

Sexual harassment: criminological grounds and criminal law powers

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Abstract. The objective reality of social interaction demonstrates the further development of social relations in various aspects of human existence, which gives rise to new contradictions that require resolution, including legal regulation by the norms of various law branches. There is a need to establish the limits for the subject's legally acceptable behaviour, upon reaching which the area of deviations begins. Sexual harassment is one of such problems emerged at the end of the 20th century. Many foreign countries faced with this social phenomenon have recognized the criminality of sexual harassment in continuation of the chosen political trend towards liberalization of sexual relations. Similar trends are also observed in Russian society. They are practiced both at the level of discussions within the doctrinal environment and at the legislative level. Concerned about the seriousness of the problem and armed with the results of sociological research, Russian forensic scientists are engaged in developing a concept for the criminalization of harassment. The purpose of this work is to study the criminological grounds for recognizing the wrongfulness of sexual harassment and to consider the current criminal law powers against harassment in order to confirm the need to criminalize this phenomenon or to deny it. To achieve this purpose, the opinions of domestic and foreign researchers were studied, a rather-legal analysis of the domestic policy tendencies in Russia and foreign states regarding the liberalization of sexual relations was carried out. The conditions of the modern Russian legislation in combating sexual harassment were studied. Applied are such general scientific research methods as analysis, synthesis, generalization, as well as such specific scientific methods as statistical method, content analysis, formal logical method, and rather-legal method. As a result, the authors come to the conclusion that there is a recognized unlawfulness of sexual harassment in the norms of the current Russian legislation and that it is inexpedient to criminalize this phenomenon as an independent crime in view of the sufficiency of powers available within the framework of the modern criminal law.

Keywords: harassment, criminal policy, abuse

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1 Introduction

Sexual harassment is one of the topics being under discussion in foreign countries regarding the types of behavior qualified as harassment, its causes, and preventive measures [1-4]. Sociological studies carried out in Russia show that public opinion is inclined towards the legalization of proper behavior through the recognition of the unlawfulness of sexual harassment [5]. The problem of establishing permissible code prescribed limits of sexual behavior has been actualized [6]. The domestic legal doctrine demonstrates studies that substantiate the prevention of sexual harassment as well as the legislative attempts to establish administrative responsibility for sexual harassment [7]. The opinion about the need to establish criminal liability for harassment keeps growing in strength and popularity [8]. Let us consider the validity of this position and develop our own judgment about the need to criminalize sexual harassment.

2 Methods

The publications of domestic and foreign authors over the past 15 years on the criminalization of sexual harassment have been subjected to content analysis. The results of statistical studies on public opinion in Russia have been studied and summarized. A rather-legal analysis of social and political trends in Russia and foreign countries regarding the liberalization of sexual behavior has been carried out. The state of the domestic regulatory legislation that counteracts harassment and the judicial practice towards the application of criminal law norms protecting sexual inviolability and sexual freedom of the individual have been analyzed.

3 Results

The legislative due process for recognizing unlawfulness of sexual harassment through the norms of administrative and criminal legislation has been established. The inexpediency of criminalizing harassment as an independent crime in view of the availability of sufficient criminal law powers against it has been determined.

4 Discussion

The factors driving the legalization of sexual harassment include the emancipation of women and the popularization of the feminist movement in European and North American countries in the second half of the 20th century [8]. This paved the way for the development in the public consciousness of a tolerant view towards same-sex sexual relations as well as the entry of the LGBT civil rights movement into the world scene that united people on the basis of their sexual orientation and gender identity, which stands for the social movement of lesbians, gays, bisexuals, and transgender people [9]. The liberalization of public and political opinion for the sake of tolerance towards non-traditional sexual relations at the end of the 20th century led to the refusal of most civilized countries of the world from the legislative prosecution of the LGBT movement followers. In 1993, non-traditional sexual relations were decriminalized in Russia, and in 1997, sexual minorities were equalized in civil rights [10]. However, absolute equality did not take place. Following the established traditional religious and moral views on family values, same-sex marriages and adoption of children by same-sex cohabitants are unacceptable in Russia. Besides, a number of other civil rights are also limited [11]. On June 30, 2013, the Federal Law No. 135-FZ “On Amendments to Article 5 of the Federal Law “On the Protection of Children from Information Harmful to Their Health and

Development” dated June 29, 2013 and certain legislative acts of the Russian Federation aimed to protect children from information that promotes the denial of traditional family values” came into force. The Code of Administrative Offenses of the Russian Federation (hereinafter referred to as the CoAO RF) has introduced the forgoing within Art. 6.21 on “Promotion of Non-Traditional Sexual Relations Among Minors,” the dispositions of which directly indicate the absence of criminal offense signs in the propaganda actions [12]. This formulation reflects the criminal policy tendencies to protect the traditional family values, the formation of stereotypes of natural sexual behavior in the minds of the younger generation. That is, Russia adheres to a restrained liberal view of the LGBT movement and does not allow the idea of non-traditional sexual relations to be implanted in society.

Foreign states that have criminalized sexual harassment are mostly states with extremely liberal views on sexual relations, with the legalization of same-sex marriages, which some researchers cite as an example of states with advanced national legislation [8, 13]. These are Australia, Great Britain, Germany, Canada, France, Belgium, and Holland. A number of states, unlike Russia, have laws of absolute tolerance for non-traditional sexual relations. However, they have not legalized same-sex marriages. These are Bulgaria, Israel, Switzerland, and Japan [10]. The above circumstances indicate the individuality of Russia's domestic policy regarding the LGBT movement and followers of non-traditional sexual relations.

Legislation of different countries among the world understands the unlawful sexual harassment in different ways [8, 13]. There is no consensus in the Russian doctrine either. V.V. Monastirev understands the criminally liable sexual harassment as a repeated sexual harassment in a latent or explicit form as well as repeated offers of sexual intercourse or other physical acts of a sexual nature committed against the victim against his/her will [8]. S.V. Veklenko and A.V. Stulov understand the sexual harassment as repeated actions by a person in order to satisfy his/her sexual needs that violate the sexual freedom of another person, for whom such actions are undesirable [13]. M.M. Kharitonov understands the sexual harassment as any form of overt sexual behavior, undesirable and offensive for the victim and unconditioned by the formal model of relations between the victim and the subject [14].

By analyzing the various concepts of sexual harassment, a sign of the subject's offensive behavior towards the victim becomes obvious, which is expressed by the actions of touching, hugging, kissing, examining, suggestive comments, vulgar jokes, etc., which is undesirable for the victim and causes its unpleasant emotions. In the author's opinion, such forms of sexual behavior do not have an increased degree of social danger and do not require the application of a penal prohibition. This behavior is consistent with the signs of abuse formalized in Art. 5.61 of CoAO RF [12]. If the victim considers the behavior of the subject in interpersonal relations to be offensive, he/she can apply for protection to the law enforcement agencies. Usually, the victims of sexual abuse are women being in employment relationship with men [15]. The need to regulate employment relationship makes it possible to counteract harassment through organizational and legal means on the part of the employer [14].

In cases of committing sexual harassment as a violation of public order, that is, harassment between strangers, then such an act falls under the signs of Art. 20.1 of CoAO RF on “Petty Hooliganism” in the form of insulting harassment of citizens with sexual motivation [5].

The author cannot agree with the statement of S.V. Veklenko and A.V. Stulov on that sexual harassment violates the sexual freedom of another person [13]. Such a statement indicates that sexual inviolability with regard to sexual harassment is protected by criminal law. Art. 135 of the Criminal Code of the Russian Federation (hereinafter referred to as CC RF) on “Acts of Sexual Abuse” prohibits their commission by a person who has reached the age of eighteen against a person who has not reached the age of sixteen. If there is a different

age discrepancy, then, given the grounds therefor, the administrative liability may arise under Art. 6.21 of CoAO RF or even under Art. 131 of CC RF on “Forceful Rape” or under Art. 132 of CC RF on “Sexual Violence.” The act of sexual abuse refers to any act that is not expressed in sexual intercourse, sodomy or lesbianism, committed to satisfy a subject's sexual desire or to induce sexual excitement in the victim or to arouse his/her sexual interest. These may include actions that are not associated with physical contact with the victim's body, but which involve intellectual influence on his/her consciousness including using the Internet and other information and telecommunication networks [16]. That is, the acts of sexual abuse are nothing more than sexual harassment committed by an eighteen-year-old subject against a victim who has not reached the age of sixteen.

A person's reaching the age of sixteen constitutes a new object – his/her sexual freedom. In cases of sexual harassment of such a person, his/her sexual freedom is protected by Art. 133 of CC RF on “Sexual Coercion” [17]. Violation of the victim's sexual freedom is expressed by subject's placing the victim in a hopeless position using such methods of compulsion as blackmail, threats of destruction, damage or seizure of property, or when the subject uses the state of material or other dependence as arguments forcing the victim to consent to sexual relations with the subject. If the victim's refusal does not cause significant harmful consequences, then, in the author's opinion, his/her sexual freedom remains unaffected, which happens if the victim refuses to commit unwanted actions for the sake of the subject's sexual harassment.

5 Conclusions

The author believes that there is no need to establish independent criminal responsibility for sexual harassment, since the current criminal law standards, in conjunction with the administrative law rules, protect sexual integrity and sexual freedom of the individual from sexual permissiveness of the subject with a sufficient reliability. The criminalization of sexual harassment is inappropriate due to the insignificance of its social danger. The proposed interpretation of sexual harassment only raises controversy about the presence of social danger in it, since it affects the moral and ethical interaction of the sexes, which must be formed by ordinary educational influence, without resorting to legal regulation, especially through the establishment of penal prohibitions. The conducted sociological studies show that the problem of ethical and legal interaction between the sexes remains relevant at all times. Its inherent intimacy raises the latency of sexual deviations underestimating the statistical data [6, 18].

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