 8 of the European Convention on Human Rights (right to privacy) and enshrines the right to personal inviolability guaranteed by the French Constitution. This substance was introduced in 1994 and subsequently improved in accordance with technological changes.

Article 226-1 of the French Criminal Code plays an important role in the protection of private life. It strictly punishes unauthorized recording or distribution of a person's confidential conversations and images in the private environment, but maintains legal balance through consent. The use of the substance serves to prevent cases of encroachment on private life within the framework of modern technologies. When applying this article, French courts carefully balance the rights of the individual and public interests.

Foreign experience allows for the adaptation of legislation on the protection of private life in Uzbekistan to modern requirements, the fight against crime in the digital environment, and the strengthening of the protection of minors. At the same time, it is possible to strengthen the law enforcement system by identifying new types of crimes, such as a fair balance of punishments and intimidation.

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