

## Comparative Characteristic of Criminal Liability for Sexual Offence Against Juveniles under Law of Foreign Countries and Delinquency Prevention

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**Abstract:** The present article deals with comparative analysis of criminal liability for sexual offence against juveniles under the law of the Republic of Kazakhstan and some foreign countries. The article provides statistical data regarding sexual offences in respect of juveniles both in the Republic of Kazakhstan and in several foreign countries (USA, France, Switzerland, FRG and in others). The study and statistical data analysis have enabled the authors to reveal the state and causes of such crime and to identify the criminal and legal ways of fighting these crimes and some ways of their prevention.

**Key words:** Sexual offence • Juvenile • Criminal liability • Rape • Violent lecherous actions • Sexual intercourse • Corruption of minors • Sexual aggression

### INTRODUCTION

According to the statistical data, in Kazakhstan, only during 2011 the sexual violence was committed against 495 juveniles, 162 minors were traumatized through the fault of adults, 33 minors were kidnapped and held illegally. During the last three years, the number of crimes against juveniles has leapt 76 %. In the USA, 1,400 cases of juvenile deaths are registered caused by adult actions, about 116 millions of mistreatment of minors are registered [1]. These data have not left indifferent the home law enforcer: the new Criminal Code of the Republic of Kazakhstan introduces a number of amendments reinforcing the criminal liability. At present time, at the city of Astana, the study is being completed investigating the juvenile aggressiveness level and manifestations of cruel treatment and violence, which has the informative content for adults, teachers and law enforcers. Therefore, the studies dealing with delinquency prevention, particularly, the sexual abuse in respect to teenagers, seem quite challenging.

Under the Republic of Kazakhstan civil code, the sexual abuse includes rape, violent sexual actions and corruption of minors and sexual intercourse with a person less than 16 years of age (RK CC, articles 120-124). For comparison, the French criminal code has an original

approach to the interpretation of the notion of sexual abuse relating it to sexual violence implying the sexual aggression as “any sexual encroachment” committed by violence, coercion, threat, or deception” [2]. This treatment of a sexual crime, in our view, does not enable to delaminate this criminal group into subtypes depending on the violent application or without it. In particular, the French law divides the sexual crime into ‘raping’ and “other sexual aggression”. In this case, the notion rape is rather complex: the rape implies any act of sexual penetration of any kind committed by another person by violence, coercion, threat, or deception (articles 222-23). Based on this interpretation, the rape relates like the raping proper as the violent sexual act, the sexual intercourse voluntarily with a person younger than the age established by law [3].

The French CC qualifies the raping types the rape committed in respect of the juvenile younger than 15 years (paragraph 2 of articles 222-24); inspect of a person particularly vulnerable due to the age, disease, severe injury, physically or mentally handicapped, or to the pregnancy evident or known to the culprit (paragraph 3). The punishment for the qualified rape is determined 20 years of «criminal imprisonment», unlike the simple rape, which is punished by 15 years of criminal imprisonment.

The French CC determines another crime as the liability for criminal violence in respect to the minors in paragraph 1 of articles 222-29 «Sexual aggression, which is not rape in respect of a person under 15 years.

The French CC contains the distinctive feature of liability for sexual crime is the fact that the person is liable for «public display of genitals at the presence of many persons in places accessible to public viewing (articles 222-32). The criminal law of a number of states, Kazakhstan included, misses this point.

The Swiss law enforcer determines the «criminal actions in respect to the sexual immunity (Switzerland CC 5) and the criminal crimes the sexual actions against minors (article 187); the sexual actions against dependent persons (article 188); the sexual coercion (article 189); article 190-the rape; the sexual intercourse using the victim in unconscious state (article 191); the sexual actions against persons kept in institutions, accused convicts (article 192); the use of handicapped state (article 193); exhibitionism (article 194); subdivision 3 includes an independent group of crimes-«the use of sexual actions « (this group comprises article 195-assistance to prostitution; article 196-trade of humans; subdivision 4-pornography; subdivision 5 «violation of sexual immunity»: sexual harassment (article 198), intolerable prostitution (article 199); article 200 determines the liability for committing the listed actions in combination [4].

Article 187 appeals, primarily, as the analysis of «sexual actions against minors». This article envisages the liability for sexual actions against minors relating to the persons less than 16 years. It is determined that, «if the age difference between the participants, is under three years, this action is not punishable [5].

We believe that the Swiss criminal law has the drawback that it neglects the criminal attributes. For instance, the rape (article 190) is determined as the «coercion of a female to illicit cohabitation under threat of violence ». Unlike the French CC, the female is determined as the victim.

The FRG CC determines more in detail the liability for sexual crime in respect to juveniles: paragraph 176 refers to «independent sexual violence against minors» (this article envisages the liability for the inducement of a minor as the person under 16 years to commit sexual action, affecting the minor by displaying pornographic materials, by committing sexual action in the minor presence) [6], paragraph 176A «severe sexual actions against minors»; paragraph 176b-«sexual action against minors with fatal outcome».

The law enforcer determines rape as «coercion to sexual action» with the liability determined in 177: «the person coercing another person under threat of real danger to health and life or using the situation when the victim becomes helpless against actions of the person, compelling this person suffer the sexual actions in respect to oneself or third person to suffer the sexual actions or commit them in respect to the person committing the crime or a third person, is punishable ...». (C.333).

As a sexual crime in respect to juveniles, the crime can be considered when «the sexual action is committed against persons not in the state to resist « (paragraph 179). FRG CC paragraph 180 attracts notice, which determines the liability for favoring juvenile sexual actions [7]. It means the connivance by adults (full aged) to enter into intimate relation with persons under 16. This paragraph should be discriminated from the prostitution encouragement-«the ownership of a relevant institution or its professional management « [7].

The Argentinean criminal law emphasizes the «crimes against sexual freedom», thus implying that the protected object needs the right to choose a sexual partner [8]. The drawback of section 3 about sexual crimes, it is remarkable that there is no distinct discrimination between sexual crimes committed with violence and its absence. In particular, article 119 envisages the liability for «sexual abuse in respect to the person of this or other sex under 13 years of age»; article 120 determines this measure of liability as the imprisonment for three to six years of penal servitude or a term in jail for «misuse of domination over the victim, sexual immaturity, or other such circumstances and committed the crime in respect to the person under 16 years of age envisaged in article 119» [8]. The law does not envisage what should be understood as sexual coercion if it is different from rape or any other crime against sexual freedom.

The Korean law enforcer reduces the sexual crimes to the group of «crimes relating to sexual morals « (chapter 22), separately identifying article 260 «criminal violence « implying «any violence in respect to another person» [9].

The home law regarding sexual crimes is similar to that in the Russian. The matter remains unclear why not to refer article 128.1 «slander» to sexual crimes, though the attribute that the culprit is unjustifiably accused of committing the crime of sexual nature [10].

Since the matter of the object of sexual crimes is considered, it is worthwhile to note that the sexual immunity is not often understood as the «state of personal social protection against sexual encroachment

on the part of other persons « [11]. We agree with the standpoint of Kameneva A.N. in that the «basis of social sexual relations is the sexual setup», the author attributes the protection to the sexual relations in natural form [11]. But we stand for expansion of this notion determining by protection both the natural sexual relations and any voluntary sexual relations between males or females as long as they do not concern persons under 18 years of age (lesbianism, homosexuals), naturally, if it does not concern persons under 18 years if age. It is confirmed in a number of publications. For instance, M.A. Korotaeva comments that the «lecherous actions should be the sexual intercourse in the natural form, oral, or anal actions « [12]. The «natural sexual behavior» should cover either the homosexual contacts at the presence of victims, termed by M.A Korotaeva as the »lecherous acts in visual form « [12].

We believe that any study should logically draw the end by proposing some preventive measures against such «phenomena». Here the Convention about children is fully applicable interpreting that «no violence in respect to minors is not justifiable; any violence in respect to children is not to be prevented « [13].

Item 25 of the Convention determines distinctly what should be related to sexual coercion and exploitation: «the harassment or coercion of a child to do some illegal or mentally harmful sexual action «Let us consider the comment to this article: «the sexual coercion includes any sexual activity imposed to the child by the adult who is entitled to protection in accordance with the criminal law; «therefore, the sexual coercion should be understood as any action aimed at provoking the child's interest in sexual intercourse and directly to the sexual contact with the child. (In our view, it is particularly individual and des not claim public recognition). Definitely these situations do not expand to the cases of crime committed by parents themselves or by persons replacing them who «due the child's helpless or unprotected state may commit such encroachment during a prolonged period « [14].

Let us go back to the Convention, the latter in general quite broadly interprets what relates to the sexual coercion: whether «the use of children for commercial sexual exploitation and their use in audio and video clips containing full coercion; infantile prostitution, sexual slavery, sexual exploitation in trips or tourism, infantile trade for sexual purposes and to compelling the children to marry» [13].

Of course, the Convention about rights of children does not mention directly the crime prevention, «but, the international convention states fully the stipulations that it is also a humane and effective solution of juvenile criminality « [15].

Speaking about the sexual crime prevention, the fact should be remembered that quite often the sexual passion satisfaction is beyond the rape limits. It should also be remembered that the motive could be revenge, a drive to disgrace a woman, to compel her to marry [16].

The choice freedom is the main component of normal sexual behavior, as A. Akasheva states [17]. This fact can be accepted if prostitution is neglected: yes, here the choice freedom is present (we do not mean the sexual slavery), but we would not risk stating normal sexual behavior. What concerns the pedophilia or sexual deviation, we agree fully: «love», «sexual passion towards children», should not be considered as the norm, therefore, the person with such an appeal should not be treated as a normal type.

Proceeding from the above, the raping expands its net both directly to the rape victim and to the surrounding persons, it affects both the physical and mental state (it is no secret that the rape consequences can be both the articles and mental disorders) [18], so that the victim and surrounding persons should be taken care of when they suffer as much as the victim and sometimes even more. Let us be courageous enough to state that the situations are possibly were the sexual crime victim due to the juvenile age fails to realize full tragedy of the accident, or, again, due to the age, cannot survive the mental suffering and mental horror is shared by mother (father), understanding all consequences of the incident with the child who was (likely) kidnapped and subjected to torture.

The need to prevent sexual crimes is determined in a number of international statements, among which is the UN Document A\63\216 «rape promulgation and other types of sexual violence, including rape and other types of sexual violence in all its manifestations, including those during conflicts and relevant situations «; the need of its endorsement is due to the sexual exploitation and sexual violence by the UN personnel during armed hostilities [19].

Our studies of age criteria of persons guilty of sexual crime, in general, confirm the results of other researchers [20]. They reduce to the fact that persons aged 20-29 years commit majority of rapes, the persons of the same age group commit the violence A sexual nature. By the education level, the sexual crimes are inherent to persons

with secondary or secondary vocational education or unemployed. Unfortunately, the same tendency persists until today.

Poor prevention effectiveness in unfavorable families with children, common practice of deprivation of parental rights; the social infrastructure of assistance to families and children in hard life situations not fitting the modern requirements, is necessary in order to solve challenges and to eliminate the causes and conditions of their emergence; the growing risk of proliferation of information hazardous to children; lack of efficient mechanisms of juvenile participation in public life, in resolving the challenges affecting juveniles directly are, in fact, the reasons why the minors become sexual victims. For instance, articles 128 and 133 of the Republic of Kazakhstan criminal code do not envisage any attributes of committing these actions with application of violence not dangerous to health and life or any the area of its application. The second part of these articles the violence application is indicated as the qualifying attribute of violence dangerous to life and health, or the threat of its application. The study of court practice manifests that, when these crimes are committed, the violence is applied (or threatened) not dangerous to life or health, therefore, this circumstance does not acquire legal assessment. The titles of articles 128 and 133 of the RK CC orient the law enforcer at the human sale and buy transactions, or, in the best case, «other measures are necessary with the person». The materials of practice manifest that all other alternative measures are disregarded. Though each of them can have an independent significance, if properly interpreted.

The legislation needs amending in the sphere of commerce by reinforcing supervision over marketing of audio and visual products and computer games to juveniles.

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