



Magistrates Court Haifa

Criminal record 19991-07-20 State of Israel v. Shih (detainee)

Before Judge Shlomo Benjo

Regarding:

The accuser **State of Israel**
 Represented by Mr. Itay Gohar Esq.
 And Ms. Moran Ashul Esq.
Against

The defendant **Ronen Shih (detainee)**
 Represented by Mr. Avi Amar Esq.

Verdict

Indictment:

The defendant was convicted based on his confession to facts spread across three charges in the amended indictment as part of a plea bargain after withdrawing his apostasy, for the following offenses:

In the first charge - in the number of offenses of sexual harassment and harassment - an offense under section 3 (a) (5a) in conjunction with section 5 (a) of the Prevention of Sexual Harassment Law, 5758-1998; and in the number of offenses of invasion of privacy - an offense under section 5 2 (4) of the Protection of Privacy Law, 5741-1981.

In the second charge - in the number of offenses of advertising prostitution services - an offense under section 205C of the Penal Code, 1977.

In the third charge - in the number of offenses of fraud and breach of trust - an offense under section 284 of the Penal Code, 1977; and in the number of offenses of invasion of privacy - an offense under section 5 in the circumstances of section 2 (4) of the Protection of Privacy Law, 5741-1981.

According to the facts of the amended indictment, the defendant admitted to using the "Telegram" app to spread messages on the internet.

Throughout the years 2019-2020, the defendant took measures to conceal his internet activity by equipping himself with at least six smartphones and one hundred PREPAID SIM cards in order to receive communication services without providing identifying information. He also used the SIM cards he purchased to create e-mail accounts with various service providers and dozens of different users in the "Telegram" application.



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Furthermore, he obtained a computer software license that allowed him to manage the Telegram application and conversations in multiple groups simultaneously and use digital wallets and coins that provide anonymous money transfers.

Using the methods outlined above and in the amended indictment, the defendant distributed thousands of images and videos containing pornographic material of young Israeli women, along with personal details of those young women as evidence it was credible content, all without their consent.

The first charge –

On June 11, 2019, the defendant took over management of the "Telegram" group known as "X Israel." The defendant introduced himself to the group as the owner and manager. Due to his management privileges, he was able to monitor the content posted in the group and publish and remove content distributed by other users, add new users, and reorganize it. The group aimed to share videos and images in which Israeli girls and women are forced to perform sexual acts or appear in exposed photos focusing on their sexuality, typically without their knowledge or consent.

From November 6, 2019 to June 15, 2020, many Telegram users joined the "X Israel" group, and by June 23, 2020, the group had over 28,110 members, with over 10,000 images and videos containing sexual content of Israeli women distributed since its inception.

Along with the sexual content, the personal information of the women shown in the content was usually published, including their full names and nicknames on social networks - details that allowed contacting them - to demonstrate that these are young Israeli women and not pornographic material from around the world, this, for the most part, was done without the consent of those young women.

Throughout the years 2019-2020, the defendant set up a network of several groups and channels in the Telegram app, advertising and promoting the network and stating that it is a network of groups created by the Telegram Group "X Israel."

In the manner described above, the defendant set up and operated the group network, and within it, a series of channels and groups in which thousands of photos and videos were published, containing generally sexual content of young Israeli women, with their personal details, all without their consent, and to prove and show authentic content belonging to young Israeli women (all as specified in section 9 of the facts of the amended indictment, in which the defendant admitted).



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The defendant's network of groups comprised tens of thousands of Telegram users who signed up as members of channels and groups available for all Telegram users worldwide.

Following the publications, some of the victims listed in Appendix A to the indictment reported poor mental health, suicidal thoughts, difficulties in trusting, repeated harassment on social media.

One of the victims reported having significant functional difficulty going out in public until recently when she underwent plastic surgery to change her facial features so she could not be recognized.

In the acts described in the first indictment, the defendant posted tens of thousands of photos and videos focusing on the sexuality of about 160 young Israeli women in situations in which they should be humiliated or humiliated, without their consent to publication, on the network of groups he formed. He also disseminated and published contacting details of 184 young Israeli women without their permission in situations that may have been humiliating or humiliating.

The second charge –

On March 8, 2020, the defendant created the "Teleznut" Telegram channel, which was available to any Telegram user. Approximately 5,000 people entered the channel between the day it was opened and June 23, 2020.

From March 12, 2020 to the date of his arrest, the defendant used this channel to advertise prostitution services and posted hundreds of advertisements for around eight different women, all of whom offered sex services in exchange for a fee.

To promote the advertisement's publication, the defendant worked to increase the channel's visibility, including by promoting and advertising the "Teleznut" channel in the network of Telegram groups he created, each of which has over 100,000 members.

The third charge –

The defendant was a public servant and worked for the Haifa Municipality on the dates stated in the third charge.



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As part of his job, he assisted various residents in making payments to the municipality over the phone.

Between August 2019 and February 2020, the defendant copied without permission the debit card information he received from different residents, all without the cardholders' or employers' knowledge or consent.

The defendant's actions violated the privacy of those who provided him with debit card information, as well as confidence, materially violated the public trust and the moral purity expected of public servants.

Evidence of punishment:

The State's attorney submitted by consent twenty-seven affidavits of victims of crime (received and marked T/1 - T/27). The defendant's attorney did not submit evidence for punishment.

Arguments of the parties:

The State's attorney stressed the severity of the defendant's conduct, citing the nature of the publications, their reach, the dissemination of the sexual material of 187 young women, some of whom were minors, to a user audience of over 100,000 people, and the psychological harm suffered by some of the complainants.

The State's attorney sought to establish that there were 187 separate cases, each with a sentence ranging from 9 to 18 months in prison (concerning the first charge), and a sentence ranging from 2 to 6 months in prison and a fine (concerning the second charge, which involves the advertisement of prostitution services). Concerning the third charge, he sought to establish a sentence range of 2 to 8 months in prison, as well as additional penalties.

In the prevailing circumstances, the State's attorney sought to sentence the defendant to the top of the lower third of the proposed punishment range for each incident and to impose a combined sentence of not less than six years imprisonment, plus a suspended sentence, fine, and compensation for the victims of the offense.



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The court was also asked to extend the injunction granted on 11/23/20, blocking the phone numbers used by the defendant for an additional five years from the date of sentencing, and to impound and eliminate all seized items at the police's discretion, in compliance with the parties' agreement.

The defendant's attorney stressed in his arguments concerning the indictment's significant amendment on the defendant's decision to withdraw from his apostasy and admit the facts of the revised indictment while taking responsibility for his conduct and saving time in the courtroom.

It was emphasized that the defendant is a married father of a one-year-old daughter with no criminal record who has been detained since 7.15.20. The personal circumstances of the defendant were detailed.

The defense attorney further stated that while the defendant should be imprisoned, the focus should be on a forward-looking punishment because he is a young man with no criminal record, lived a normal life, and has high potential and abilities that reflect his ability to integrate into society.

In his arguments, the defense attorney emphasized an extensive chapter on the claim of defense of justice. In his perception, the State acted discriminatorily, selectively enforcing the law against the only part of the photo and video distribution chain.

The defense attorney also requested that the complainants be held accountable for sending sexually explicit images and videos. According to him, a significant part of the victims of the crime posted sexual content on online dating sites, which included nude photos and personal information, including an address. Some of them were in "open" relationships with their spouses at the time, so they turned to dating sites to find new "partners" for sexual intercourse. Since one of the conditions of those sites was to upload nude photos, these photos "circulated" on the internet. The defense attorney questions the morality of the complainants who have filed complaints, pointing an accusing finger at the defendant despite being partially responsible for the publication.

In the defendant's case, the defense attorney requested that the court prioritize rehabilitation over the consideration of compensation. According to him, this is a person who has no criminal behavior patterns and has a minimal risk of committing similar offenses in the near future.

The defendant suffered severe consequences as a result of the entire criminal proceeding, including the arrest. He believes that his image has been severely harmed and that it does not reconcile with him being a normal person, innocent of any criminal behavior.



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Finally, the defense attorney asks for a prison term limited to the time the defendant has been detained, as well as foresighted penalties and restitution for the complainant.

Defendant's statement before sentencing:

Before sentencing, the defendant expressed remorse and regret for his actions and a willingness to compensate each of the complainants he harmed.

Discussion and sentencing:

Multiple incidents (section 40M of the Penal Code):

According to the Jaber rule (according to 4910/13 Ahmad Benny Jaber v. State of Israel (2014)), taking into account the nature of the events, the virtual space in which they were performed, the proximity of the events, and the overall criminal plan that characterizes the circumstances, it was determined that the multiplicity of incidents that are the subject of the first indictment constitute a cluster of offenses and one incident, to determine the appropriate penalty range. However, in sentencing, the court will consider the number of offenses, their frequency, and their connection while maintaining an appropriate proportion between the seriousness of the acts, the defendant's degree of guilt, and the period of imprisonment the defendant must bear (section 40M (c) of the Penal Code).

The events described in indictments two and three will be treated as separate events, each of which will be judged on its own merits in determining the appropriate punishment.

The second charge concerns advertising prostitution services. Although the publication was made on the same internet media as in the first indictment, the publication of sexual images of the victims without their consent is the main component of the criminal scheme that is the subject of the first indictment. The second charge is for promoting prostitution services in exchange for payment. As a result, the two incidents are fundamentally different, and this incident cannot be subordinated to the criminal program that accompanied the first incident, followed by a factual difference in the time of the offenses.

The third charge is entirely different from its predecessors, both in nature and timing. It is of the fraudulent-property nature and concerns obtaining credit card information from the public applying to the municipality where the defendant worked.



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It should be noted that the State addressed the three charges separately and sought to determine separate penalty areas for each of them, whereas the defense addressed the sentence, including all incidents, with emphasis and extension to the first charge, which is the most serious of the three, in its arguments.

The social value that has been damaged and the extent of the damage (section 40C (a) of the Penal Code):

Without the consent of a person, man or woman, the dissemination of sexual content in general, and on the internet in particular, is a severe violation of that person's rights. Embarrassing a person in public is a breach of his autonomy as an individual. It degrades his dignity and makes him a mockery (see also: case 1024/21 John Doe v. State of Israel (2021) and case 5745/19 John Doe v. State of Israel (2019)).

The legislature did not stop at the fact that deliberately making a forbidden publication of an infringing nature on a person's privacy is a severe breach of the Privacy Protection Law, punishable by a 5-year prison term (section 2 (4) of the Privacy Protection Law, 1981), but went further. The legislature has ruled that an invasion of a person's privacy that focuses on his sexuality and has the potential to humiliate or degrade him is the same as a sexual assault on that person, resulting in sexual harassment (see section 5 (a) 1998, which was added to the law in 2014 amid numerous sexually degrading sexual posts on social media).

The following was stated in the explanatory notes that preceded the amendment of the law:

""With technological advancements in recent years, the phenomenon of publishing pornographic images, videos, or recordings without the consent of those photographed has spread. These cases are commonly viewed as a breach of privacy only, but they should be considered sexual abuse in general. Determining the above behavior to be sexual harassment clarifies that it is a sexual crime, that the damage it causes is extremely severe, and that it has the characteristics of sexual abuse."



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(See: Bill 516 for the Prevention of Sexual Harassment (Amendment No. 9) Publication of a photograph of a film or recording focusing on a person's sexuality, July 31st, 2013).

Following this amendment to the law, which stresses a person's autonomy over his body, the Supreme Court recently clarified that criminal punishment must be aggravated (see Judge Y. Elron's words in Case No. 1024/21, par. 9).

The defendant's actions severely harmed social values.

Penal policy (section 40C (a) of the Penal Code):

It begins with a legislative directive, which states that harassing an individual, as defined in sections 3 (a) (5a) and 5 (a) of the Law for the Prevention of Sexual Harassment, equals to infringing on another's privacy, as defined in section 5 of the Privacy Protection Law.

Several factors were taken into account when determining the applicable punitive considerations for the dissemination of images and videos on the internet, including the type of the publication, its content and nature, the nature of the distribution, reach, age of victims, prior acquaintance, and the degree of harm to victims (case 5090/18 State of Israel v. John doe (2018)).

In case 5090/18 State of Israel v. John Doe (2018), the defendant was convicted of coercing a minor into consenting to photographing the sex between them and distributing the video. He was convicted of extortion by threats, as well as three counts of sexual harassment by derogatory publication under sections 3 (a) (5a) and 5 (a) of the Sexual Harassment Prevention Act. The district court sentenced him to 6 months in prison for service work, four months' probation, and NIS 12,000 in compensation to the complainant. The Supreme Court upheld the State's appeal, holding that the sentence was excessive to the point where his intervention was required, and considering everything stated in the judgment, the defendant's sentence was set at one year of actual imprisonment.

In Case No. 1024/21 John Doe v. State of Israel (2021), the defendant broke into the complainant's vehicle and stole a bag containing a cell phone. He hacked into the cell phone, retrieved photos, including two intimate images in which the complainant was photographed naked, and distributed them on her private Instagram account while impersonating the complainant, allowing each of her hundreds of followers to view and distribute the photos widely. The pictures were quickly shared on other websites. The next day, the claimant removed all the phone's contents and sold it to a minor.



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The defendant was found guilty of burglary and theft of a vehicle, intrusion into computer material and computer, sexual harassment, and breach of privacy due to his conduct. He was also charged with reckless driving, vehicle sabotage, and destruction of evidence, as well as two separate charges of obstructing a police officer in the execution of his duties. The defendant was sentenced to 45 months in prison and an accompanying penalty that included compensation for the complainant in the amount of NIS 16,000 and compensation for the complainants in the additional charges in the amount of NIS 6,000, as well as a three-year license suspension.

The district court denied the defendant's appeal and held that the sentence imposed on him was not to aggravate with him and was also moderate concerning the seriousness of the offenses for which he was convicted, the circumstances of their commission, and his history. The request for leave to appeal to the Supreme Court was also denied, while the Supreme Court (according to Judge Y. Elron) places particular emphasis on offenses involving the distribution of pornographic materials, noting:

"The seriousness of the applicant's conduct speaks for itself: distributing nude images of an individual without his consent is a violation of his privacy, humiliation, and public ridicule, as well as a violation of his fundamental rights to privacy, integrity, and credibility... And, considering how difficult it is to find the perpetrator in many cases, a stringent penalty policy is necessary to prevent future criminals from committing their crimes."

It should be noted that the punishment policy before the law's amendment, and prior to the Supreme Court's decision in light of the amendment, was more lenient and forgiving (see, for example, case 47450-03-18 where the defendant was tried in a plea bargain for the punishment of service work, probation, a fine and compensation for the complainant; case 4793-03-18 where the defendant was sentenced to a similar sentence when it is worth noting that this was also the position of the accused).

However, in light of the Supreme Court's recent statements and guidelines, in cases 5090/18, 7475/19, and most recently 1024/21, which specifically call on trial courts to determine an aggravating and deterrent punishment approach, these binding standards must be applied.



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Circumstances related to the commission of the offense (section 40l of the Penal Code):

Concerning the first charge, according to the facts of the amended indictment, which the defendant admitted, it is a matter of distributing tens of thousands of images and videos with sexual content in which the victims of the crime perform sexual acts in partial or full nudity. It should be noted that there are 187 crime victims, three of whom are minors. The sheer scale of the publication, including the number of victims of the crime, constitutes a remarkably high severity threshold for committing offenses, including a severe violation of the victims' privacy while disparaging and sexually harassing the public.

The publications were made using the Telegram application in a systematic, sophisticated, and well-planned manner, with the defendant working to create groups and group them, while promoting advertising through various means, as detailed in the amended indictment, and concealing his activity by using at least six different cell phones, a hundred unidentified sim cards, multiple mail accounts, the creation of dozens of other users, the purchase of software that allows control of Telegram groups, and the use of digital currencies to disguise its activities.

It should be noted that the defendant and the victims of the crime had no previous acquaintance, and he did not expressly or implicitly inquire for and/or receive their permission. He was utterly unconcerned about the damage he was causing those women, and he saw them as sexual objects for his own needs. The defendant's behavior caused them tremendous harm, and it appears that words are insufficient to explain it. They were put to shame in front of a user community of over a hundred thousand users in the virtual 'square' on crowded social networks. Every consumer despised, embarrassed, and desired them. Their personal information was made public on social media. Their integrity as humans had been trampled to the ground.

One of the victims reported major functional difficulties, to the point that she needed cosmetic surgery to alter her facial features so that strangers would not recognize her. Her statement joins a slew of affidavits filed in court by victims of the crime, many of which detail the crime's actual tremendous damage. The feelings of shame, insult, and great contempt that accompanied the widespread publicity cannot be estimated, and it is not surprising that many of the complainants claimed mental difficulties, social isolation, difficulty integrating into frameworks, loss of trust in others, and other issues.

Judge Barak-Erez's words in case 6703/13 **Cohen v. State of Israel** [published in Nevo] are appropriate here:



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"Although the appellant's acts against his victims occurred in cyberspace, the harm and psychological harm suffered by those young victims is actual and realistic. Furthermore, because of the ease of replication and dissemination, the potential for harm is especially high in the internet space."

The Supreme Court ruling and the district court ruling detailed the severity of the offense (see cases 5090/18 and 8863/15; case (Tel Aviv District) 8878-08-16 State of Israel v. John Doe (01/11/2017) and case 1728/17 John Doe v. State of Israel (2017); and case (Tel Aviv District) 70841-03-19 State of Israel v. M. and N. (July 1st, 2019).

Reference to the defense's claims at the level of the offense's circumstances:

The defense attorney argued that the complainants' "contributory negligence" accompanied the circumstances of the offenses and that it can affect both the determination of the effective penalty compound and the determination of the punishment.

The defense claimed that the complainants were also complicit in the injustice done to them. They are the ones who sent the photo/video to others, and from there, the content traveled for a long time across networks until it arrived at the hands of the defendant, who was "the 5000 hand" receiving the same content, in the words of the defense attorney. The defense attorney also advocated for selective enforcement, arguing that the State chose to prosecute the defendant rather than the first people involved in distributing the videos. In these instances, the seasoned defense attorney will invoke the abuse of process doctrine to reduce the defendant's sentence.

In my opinion, given the facts of the case, the defendant is not protected by the abuse of process doctrine. Abuse of process is a shield that protects the defendant from outrageous behavior on the part of the prosecution and enforcement authorities when they question the defendant in a discriminatory manner in material conflict with the principles of justice and fairness, infringing on the defendant's right to due process. The long and broad arm of the abuse of process is extended to those in need, starting with custody hearings in the context of a 're-examination' (case 7148/12 Kanana v. State of Israel (2012), par. 26); going through the opening of the proceedings as a preliminary argument with the power to bring an indictment (section 149 (10) of the Criminal Procedure Law 1982), and eventually, at the sentencing stage,



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where it can result in a reduction in punishment (Case 4855/02 State of Israel v. Dr. Itamar Borovich (2005)).

The defendant in our case decided to revoke his apostasy and admit the facts of the amended indictment. He was given the opportunity to conduct the trial prior to the confession when he was still entitled to his presumption of innocence. The factual framework set out in the amended indictment is before the court, and it speaks categorically to the defendant's responsibility, having agreed to admit the evidence of the amended indictment. The defendant provided no evidence to the court of the State's oppressive or deprived governmental conduct. The court is presented with facts, which testifies to the defendant's discriminatory and unjustified actions toward the complainants. According to the defendant, from 2019 until his arrest in June 2020, he operated a network of Telegram groups through which he circulated tens of thousands of videos with sexual content, claiming the authenticity of the pornographic material he distributed by using the identifying information of different young women in the videos. As previously stated, this is content relating to 187 young women with a user audience of over 100,000. As if that was not enough, he also developed and ran a Telegram channel through which he used to publish advertisements for prostitution services for a fee. In addition, between August 2019 and February 2020, he copied credit card information that he was exposed to as part of his work at the Haifa Municipality. While the State does not claim he used it, he retains it for his purposes. In the absence of proof of outrageous state behavior depriving freedom, I have not considered the defendant's claims for abuse of process to be credible.

Concerning the claim of 'contributory negligence' on the part of the victims of the crime, the fact that the victims were photographed in the way they were photographed has no bearing on the seriousness of the defendant's conduct. The victims of the crime are not to blame for the defendant's horrible acts against them. They are the victims, not the offenders. They are the ones who have been damaged, not the ones who have caused the damage. They would not have let the defendants humiliate them in front of a crowd of a web audience of over a hundred thousand people. The defendant and everyone else involved in the crime bears the responsibility (see below). Moreover, there is no defense in the criminal law concerning 'contributory negligence' on the part of crime victims (Case 478/72 **Meir Pinkas v. State of Israel** (1973)). Hence, the claim is dismissed.

The State also confirmed that the videos/photos found their way to the defendant after having "traveled" on social media.



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This fact, however, does not diminish the defendant's responsibility for the offenses for which he was convicted based on his confession since the offense is limited to publishing the contents without the victims' consent. Therefore, this claim is also dismissed.

Regarding the defense attorney's claim of selective enforcement and non-prosecution of the rest of the 'distribution squad,' the defendant bearing the burden presented no evidentiary basis for discrimination allowing a ruling on the matter. As stated, the defendant chose to plead guilty to the indictment. He was given the opportunity to conduct the proceedings and present any evidence to that effect before the court. The State confirmed that the police investigated and prosecuted anyone from the distribution squad who could and should have been charged. There is no contradictory evidence before the court. It is surely assumed that the seasoned defense attorney examined the investigation's material and the entirety of the necessary information before admitting the facts of the amended indictment, without consent to punishment, when the State's position was and still is lengthy imprisonment. Furthermore, if there were evidence to contradict the State's position, he would have certainly presented it to the court. Therefore, this claim must also be rejected.

Furthermore, the evidence of the second and third charges must be considered among the other circumstances surrounding the commission of the crime. The defendant was charged with promoting prostitution services in the second charge. On the third charge, he copied the debit card information from the applicants public while working as a municipal employee who received public inquiries. This act is part of the defendant's larger pattern of invasive conduct. Both of these actions were preceded by forethought and preparation, demonstrating the accused's malice.

The penalty range (Section 40C (b) of the Penal Code):

Having considered the defendant's conduct, the violation of social values and the degree of violation, the standard punishment policy, including the Supreme Court's guidelines on punishment, and with particular emphasis on the seriousness of the defendant's actions, the following penalty range is hereby established:

In the case of the first charge, which covers 187 acts of sexual assault and malicious violation of privacy, a penalty range of two to six years in prison and ancillary penalties and compensation for the complainants is determined.



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Regarding the second charge, advertising prostitution services, the appropriate sentence ranges from two months to six months of actual imprisonment, as well as ancillary sentences.

Regarding the third charge, which concerns the copying of debit card details, fraud and breach of trust, the penalty range is set from probation to six months' actual imprisonment, as well as accompanying penalties.

Deviation from the appropriate punishment range (section 40D of the Penal Code):

The court may deviate from the appropriate punishment range for reasons of rehabilitation, according to Section 40D of the Penal Code. However, except in exceptional circumstances, there is no room for deviation from the appropriate punishment in serious offenses (section 40D (b) of the Penal Code). In our case, there is no evidentiary basis or exceptional circumstances to justify a deviation from the appropriate punishment range.

Circumstances unrelated to the commission of the offense (section 40K of the Penal Code):

The defendant, 29, immigrated to Israel with his mother and grandparents from Ukraine. He has been married since 2018, has a one-year-old daughter, and has no criminal record. He lived in Kiryat Haim with his family until his arrest and worked as a telephone receptionist at the Haifa Municipality call center.

The defendant initially denied the facts of the indictment, but before the evidence was heard, he withdrew his apostasy and admitted the facts of the amended indictment, which was amended as part of a plea bargain, saving much judicial time. It should also be noted that after some of the complainants began testifying during the sentencing process hearing, the defendant decided to end their testimony so that their affidavits could be filed without investigation.

The fact that the defendant is in detention on 6/15/20 was also taken into consideration.

Additional circumstances to consider when determining the sentence within the appropriate penalty range (section 40L of the Penal Code):

The distribution of intimate images without consent has become a severe and abusive phenomenon in recent years, which many countries around the world are attempting to confront through changes in the legislative and legal systems.



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This is a heinous phenomenon known as "REVENGE PORNOGRAPHY," in which intimate images are obtained as part of a romantic relationship between two people that ends unilaterally, but not only.

We live in a technologically advanced era that is rapidly changing, but the law frequently lags and takes time to adapt to the new era. Simultaneously, when it comes to distributing intimate images without the consent of the person being photographed, many legislative changes have been made in recent years in Israel and in countries around the world, including Italy, Germany, England, Canada, most of the United States, Australia, and others, even beginning to enforce and criminalize these acts, resulting in judgments that include actual imprisonment (See, for example: South Australia Summary Offences (filming Offences) Amendment Act, No 5 OF 2013 ; South Australia Summary Offences (filming And Sexting Offences) Amendment Act, No 39 OF 2016 ; Crimes Act 1900- Sect 91q Distribute intimate image without consent, New South Wales Consolidated Acts; Protecting Canadians from online Crime Act (S.C. 2014 c.31) ; People vs. Kevin Christopher Bollaert ; United States of America vs. Hunter Moore and Charles Evens; Criminal Justice and Courts Act 2015, Section 33).

When a person's image is circulated on social media nowadays, it cannot be undone , and the image will forever be part of the massive database spread around the internet's vast information ocean. The person's picture and what is done with it are no longer under his influence. The vast number of individuals exposed to the distributed image is enormous, and it is available to nearly the entire world's population. The dangers of distributing private photographs of an individual without their permission are almost unimaginable. The same person who spreads and publishes an intimate picture of another, which has the power to embarrass and disgrace him in public, leaves a mark of shame on the subject's forehead, a mark of shame that can follow him for the rest of his life.

The damage done to victims by these crimes is extensive and widespread, and it is not static. The damage has a significant impact on the victims' everyday lives and their current and possible future relationships. The damage is also manifested on the personal and employment side, with many victims losing their jobs or having trouble finding new ones because their digital identity has been compromised, and prospective employers are hesitant to hire them. Often, to deal with the difficulties that this creates for the victims, they change their names and identities, as one of the victims did here.



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Furthermore, the harm is manifested in the mental and psychological aspects, as well as the victims' feelings of guilt and humiliation and the fact that they feel they "enabled" the abuse since the original photograph was taken with their permission. The victims do not always report to the police because of their guilt. According to studies, the damage can last for years. Many people have reported mental stress as a result of the images' continued distribution and an inability to control where the images will be distributed later and where else they will surface in the future, anxiety about the extent of exposure. They sometimes fear and apprehension of socializing, fearing that anyone may have seen them, all due to the difficulty of completely removing the photos from the internet (Regarding the damages caused to the victims of the crime, see LAW COMMISSION, CONSULTATION PAPER NO 253 "INTIMATE IMAGE ABUSE, 26.2.2021 p. 119 on behalf of Durham University and Kenneth University, Clare McGlynn, Erica Rackley and Kelly Johnson and others, "Shattering Lives and Myths: A report on Image-Based Sexual Abuse" (July 2019), Old Problems, New Media: Revenge Porn and the law – RightsUp, Episode 1, University Of Oxford).

Victims are helpless in the face of the proliferation of photographs, which often surface when people search for their names online. Unfortunately, there have been reports of victims of these crimes committing suicide due to their difficulties. See NON CONSENSUAL PORN AND THE RESPONSIBILITIES OF ONLINE INTERMEDIARIES, Nicolas Suzor, Bryony Seignior and Jennifer Singleton, (2016) 40(3) Melbourne University Law Review (advance).

As the Supreme Court has clarified, in order to curb the phenomenon, measures must be taken, and a punitive approach that leaves no room for doubt must be implied - harming someone while being trigger-happy on the keyboard should be caught and accounted for. This was stated by the District Court in Case (Tel Aviv) 7997-12-16 John Doe v. State of Israel, [published in Nevo], paragraph 8 (March 6, 2017).

"... In today's world, committing actions like those performed by the appellant is simple, convenient, and accessible to everyone. Software is created with one tap on the keyboard, and sharing is made with another tap.



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"Because of the unfathomable ease at which the crimes may be committed, the court should speak out loudly and unequivocally in order to both reduce the scourge and deter future audiences from being subjected to such heinous content... In this case, the need for deterrence is an important, relevant, and expected factor "...

The appropriate punishment (section 40 (2) of the Penal Code):

The defendant's actions are unprecedented in the ruling's history. As previously stated, the acts include the illegal distribution of tens of thousands of pornographic images and videos of 187 young women who were either nude or engaged in a sexual act. The sexual publications have reached a large audience, with more than 100,000 Telegram users. Without a doubt, this is a grave matter.

As outlined in the amended indictment, the defendant's activities were meticulously organized and systematic. The defendant formed groups and worked within them to promote the publications and conceal his online activity using numerous smartphones, untraceable SIM cards, undetectable digital currency, and other methods.

The victims of the crime are 187 young Israeli women of various ages and based on the affidavits before me and those who have begun to testify here, it appears that they are all young women just starting out in life. Three minors are among the victims.

The defendant did not know the victims of the crime. He showed complete indifference and apathy towards them as he advertised them nude, invading their sanctuary of privacy while being utterly unconcerned about the harm it would bring them and only interested in the advertising benefit he generates.

The extent of the damage caused to the complainants must also be considered when assessing the sentence within the range. I refer to Appendix A of the amended indictment, the affidavits in front of me, and the psychological harm caused to the complainants in this regard.

I also considered and emphasized the Supreme Court's words in John Doe v. State of Israel, as well as the fact that this is a volatile, easy-to-carry phenomenon with the potential for real destructive damage and that countering it is extremely difficult. In these circumstances, a strict approach is required, with retaliatory and deterrent

considerations taking precedence, to discourage the criminal, as well as the general public,

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from repeating these crimes, as the perpetrator takes advantage of the intolerable ease of committing these crimes when operating in the dark, somewhere behind a screen and keyboard. The lives of various victims who happen to be nearby can be ruined at any time of day, without warning, with the click of a button.

Because of the variety of actions and characters and deterrent purposes, the entirety of these circumstances dictates an effective and dissuasive penalty, which involves maximum imprisonment, as well as forward-looking punishments and compensation for the complainants.

Regarding the second and third charges, the sentence will be set at a lower level due to the relatively mild circumstances of the offenses and the lack of damage done to the victims.

Therefore, I sentence the defendant to the following:

For the first charge –

I sentence the defendant to 48 months in prison, beginning on June 15th, 2020, the date of his arrest.

Ten months' probation for three years from the date of his release, with the condition that he does not commit an offense of sexual harassment and harassment under sections 3 (a) (5a) and 5 (a) of the Prevention of Sexual Harassment Law 1998, and/or invasion of privacy under section 5 in the circumstances of section 2 (4) of the Privacy Protection Law 5741 1981. Each of the 187 complainants received NIS 3,000 in compensation.

NIS 3,000 compensation for each of the 187 complainants.

For the second charge –

Two months in prison.

Five months' probation for three years from the date of his release, with the condition that he does not commit an offense under section 205 (c) of the Penal Code, 5737 – 1977.



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For the third charge –

Six months' probation for three years from the date of his release, with the condition that he does not commit an offense under section 284 of the Penal Code, 5737 – 1977 and/or section 5 of the Privacy Protection Law 5741 – 1981 in the circumstances of section 2 (5) of that law.

The imprisonment sentences will run cumulatively, so the defendant will serve a total of 50 months of active imprisonment from the date of his arrest - June 15th, 2020.

To prevent the 2018 offenses, the order to block the telephone number given in file 53039-11-20 on November 23rd, 2020, is extended for an additional period of 5 years from the date of this sentence, with the consent of the parties, under the provisions of section 3 (b) of the Telephone Number Blocking Law.

A forfeiture and destruction order was also issued for all of the defendant's SIM cards, information, and telephones.

Right to appeal within 45 days to the district court.

The sentence may be published, but identifying information about the complainants and the defendant must be censored.

Given in the presence of the parties today, April 25th, 2021.

signature

Shlomo Benjo, Judge

