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**CRIMINAL LIABILITY FOR CHILD RAPE IN THE LEGISLATION  
OF THE ADVANCED COUNTRIES OF THE WORLD**

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**Abstract**

The comparative legal analysis of the application of the norms on child rape, which caused serious harm to the health of victims with similar norms in the legislation of advanced countries of the world. Determining the most effective ways to enforce clause "b" of Part 4 of Article 131 of the Criminal Code of the Russian Federation not only in Russia, but also in the countries that are parties to the Lanzarote Convention. The General scientific methodological approach was applied within the preparation of the article. While doing the research private scientific methods of knowledge (dialectical, analysis, synthesis, generalization) and special scientific methods (comparative legal, legal and technical) were implemented. Following the positive example of the advanced countries of the world (Germany, France, USA, England, China), Russia needs to strengthen criminal liability for sexual offences, particularly, for rape, leading to serious consequences for a child under 14 years of age. In this regard, it is proposed to improve the Russian criminal legislation. If the proposed changes in the Russian legislation are effective in the area under analysis, there is a great chance that Russia's fruitful cooperation with the Lanzarote Convention control mechanism can result in a significant contribution to other states.

**Keywords**

Rape – Juvenile – Careless form of guilt – Serious bodily harm – Stricter punishment

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## Introduction

Child rape is the most common and serious crime against sexual freedom and sexual integrity of juveniles. Despite the close attention to crimes against the sexual inviolability of juveniles by the Russian legislator, the legal community and the public, many questions of the legal regulation of such crimes in the Russian legislation today remain unresolved and require scientific approach, analysis and resorting to foreign legal regulation experience. Within this study the general scientific methodological approach allows to analyze the criminal legislation of a number of the leading countries of the world, which are parties to the Council of Europe Convention on the Protection of Children of 2007<sup>1</sup> (hereinafter - the Lanzarote Convention) for comparative analysis. Having ratified the Lanzarote Convention, in accordance with Subparagraph “A” of Paragraph 1 of Article 18 of this Convention, the Russian Federation is committed to taking all necessary measures to ensure the establishment of criminal liability, which also includes liability for engaging in activities of sexual nature with any underage child.

## General Characteristics of the Legal Regulation of the Analyzed Norm in the Russian Criminal Legislation

In the national legislation of the vast majority of world countries, the corresponding public liability is enshrined in criminal law, in Russia it is enshrined in Articles 131-135, 240, 241, 242.1, 242.2 and other articles of the Criminal Code of the Russian Federation <sup>2</sup> (hereinafter – the CC of the RF). Higher courts have repeatedly spoken in their decisions on the increased protection of children from sexual violence (for example, Decisions of the Constitutional Court of the Russian Federation “On the refusal to accept for consideration a complaint of a citizen Nasteka Daniil Aleksandrovich on violation of his constitutional rights by Articles 134 and 135 of the CC of the RF”, dated July 18, 2017 № 1549-O, “On the refusal to accept the complaint of citizen Perepelko Sergey Leonidovich for violation of his constitutional rights by Part 4 of Article 134 of the CC of the RF”, dated September 27, 2018 № 2224-O, “On the refusal in accepting for consideration the complaint of the citizen Roman Aleksandrovich Sinekaev about the violation of his constitutional rights by the note to article 131 of the Criminal Code of the Russian Federation and Subparagraph “B” of Paragraph 14 of Article 1 of the Federal Law, “On Amendments to the CC of the RF and Certain Legislative Acts of the Russian Federation in order to Strengthen Responsibility for Sexual Offenses Committed against Juveniles” dated January 29, 2019 № 79-O <sup>3</sup> and others). Despite the close attention to crimes against the sexual inviolability of juveniles by the Russian legislator, the legal community and the public, these days most issues of the legal regulation of such crimes in the Russian legislation remain unresolved and require scientific analysis and reflection.

## The Current State of Violent Crime against Juveniles in Russia

The type of criminal assault that is of particular interest is the child rape (rape of persons under the age of 14) (Paragraph “B” of Part 4 of Article 131 of the CC of the RF),

<sup>1</sup> Council of Europe, “Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse, 12 July 2007, CETS No.: 201” (Council of Europe, 2007), <https://rm.coe.int/1680084822>.

<sup>2</sup> The State Duma, The Criminal Code of the Russian Federation No. 63-FZ of June 13, 1996 (as amended from 02.08.2019), 1996, <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>

<sup>3</sup> Consultant Plus, “Informatsionnyy bank ‘Arkhiv resheniy sudov obshchey yurisdiksiy’”, KADIS, 2019.



which is the most common and serious crime against sexual freedom and sexual inviolability, which is characterized by increasing dynamics, a high level of latency with a quite light punishment system. So, according to the Judicial Department under the Supreme Court of the Russian Federation, 2,709 people in Russia were convicted in 2016 under Article 131 of the CC of the RF, 2,451 people were convicted in 2017. In 2018, 557 people were convicted of aggravated rape (Parts 3-5 of Article 131 of the CC of the RF), 546 of whom were sentenced to imprisonment and 0 to death penalty or life imprisonment<sup>4</sup>. Despite the fact that in the studies of a number of scientists and processualists there is data that justifies a general decrease of violence in the world in recent decades, and, in particular, of sexual recidivism among criminals<sup>5</sup>, which points out the effectiveness of the state policy of reducing the scale of sexual violence in the society<sup>6</sup>, latent violent crime against juveniles, and in particular young children, dominates in Russia, which is explained by many reasons, which include: the imperfection of Russian legislation<sup>7</sup>; the insufficient assessment of the public danger of this type of crime by law enforcement authorities<sup>8</sup>; the reluctance of victims to share information with relatives, people close to them and the society; the doubts about the effectiveness of legal assistance; the low level of supervision and management of violent criminals, and other reasons. The fact of committing the abuse of a young child entails the most negative and terrifying consequences: health and psyche deterioration, often death of the victims<sup>9</sup>.

### **The Specifics of the Legal Regulation of Criminal Liability for Child Rape in a Number of Advanced Countries of the World**

The general scientific dialectic method of cognition allows us to study the features of the mechanism of legal regulation of criminal liability for child rape in a number of advanced countries of the world, where there are its different regulations, which, certainly, poses interest in studying positive experiences with the aim of improving the Russian criminal legislation. The general features of foreign criminal law of regulating young children rape include the recognition of this crime in most countries of the world as felony<sup>10</sup>. The Russian Federation belongs to the group of countries with the most humane punishment for raping young children (the maximum punishment under the sanction of Paragraph “B” of Part 4 of Article 131 of the CC of the RF is 20 years of imprisonment with the deprivation of the right being hired to certain positions or being engaged in certain business activities for up to 20 years or without it), therefore, special attention ought to be paid to approaches of establishing the severity of responsibility and the amount of punishment for the criminal offense under consideration in other countries, for which private scientific methods of analysis, synthesis and generalization are used .

<sup>4</sup> “Judicial Department at the Supreme Court of the Russian Federation,” Judicial Department at the Supreme Court of the Russian Federation, 2019, <http://www.cdep.ru/index.php?id=77>.

<sup>5</sup> Maribeth Rodin and Gail Abarbanel, *Kak eto byvayet. Seksual'nyye prestupleniya i iznasilovaniye* (Moscow: Etipak, 2011).

<sup>6</sup> W. Masters; W. Johnson and R. Kolodney, *Osnovy seksologii* (Moscow: Mir, 1998).

<sup>7</sup> Rustam A. Bazarov, “Problemy zakonodatel'noy reglamentatsii ugolovnoy otvetstvennosti za osobo kvalifitsirovannyye sostavy iznasilovaniya”, *Ugolovnoye zakonodatel'stvo [Criminal-Executory System: law, economics, management]*, Vol: 2 (2019): 24.

<sup>8</sup> V. N. Karagodin, *Rassledovaniye umyshlennykh prestupleniy protiv zhizni, polovoy svobody i neprikosnovennosti nesovershennoletnikh. Monografiya* (Moscow: Prospekt, 2019), 179.

<sup>9</sup> Michael F. Caldwell, “Quantifying the decline in juvenile sexual recidivism rates”, *Psychology, Public Policy, and Law*, Vol: 22 num 4 (2016): 414–426.

<sup>10</sup> Sigmund Freud, “Zarubezhnoye zakonodatel'stvo na russkom yazyke”, *World Business Law*, 2019, <https://worldbiz.ru/rls-wbl>.

The German criminal law for child rape with a fatal outcome (even as a careless mistake) stipulates a punishment in the form of a 10-year or life imprisonment (§ 176b of the Criminal Code of the Federal Republic of Germany dated 1871)<sup>11</sup>.

The French criminal law for a young child rape provides for liability in the form of imprisonment of up to 30 years, additionally in case of such a crime being committed with cruelty, the form of life imprisonment is provided (Article 222.26 of the French Penal Code of 1992)<sup>12</sup>.

The responsibility for raping a young child in England is established in the special Sexual Offenses Act of 2003, which is a code of criminal responsibility for sexual offenses. The specified English law differentiates the age of victims of rape by persons under 13 years of age (young) and or persons of 13 years of age (juveniles). The responsibility for the analyzed crime provides for the punishment of life imprisonment<sup>13</sup>.

The US criminal law regarding rape of a young child is characterized, depending on the state, by the discretion of the judge in the choice of punishment: either life imprisonment or the death penalty (for example, Section 288.5 of the California Penal Code provides for the death penalty for rape of a person under the age of 14, resulting in their death)<sup>14</sup>.

What is noteworthy is that since 1990 in the US criminal law a large number of adopted regulatory acts that toughen penalties, strengthen supervision and management of sex offenders, united by a common goal - to protect the society from sex offenders, who represent the risk of their recurrence (for example, Registration of Community and Notification Laws (RCNL)<sup>15</sup>). Nowadays, the US criminal policy is differentiated into three areas: the registration of sex offenders and notification to the community of their residence; the protection of the community from sex offenders released from prison; the treatment of sex offenders with "mental defects or abnormality"<sup>16</sup>.

The criminal legislation of the People's Republic of China (PRC) for indecent assault against a person under 14 years of age, as well as rape, provides for liability in the form of imprisonment of 10 years or life imprisonment<sup>17</sup>.

The private scientific method of generalization allows us to determine that the responsibility for child rape with or without various negative consequences, in a number of advanced foreign countries provides for punishment in the form of long sentences of imprisonment (from 10 to 30 years), life imprisonment and the death penalty, which cannot be found in the Russian criminal law that regulates this type of crime.

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<sup>11</sup> Sigmund Freud, "Zarubezhnoye zakonodatel'stvo..."

<sup>12</sup> Sigmund Freud, "Zarubezhnoye zakonodatel'stvo..."

<sup>13</sup> Sigmund Freud, "Zarubezhnoye zakonodatel'stvo..."

<sup>14</sup> Sigmund Freud, "Zarubezhnoye zakonodatel'stvo..."

<sup>15</sup> Steven Barkan and George Bryjak, *Fundamentals of Criminal Justice* (Boston, MA: Allyn and Bacon, 2004).

<sup>16</sup> Peggy C. Giordano and Jennifer E. Copp, "Girls' and Women's Violence: The Question of General Versus Uniquely Gendered Causes". *Annual Review of Criminology*, Vol: 2 num 1 (2019): 167–189.

<sup>17</sup> Sigmund Freud, "Zarubezhnoye zakonodatel'stvo..."

### Comparative Analysis of Paragraph "B" of Part 4 of Article 131 of the CC of the RF

Paragraph 2 of the Decree of the Plenum of the Supreme Court of the Russian Federation dated December 04, 2014 № 16<sup>18</sup> (hereinafter referred to as the Decision of the Plenum of the SC of the RF № 16) explains that if a person receives light or moderate injuries as a result of rape, the offense should be qualified only according to the relevant norm of Article 131 of the CC of the RF. Also in case of rape resulting in the injured person suffering from serious harm to health, provided that there was an intent to inflict such harm while committing this crime, the offense is qualified according to the totality of the relevant norms of Articles 131 and 111 of the CC of the RF. When a serious bodily injury caused intentionally as a result of rape resulted in a victim's death, the deed should be qualified according to the totality of the crimes provided for in Part 1 of Article 131 and Part 4 Article 111 of the CC of the RF. Consequently, if the rape of a child with in an intentionally caused serious harm to their health, results in their death, the offense should be qualified according to Paragraph 131 and Part 4 Article 111 of the CC of the RF. So, according to the materials of the criminal case, Zh., in order to overcome the resistance of the juvenile victim and facilitate the commission of rape, hit her with a hammer on the head and body several times, which resulted in serious harm to her health. Zh. was convicted of rape, as well as of deliberate infliction of serious bodily harm to a young person (Paragraph "B" Part 4 of Article 131, Paragraph "B" Part 2 of Article 111 of the CC of the RF).

It is obviously outrageous how unfair and excessively humane the legislator's explanation is, as according to this explanation, the serious bodily harm to the victim during the rape with a careless form of guilt does not require any additional qualification under other articles of the criminal legislation of Russia. The deed is qualified only by Article 131 of the CC of the RF (Paragraph 2 of the Resolution of the Plenum of the SC of the RF № 16<sup>19</sup>). So, according to the materials of the criminal case, A. was convicted of rape, which caused serious bodily harm to a juvenile victim as a result of carelessness, his actions were qualified by the court under Paragraph "B", Part 4, Article 131 of the CC of the RF. At the same time, the court found that the serious harm to the health of the young victim occurred as a result of her anxiety-phobic mental disorder. In other words, the convicted A. had no intention of causing serious harm to the victim's health<sup>20</sup>.

Discussing the humanity of the Russian criminal punishment for raping juveniles with consequences in the form of serious bodily harm, it is crucial to mention the norm provided for in Part 3 of Article 69 of the CC of the RF (the punishment is imposed by partial or full cumulative sentencing, while the final punishment in the form of imprisonment should not exceed more than ½ the maximum term of imprisonment, which is provided for the most serious of the crimes committed). So, as it turns out, child rape which caused serious harm to the health of the victims, is punished, indeed, in the most humane way in the world, which is not significant sentences of imprisonment. As the judicial practice confirms, in Russia the analyzed type of crimes is provided for life imprisonment only in rare cases, while a moratorium on the death penalty has been declared in Russia. For instance, in 2019 a 44-year-old man who had raped women and young girls in Perm for seven years was implicated in 6 crimes and sentenced to 8.5 years in a standard regime penal colony. In Karelia, a

<sup>18</sup> "Postanovleniye Plenuma Verkhovnogo Suda RF ot 04.12.2014 No 16 'O sudebnoy praktike po delam o prestupleniyakh protiv polovoy neprikosnovennosti i polovoy svobody lichnosti'", Rossiyskaya Gazeta (284), December 12, 2014, <https://rg.ru/2014/12/12/plenum-dok.html>.

<sup>19</sup> "Postanovleniye Plenuma Verkhovnogo Suda RF ot 04.12.2014 No 16..."

<sup>20</sup> Consultant Plus, "Informatsionnyy bank..."

sentence has been passed in the case of a young girl having been raped by her 32-year-old stepfather. The man was sentenced to 13 years in a maximum security colony<sup>21</sup>. There are many more examples of child rape, often resulting in serious bodily harm, and sometimes even in death of a child. In the judicial practice of this category of criminal cases there must be emphasis on the humane terms of punishment of criminals: in Russia there was not a single person sentenced to life imprisonment over the course of 2018, to the death penalty especially, due to the moratorium on the territory of Russia.

## Results

The comparative legal method, which made it possible to analyze the criminal law of a number of advanced countries of the world and Russia, which regulates liability for rape, entailing serious consequences for a child under the age of 14, allows us to state that in Russia, , it is necessary to follow the positive example of foreign countries and strengthen criminal liability for crimes of sexual character, in particular, for rape, which entailed serious consequences for a child under 14 years of age. The society understands that, despite the toughening of criminal penalties for this group of crimes, it is not possible to reverse the growth the trend of sexual offenses against juveniles (we should not forget about the high latency of the crimes under consideration). After sexual criminal abuse, the mental health of most children is “ruined” for the rest of their days, moreover, their life, worldview and attitude to the opposite sex change radically.

Given the high degree of social significance of the criminal law regulation of sexual freedom and sexual inviolability of young children, in order to minimize mistakes in qualifying rape, in order to create additional conditions for increasing the effectiveness of criminal law measures in the fight against sexual crimes against juveniles , we consider it possible and necessary to ensure by the Russian criminal law a criminal sentence of life imprisonment for child rape that caused serious bodily harm as a result of carelessness. Taking the foregoing into consideration, based on the legal and technical method of cognition, the following is proposed:

- the disposition of Part 5 of Article 131 of the CC of the RF to be supplemented with the norm of the following approximate content: “or that entailed by carelessness the infliction of serious harm to the health of the victim”;
- in Part 4 Article 131 of the CC of the RF to tighten the sanction by replacing the phrase “from twelve to two to twenty years” with the phrase “from fifteen to twenty years”;
- in Part 5 Article 131 of the CC of the RF to tighten the sanction, having stated it as follows: “shall be punishable by life imprisonment”.

Corresponding changes should also be made to the Resolution of the Plenum of the RF № 16 and other norms of corresponding articles of Article 131 of the CC of the RF.

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<sup>21</sup> Consultant Plus, “Informatsionnyy bank...”

It should be expected that the implementation of the proposed innovations will prove a positive effect, leading to: a) the exclusion of an alternative sentence under Part 5 of Article 131 of the CC of the RF, by that increasing the social and moral function of this criminal norm; b) the reduction of errors in the qualification of rape; c) the creation of additional conditions to increase the effectiveness of criminal law measures in the fight against sexual offenses against juveniles. The Lanzarote Convention is one of the most important international legal instruments adopted to combat all forms of sexual violence against children, where The Lanzarote Committee has the central position in the collection, analysis and exchange of information, experience and positive practice between member states, their purpose being the improvement of their policies. Noteworthy and important is the experience of legal regulation of the norms on the rape of juveniles, provided for by the criminal laws of Germany, France, the United States of America, England, China and others, and for other countries that have signed the Lanzarote Convention. In the case of the effectiveness of the proposed changes in the Russian legislation in the analyzed area, a significant contribution for other states can be made through productive cooperation of Russia with the control mechanism of the Lanzarote Convention - the Lanzarote Committee, which is developing proposals to ensure and improve the process of application and implementation of the Convention in the participating states.

## Conclusions

1. A comparative analysis of applying the norms on child rape (Paragraph “B” Part 4 of Article 131 of the CC of the RF), in particular, the rape of juveniles resulted in a serious harm to the health of the victims, with similar standards in foreign countries, allows us to state that as of today in a number of advanced countries of the world (Germany, France, USA, England, China and others) punishments for such crimes are provided in the form of long sentences of imprisonment (from 10 to 30 years), life imprisonment and death penalty, which cannot be said about the Russian criminal law, which is characterized by excessive humanity in terms of legal regulation of punishment of this type of crime. The norm that does not require any additional qualifications under other articles of the criminal legislation of Russia for serious bodily harm to the victim of rape in case of careless form of guilt should be recognized as a legal gap.
2. Following the positive example of the leading countries of the world (Germany, France, USA, England, China), Russia needs to strengthen criminal liability for crimes of sexual nature, in particular, rape, which entailed serious consequences for a child under 14 years old, which has led to making suggestions on improving the Russian criminal law. In case of the effectiveness of the proposed changes in the Russian legislation in the analyzed area, productive cooperation of Russia with the control mechanism of the Lanzarote Convention, namely, the Lanzarote Committee, can make a significant contribution to other countries, as this committee develops proposals to ensure and improve the process of the application and implementation of the Convention in the participating states.

3.

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