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Zvenyhorodskyi O.,

Ph.D. in Law, Associate Professor, Associate Professor of the
Department of Criminal, Criminal-Executive Law and Criminology,
Academy of the State Penitentiary Service, Chernihiv, Ukraine
ORCID: 0000-0003-1386-4919;

Terebylo N.,

Postgraduate officer of the Department of Criminal,
Criminal-Executive Law and Criminology,
Academy of the State Penitentiary Service, Chernihiv, Ukraine
ORCID: 0000-0001-9059-8517

PIMPING OR THE INVOLVEMENT OF A PERSON IN PROSTITUTION: THE ISSUE OF THE SCOPE OF THE CRIMINAL OFFENSE

On the basis of normative and doctrinal provisions, the issue of determining the object of the criminal offense composition provided for in Art. 303 of the Criminal Code of Ukraine "Pimping or involving a person in prostitution", which should include social relations defined by constitutional provisions and legal norms regarding the realization of human rights and freedoms in the sphere of morality, as well as a complex of moral and social values, that represent a generalized content basic ethical concepts and principles.

Key words: social morality, moral and social values, pimping, prostitution, legislation, criminal offense, object of criminal offense.

Target setting. One of the socially dangerous actions that undermine the principles of public morality is pimping and engaging a person in prostitution, provided for in Art. 303 of the Criminal Code of Ukraine (hereinafter – CC), which make up about 20 % of all annually committed criminal offenses against morality (Articles 297–304 of the CC) [1].

According to the official statistical data of judicial authorities as for 2021, the number of criminal proceedings for committing criminal offenses against public order and morality was 6,855, 1/4 of which were criminal offenses against morality. According to the Office of the Prosecutor General as for January-November 2022, for the commission of a criminal offense provided for in Art. 303 of the CC, 173 criminal offenses were recorded, 67 of which were sent to court with an indictment [2]. As a type of criminal activity,

pimping and engaging a person in prostitution have a negative impact on public morality, undermine the moral foundations of the state, increase the number of associated criminal offenses and negatively affect the observance of the rights, freedoms and interests of citizens. And, therefore, encroachment on public morality as an object of criminal law protection causes serious damage to the foundations of most social relations.

At present, among the problems not sufficiently developed by the theory of criminal law is the question of determining the object of the criminal offense provided for in Art. 303 of the CC "Pimping or involving a person in prostitution", which is explained by a number of debatable issues regarding the doctrine of the object of the criminal offense.

In particular, the theory and law enforcement practice state the lack of unity of views in the doctrine of criminal law regarding the definition of the concept (content) of the object of the composition of the criminal offense, its terminological uncertainty, and in some law enforcement acts the term "object of the composition of the criminal offense" is used to define its subject and the actual object of the criminal offense [3, p. 53]. Along with this, in the science of criminal law there are two opposite concepts regarding the object of a criminal offense: the concept according to which the object of all criminal offenses is a set of social relations (M. I. Bazhanov, Yu. V. Baulin, I. O. Bandurka, V. Ya. Tatsii, O. V. Us, et al.) and the concept that includes such objects of value, personal goods, etc. (P. P. Andrushko, V. V. Benkivskyi, S. B. Havrysh, P. S. Matyshevskyi, I. M. Titenko, et al.).

There is also a problem of using and correlating of the terms "object of criminal offense" and "object of criminal law protection" that are similar in meaning [4, p. 77].

In addition to the above, questions about the content of the categories "public order" and "morality", which play a system-forming role as a generic object for criminal offenses provided for by Chapter XII of the Special Part of the CC [5, p. 393–394].

Judicial practice states certain errors in the qualification of socially dangerous acts provided for in Art. 303 of the CC when combined with other criminal offenses.

Actual scientific researches and issues analysis. The topic of various aspects of criminal offenses against morality was considered in the papers of such scientists as: Yu. V. Aleksandrov, P. P. Andrushko, V. H. Honcharenko, I. A. Holovko, P. I. Hryshaiev, S. F. Denysov, V. T. Dziuba, I. M. Dolianovska, O. O. Dudorov, V. V. Dzungza, D. O. Kalmykov, O. S. Kapinus, I. Ya. Kozachenko, V. V. Kuznetsov, L. S. Kuchanska, V. S. Komisarov, V. A. Kopylian, O. V. Kudelich, V. M. Kuts, V. A. Lomako, M. I. Melnyk, V. O. Navrotskyi, A. M. Orlean, M. V. Palii, O. V. Panchuk, S. P. Repetskyi, O. P. Riabchynska, A. V. Savchenko, O. O. Solovei, V. Ya. Tatsii, M. I. Trofymov, A. P. Tuzov, H. O. Usatyi, Ye. V. Fesenko, P. L. Fris, V. L. Chubariev, V. I. Shakun, N. M. Yarmysh, S. S. Yatsenko et. al.

Issues regarding the object of the criminal offense provided for in Art. 303 of the CC of Ukraine "Pimping or engaging a person in prostitution" were investigated in the publications of such scientists as: V. Ts. Abramian, I. O. Bandurka, O. B. Zapadniuk, V. V. Kuznetsov, A. V. Landina, N. O. Lopashenko, V. O. Navrotskyi, A. A. Niebytov, A. V. Plotnikova, Yu. A. Ponomarenko, I. I. Prypkhan, P. P. Serdiuk, N. O. Semchuk, I. M. Tiazhkov, I. M. Titenko, V. D. Filimonov, V. D. Chabaniuk, D. V. Chobit, V. V. Shendryk, S. V. Shlyk et. al.

Despite a certain amount of scientific papers devoted to this issue, many aspects still remain not fully defined.

According to I. O. Bandurka, the importance of the consideration of theoretical issues about the object of a criminal offense is conditioned by the prospects of further research into the problems associated with establishing its composition as the basis of a person's criminal responsibility and bringing the science of criminal law into line with modern methods of regulating social relations [6, p. 74]. O. V. Us notes that the problem of the object of a criminal offense is one of the fundamental ones in criminal law science and investigative judicial practice [3, p. 52].

Supporting the opinion of the above-mentioned authors, we consider an important area of criminal legal research to be the issue of determining the object of the criminal offense-pimping or involving a person in prostitution, which is one of the least studied in modern legal science, and also causes certain difficulties in establishing it when criminal law qualification.

The purpose of the article is to analyze and generalize normative and doctrinal provisions regarding the definition of the object of the criminal offense provided for in Art. 303 of the CC "Pimping or involving a person in prostitution" from the point of view of its essence, the content of its types.

The statement of basic materials. At the current stage of the development of criminal law science, the problem of the use of prostitution by pimps remains understudied, and the lack of comprehensive research on these issues complicates law enforcement practice. According to V. Ts. Abramian and O. B. Zapadniuk, the provisions of Art. 303 of the Criminal Code, is the initial stage for the establishment of a system that regulates legal relations in the sphere of morality and sexual morality, a component of which is the organization and provision of sexual services for a monetary reward, that is, involvement in prostitution [7, p. 157].

In our opinion, this process is caused by various factors of a specific state or society of a certain period (level of economic development, state of the social protection system, criminogenic situation, conditions of war or state of emergency, level of social morality, psychological factors, etc.). It is the above-mentioned factors that generate or spread such shameful phenomena as pimping and prostitution, which undermine the foundations of public morality and are recognized as criminal and illegal phenomena.

For the criminal legislation of Ukraine, the problematic issues of defining the object of a criminal offense as a general criminal law category, and the category of the object of relevant types of criminal offenses are quite relevant. Such a definition has an important legal significance, since: it makes it possible to establish the social essence of a criminal offense, its socially dangerous consequences; affects the definition of the very concept of a criminal offense; contributes to the correct qualification of the act and its separation from related socially dangerous encroachments; significantly affects the content of its objective and subjective features; is a decisive factor in the construction of the system of the Special Part of the CC [8, p. 119].

Establishing the object of the criminal offense provided for in Art. 303 of the CC, in our opinion, it is necessary to adhere to the

established position of the doctrine of criminal law on the division of objects into general, generic and direct, bearing in mind the ongoing discussion that such objects include not only social relations, which are encroached upon a criminal offense, causing them some damage, and which are protected by the law on criminal liability, but also certain public values, personal goods, etc. [6].

Titenko I. M., sharing the opinion of a group of scientists regarding values as an object of criminal offenses, singles out the general object as a set of values defined in part 1 of Art. 1 of the CC; generic as a group of values (public order, morality), and direct – as specific values that are harmed [7, p. 156–162].

Value is a philosophical concept that reflects the significance of certain objects for the life of a person and society [9, p. 250].

Philosophical science defines moral values as: 1) appropriate virtues understood by moral consciousness, ethically grounded, and their corresponding norms of behavior (wisdom, courage, tolerance, fidelity, truthfulness, sincerity, etc.); 2) a generalized content of the main ethical concepts (good and evil, justice, happiness, dignity, honor, duty) and principles (altruism, humanism, reverence for life, etc.); 3) universal standards and requirements that are directly significant for a person, moral ideals that have an independent status, are approved by public opinion, are embodied in law, religion, art, philosophy [10, p. 708].

The theory of ethics understands moral values as varieties of good and evil and their numerous manifestations, and their carriers can be not only individual people, but also communities of people (family, work team, society) [11, p. 384].

So, in our opinion, to the general object of the criminal offense provided for in Art. 303 of the CC, it is expedient to refer primarily to social relations regarding the realization of constitutional human rights and freedoms, which determine the moral foundations of society and the state and which are subject to criminal law protection. The provisions of the preamble and Art. 3, 11, 22, 32 of the Constitution of Ukraine, separate norms of articles of sections I-IV, XII of the Special Part of the CC, as well as provisions of the Law of Ukraine "On Protection of Public Morals" and others.

Therefore, taking into account the above, to the general object of the criminal offense provided for in Art. 303 of the CC, that represents a group of constitutional provisions regarding the moral foundations of society and the state of Ukraine, should be supplemented with a complex of moral and social values, which can represent universal and mental ideas of the Ukrainian people about moral and morality, life and dignity, justice, equality, tolerance, certain religious, cultural and family folk traditions, requirements for sexual education, norms of social behavior, etc. I. M. Titenko distinguishes such values into moral-social and personal-physiological values [7, p. 161].

We support the opinion of V. V. Kuznetsov that despite the insufficient development of the theory of the object of a criminal offense, the pluralism of scientific views regarding the content of the object of a criminal offense should be taken into account. However, the priority regarding the composition of the object of the criminal offense is still social relations, which are under criminal law protection [4, p. 79].

The theory of criminal law defines a generic (group) object of a criminal offense as a certain circle of social relations that are identical or homogeneous in terms of their social and economic essence, which, as a result, are protected by a single complex of interrelated criminal law norms [8, p. 123-125].

Criminal offenses against morality are provided for in Chapter XII of the CC of Ukraine "Criminal offenses against public order and morality", that gives reason to conclude that the legislator defines public order and morality as the two generic (species) objects of this group of criminal offenses. In particular, Yu. A. Ponomarenko emphasizes that the public danger of these criminal offenses lies precisely in the encroachment on the above-mentioned objects, in causing them significant damage or in creating a real threat of damage to such a school [12, p. 422].

In the doctrine of criminal law, questions about the content of the categories "public order" and "morality" remain debatable. Regarding the category of morality, there are uncertainties regarding its types (public, social), as well as regarding the relationship between the concepts of "moral" and "morality" [5, p. 393-394].

Accordingly, Art. 1 of the Law of Ukraine "On the Protection of Public Morality" dated November 20, 2003, public morality is a system of ethical norms, rules of behavior that have developed in society on the basis of traditional spiritual and cultural values, ideas about goodness, honor, dignity, public duty, conscience, justice.

Therefore, social morality should be understood as social relations that are regulated by social norms (principles, views, ideas) and arise as a direct reflection of the conditions of social life in the minds of people in the form of certain socially significant categories (good, evil, etc.) and shape people's behavior in society [13, p. 23].

According to A. V. Plotnikova, public order and morality are not the generic object of criminal offenses provided for in Art. 303 of the CC of Ukraine, and these are separate objects of criminal legal protection, that is, the author defines values or legal goods as such an object, and criticizes the position regarding the recognition of various manifestations of the organization of prostitution of public order and morality as a generic object. In her opinion, the specified objects are, by their content, separate generic objects of criminal law protection. Their unification in one section of the Special Part of the CC of Ukraine means that they collectively form a single object of crime. In this regard, the author emphasizes that the generic object of the organization of prostitution is social morality, and the immediate one is morality in the field of sexual relations as a component of social morality. Landina A. V. takes a similar position, noting that the generic object of criminal offenses against morality is morality itself [7, p. 160].

In the criminal law theory, the direct object of a criminal offense is a specific social relationship that is protected by the legislator under a certain article of the Special Part of the CC and which is harmed by a criminal offense that falls under the characteristics of a specific composition of a criminal offense.

We support the opinion of V. O. Navrotskyi that the main direct object of the criminal offense provided for in Art. 303 of the CC are the moral principles of society regarding the satisfaction of sexual needs, which according to the norms of social morality should be established not on a material basis, but on the principles of mutual sympathy, desire

and trust, and an additional object should be considered property, a person's health and his sexual freedom [14, p. 960].

Conclusions. The social danger of pimping and the involvement of a person in prostitution consists in degrading the honor and dignity of persons engaged in it, in the immorality of this activity, as well as in the illegal receipt of income from it, etc. Thus, after analyzing the legal norms and doctrinal positions, we believe that the general object of the composition of the criminal offense provided for in Art. 303 of the CC "Pimping or involving a person in prostitution" refers to social relations regarding the realization of human rights and freedoms in the sphere of morality, as well as a complex of moral and social values, which represent the generalized content of basic ethical concepts and principles, are approved by public opinion and are embodied in norms of social behavior and law, and which are negatively affected as a result of criminal and illegal actions (the Ukrainian people's perception of moral and morality, life and dignity, justice, equality, tolerance, certain religious, cultural and family folk traditions, requirements for sexual education, norms of social behavior, etc.); the generic object is relations in the sphere of social morality; the main direct object of this criminal offense is the moral principles of society regarding the satisfaction of people's sexual needs, and an additional direct object is property, a person's health and his sexual freedom.

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Звенигородський О. М.,

кандидат юридичних наук, доцент, доцент кафедри кримінального, кримінально-виконавчого права та кримінології, Академія Державної пенітенціарної служби, м. Чернігів, Україна
ORCID: 0000-0003-1386-4919;

Теребило Н. В.,

ад'юнкт кафедри кримінального, кримінально-виконавчого права та кримінології, Академія Державної пенітенціарної служби, м. Чернігів, Україна
ORCID: 0000-0001-9059-8517

СУТЕНЕРСТВО АБО ВТЯГНЕННЯ ОСОБИ В ЗАНЯТТЯ ПРОСТИТУЦІЄЮ: ПИТАННЯ ОБ'ЄКТА СКЛАДУ КРИМІНАЛЬНОГО ПРАВОПОРУШЕННЯ

У статті на основі нормативних та доктринальних положень досліджено питання визначення об'єкта складу кримінального правопорушення, передбаченого ст. 303 Кримінального кодексу України «Сутенерство або втягнення особи у заняття проституцією».

Обрунтовано, що до традиційної позиції вчених щодо об'єкта кримінального правопорушення – суспільних відносин, що поставлені під кримінально-правову охорону, необхідно включити низку цінностей, визначених конституційними положеннями та нормами законодавства.

Доведено, що до загального об'єкта кримінального правопорушення – сутенерства та втягнення особи в заняття проституцією слід віднести суспільні відносини щодо реалізації прав та свобод людини у сфері моральності, а також комплекс морально-суспільних цінностей (загальнолюдські та ментальні уявлення українського народу про мораль та моральність, життя та гідність, справедливість, рівність, толерантність, певні релігійні, культурні та сімейні народні традиції, вимоги щодо статевого виховання, норми суспільної поведінки та інші), що являють собою узагальнений зміст основних етичних понять і принципів, безпосередньо значущі для людини універсальні зразки, вимоги, ідеали моралі, які мають самостійний статус, схвалюються суспільною думкою і знаходять втілення в нормах суспільної поведінки та права, і які зазнають негативного впливу внаслідок вчинення кримінально-протиправних дій.

Підтверджено, що сучасна кримінально-правова доктрина визначає родовим об'єктом кримінального правопорушення, передбаченого ст. 303 Кримінального кодексу України «Сутенерство або втягнення особи у заняття проституцією», суспільну моральність як суспільні відносини, що регламентовані соціальними нормами (принципами, поглядами, уявленнями) та виникають як безпосереднє відображення умов суспільного життя у свідомості людей у вигляді певних суспільно значущих категорій, формують поведінку людей у суспільстві і є частиною норм законодавства, в тому числі й кримінального.

Зазначено, що основним безпосереднім об'єктом кримінального правопорушення – сутенерства та втягнення особи в заняття проституцією слід вважати моральні засади суспільства щодо задоволення статевих потреб, а додатковим безпосереднім об'єктом – власність, здоров'я особи та її статеву свободу.

Ключові слова: суспільна моральність, морально-суспільні цінності, сутенерство, проституція, законодавство, кримінальне правопорушення, об'єкт кримінального правопорушення.