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THE PRACTICE OF APPLYING THE NORMS ON RESPONSIBILITY FOR SEXUAL CRIMES (ARTICLES 131-135 OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION) AND WAYS TO IMPROVE IT**

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The subject. The article reflects the progress and results of the study of the practice of applying the norms on responsibility for crimes against sexual inviolability and sexual freedom of the individual (Chapter 18 of the Criminal Code of the Russian Federation). There are a large number of general and specific law enforcement problems that do not allow us to effectively counteract such crimes.

Purpose of the study. The purpose of the study is to confirm the scientific hypothesis about the presence of systemic problems in the practice of applying the norms of Chapter 18 of the Criminal Code of the Russian Federation, as well as to develop proposals for improving law enforcement.

Methodology. The identification of law enforcement problems was carried out by analyzing published and unpublished materials of judicial practice and comparing them with the main categories and principles of criminal law. Access to the published materials was carried out through the legal reference systems and the State Automated System "Justice". Un- published materials were obtained in the course of their own professional activities, as well as when studying the scientific works of other authors. The use of previously obtained re- sults of their own scientific activities, the results of scientific research of modern criminologists and criminologists, as well as the study of the experience of foreign countries allowed us to formulate proposals for solving the identified problems.

The main results. In the course of the study, the following systemic problems of law enforcement were identified. (1) The uncertainty of the content of other sexual actions. (2) The ambiguity of the legal assessment of the multiplicity of crimes against sexual inviolability and sexual freedom of the individual. (3) The blurring of the content and methods of committing depraved actions.

These problems characterize the current state of the practice of applying the norms of Chap- ter 18 of the Criminal Code of the Russian Federation.

To solve these problems and improve law enforcement, the following proposals are justified and formulated.

1. At the level of the resolution of the Plenum, it should be clarified that other actions of a sexual nature are contact forms of the perpetrator's influence on the victim's body that can satisfy sexual needs, with the exception of sexual intercourse, sodomy and lesbianism (for example, masturbation, fellatio, forced kisses, manual influence on the mammary glands or genitals and other ways of stimulating sexual arousal).
2. On the issue of the qualification of continuing crimes, the Plenum of the Supreme Court should indicate that repeated sexual acts that form the objective side of one corpus delicti should be considered as a single continuing crime, if their commission was covered by a single intent. At the same time, such intent may be evidenced by the behavior of the perpetrator, in which he does not stop the violation of sexual freedom or sexual inviolability of a particular victim.
3. The provisions of the resolution of the Plenum of the Supreme Court concerning the qualification of depraved acts should be changed, indicating that depraved acts are other sexual acts that are not covered by the dispositions of Article 134 of the Criminal Code of the Russian Federation, and actually depraved acts committed without direct physical contact in order to satisfy sexual needs or arouse the victim's interest in sexual acts. It is also important to emphasize that the acts provided for in the note to Article 131 of the Criminal Code of the Rus- sian Federation should include only other actions of a sexual nature.

Conclusions. In conclusion, it should be noted that the proposals formulated to solve the identified problems of law enforcement cannot completely eliminate them. The solution to these problems should be found through legislative changes. In this activity, it seems correct to focus on the positive experience of European legislators, which provides for a more de- tailed differentiation of responsibility depending on the features that objectively affect the nature and degree of public danger of the act.

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1. Preface.

Crimes against the sexual inviolability and sexual freedom of an individual, often referred to in the literature as sexual offences [1, p. 53], are among the most dangerous types of assault against a person. Experts emphasize that the most frequent effects experienced by the victims of such assaults are fear, anxiety, disgust, physical pain [2], extragenital injuries, health damage of varying severity, infectious diseases [3, p. 15], mental trauma [4, p. 112]. K. D. Nikolaev correctly points out that injuries resulting from crimes against sexual inviolability often entail irreversible psychological and physiological problems [5, p. 118].

Successful counteraction of such crimes requires high-quality criminal law regulation and effective criminal law action. Up-to-date and balanced legislation along with its effective implementation can minimize the destructive consequences of sexual crimes, including through their prevention.

The current pattern of criminality,[1] the state of convictions,[2] continuously changing qualification rules[3] and frequent miscarriages of justice[4] demonstrate that the criminal liability for sexual crimes needs improvement.

Supporting the foregoing conclusion, contemporary authors highlight that the problems of valid legal assessment of crimes against sexual inviolability and sexual freedom of an individual stem from the imperfection of the legislative framework and a lack of generally accepted rules for qualifying crimes, which impede, in the long run, compliance with the principles of inevitability, justice and commensurate punishment [6, p. 834].

Gaps in the legislative regulation of liability for sexual crimes are discussed in works by A. V. Motin [7], I. I. Skripova [8, p. 84], N. V. Tydykova [9, p. 136], A. A. Atabekova, L. A. Bukalerova, M. A. Simonova and O. A. Yastrebov. However, the latter of these point out that despite the ratification of the Lanzarote Convention,[5] domestic legislation still does

[1] According to the Main Information and Analytical Centre of the Ministry of Internal Affairs of Russia, in 2016 the number of crimes registered under Art. 131 of the Criminal Code of the Russian Federation amounted to 3893, under Art. 132 of the Criminal Code of the Russian Federation — 6436, under Art. 133 of the Criminal Code of the Russian Federation — 167, under Art. 134 of the Criminal Code of the Russian Federation — 4491, under Art. 135 of the Criminal Code of the Russian Federation — 1194 crimes. In 2017 the number of crimes registered under Art. 131 of the Criminal Code of the Russian Federation amounted to 3538, under Art. 132 of the Criminal Code of the Russian Federation — 6674, under Art. 133 of the Criminal Code of the Russian Federation — 156, under Art. 134 of the Criminal Code of the Russian Federation — 4988, under Art. 135 of the Criminal Code of the Russian Federation — 1498 crimes. In 2018 the number of crimes registered under Art. 131 of the Criminal Code of the Russian Federation was 3374, under Art. 132 of the Criminal Code of the Russian Federation — 6914, under Art. 133 of the Criminal Code of the Russian Federation — 176, under Art. 134 of the Criminal Code of the Russian Federation — 4974, under Art. 135 of the Criminal Code of the Russian Federation — 1810 crimes. In 2019 the number of crimes registered under Art. 131 of the Criminal Code of the Russian Federation was 3177, under Art. 132 of the Criminal Code of the Russian Federation — 7129, under Art. 133 of the Criminal Code of the Russian Federation — 279, under Art. 134 of the Criminal Code of the Russian Federation — 4996, under Art. 135 of the Criminal Code of the Russian Federation — 2036 crimes. In 2020 the number of crimes registered under Art. 131 of the Criminal Code of the Russian Federation was 3535, under Art. 132 of the Criminal Code of the Russian Federation — 7433, under Art. 133 of the Criminal Code of the Russian Federation — 236, under Art. 134 of the Criminal Code of the Russian Federation — 5319, under Art. 135 of the Criminal Code of the Russian Federation — 2192 crimes.

[2] See: Judicial statistics of the Judicial Department of the Supreme Court of the Russian Federation // http://www.cdep.ru/index.php?id=79

[3] See: Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 dated 04.12.2014 ‘On Judicial Practice in Cases of Crimes against Sexual Inviolability and Sexual Freedom of an Individual’; Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11 dated 15.06.2004 ‘On Judicial Practice in Cases of Crimes Falling under Articles 131 and 132 of the Criminal Code of the Russian Federation’; Resolution of the Plenum of the Supreme Court of the Russian Federation No. 4 dated 22.04.1992 ‘On Judicial Practice in Cases of Rape’.

[4] See, for instance: Review of judicial practice of the Supreme Court of the Russian Federation, 2020, No. 3 (approved by the Presidium of the Supreme Court of the Russian Federation on 25.11.2020).

[5] Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) (Concluded in Lanzarote on 25.10.2007).

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not establish responsibility for the "harassment" of a minor on the Internet (an offer to a minor for a meeting, followed by preparatory actions) [10, p. 428–429]. The theoretical inconsistencies of notes to Article 134 of the Criminal Code of the Russian Federation are discussed by L. M. Prozumentov [11]. V. K. Piskareva believes that a root and branch reform of criminal law is necessary, including in terms of giving a more precise definition of the concept of other actions of a sexual nature, and a rejection of both the characterisation of lecherous actions as non-violent and age boundaries of victims [12].

The literature also points to a large number of law enforcement problems. Thus, according to E. V. Avdeeva, there are questions in terms of judicial practice regarding the process of establishing criteria to assess a helpless state of victims of sexual assault [6, p. 834]. K. A. Barysheva raises the same problem in her work [13, p. 120]. A. A. Semerikova points out the uncertainties present in the legal assessment of sadomasochistic actions made towards a person who outwardly agrees to suffer physical pain [14]. V. N. Kitaeva emphasizes the problems of qualifying an attempted rape, stressing that a victim's helpless state may exclude the possibility of an assault qualification at this stage [15, p. 523]. I. V. Pantyukhina believes that the reforms enacted in relation to responsibility for non-violent sexual crimes impede application of the rule of exemption from criminal liability for their commission [16, p. 80].

These and many other law enforcement problems studied in the scientific literature are of a private nature, but this does not diminish their importance and criticality for law in general and criminal proceedings in particular. However, the objective of this study was to identify the most common systemic problems in the practice of the relevant norms of Chapter 18 of the Criminal Code of the Russian Federation and develop proposals for their resolution.

2. Uncertainty of the Notion of Other Actions of Sexual Nature.

The first problem is uncertainty in the qualification of other sexual acts committed in the course of rape.

It is important to understand that other actions of sexual nature include all kinds of physical impact on a person that can satisfy a sexual need, with the exception of sexual intercourse, sodomy and lesbianism. These include, for instance, various types of anal and genital stimulation, frot, vestibular coitus, masturbation, fellatio [17].

The psychophysiology of a person [18], as a rule, makes them in the process of sex (including violent sex) resort to various forms of stimulation of sexual arousal, its maintenance and development, which are precisely those which comprise other actions of a sexual nature. According to N. N. Konovalov, rape without other actions of a sexual nature becomes often impossible because of the resistance of the victim and a rather uncomfortable environment which affects the process of sexual arousal [19, p. 34]. It is quite obvious that in most cases of rape, the perpetrator, in addition to sexual intercourse, performs other actions of a sexual nature towards the victim (masturbation, cunnilingus, fingering and other "preliminary sexual caresses"). The problem is that these actions constitute corpus delicti of a separate crime subject to Article 132 of the Criminal Code of the Russian Federation. Thus, the Shcherbinovskiy District Court of the Krasnodar Territory found G. guilty of committing a crime falling under Part 1 of Article 132 of the Criminal Code of the Russian Federation. The case investigation found that G., being near household No. * on the street * in settlement *, grabbed B. — whom he did not know before — by the neck with his hand and, threatening her with physical violence, against her will, performed other actions of a sexual nature: he touched her breasts and genitals with his hands.[6]

In criminal cases of rape (Article 131 of the Criminal Code of the Russian Federation), additional qualifications under Article 132 of the Criminal Code of the Russian Federation are applied, as a rule, only when the perpetrator, in addition to sexual intercourse, also performs oral or anal sexual contact with the victim. Thus, according to the verdict of the Kalininsky District Court of the Tver Region of

[6] The verdict of the Shcherbinovskiy District Court of the Krasnodar Territory dated August 06, 2010 in case No. 1-93/2010. GAS RF *Justice* (State Automated System of the Russian Federation).

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October 01, 2014, N., in pursuit of his criminal intent, struck FULL NAME in the face with his fist, after which, seeing that the victim's will to resist was suppressed, he introduced his penis into the oral cavity of the victim FULL NAME against her will, thereby committing other acts of a sexual nature. Having committed these actions, N., seeing that the victim's will to resist was still suppressed, proceeding with his existing criminal intent, introduced his penis into the vagina of FULL NAME, against her will, thereby committing sexual intercourse.[7]

In similar cases where these forms of sexual contact are absent, the courts qualify the offense under the same Article 131 of the Criminal Code of the Russian Federation, omitting description of other actions of a sexual nature or referring to their commission as means of imposing violence. Thus, the Bryansk Regional Court found R. guilty of committing, inter alia, a crime subject to Part 1, Article 131 of the Criminal Code of the Russian Federation, finding also that R., in order to satisfy his sexual needs, suppressing L. G. V.'s resistance, made her fall on the ground, pulled off her dress, *took off* her panties and *bra*, after which, against the will of L. G. V., holding her on the ground, he had sexual intercourse with her.[8]

Rapes, during which the perpetrator does not commit other acts of a sexual nature, that is, does not otherwise touch the body of the victim to satisfy their sexual need, of course, also occur. Such crimes, as a rule, are characterized by the short duration of intercourse and have a different, non-sexual, motivation (for instance, revenge or a desire to demonstrate one's superiority).

However, in most convictions in rape cases, the courts inadvertently violate the principle of legality by omitting the relevant assessment of other sexual acts directly related to the sexual intercourse. Law enforcement practitioners do not generally hazard to use additional qualifications under Article 132 of the Criminal Code of the Russian Federation, since they do not have a clear idea of what should be understood by other acts of a sexual nature, and whether they can have their own legal value in terms of committing unwanted sexual intercourse.

Lack of uniformity in qualifying rape attempts is the effect of the same problem. In cases where a perpetrator fails to commit sexual intercourse (for instance, due to physiological problems), although the actions he has done already constitute other actions of a sexual nature, the courts can qualify the crime as attempted rape with reference to Part 3, Article 30 of the Criminal Code of the Russian Federation or as a consummated crime under Article 132 of the Criminal Code of the Russian Federation. Thus, the verdict of the Ostankino District Court of the city of Moscow found M. U. N. guilty of committing a crime under Part 3, Article 30, Clause 'b' of Part 2, Article 131 of the Criminal Code of the Russian Federation. The case investigation found that M. U. N. attacked A. N. A., began to hit her with his hands and feet on the body and face, voicing out his desire to have sexual intercourse with her, and then dragged her to one side, where he began to hit her head against the wall of the cafe building, threatening to kill her, while trying to take off her pants, touched the intimate parts of her body, expressing his desire to have sexual intercourse with her, until he was arrested by the police.[9] Assessing similar other acts of a sexual nature, the Kirovsky District Court of the Omsk Region stated that, within the context of the law, rape and the perpetration of violent acts of a sexual nature should be considered consummated actions, respectively, as of the beginning of sexual intercourse, an act of sodomy, lesbianism and other acts of a sexual nature provided for by the factual circumstances of the corpus delicti, regardless of their completion and consequences thereof. The evidence examined in the court session reliably testifies to the fact that the defendant did commit violent acts of a sexual nature in relation to the victim in the form of touching her genitals with his hands, given which the court found this crime consummated.[10]

[7] Verdict of the Kalininsky District Court of the Tver Region dated October 01, 2014 in case No. 1-187/2014. GAS RF *Justice*.

[8] Verdict of the Bryansk Regional Court of February 14, 2012.

[9] Resolution of the Moscow City Court dated May 21, 2015 in case No. 4u-2457/2015.

[10] Verdict of the Kirovsky District Court of the Omsk Region dated September 19, 2018 in case No. 1-554/2018.

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It seems that none of these approaches fully comply with the current law. In situations where the acts of a perpetrator aimed at committing rape already contain other acts of a sexual nature, but sexual intercourse was not committed due to circumstances beyond his control, law enforcement practitioners should qualify the deed, accounting for the actions taken and their intent as violent acts of a sexual nature and attempted rape. An example of a valid qualification is the Sentence of the Supreme Court of the Republic of Karelia, according to which R. was found guilty of committing, inter alia, the crimes provided for by Part 3 of Article 30, Part 1 of Article 131 and Part 1 of Article 132 of the Criminal Code of the Russian Federation. Investigation of the case found that R., in order to satisfy his sexual needs, against the will of L., undressed her, taking off her trousers, panties and bra, and, holding the arms and legs of the victim, tried to have sexual intercourse with her. However, due to an inability to perform sexual intercourse for physiological reasons, R., while continuing to hold L. by the arms and legs, acting to satisfy his sexual needs, against the will of the victim, inserted a finger into her vagina.[11]

As for the general problem of understanding other actions of a sexual nature, this problem, before it is resolved by law, can and should be graded within the framework of appellate, cassation, supervisory activities and generalization of judicial practice by giving the courts explanations about the content of these actions, citing (preferably from the current Resolution the Plenum on Sexual Crimes) the most common examples therefrom.

3. The Ambiguity of Legal Assessment of the Plurality of Crimes against Sexual Inviolability and Sexual Freedom of an Individual.

The second problem is related to the legal assessment of a plurality of crimes against sexual inviolability and sexual freedom of an individual. Law enforcement practitioners face issues both in the process of qualifying sexual crimes and in imposing punishment for their perpetration. In either case, complexity may stem from either of the two forms of plurality.

Issues of qualifying crimes under consideration often arise in cases of repeated acts of a sexual nature. If such actions are provided for by different articles (for instance, sexual intercourse — Article 131 of the Criminal Code of the Russian Federation, and other actions of a sexual nature — Article 132 of the Criminal Code of the Russian Federation), the aggregate of crimes is obvious. If the perpetrator committed several acts of a sexual nature, responsibility for which is defined in one article of the Criminal Code of the Russian Federation, the deed, depending on the circumstances, can constitute a single continuing crime or an aggregate of crimes.

The Plenum of the Supreme Court of the Russian Federation points out that in cases where several rapes (violent sexual intercourse) or several violent acts of a sexual nature are committed within a short time in relation to the same victim and the circumstances of their perpetration testify to the unanimous intention of the perpetrator to commit these identical actions, the deed should be considered as a single continuing crime.[12]

The problem is that the law enforcement practitioner does not have clear criteria to establish a single intent and a short timeframe of sexual crimes. According to M. V. Bercheneva, a number of constituent entities of the Russian Federation tend to classify each consummated sexual act, if repeated multiple times, as a separate crime and construe a criminal intent as re-emerging with each crime. The author cites a practical case of the Irkutsk Regional Court, whose verdict found G. guilty, inter alia, of 24 crimes provided for by clause ‘b’, Part 4, Article 132 of the Criminal Code of the Russian Federation. The court found that G., in pursuit of his sexual need, making use of helpless state of his minor daughter, forced the latter to take his naked penis in her hands, perform reciprocating movements, sit on his bare penis, imitating sexual intercourse. Such actions were carried out at intervals of about twice a week

Judicial and Regulatory Acts of the Russian Federation (SudAkt.Ru).

[11] Sentence of the Supreme Court of the Republic of Karelia dated November 26, 2004 // SPS ConsultantPlus.

[12] Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 dated 04.12.2014 *‘On Judicial Practice in Cases of Crimes against Sexual Inviolability and Sexual Freedom of an Individual’*.

ISSN 2542-1514 (Print)

(Archive of the Irkutsk Regional Court. Case No. 2-20/2015) [20].

Obviously, the criminal acts in the above situation are committed with a single intent, consisting of the fact that the perpetrator was initially aware of his violating the victim's sexual inviolability and sexual freedom, he wanted to do this and further did not change his mental attitude, continuously making use of the helpless state of his daughter and committing acts of a sexual nature periodically.

There is no certainty regarding the short period of time during which these actions were performed. This attribute is purely estimative and is asserted by the law enforcement practitioner without the need to justify it. As it happens, one of the arguments the court used in its qualification in the above verdict was the statement that the actions of a sexual nature were carried out over a long period of time.

A. F. Zalov is correct to point out that many questions regarding the qualification of continuing rape could have been avoided if single intent was given the status of the only criterion for determining continuing sexual crime [21, p. 29]. Indeed, the time interval between acts of sexual activity can vary greatly depending on many factors: form of the sexual contact, physiological characteristics, mental state, location, use of drugs and psychoactive substances, etc. The perpetrator of the sexual act may take breaks for sleep or using narcotics. In either case, this should not matter for the qualification as long as the renewed sexual assault had a common single intent with the interrupted one.

The courts should be given clarifications that repeated acts of a sexual nature that constitute the factual circumstances of the same corpus delicti should be considered as a single continuing crime if their perpetration stemmed from a single intent. Moreover, such intent may be evidenced by the behaviour of the perpetrator, when they do not cease the violation of sexual freedom or sexual inviolability of a particular victim. Continuing violation of sexual freedom can, for instance, take the form of imposing violence (including restriction of freedom), in exercising previously used violence, in the use of threats (including non-verbal) or a helpless state, giving the perpetrator an actual opportunity to continue the crime. Continuing violation of sexual inviolability can be evidenced by the cohabitation of the perpetrator with a minor victim, family planning (for instance, preparation for conception) and other attributes indicating the long-term nature of the joint sexual life between them.

It is important to remember that non-violent sexual crimes committed against several victims also do not form aggregates of crime and are subject to qualification under Part 4, Article 134 or Part 3, Article 135 of the Criminal Code of the Russian Federation, depending on the form of sexual contact, respectively.

Violent sexual crimes committed against several persons are subject to qualification as aggregate of crimes. This position in the literature raises no doubts [22].

Law enforcement problems also arise with the assessment of recidivism of crimes.

In terms of qualifications, the questions mainly relate to the determination of the relevant perpetrators of crimes provided for in Part 5 of Articles 131 and 132 of the Criminal Code of the Russian Federation, accounting for the operation of criminal law in time.

In the process of defining punishment, the courts err most often in the assignment of penal institution. Thus, the Presidium of the Supreme Court of the Russian Federation overturned the verdict, the appellate ruling regarding the type of penal institution to which M. was assigned, and transferred the case in this part for a new judicial review. The case investigation found that the court verdict of November 18, 2015 sentenced M. (previously convicted on May 18, 1998 under clause 'c', Part 3 of Article 131 of the Criminal Code of the Russian Federation to 10 years in prison) to 19 years of imprisonment under Part 5 of Article 131 of the Criminal Code of the Russian Federation and to 15 years of imprisonment under Part 5 of Article 132 of the Criminal Code of the Russian Federation. On the basis of the aggregate of crimes, M. was sentenced to 23 years of imprisonment in a maximum security penal colony. By the appellate ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation, the verdict was upheld.

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However, it appears from the materials of the criminal case that M. was convicted by a court verdict of May 18, 1998 under clause 'c', Part 3 of Article 131 of the Criminal Code of the Russian Federation for a crime belonging to the category of particularly grave crimes. According to clause 'e', Part 3 of Article 86 of the Criminal Code of the Russian Federation *(as amended on June 13, 1996*), a criminal record in relation to persons convicted of a particularly grave crime is cancelled *8 years after* the sentence was served. At the time of the rape and violent acts of a sexual nature in September 2014, M.'s criminal record had not been cancelled in the due legislative procedure, therefore, in accordance with clause 'b', Part 3 of Article 18 of the Criminal Code of the Russian Federation, the actions of the convict qualify for particularly grave recidivism. In this regard, based on clause 'd', Part 1 of Article 58 of the Criminal Code of the Russian Federation, M. must serve his sentence in a maximum security penal colony.[13]

The above example demonstrates that the courts have doubts about the properties of a criminal record for a previously committed crime against the sexual inviolability of a minor, including its influence on the assignment of punishment for a new crime, of which it is a crime-generating attribute.

According to the current version of the Criminal Code of the Russian Federation, the legal implications of previously committed crimes against the sexual inviolability of minors affect not only the qualification of a new sexual assault, but also the imposition of punishment for its perpetration. Examples of valid imposition of punishment under Parts 5 of Articles 131 and 132 of the Criminal Code of the Russian Federation and under Part 6 of Article 134 and Part 5 of Article 135 of the Criminal Code of the Russian Federation could reasonably be cited in the resolution of the Plenum of the Supreme Court of the Russian Federation on sexual crimes, on the practice of sentencing or on choosing the type a penal institution.

[13] Review of judicial practice of the Supreme Court of the Russian Federation. 2020. No. 3 (approved by the Presidium of the Supreme Court of the Russian Federation on 25.11.2020).

4. Obscurity of the Notion and Methods of Committing Lecherous Actions.

The third problem is the obscurity of the notion and methods of committing lecherous acts.

The current legislation, regrettably, contains no definitions of the attributes inherent to lecherous actions. Filling this gap, the Plenum of the Supreme Court of the Russian Federation clarifies that any actions, except for sexual intercourse, sodomy and lesbianism, committed against persons who have reached the age of twelve, but are under the age of sixteen, aimed at satisfaction of sexual desire of a perpetrator or inducement of sexual arousal in the victim or victim's interest in sexual relations shall be deemed lecherous actions. In addition, lecherous actions may also be comprised of actions which do not involve direct contact of the perpetrator with the victim's body, including actions committed via the Internet or other information and telecommunication networks.[14]

Thus, the notion of lecherous actions, according to the Supreme Court of the Russian Federation, shall be deemed to constitute contact actions aimed at satisfying the sexual desire of a perpetrator, at inducing sexual arousal in the victim or the victim's interest in sexual relations, with the exception of sexual intercourse, sodomy and lesbianism, and all kinds of contactless actions, including actions performed via various information and telecommunication networks.

There arises the question of whether the notion of lecherous actions coincides with other actions of a sexual nature. Many law enforcement practitioner think so. This is evidenced by the materials of forensic practice[15] and special studies on this topic. Thus, D. A. Shamansky, as a result of his analysis of judicial practice, comes to the conclusion that the law enforcement practitioner may recognize other actions of a sexual nature, actually committed in a non-violent way, depending on the age of a victim, as lecherous or violent other actions of a sexual nature [23].

[14] Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 dated 04.12.2014 *'On Judicial Practice in Cases of Crimes against Sexual Inviolability and Sexual Freedom of an Individual'*.

[15] Resolution of the Krasnodar Regional Court dated August 22, 2016 in case No. 4u-2078/2016.

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Most academics disagree with this position. According to E. V. Khromov, lecherous actions by their nature have qualitatively different features of criminalization, associated primarily not with the perversity of sexual intercourse against the will of a victim, but with the age characteristics of a victim and the perpetrator of the crime, who voluntarily enter into sexual relations. Other actions of a sexual nature, as comparable in terms of the degree of destructive impact on the object of assault, have a higher degree of social danger than lecherous actions, therefore they have a different form of expression of socially unacceptable sexual behavior [17]. T. V. Kondrashova agrees with the author and notes that other actions of a sexual nature can only be contact, while lecherous actions may be contact and non-contact [24].

The confusion around these concepts is associated with a note to Article 131 of the Criminal Code of the Russian Federation, according to which lecherous acts committed against a person under the age of twelve should be classified as violent acts of a sexual nature (other acts of a sexual nature committed using the helpless state of a victim). This requirement stems from efforts to ensure a high level of legal protection for the most vulnerable category of victims of sexual acts, which, even without the use of violence, can cause serious effects for the physical and mental well-being of minors. Such actions, in terms of the corpus delicti provided for in Article 135 of the Criminal Code of the Russian Federation, are other actions of a sexual nature, which, like (provided for in Article 134 of the Criminal Code of the Russian Federation) sexual intercourse, sodomy and lesbianism are committed by physical impact on the victim's body and have highly dangerous potential effects for a minor.

At the same time, lecherous actions are also non-contact actions, the danger of which is in fact much lower [25]. The general approach to the definition of lecherous actions developed by the Supreme Court of the Russian Federation currently admits the recognition of non-contact actions aimed at satisfying sexual needs as violent actions of a sexual nature in accordance with clause 'b', Part 4 of Article 132 of the Criminal Code of the Russian Federation, where the punishment varies from 12 to 20 years of imprisonment. Thus, by the verdict of the Moscow City Court, M. was found guilty of committing a crime subject to clause 'b', Part 4 of Article 132 of the Criminal Code of the Russian Federation. The investigation of the case found that the defendant, in the process of Internet correspondence, sent text, graphic, photo and video files of pornographic content to the victim under the age of twelve, thereby exerting a psychological effect aimed at encouraging a minor to commit sexual acts.[16]

Existing provisions requiring non-contact lecherous acts committed against persons under the age of twelve to qualify as violent acts of a sexual nature under clause 'b', Part 4 of Article 132 of the Criminal Code of the Russian Federation contradict the principles of justice (due to excessively severe punishment) [26, p. 17] and legal certainty (since they do not allow people to predict the legal consequences of their actions).

New explanations of the Plenum of the Supreme Court of the Russian Federation on the notion and methods of committing lecherous actions may serve as a temporary solution (until legislative developments appear) of the above problem.

Thus, clause 17 of the current resolution of the Plenum on sexual offenses should state that lecherous acts are other acts of a sexual nature that are not covered by the dispositions of Article 134 of the Criminal Code of the Russian Federation, and the lecherous acts *per se* committed without direct physical contact in order to satisfy a sexual need[17] or induce a victim's interest in sexual activities. Only other acts of a sexual nature should be classified as acts provided for by the note to Article 131 of the Criminal Code of the Russian Federation.

Clause 16 of the above resolution should also be amended: it should be noted that, in accordance with Article 135 of the Criminal Code of the Russian Federation, liability is imposed for lecherous acts committed without violence. However, perpetration of non-contact lecherous actions (lecherous actions *per se*) through the threat of violence or using a

[16] The verdict of the Moscow City Court dated February 18, 2014 in case No. 2-0011/2014.

[17] The goal of satisfying sexual need includes, among other things, inducement of sexual desire, since the latter is a reflection of sexual need [27, p. 187].

helpless state should be qualified under Article 135 of the Criminal Code of the Russian Federation.[18]

5. Conclusion.

As a result of the study, the following systemic problems of law enforcement in relation to sexual crimes were identified.

1. Uncertainty of the notion of other actions of sexual nature.

2. The ambiguity of legal assessment of the plurality of crimes against sexual inviolability and sexual freedom of an individual.

3. Obscurity of the notion and methods of committing lecherous actions.

Ways for resolving the foregoing problems are proposed as follows.

At the level of the resolution of the Plenum, it is proposed to clarify that other actions of a sexual nature are contact forms of influence of the perpetrator on the body of the victim, which allow the perpetrator to satisfy sexual need, with the exception of sexual intercourse, sodomy and lesbianism (for instance, masturbation, fellatio, forced kissing, manual influence on the mammary glands or genitals and other ways to induce sexual arousal).

Provisions of the resolution on the qualification of lecherous acts are proposed in the following wording.

"Lecherous acts shall be other actions of a sexual nature that are not covered by the dispositions of Article 134 of the Criminal Code of the Russian Federation, and lecherous acts as such performed without direct physical contact to satisfy a sexual need or induce the victim's interest in actions of a sexual nature. Only other actions of a sexual nature should be referred to the acts provided for by the note to Article 131 of the Criminal Code of the Russian Federation…

In accordance with Article 135 of the Criminal Code of the Russian Federation, liability shall be imposed for lecherous acts committed without violence. Moreover, perpetration of non-contact lecherous actions (actual lecherous actions) with the threat of violence or with the use of a helpless state should be qualified under Article 135 of the Criminal Code of the Russian Federation."

As far as qualification of continuing crimes is concerned, the Plenum of the Supreme Court could state that repeated acts of a sexual nature, constituting the factual circumstances of the same corpus delicti, should be considered as a single continuing crime if their perpetration stems from a single intent. Moreover, such intent may be evidenced by the behaviour of the perpetrator, when they do not cease the violation of sexual freedom or sexual inviolability of a particular victim. Continuing violation of sexual freedom can, for instance, take the form of imposing violence (including restriction of freedom), in exercising previously used violence, in the use of threats (including non-verbal) or a helpless state, giving the perpetrator an actual opportunity to continue the crime. Continuing violation of sexual inviolability can be evidenced by the cohabitation of the perpetrator with a minor victim, family planning (for instance, preparation for conception) and other attributes indicating the long-term nature of the joint sexual life between them.

In addition, it would be reasonable in the resolution of the Plenum to give examples of valid imposition of punishment under Parts 5 of Articles 131 and 132 of the Criminal Code of the Russian Federation and Part 6 of Article 134 and Part 5 of Article 135 of the Criminal Code of the Russian Federation, including the type of penal institution appropriate.

We believe that the above proposals will make the differentiation of liability balanced and have a favourable effect on law enforcement, including in terms of compliance with the principles of criminal law.

However they are not sufficient to completely resolve the indicated problems. For instance, the issue of liability for contactless lecherous acts committed against a person under the age of twelve will remain open. This and other problems shall be finally resolved through legislative reforms. For the purpose of this activity, it seems reasonable to focus on the positive experience of lawmakers of European states, which provides for a

[18] In the Criminal Code of the Russian Federation, the attribute "with the use of violence" means the use of physical violence exclusively, therefore the attribute "without the use of violence" should determine the absence of physical violence exclusively, rather than the threats or the use of the helpless state [28, p. 11].

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more detailed differentiation of liability depending on the attributes that actually affect the nature and degree of public danger of the act.

Thus, in Germany, after the Law (Fiftieth Law on the Reform of the Criminal Legislation of the Federal Republic of Germany) on the enhancement of protection of sexual self-determination of a person of November 4, 2016[19] was adopted, unified definitions of elements of sexual coercion (sexuelle Nötigung) and acts of a sexual nature towards defenceless persons (*should not to be confused with the helpless status*), along with a new legal term — "sexual harassment" (sexueller Übergriff) — were all introduced. Thus, firstly, the gap was closed in terms of appropriate punishment for nonviolent rape, when women, numb from fright or in fear of possible violence against them, have to endure the perpetration of sexual acts [29], and secondly, equal liability was enacted for violations of opposing will of the victim. With the introduction of new attributes, according to Pavel Golovnenkov, the scope of § 177 of the Criminal Code of the Federal Republic of Germany was significantly expanded, since criminal liability now arises not only with the acts committed through the use of violence, threats of personal harm to physical integrity or life, and through the use of defenceless status of the victim, but also in the case of "neglect" of the discernible (clause 1) and non-discernible (clause 2) opposing will of the victim (sexual harassment) [30, p. 282–284].[20]

It is also important to note that the main corpus delicti of the crime in question covers any contact acts of a sexual nature, with the exception of actions resulting in the penetration into the body, which form a qualified corpus delicti of this crime. The above regulation of liability, for instance, completely resolves the problem of uncertainty of the notion of other actions of a sexual nature inherent in Russian criminal law.

[19] BGBl. 2016 I S. 2460. https://dejure.org/BGBl/2016/BGBl._I_S._2460

[20] P. V. Golovnenkov. CRIMINAL LAW OF THE FEDERAL REPUBLIC OF GERMANY — Strafgesetzbuch (StGB) — Scientific and practical commentary and translation of the text of the law Universitätsverlag Potsdam 2021 282–284 https://doi.org/10.25932/publishup-47371

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