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CRIMINAL LIABILITY FOR SEXUAL COERCION

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The most widespread problem in society worldwide is sexual harassment of women and children. Sexual harassment is considered to be intimidation, bullying or coercion of a sexual nature, as well as an undesirable or improper promise of remuneration in exchange for sexual services, other verbal or physical sexual services. [1]

In some countries, street sexual harassment in the form of insults, catcalling (unwanted, unsolicited compliments) and disparaging comments on the basis of gender is prosecuted in many modern countries.[2] In our time, not only women are harassed, but also female children. To resolve this situation, we need to bring this issue under control. In addition, cases of harassment are

widespread not only in public places, but also in the workplace. Sexual violence in the workplace is a form of gender-based discrimination that can combine elements of physical and psychological violence, as well as a number of behaviors, such as unkind remarks or harassment, "jokes", brief physical touching, and sexual assault [3]. As with gender-based violence in general, men and boys can be victims of sexual violence and harassment, but the vast majority of reported cases involve women and girls. Harassment in a hostile work environment refers to a form of behavior that creates a threatening, hostile, or humiliating work environment. Sexual harassment violates workers' rights to a safe and comfortable working environment and working conditions. The risk of being harassed prevents a person from feeling safe in public places and transport. Harassment is often a prelude to more serious crimes, including incarceration, threats, beatings, rape, and even murder. In order to avoid the consequences, we need to deal with the root of the problem, sexual harassment.

The problem is that there is no concept of sexual harassment in Kazakhstan. Despite the fact that this is a form of sexual violence, a violation of the human right to inviolability of honor and dignity and a type of discrimination, it is still impossible to punish harassment at the legislative level. Because of this, a number of problems that could have been prevented expire. For example, the victims would not be silent about what happened and would not tolerate these humiliations. In practice, anyone can face sexual harassment: men and women; adults and children; at work, at school, university, hospital; in the civil service and in private companies; on the street, in a taxi, on the train, on public transport and in many other places. But since there is no specific article on sexual harassment in Kazakhstan-neither in the Code of Administrative Offenses, nor in the Criminal Code, the police, according to public activists, do not have effective methods for investigating and bringing to justice for sexual harassment. It turns out that it is almost impossible to achieve punishment for the aggressor.

Preventing sexual harassment.

The most effective weapon against sexual harassment is prevention. Harassment does not disappear by itself. In fact, it is more likely that when the problem is not resolved, the harassment will worsen and become more difficult to fix over time.

Responsibilities of the Employer.

The burden of preventing sexual harassment lies with the employer. In the United States, Canada, and some member States of the European Union, employers have a responsibility to ensure that their employees enjoy working conditions that are non-discriminatory and non-oppressive. Therefore, the law obliges employers to take measures to prevent and combat harassment in the workplace. If the employer has not taken all reasonable measures to prevent and combat harassment in the workplace, they may be held responsible for any harassment, which actually happens, even if you don't know that harassment has taken place. The United States, in particular, has a well-defined standard of employer liability for sexual harassment committed by an employee.

Employee Responsibilities.

In addition to the employer's responsibility to ensure a non-discriminatory and non-violent workplace environment, employees must also play an active role in preventing sexual harassment. Employees must make the following commitments:

- get and review the organization's sexual harassment policy;
- be aware and aware of possible sexual harassment or incidents at work;
- be sensitive to people who may be offended by the verbal and non-verbal behavior of others;
- watch out for sexual behavior that negatively affects your work and do not encourage it.
- don't take sexual harassment lightly. If you think you are being sexually harassed by a person or group, don't take it as a joke. Don't encourage your pursuer by smiling, laughing at their jokes, or flirting back. Let the stalker know that you are uncomfortable and do not want such attention.
- if possible, tell the stalker that their behavior negatively affects you and could potentially negatively affect you.;
- tell the stalker what behavior (gestures, physical or verbal) you find it offensive.
- document all cases of sexual harassment. Be detailed and accurate about the date, time, location, and people involved.

In Russian society, the problem of sexual harassment is acute. In this regard, it is proposed to introduce administrative liability for sexual harassment, and in the case of sexual harassment committed by a person subjected to administrative punishment for sexual harassment, to provide for criminal liability in Article 133.1 of the Criminal Code of the Russian Federation "Sexual harassment committed by a person subjected to administrative punishment". This means that, you can consider the option where, initially, the aggressor should be brought to an administrative offense, and in the case of a recedive, a more severe punishment should be applied.

Based on foreign experience, for example, the President of the Philippines, Rodrigo Duterte, signed a bill that provides for punishment for sexual harassment.

Bill 11313 was called the "Safe Space Act". According to the new law, sexual harassment is any sexual act that one person commits against another without his consent and desire.

For example, now the country will be punished for whistling and any unsolicited comments with sexual overtones to a person, as well as for misogynistic, homophobic or sexist insults. Violators of the law can go to prison for a period of six days to six months, as well as pay a fine of one thousand to 500 thousand Philippine pesos (\$20-\$9.7 thousand).[4]

It is possible to use the practice of the Philippines and introduce sexual harassment in our criminal code. Take into account all factors such as sexual harassment against men and children, harassment committed repeatedly, against two or more persons, and so on. After the adoption of the law, the victims will no longer remain silent and tolerate all these bullying in their address. According to UN statistics, more than a third of women in the world, namely 35%, face physical and sexual violence. [5]

In almost every country, women are victims of sexual harassment at work, on public transport, and at home.

If we take into account the minimum number of reported cases of sexual violence, the real situation looks threatening.

According to the international non-governmental organization Actionaid, 79% of women in India, 87% in Vietnam, 77% in Cambodia, and 57% in Bangladesh have experienced some form of sexual harassment. [6]

According to official statistics of the Ministry of Internal Affairs of the Republic of Kazakhstan in the period from 1998 to 2018, 87 cases were registered under Article 123 of the Criminal Code of the Republic of Kazakhstan "Compulsion to sexual intercourse, sodomy, lesbianism or other sexual acts", as well as a total of 30 cases were referred to court— 25 people were convicted, but no person was punished with imprisonment, which again proves the inaction of the law.[7] President Kassym-Jomart Tokayev, in his message of September 2, 2019, ordered to urgently toughen the punishment for sexual violence and pedophilia in the country. MP Nurzhan Altayev, the initiator and one of the developers of the draft law on toughening the punishment for rape, also proposes to introduce criminal penalties for sexual harassment in Kazakhstan. Altaev said that he will promote the relevant bill after the New Year. Altaev believes that for sexual harassment, it is necessary to introduce fines in the amount of up to two hundred monthly calculation indices or arrest for up to fifty days. It should also be a public article, not a private one, in which case it will be impossible to reconcile the parties.[8] However, more than two years have passed, and there is still no law.

In the Kazakh society, it is not customary to take harassment seriously. When a woman accuses her boss of harassment, society begins to put pressure on her with reproaches: "probably, she flirted with him", "apparently dressed inappropriately" or "some girls even sleep for a workplace, and this is normal". Men oppose the appearance of a criminal article for "sexual harassment" or are skeptical about it because they are used to being unpunished. And now women may have the opportunity to protect their sexual safety within the framework of the law. That's why men are afraid of losing their unspoken right to harassment.

How can you prove an act of harassment?

* unwanted sexual offers;

* demands for the provision of sexual services and other verbal or physical actions of a sexual nature;

- * bullying, unwanted communication
- * offering rewards in exchange for sexual services;
- * other verbal or physical (hugging, touching) harassment of a sexual nature.

These are witness statements, written and physical evidence, audio and video recordings, expert opinions, electronic documents and explanations of persons involved in the crime. However, the first difficulties may arise here, since according to the Criminal Procedure Code of the Republic of Kazakhstan, video and audio recordings that were not authorized by the investigation cannot be evidence in court. In other words, even if you shoot the harassment of the boss on camera, you can still lose the process.

There is no goal to increase the level of punishment for those who harass. There is a goal to prevent harassment, to prevent it from happening. We need to create the necessary conditions, we need to work with organizations so that each employer first of all determines for themselves and for their partners that they are against sexual harassment. He must communicate to his employees and may even teach them that this is wrong. Every organization should have tools to address such conflicts in the workplace. The victim should have the opportunity to complain, and the organization should try to eliminate the uncomfortable conditions. If this did not work, then the guilty person should be criminally punished.

Sexual harassment has been, is, and will be. The only thing that needs to be done is to reduce their number to a minimum, and create a safe society around the world.

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