

Development of the criminal legislation of the Russian Federation on crimes related to indecent assault against the persons under the age of 16

Desarrollo de la legislación penal de la Federación de Rusia sobre delitos relacionados con agresiones indecentes contra personas menores de 16 años

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ABSTRACT

The article is devoted to the analysis of crimes related to indecent assault against persons under 16 years of age. We investigated the issues of criminal-legal assessment of crimes of this category in foreign legislation, as well as the history of responsibility for this act in the domestic criminal law and modern legislation of Russia. The article compares the norms of criminal responsibility between different countries states and Russia for crimes related to sexual inviolability of minors. Some measures aimed at improving the national criminal legislation regards the crimes against sexual inviolability has been proposed. In addition, we suggested to specify the concept of indecent assault and to enhance the Criminal Code of the Russian Federation with an appropriate part providing for criminal liability for indecent assault by parents, teachers or other persons who are legally responsible for education or supervision of persons under the age of 16.

Keywords: Sexual inviolability, lewd acts.

RESUMEN

El artículo está dedicado al análisis de delitos relacionados con agresiones indecentes contra personas menores de 16 años. Investigamos los problemas de la evaluación penal-legal de los delitos de esta categoría en la legislación extranjera, así como el historial de responsabilidad de este acto en el derecho penal interno y la legislación moderna de Rusia. El artículo compara las normas de responsabilidad penal entre diferentes países, estados y Rusia por delitos relacionados con la inviolabilidad sexual de menores. Se han propuesto algunas medidas destinadas a mejorar la legislación penal nacional sobre los delitos contra la inviolabilidad sexual. Además, sugerimos especificar el concepto de agresión indecente y mejorar el Código Penal de la Federación de Rusia con una parte apropiada que prevea la responsabilidad penal por agresión indecente por parte de padres, maestros u otras personas que son legalmente responsables de la educación o supervisión de las personas menores de 16 años.

Palabras clave: inviolabilidad sexual, actos lascivos.

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INTRODUCTION.

Children are the highest value of each state. Taking into account physiological, psychological and social peculiarities, it is children who have a special status, require the greatest attention from the state and need measures for increased protection of their rights and legitimate interests. The problem of violence against children is a problem of global international character. "Its solution is impossible without joint efforts of the international community, intensification of actions in this direction by all states and effective use of the potential of law enforcement agencies" (Izmailova, 2012).

A special place in the system of measures to protect and safeguard the rights and interests of minors is occupied by protection against sexual abuse, as this phenomenon is widespread in many countries. Moreover, crimes of this type tend to grow. Our state is not an exception. The growth of such crimes against minors in the last few years is one of the most significant problems of modern Russian society. According to the Federal State Statistics Service (2019), the number of minors who have been subjected to sexual abuse, as well as sexual intercourse and other acts of a sexual nature, has been progressing over the past five years (see Table 1).

Table 1. Number of minors recognized as victims

Offence Type	Year					
	2013	2014	2015	2016	2017	2018
Sexual intercourse and other sexual acts with a person under the age of 16	1 063	2 361	3 709	4 114	4 378	4 388
Depraved acts	841	985	1 045	1 251	1 554	1 828

Therefore, one of the priorities of our State's policy is to combat crimes against the sexual integrity of individuals, which include crimes committed against persons under the age of 16 in particular. The relevance of the chosen topic is also in the fact that the norms of the criminal legislation of Russia providing for liability for crimes against the sexual inviolability of minors have certain drawbacks, which cause problems when qualifying the acts in law enforcement practice.

In this regard, the purpose of this study is to develop proposals for improving the legislation in the field of sexual inviolability of minors. In accordance with this goal, the following objectives of the study are outlined: to study the past and current criminal legislation of Russia, as well as to consider the legislation of foreign countries, in comparison with the current norms of criminal law of the Russian Federation, to identify the positive legislative experience of other states in the field of combating crimes of this kind.

DEVELOPMENT.

Methods.

Within the limits of the present research are used: criminal-statistical, comparative-legal, historical-legal and formal-logic methods of the analysis.

The regulatory framework for the study was made up of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (October 25, 2007) and other international legal acts, Russian criminal legislation and other federal laws and regulations of the Russian Federation, as well as criminal legislation of foreign countries.

When writing this article, the authors studied and used the regulatory legal acts of Russia and foreign countries within the framework of the research topic, international legal documents, statistical data, works of scientists and practitioners, materials of law enforcement practice. The theoretical basis of the work was made up of scientific works of famous representatives of the theory of criminal law, physicians, statistical data on the status and dynamics of crimes against the sexual inviolability of minors, for 2013-2018.

Results and discussions.

In Russia, for the first time, criminal liability for indecent assault was included in the chapter "On Non-demand" of the 1903 Criminal Code, which provided for liability depending on the age of the victim. Thus, "for such actions with a child under 14 years of age, the perpetrator was responsible, even if these actions were committed with the consent of the victim (Part 1, Article 513), the responsibility for similar actions with the victim aged 14 to 16 years occurred in the absence of the consent of the victim or "at least with his consent, but for the use in evil of his innocence (Part 2, Article 513)" (Criminal, 2002).

Since then, domestic criminal legislation in the field of crimes against the sexual inviolability of minors has undergone significant changes.

The current version of the Criminal Code of the Russian Federation qualifies such acts as crimes under Article 135 -

indecent assault without the use of violence by a person who has reached the age of eighteen years against a person who has not reached the age of sixteen (Part 1) or fourteen years (Part 2). If the victim has not reached the age of twelve, such actions are qualified under paragraph “b” of Part 4 of Article 132 of the Criminal Code of the Russian Federation and other actions of a sexual nature using the helpless state of the victim, committed against a person under the age of fourteen. This is expressly stated in the annex to article 131 of the Criminal Code of the Russian Federation, according to which the crimes provided for in paragraph 4 (b) of article 132 of the Criminal Code of the Russian Federation also include acts falling under the characteristics of crimes provided for in parts 2-4 of article 135, committed against persons under 12 years of age, since such a person is in a helpless state because of his age, i.e. cannot understand the nature and significance of the acts committed with him.

In general, recently, the Criminal Code of the Russian Federation shows a tendency to toughen penalties for crimes of a sexual nature committed against minors.

For example, according to Federal Act No. 14 of 29 February 2012 on amendments to the Criminal Code and certain legislative acts of the Russian Federation in order to increase liability for crimes of a sexual nature committed against minors, the following innovations may be highlighted

- A ban on the imposition of suspended sentences on persons convicted of crimes against the sexual inviolability of minors under 14 years of age (art. 73, para. 1 (a), of the Criminal Code);
- Parole, as well as the replacement of not served part with a milder type of punishment for crimes against the sexual inviolability of minors under 14 years of age, may be applied only after the actual serving of at least four fifths of the sentence. (Paragraph “e” of part 3 of article 79 of the Criminal Code of the Russian Federation).
- Delay in serving a sentence is not applied for crimes against the sexual inviolability of minors under 14 years of age (part 1 of Article 82 of the Criminal Code of the Russian Federation).

By virtue of paragraph “p.” of Part 1 of Article 63 of the Criminal Code of the Russian Federation, the aggravating circumstance is considered to be “the commission of a crime against a minor (minor) by a parent or other person who is charged by law with the responsibility for the upbringing of a minor (minor), as well as by a pedagogue or other employee of an educational organization, medical organization, organization providing social services, or other organization that is obliged to carry out supervision over a minor (minor)” (Federal Law, 2012).

Such changes in legislation were intended to correct the unfavorable situation in the field of protection of the right of the child to protection from sexual abuse and sexual exploitation guaranteed by the UN Convention on the Rights of the Child (1989), which states in Article 34 that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse” (United Nations 1989).

The text of the Convention requires the adoption of measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, as well as the prohibition of the use of children in prostitution or other unlawful sexual practices. It should be noted that the evolution of the Russian criminal legislation on the protection of the sexual inviolability of minors is directly related to the trends of foreign countries in this area. Efforts are being made to bring domestic legislation into line with international law.

In May 2013, the President of the Russian Federation signed the Federal Law on the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007, signed by Russia in October 2012. The Convention establishes uniform standards for preventing and combating all forms of sexual violence against children, defines the forms of international legal cooperation in this area and provides for a set of measures for victims of sexual violence. The document contains strict requirements for persons who have committed or intend to commit crimes of a sexual nature against children, including prostitution, pornography, the participation of a child in pornographic performances, the corruption of children and their sexual harassment.

The implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is monitored by the Committee on the Rights of the Child, which has “concluded that children in Europe are not adequately protected from sexual exploitation and abuse. In particular, the Committee underlines the lack of comprehensive national criminal legislation in States parties, especially with regard to the sale of children, “sex tourism” and child pornography, and the lack of protection of children from violence on the “Internet” (Council of Europe, 2007).

Optional Protocol to the Convention on the Rights of the Child on a communications procedure Adopted by the General Assembly in its resolution 66/138 of 19 December 2011. Despite the fact that to date the Protocol has not been ratified, in the territory of the Russian Federation these functions are vested in the Commissioner for the Rights of the Child under the President of the Russian Federation. Regional Ombudspersons for Children’s Rights operate in the constituent entities of the Russian Federation. Activities to protect children’s rights at the federal, regional and local levels are also coordinated by commissions on minors’ affairs and the protection of their rights. According to A.P. Dyachenko and Tsybmal, E.I. (2017), “In Russia, there is no clearly defined body at the

federal level that coordinates the activities of various agencies involved in the protection of children from sexual exploitation and abuse”.

The Regulation on the Government Commission on Minors' Affairs and Protection of Minors' Rights, approved by Resolution of the Government of the Russian Federation of 06.05.2006 No. 272 (22.01.2014), does not contain any reference to sexual exploitation and sexual abuse of children. The main task of the Government Commission is to “coordinate the activities of federal executive authorities and executive authorities of the constituent entities of the Russian Federation related to the enforcement of Russian Federation legislation in the field of prevention of child neglect and juvenile delinquency and protection of their rights” (Resolution, 2018).

One cannot but agree with this opinion, because effective fight against such crimes requires interaction and coordination of representatives of the bodies of internal affairs, health care, education, and social protection.

In September 2012. The President of the Russian Federation has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the UN General Assembly on May 25, 2000 and signed by Russia. Article 3 of the Protocol states that “each State Party shall ensure that, at a minimum, the following acts and activities are fully covered by its criminal or criminal law, regardless of whether these crimes have been committed at the national or transnational level or in an individual or organized manner” (Optional Protocol, 2002).

Among these acts are: offering, transferring or receiving, by whatever means, a child for the purpose of: sexual exploitation; offering, receiving, transferring or providing a child for child prostitution; producing, distributing, distributing, distributing, importing, exporting, offering, selling or possessing child pornography.

Such provisions of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography are convergent with the articles of the Criminal Code of the Russian Federation (127.1, para. 2 b.p., 240, para. 3, 241, para. 2, and 3, 242, para. 2, 242.1), which provide for criminal liability against persons who have committed such acts. In the authors' opinion, international legal acts have influenced the introduction of new articles into the Criminal Code of the Russian Federation. Thus, Federal Act No. 14-FZ of 29 February 2012 brought into force article 242.2 of the Criminal Code of the Russian Federation - the use of a minor for the production of pornographic materials or objects; and Federal Act No. 380-FZ of 28 December 2013 brought into force article 240.1 - the receipt of sexual services by a minor.

The Russian Federation has recently adopted a number of legal and regulatory instruments relating to the protection of children, including the protection of the sexual inviolability of minors.

One of the main ones protecting children's rights in Russia is the National Security Strategy of the Russian Federation until 2020, approved by Presidential Decree No. 537 of 12 May 2009, which states that “the main direction of State policy in the area of ensuring State and public security in the long term should be to strengthen the role of the State as a guarantor of the security of the individual, primarily children and adolescents” (Decree, 2012).

Despite the multiplicity and dynamism of the legislation on sexual inviolability of minors, there are many problems in the field of its enforcement, including Article 135 of the Criminal Code of the Russian Federation. We believe that the positive experience of foreign countries can serve to identify these problems and ways of solving them. Actions against the sexual inviolability of minors have different criminal-legal qualifications in different countries.

Responsibility for sexual crimes against the sexual inviolability of children is established in the criminal legislation of the vast majority of countries. However, not all criminal laws define the concept of indecent assault on minors in a separate article; these acts are included in the articles providing for criminal liability, including for sexual intercourse. For example, the French Criminal Code introduces the concept of sexual aggression, which means “any sexual assault committed through violence, coercion, threat or deception” (Lesser, 2018).

But we can give another example. For example, in Norwegian criminal law, article 217 provides for liability for the commission of sexual abuse of a child under 16 years of age. This term is synonymous with the concept of “indecent acts” contained in Article 135 of the Criminal Code of the Russian Federation.

In some countries, several articles criminalize indecent assault on a minor. For example, article 11 of the English Sexual Offences Act makes it an offence to commit sexual acts in the presence of a minor. Note that the subjective side of the crime is characterized by direct intent and the mandatory purpose of obtaining sexual satisfaction. Article 12 of the same law provides for criminal liability for involving a minor in the viewing of sexual acts. The difference between these articles lies in the fact that in Article 12 a minor is involved in the monitoring of sexual acts committed by 3 persons or in the viewing of sexual acts.

In different countries, the approach to assessing the age of victims of sexual offences against minors is ambiguous. For example, victims are: in Germany, persons under the age of 14; in France, persons under the age of 15; in Moldova, persons under the age of 16; and in England, persons between the ages of 13 and 16. The age of the subjects of these crimes varies from State to State. Thus, the subjects of crimes against the sexual inviolability

of minors are recognized: in Germany, persons who have reached the age of 14, in Moldova, persons who have reached the age of 16, in France, and in England, persons who have reached the age of 18.

In general, analyzing the legislation of the countries of different legal systems on sexual assault on the sexual inviolability of minors, we can conclude that the approaches to the criminalization of such acts in Russia and other countries differ.

First of all, in comparison with the legislation of Russia in the criminal legislation of many states actions on sexual intercourse, sodomy, lesbianism, lewd actions are not differentiated on separate articles, and contain in one.

Second, in a number of countries violent acts are considered as a qualifying sign of a concrete article about sexual encroachments on sexual inviolability of minors.

Third, the age of both victims and persons prosecuted for indecent assault is not equally defined in different countries.

Fourth, the criminal legislation, especially in European countries, is more specific about sexual offences. For example, criminal liability for indecent assault under article 135 of the Criminal Code of the Russian Federation is provided for in a number of States by various articles of the criminal law: demonstration of scenes of sexual acts; inducement of a minor to acts of a sexual nature.

Fifth, in some countries, acts such as communicating with juveniles for the purpose of sexual intercourse with them; offering a minor to commit sexual acts; and meeting with a minor for the same purpose constitute a separate offence. However, under Russian law, these acts can only be qualified as unfinished crimes.

Thus, foreign legislation has both positive and negative aspects in comparison with the relevant Russian criminal legislation on sexual inviolability of minors. We believe that in the Criminal Code of the Russian Federation, in contrast to the legislation of many foreign countries, criminal liability for illegal sexual intercourse, sodomy, lesbianism and indecent acts against minors is differentiated reasonably, since the degree of public danger of these acts is different. However, there is a certain conflict in Russian legislation related to the concept of "sexual acts". Within the meaning of Article 132 of the Criminal Code of the Russian Federation, violent actions of a sexual nature are understood as sodomy, lesbianism or other actions of a sexual nature. Article 134 of the Criminal Code of the Russian Federation includes only sodomy and lesbianism in the concept of other acts of a sexual nature with a person under the age of 16. All other sexual acts (except for sexual acts) with respect to persons under the age of 18 are covered by the concept of indecent assault provided for in Article 135 of the Criminal Code of the Russian Federation. Thus, the term "other actions of a sexual nature" specified by the legislator in the title of Article 134 is much broader in meaning of the terms "sodomy, lesbianism" used in the disposition of this norm (Kantemirova, 2007).

These contradictions in the concepts of the Criminal Code of the Russian Federation, according to the authors of the article, should be eliminated by replacing the term "other actions of a sexual nature" in the title of Article 134 of the Criminal Code of the Russian Federation with the concretizing terms "sodomy" and "lesbianism". But there is also a different position on the need to merge Article 134 of the Criminal Code of the Russian Federation and Article 135 of the Criminal Code of the Russian Federation. Thus, according to A.A. Bimbinov (2016), a professor of the Department of Criminal Law of the Kutafin University (MSUA), "If the laws of European countries provide a single rule on liability for any acts of a sexual nature with a minor, the Criminal Code of the Russian Federation in Article 134 "Sexual intercourse and other acts of a sexual nature with a person under the age of sixteen" allocates and establishes liability only for sexual intercourse, sodomy and lesbianism, and unjustifiably classifies all other sexual acts as lewd (Article 135 of the Criminal Code of the Russian Federation).

Another problem of the Russian criminal legislation can be called the absence of an official legislative definition of the concepts of "indecent assault", "sodomy", "lesbianism", which makes it difficult in some cases to distinguish Article 135 of the Criminal Code from Article 134 of the Russian Federation. A positive example of the Criminal Code of Moldova, where Article 175 provides a legal definition of depraved acts, which consist in "exhilaration, indecent touching, conversations of obscene or cynical content about sexual relations, in inducement to participate or to be present at pornographic performances, in the provision of pornographic materials, as well as in other actions of a sexual nature, and actions of a sexual nature" (Criminal Code, 2002).

But there are other, in our opinion, negative examples. Thus, Article 78 of the Sexual Offences Act of England of 2003 defines the concept of sexual acts, which includes any "touching, penetration or other type of activity committed by a reasonable person for sexual purposes" (The Sexual, 2003). Such actions, according to Article 13 of the said Law, include sexual contacts of persons under 18 years of age with each other, not only having sexual intercourse, but also showing feelings in other ways (caresses, kisses).

At the same time, with regard to this norm, the Parliament and the Royal Prosecution Service recommended that in order to criminalize the actions of minors, it is mandatory to examine such issues as the ratio of their age, the duration and nature of their relationship, the level of maturity of each, whether there is any dependence between

them, and whether there are any elements of exploitation.

This approach of English lawmakers makes the concept of sexual activity vague - evaluative.

In connection with the above, we believe that the introduction of the concepts of "indecent acts", "sodomy", "lesbianism" into the Russian criminal legislation at the official level would significantly simplify the practice of law enforcement of Article 135 of the Criminal Code of the Russian Federation and would largely solve the problem of delimitation of this article from related crimes.

Among the positive legislative examples we can mention the thoughtfulness of the qualifying features in Articles 227-25 of the Criminal Code of France for the commission of sexual acts, among which are: the commission of sexual acts with a person under 15 years of age by a relative or other person having power over the victim; the commission of a crime by a person abusing power in connection with the granted powers; sexual acts in which a minor was involved through the use of electronic means of communication, when spreading the details of communication

In item "b" of part 1 of article 63 of the Criminal Code of the Russian Federation, to circumstances aggravating punishment the commission of a crime against a minor (minor) by the parent or other person on whom the law entrusts duties on education of the minor (minor), and also the pedagogical worker or other worker of the educational organization, the medical organization rendering social services, or other organization, obliged to carry out supervision over the minor (minor) is carried out.

Taking into account the increased social danger of persons who, for various reasons, have an impact on minors, as well as the prevalence of this act in crimes that infringe on the sexual inviolability of persons under the age of 16, we believe that the actions of these special subjects should be specified as a qualifying feature of Article 135 of the Criminal Code. The commission of indecent acts involving the use of information and telecommunication networks should be introduced into the Criminal Code of the Russian Federation either as a separate article or as a qualifying feature of Article 135 of the Criminal Code of the Russian Federation.

CONCLUSIONS.

Universal values and, above all, life, health, freedom, dignity, honor, rights and interests of the child are the basis of a democratic state governed by the rule of law. By recognizing the norms of international law, Russia not only seeks to improve criminal legislation, but also tries to bring it into line with international standards. The Russian legislation in the field of protection of sexual inviolability of minors is constantly developing, there is a tendency to toughen criminal responsibility and punishment for such crimes, taking into account the positive experience of other states in this area. However, there are not few gaps in the current criminal legislation of the Russian Federation, which lead to difficulties in law enforcement. Thus, there are uncertainties and contradictions in the concepts contained in the titles and dispositions of articles providing for criminal liability for crimes against sexual inviolability and sexual freedom of the individual. In order to eliminate these gaps, the Criminal Code of the Russian Federation proposes to clearly define such notions as sodomy, lesbianism, other acts of a sexual nature, and debauchery.

In addition, it is proposed to introduce into the Criminal Code of the Russian Federation some types of lewd acts, which, in the opinion of the authors, are of increased public danger due to their prevalence. Thus, it is advisable to introduce in the Criminal Code of the Russian Federation a separate provision providing for liability for indecent acts with the use of information and telecommunication networks, or to consider such crimes within the framework of a separate qualifying feature of Article 135 of the Criminal Code of the Russian Federation. It is also proposed that Article 135 of the Criminal Code of the Russian Federation be supplemented with a qualifying feature in which to establish increased liability for indecent acts without violence committed by a parent or other person charged by law with the responsibility for the upbringing of a person under the age of 16, as well as by a teacher or other employee of an educational organization, medical organization providing social services, or other organization required to supervise a person under the age of 16. To provide for a harsher penalty in respect of these special subjects if the same acts are committed in respect of persons under 14 years of age.

In order to counteract crimes against the sexual inviolability of minors more effectively, it is proposed that a system of bodies protecting minors from sexual exploitation and abuse be clearly developed at the legislative level, setting out the procedure for cooperation between these bodies and designating the main coordinating body.

It is also necessary to develop a clear interstate system of interaction and counteraction to such crimes.

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