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Legal and ethical aspects of pornography in comparison with nude art in the context of dignity of human body

1. Introduction

Human sexuality and human body have always been subject of art. The perception of body and sexuality was changing throughout the centuries, and so was the meaning of the word “pornography”. The term itself originates from Greek and literally means “writing about prostitutes”. The earliest legal regulations concerning pornography came into existence in the 18th century, and from then on the phenomenon was associated with moral disapproval.¹ Since the codification of human rights in the 20th century lawyers have been compelled to interpret the law with regard to human dignity. This notion is also linked to the interpretation and moral judgement of pornography and nude art. As the society evolves and the perception of human sexuality changes, the questions about difference between pornography and nude art and their relation to human dignity remain ever relevant. The aim of this article is to study this subject in the context of applicable law and ethics.

2. Definitions

Any examination of the notion of pornography in the context of dignity of human body requires, at the outset, linguistic clarification. For the purposes of this article we shall propose the following definitions.

¹ M.M. Bieczyński, “Definicja pornografii w prawie karnym w świetle celu artystycznego jako przesłanki różnicującej ocenę sądową” [in:] *Prawo wobec erotyki w sztuce oraz pornografii*, eds. M.M. Bieczyński, A. Jakubowski, Wydawnictwo Silva Rerum – Wydawnictwo Uniwersytetu Artystycznego w Poznaniu, Poznań 2016, pp. 127–129.

- 1) Pornography consists of images, films and shows depicting sexual intercourse, whose aim is sexual agitation of the viewers. This pragmatic (teleological) element is crucial to the concept: pornography is any content which aims to sexually agitate the viewer.²
- 2) Art is product or process made by man in order to influence the observers and provoke all kind of emotions, both negative and positive ones.³
- 3) Dignity of human body is firmly related to the dignity of person. Dignity arises from natural law and is confirmed in the various legal acts concerning human rights such as the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 or the Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, pp. 391–407). These definitions will be expanded and discussed further in the article.

3. The ubiquity of pornography

Pornography today is so common that it resembles a bulk product. The variety of forms in which that content appears – films, photographs, animated images (gifs) – targets wide range of audiences. Universal access to the Internet made pornography equally accessible, in fact more easily than ever before. Arguably, availability of pornographic content online is greater than public access to the results of scientific research. There is no significant financial barrier either: most of pornographic content can be accessed free of charge.

4. Penalisation of pornography

4.1. European Union regulations concerning pornography

If it is true that criminal law reflects commonly accepted moral standards, an analysis of criminal regulations will allow us to distill those features of pornography that make it morally objectionable. Although criminal law is part of public law, any meaningful examination of criminal law applicable to our subject requires mentioning the regional context – the European Union's primary legislation and secondary law. This

² *Słownik Języka Polskiego PWN*, <https://sjp.pwn.pl/szukaj/pornografia.html> (accessed: 7.03.2020).

³ W. Tatarkiewicz, *Dzieje sześciu pojęć*, Państwowe Wydawnictwo Naukowe PWN, Warszawa 1976, pp. 44–46.

statement is justified on two grounds. Firstly, the founding Treaties are joint endeavour of all the Member States and, due to legal nature of European directives – including their direct and indirect effects – have impact on all Member States of the EU. Secondly and more importantly, both primary and secondary law of the EU is applicable throughout the Union in a uniform fashion. In other words, the fundamental freedoms arising from the Treaties allow creation and distribution of legally accepted pornography – which is to say, neither production nor distribution of pornography is in itself contrary to the EU law. Jurisprudence of The Court of Justice of the EU states that the freedoms mentioned above can only be limited on the basis of the Article 52 in conjunction with Article 62 of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, pp. 47–390) in order to protect public policy or general interest.⁴ And if so, these limiting measures have to be taken with regard to the principle of proportionality. The EU law on the issue of pornography and the protection of minors has features of a framework law: clarification of this regulation is at the discretion of the Member States.

The EU's secondary law consists of three directives on the subject. Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, pp. 1–14) defines child pornography in Article 2 as “any material that visually depicts a child engaged in real or simulated sexually explicit conduct; any depiction of the sexual organs of a child for primarily sexual purposes; any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes”. Furthermore, in Article 4 the Directive obliges Member States to take all the necessary measures to guarantee that any intentional action whose aim is to prepare, make or attempt to make child pornography, is punishable.

In light of the Article 14 of Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.07.2000, p. 1–16), service providers cannot be liable for the information stored at the request of a recipient of the service, on the condition that “the provider does not have actual knowledge of

⁴ Judgment of the Court (First Chamber) of 14 October 2004 in case C-36/02: *Omega Spielhallen- und Automatenaufstellungs-GmbH vs. Oberbürgermeisterin der Bundesstadt Bonn*, ECLI:EU:C:2004:614.

illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent". If the provider obtains such knowledge, he is obliged to act expeditiously to remove or to disable access to the information (notice and takedown procedure).⁵ At the same time, Article 15 declares that the service providers have no general obligation to monitor the information they transmit.

Finally, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provisions of audiovisual media services (hereinafter: Audiovisual Media Service Directive; OJ L 95, 15.04.2010, p. 1–24) regulates, *inter alia*, the protection of minors in use of the on-demand audiovisual services. Article 12 creates an obligation that the Member States take appropriate measures to ensure that minors do not see or hear content which may seriously impair their physical, mental or moral development.

4.2. Polish regulations concerning pornography

Polish law in principle does not prohibit pornography, but there are caveats and exceptions. The concept which is key to all Polish criminal provisions on the subject is autonomy of will. Article 191a of the Act of 6 June 1997 – Penal Code (consolidated text: *Journal of Laws* of 2020, item 1444) states that it is a crime to record either an image of a naked person or an image of a person during sexual activities through use of force, threat or deceit. In addition to unlawful recording, it is also forbidden to distribute an image of a naked person or an image of a person during sexual activities without that person's consent. As to the pornographic content itself, according to Article 202 of the Penal Code it is a crime to publicly display such content in a manner that may impose it on another person against this person's will. Paragraph 3 of that Article stipulates that pornography which includes minors, violence or the use of animals is altogether unlawful, and paragraphs 4 and 5 state that distribution of every kind of activity with a minor with the aim of sexual agitation is considered a crime and punishable with severe penalty of up to 12 years of imprisonment and carries, at the court's discretion, forfeiture of the items which served or were designed for committing the offence, even if these were not owned by the perpetrator. Protection of minors goes further. Article 200 para. 5 of the Code prohibits running advertisements of pornography in a way that allows access to it to a minor under the age of 15. Paragraph 4a of Article 202 criminalises possession

⁵ K. Groszkowska, "Prawne możliwości ograniczenia dostępu do pornografii w internecie w Unii Europejskiej", *Analizy BAS* 2019, no. 1(149).

of or accessing pornographic content which includes minors; para. 4b criminalises production, distribution and possession of a depiction – whether created or altered – of a minor engaged in a sexual activity; para. 4c criminalises anyone who, in order to achieve sexual gratification, takes part in a presentation of pornographic content that includes a minor. Of note, Poland implemented the Audiovisual Media Service Directive in the Act of 18 July 2002 on Electronically Supplied Services (consolidated text: *Journal of Laws* of 2020, item 344).

4.3. French regulations concerning pornography

Under French Penal Code only child pornography is considered as crime. Article 227(23) of Penal Code state that production, distribution, possession and web usability of child pornography is forbidden and punishable by imprisonment and a fine. France, like Poland, criminalises accessing and viewing child pornography, as well as production and distribution of pornographic content including violence or child pornography, if there is a possibility that a minor may gain access to it (Article 227(24) of Penal Code).⁶

4.4. British regulations concerning pornography

United Kingdom's laws related to pornography rely on the notion of obscenity. Chapter 66 of the Obscene Publications Act 1959 and the Obscene Publications Legal Guidance define the term as follows: “an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it”. An article means any “matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures”.⁷ In practice, examples of obscenities include sexual activities involving animals, children, deceased people and with the use of violence. Furthermore, under chapter 44 of the Criminal Justice Act 2003, chapter 14 of the Protection of Children Act 1999 and chapter 4 of the Criminal Justice and Immigration Act 2008, child pornography is expressly forbidden. Although the United Kingdom is no longer a Member of the European Union, the influence of EU regulations on British law before Brexit was unquestionable: after all, pornographic materials are commodities (for the most part they are “goods” within the

⁶ Ibid.

⁷ The Obscene Publications Legal Guidance, <https://www.cps.gov.uk/legal-guidance/obscene-publications> (accessed: 7.12.2020).

meaning of the founding Treaties) and so the concepts of internal market and common market require stable and, to a certain extent, uniform criminal law context throughout all Europe.

4.5. Common themes

It appears that the main difference between Polish, French and the British law is the amount of emphasis on the effect on the person, whether a participant or a consumer. Despite the fact that the continental law systems (civil law systems) prefer rigid definitions and the system of common law allows for functioning of more flexible terms, criminal law operates like a universal presumption of lawfulness: pornography is legal to produce and to consume unless it is of the forbidden kind. Again, if we subscribe to the idea that criminal law incorporates a minimum standard for morality, we might provisionally conclude that pornography is immoral only if it runs against the law, either by being decreed a crime due to its subject (e.g., the presence of a child, use of violence, sexual activities with an animal) or due to its undesired effect on a person (e.g., unwanted consumption, obscenity). This provisional observation requires further analysis.

5. Moral aspects of pornography

Any meaningful deliberation on moral aspects of pornography should distinguish between matters concerning creators of pornography on one hand (both actors and persons responsible for the technical aspect of creation) and the audience on the other. The following analysis is made in reference to the legally accepted pornography.

Wojciech Załuski remarked that there are two approaches to that problem. The first one is called the restrictive ethics, according to which all sexual content and actions deprived of any higher value than mere sexual gratification – such as mutual trust, tenderness and intimacy – shall be considered as morally wrong. The second one, the permissive ethics, is based on the assumption that the moral judgement of pornography should be centred on the notion of voluntariness of concerned parties.⁸ I tend to subscribe to the latter approach as it embodies the universal principle of freedom of the individual and embraces its underlying concept of free will, which, in turn, extends to rights over one's own body, freedom of private and sexual life and freedom of expression. These

⁸ W. Załuski, "Aspekty seksualności" [in:] J. Stelmach, B. Brożek, M. Soniewicka, W. Załuski, *Paradoksy bioetyki prawniczej*, Wolters Kluwer, Warszawa 2010, p. 187.

principles arise from the natural law and find affirmation in both international and domestic regulations concerning human rights, such as the Universal Declaration of Human Rights or the Constitution of the Republic of Poland (*Journal of Laws* of 1997, No. 78, item 483, as amended).

5.1. Morality of actors and creators

In the spirit of the permissive ethics, pornography shall be considered as morally accepted on the condition that the creation and distribution of the content are based on free and informed consent of all parties: every person taking part in the production, whether it is an actor or a director, has to be fully aware of the essence, aim of the content and possible future distribution. This condition necessarily excludes the participation of incapacitated persons, either due to their mental illnesses and mental disorders or due to an illegal action of the third party. Needless to say, the involvement of an incapacitated person in sexual activity as well as causing such incapacitation by a third person would imply criminal liability. The principle of consent is enshrined in penal codifications of many countries, including Poland: the use of deception in order to engage person in sexual activity is forbidden and punishable (Articles 197 and 198 of the Polish Penal Code). Polish legal scholars indicate that the term “deception” should be understood broadly and include cases of either misleading the victim directly or exploiting an existing error so that the decision-making process of the victim is impaired (deception *sensu stricto*) and cases where the victim is unable to make free decisions due to deactivation of their volitional control of movement (deception *sensu largo*).⁹

In other words, moral acceptance of pornography requires voluntariness. The participation of persons engaged in the production of pornographic content has to be based on their decision, free from any external pressure, and this voluntariness must cover both the process of production and distribution. Moreover, the person in question must be granted a possibility to withdraw the consent at every stage and this decision must be respected by other participants. That strict attitude is dictated by the fact that the freedom in question is bi-directional, i.e. includes positive and negative aspect (“freedom to” and “freedom from”). Of note, Articles 197 and 198 of the Penal Code criminalise forcing or using unlawful threat in order to engage a person in sexual activity. While “force” is to be understood as using physical measures against the victim, their relative or even an animal in order to overcome the resistance of a victim and

⁹ M. Mozgawa [in:] M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Kodeks karny. Komentarz aktualizowany*, LEX/el.

engage it in sexual activity,¹⁰ Article 115 para. 12 of the Penal Code expressly defines “unlawful threat” as a threat to commit a crime or a threat to cause the institution of criminal proceedings, or to disseminate derogatory information concerning the person threatened or his next of kin.

When the condition of voluntariness is met, pornography should not be considered disrespectful to the dignity of human body since that standard of dignity cannot be examined *in abstracto*, as a standalone concept, fully disconnected from the subject’s own individual judgment as to self-perception and self-expression. This judgment is highly subjective. People are free to form that judgment and to act on it in any way they might choose and their own judgment cannot be overridden by someone else’s. Needless to say, this liberty is an organising principle of social co-existence and remains fundamentally connected to the freedoms mentioned above in 4.1.

5.2. The morality of audience

As it is the case with content creators, moral assessment of attitudes of the audience must also revolve around the idea of voluntariness. As it was already stated, according to Article 202 of the Penal Code it is a crime to publicly display pornography in a manner that may impose such contents on another person against this person’s will. However, the problem appears to be more complicated. Wojciech Załuski correctly observes that voluntariness of the audience as a point of moral reference should be examined in relation to voluntariness of creators of the content: if the content was not created and/or published voluntarily and the viewer is aware of that, it should be considered morally objectionable to watch it.¹¹ This extends to the situation in which the observer is not fully confident as to the voluntariness of the content but decides to consume it regardless. In either case this amounts to a violation of the dignity of human body of the creators. If the condition of voluntariness on the part of the creator is not established in the viewer’s mind positively, one has to assume that an infringement of the dignity of human body had occurred at some point, whether during production or distribution of the content. In either of these scenarios – the viewer knows the content lacks voluntariness or the viewer suspects so and yet chooses to view anyway – such behaviour should be considered morally wrong on two levels, in relation to legality of the content (criminal law as a minimal moral standard) and dignity of its creators.

¹⁰ Ibid.

¹¹ W. Załuski, “Aspekty seksualności”...

5.3. Dignity of human body and objectification

The issue of possible violation of the dignity of human body is closely related to the issue of objectification. Barbara L. Fredrickson and Tomi-Ann Roberts explain that “sexual objectification occurs whenever a woman’s body, body parts, or sexual functions are separated out from her person, reduced to the status of mere instruments, or regarded as if they were capable of representing her. In other words, when objectified, women are treated as bodies – and in particular, as bodies that exist for the use and pleasure of others”.¹² It seems that these two issues are inseparable when it comes to moral assessment of pornography. Although in the current state of cultural discourse objectification of human body concerns mostly women, men might also be its victims. Sarah R. Heimerdinger-Edwards, David L. Vogel and Joseph H. Hammer observed that not only the objectification of women has a malicious impact on men, but also that this social phenomenon affects women as well as men.¹³ Without doubt, the essence of objectification is a negation of the dignity of human being and its body and, in consequence, our moral attitude towards it is, to say the least, unfavourable. However, and perhaps paradoxically, free will, acknowledgement of rights over one’s own body and freedoms related to private and sexual life seem to fuel the phenomenon. It is likely that objectification, a byproduct of these liberties, is unavoidable: if a given person does not feel that their participation in a specific enterprise is contrary to their inner sense of morality and, as a corollary, does undertake certain activities consciously and voluntarily, then the outside observer would be correct to assume that he or she had agreed to objectify his- or herself.

5.4. Nude art

What is the difference, in the above context, between pornography and nude art? To answer this question, one must first understand the essence of the nude and place it takes in broadly defined art. The linguistic approach offers little in terms of insight: nude is a “painting, sculpture or photography presenting naked person”.¹⁴ Mateusz M. Bieczyński indicates three possible points of view on the relation between art and eroticism:

¹² B.L. Fredrickson, T.A. Roberts, “Objectification Theory. Toward Understanding Women’s Lived Experiences and Mental Health Risks”, *Psychology of Women Quarterly* 1997, vol. 21, issue 2, pp. 173–206.

¹³ S.R. Heimerdinger-Edwards, D.L. Vogel, J.H. Hammer, “Extending Sexual Objectification Theory and Research to Minority Populations, Couples, and Men”, *The Counseling Psychologist* 2011, vol. 39, issue 1, pp. 140–152.

¹⁴ *Słownik Języka Polskiego PWN*, <https://sjp.pwn.pl/szukaj/akty%20.html> (accessed: 7.11.2020).

- 1) Theory of separation of art and eroticism assumes that contact with erotic content provokes intellectual experience rather than biological response as it is the case with pornography.
- 2) Theory of cross-referencing assumes that these two concepts stay in the close relation; it is possible for content to have both pornographic aspect (i.e. provoking biological reaction) and higher not-just-sexual emotional value.
- 3) Theory of inclusion assumes that pornography should be considered as subtype of eroticism.¹⁵

In the light of all three of those theories, the difference of eroticism and pornography lies in the occurrence of an intellectual experience. However, it is also possible to achieve an emotional rapture in contact with content intended as merely pornographic. If one was to understand art as a product or process made by man in order to influence the observers and provoke all kind of emotions, both negative and positive ones, the boundary between pornography and art fades away. What is more, time and large-scale cultural shifts appear to factor in this assessment: the idea of eroticism evolved and these changes have led to widening of this term.¹⁶

Despite the fact that nude art is not criminalised, it should also be examined in terms of law-related concept of voluntary and conscious consent of the model who is being captured. The permissive approach (applied *mutatis mutandis* to nude art) indicates that a person whose body is a subject of nude art has to be fully aware of the essence and aim of the enterprise. It is crucial that the model makes the decision about making their body available for the artist willingly and fully consciously. Should the situation lack any of these two necessary conditions – in the circumstances analogous to the ones mentioned previously in context of pornography, such as deception, unlawful threat or use of force – it would be morally wrong for the artist to capture the model's body against his or her will. The same applies also to distribution. Moreover, that consent cannot be irrevocable and the model must be granted a possibility to withdraw it at every stage, not only in the process of production (painting, photographing etc.) but also after the display of the final product. The strict approach to the issue of consent is necessary for many reasons, one of them being the subtle and nuanced differences between pornography and nude art.

The problem of morality of the audience of nude art is far more difficult to assess when contrasted with moral questions surrounding consumption of pornography because art benefits from express presumption of lawfulness. The audience of art assumes

¹⁵ M.M. Bieczyński, "Definicja pornografii...", pp. 136–141.

¹⁶ M. Gołda-Sobczak, J. Sobczak, "Sztuka czy przekaz pornograficzny?" [in:] *Prawo wobec erotyki...*, pp. 271–272.

that it was made with the observance of the law and respect to the value of human dignity. Andrzej Jakubowski argues for a notion of art as a legal defence in a criminal case.¹⁷ There are crimes known to Polish law that are about inflicting undue emotional discomfort on the victim, but an artist, under certain conditions, would be exempt from such criminal liability with respect to the work of art. This idea, when applied to eroticism and nude art, would confirm that art indeed benefits from presumption of lawfulness. Art as criminal defence might be pleaded in cases where certain works of art may offend audience's religious feelings or cause public indecency. Furthermore, in the case *Muller and others v. Switzerland* the European Commission of Human Rights suggested that art should enjoy special protection (*une protection specific*) because of its role in the democratic society. The freedom of art is necessary for public opinion to form and spark discussion on current problems of the society. Although the European Court of Human Rights, by a majority vote, upheld the verdict of the Swiss court, judge Alphonse Spielmann issued a dissenting opinion in which he drew attention to the possible danger of censorship of art dictated by protection of public morality. He pointed out that in 1857 Gustave Flaubert's "Madame Bovary" was considered as indecent and recalled the conviction of Charles Baudelaire for "Les Fleurs du Mal".¹⁸ Evolution of society mirrors changes in the way we perceive art, eroticism and pornography. Behaviour or content once considered obscene in future might be regarded as masterpieces. Bearing this in mind, the European Court of Human Rights should adopt a strict interpretation of State's entitlement to interfere with the scope of artistic expression.¹⁹ Furthermore, as Andrzej Jakubowski noted, in cases *Hoare v. The United Kingdom* and *Perrin v. The United Kingdom* – both concerned the right to distribute pornography – the European Court of Human Rights refused to protect the freedom of artistic expression and declared that the measures taken by the United Kingdom in name of protection of public morality were justified. However, it was suggested that these judgments would be different if the subject of the deliberation was art and not pornography.²⁰ This conclusion appears to support the thesis that art benefits from the presumption of lawfulness.

The difference between pornography and art – the occurrence of intellectual experience – is connected with intention behind both. According to the above-mentioned definition of art proposed by Władysław Tatarkiewicz, the aim of nude art is to influence the audience and provoke an emotional response. This response might be as

¹⁷ A. Jakubowski, "Swoboda wypowiedzi artystycznej a 'prawo do pornografii' w orzecznictwie Europejskiego Trybunału Praw Człowieka" [in:] *Prawo wobec erotyki...*, pp. 215–216.

¹⁸ Ibid.; Judgment of the Court of 24 May 1988 in case 10737/84: *Muller and others v. Switzerland*, [section A] no. 133.

¹⁹ A. Jakubowski, "Swoboda wypowiedzi artystycznej...", p. 218.

²⁰ Ibid., pp. 214–215.

varied, nuanced and complex as human emotions can be, and the critical factor in this response is emergence of an intellectual connection – a dialogue of sorts – between the artist and the audience. Art makes us pause and reflect. In contrast, the aim of pornography is merely to sexually agitate and to provoke a biological response. This difference in aim corresponds to the very issue of dignity of human body: as Barbara L. Fredrickson and Tomi-Ann Roberts remarked, objectification occurs when people are treated “as bodies that exist for the use and pleasure of others”.²¹

6. Conclusions

The difference between pornography and nude art is based mostly on the aim of creators and reaction of the audience. Aside from difficulties as to moral assessment of pornography, the baseline is that the content involving presence of a child, use of violence or animals is commonly perceived as wrong, and this universal belief has its reflection in the EU law and in criminal regulations of various European countries, such as Poland, France or the United Kingdom. At the same time, pornography itself, which is a result of conscious and voluntary cooperation, should be considered as morally acceptable. This proposition is based on the assumption that rights over one’s own body, freedom of private and sexual life and freedom of artistic expression should be interpreted as ability to decide about participation in that kind of enterprises without any external pressure or judgement. Moreover – again, with the exception of instances of criminality – the judgement on the possible infringement of the dignity of human body should be vested in the person whose body it concerns. Finally, nude art benefits from the assumption that it is made in the name of art and therefore embraces higher values due to the presence of intellectual experience; this intellectual experience is a standalone factor in assessment whether it violates the dignity of human body.

That said, it is important to differentiate between what is “morally accepted” and “morally good”. The complexities and subjective nature of deliberations on moral status of pornography, nude art and their influence on the dignity of human body make it extremely difficult, if not entirely impossible, to propose overarching and universally applicable statements as to the latter. The last word here is everyone’s own.

²¹ B.L. Fredrickson, T.A. Roberts, “Objectification Theory...”

References

- Bieczyński M.M., “Definicja pornografii w prawie karnym w świetle celu artystycznego jako przesłanki różnicującej ocenę sądową” [in:] *Prawo wobec erotyki w sztuce oraz pornografii*, eds. M.M. Bieczyński, A. Jakubowski, Wydawnictwo Silva Rerum – Wydawnictwo Uniwersytetu Artystycznego w Poznaniu, Poznań 2016.
- Fredrickson B.L., Roberts T.A., “Objectification Theory. Toward Understanding Women’s Lived Experiences and Mental Health Risks”, *Psychology of Women Quarterly* 1997, vol. 21, issue 2.
- Gołda-Sobczak M., Sobczak J., “Sztuka czy przekaz pornograficzny?” [in:] *Prawo wobec erotyki w sztuce oraz pornografii*, eds. M.M. Bieczyński, A. Jakubowski, Wydawnictwo Silva Rerum – Wydawnictwo Uniwersytetu Artystycznego w Poznaniu, Poznań 2016.
- Groszkowska K., “Prawne możliwości ograniczenia dostępu do pornografii w internecie w Unii Europejskiej”, *Analizy BAS* 2019, no. 1(149).
- Heimerdinger-Edwards S.R., Vogel D.L., Hammer J.H., “Extending Sexual Objectification Theory and Research to Minority Populations, Couples, and Men”, *The Counseling Psychologist* 2011, vol. 39, issue 1.
- Jakubowski A., “Swoboda wypowiedzi artystycznej a ‘prawo do pornografii’ w orzecznictwie Europejskiego Trybunału Praw Człowieka” [in:] *Prawo wobec erotyki w sztuce oraz pornografii*, eds. M.M. Bieczyński, A. Jakubowski, Wydawnictwo Silva Rerum – Wydawnictwo Uniwersytetu Artystycznego w Poznaniu, Poznań 2016.
- Mozgawa M. [in:] M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, *Kodeks karny. Komentarz aktualizowany*, LEX/el.
- Tatarkiewicz W., *Dzieje sześciu pojęć*, Państwowe Wydawnictwo Naukowe PWN, Warszawa 1976.
- Załoski W., “Aspekty seksualności” [in:] J. Stelmach, B. Brożek, M. Soniewicka, W. Załoski, *Paradoksy bioetyki prawniczej*, Wolters Kluwer, Warszawa 2010.

Sources of law

- Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948.
- The Obscene Publications Act 1959.
- Act of 6 June 1997 – Penal Code (consolidated text: *Journal of Laws* of 2020, item 1444).
- The Protection of Children Act 1999.
- Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.07.2000, pp. 1–16).
- Act of 18 July 2002 on Electronically Supplied Services (consolidated text: *Journal of Laws* of 2020, item 344).
- The Criminal Justice Act 2003.
- The Criminal Justice and Immigration Act 2008.
- Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provisions of audiovisual media services (OJ L 95, 15.04.2010, pp. 1–24).

Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, pp. 1–14).

The Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, pp. 391–407).

Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, pp. 47–390).

The Obscene Publications Legal Guidance, <https://www.cps.gov.uk/legal-guidance/obscene-publications> (accessed: 7.03.2020).

Cases

Judgment of the Court (First Chamber), 14 October 2004, in case C-36/02, *Omega Spielhallen- und Automatenaufstellungs-GmbH vs. Oberbürgermeisterin der Bundesstadt Bonn*, ECLI: EU:C:2004:614.

Judgment of the Court of 24 May 1988 in case 10737/84: *Muller and others v. Switzerland*, [section A] no. 133.

Summary

Legal and ethical aspects of pornography in comparison with nude art in the context of dignity of human body

The aim of the article is to examine the differences between pornography and nude art. The issue has been analysed on the ground of applicable law of the European Union and legal regulations functioning in Poland, France and the United Kingdom. This comparative approach is supplemented with discussion about the moral aspects of the creation and consumption of pornography and of nude art, with particular emphasis on freedom of artistic expression, rights over one's body and human dignity. The author discusses these phenomena and concepts with an attempt to find boundaries between them.

Keywords: human dignity, dignity of human body, rights over one's own body, nude art, pornography

Streszczenie

Prawne i etyczne aspekty pornografii oraz aktów w kontekście godności ludzkiego ciała

Celem niniejszego artykułu jest porównanie sytuacji prawnej pornografii i aktów w sztuce w kontekście regulacji prawnych obowiązujących w Unii Europejskiej, zwłaszcza w prawie polskim i francuskim. W odniesieniu do analizowanego zagadnienia uwzględniono również przepisy prawa brytyjskiego. Przedstawione tu rozważania odnoszą się do moralnych aspektów produkcji oraz wykorzystywania treści pornograficznych i aktów w sztuce. Artykuł dotyczy problematyki wolności sztuki, godności ludzkiego ciała i prawa do rozporządzania własnym ciałem. Autorka podejmuje próbę wytyczenia granic pomiędzy powyższymi pojęciami.

Słowa kluczowe: godność człowieka, godność ludzkiego ciała, prawo do rozporządzania własnym ciałem, akty, pornografia