

Reconciliation with a Sex Offender in the Criminal Law of the Russian Federation

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ABSTRACT

The study is devoted to determining the conditions and legal effects of reconciliation with a sex offender. The following forms of reconciliation are established, entailing legal consequences in the form of exemption from criminal liability or punishment: reconciliation with the victim in accordance with Article 76 of the Criminal Code of the Russian Federation (CCRF); imposition of a judicial fine in accordance with Article 762 of the CCRF; a change of conditions in accordance with Article 801 of the CCRF; reconciliation with the victim (Article 76 of the CCRF) and a change of conditions (Article 801 of the CCRF) when changing the grade of offence from grave to medium-gravity; marriage in accordance with note 1 to Article 134 of the Criminal Code. Analysis of these reconciliation forms concluded that it is advisable to preserve the grounds for exemption from criminal liability and punishment only by rules of the General Part of the CCRF, the use of which should be obvious to the executor of law.

Keywords: *reconciliation with the victim, a change of conditions, marriage, rape, sex offences*

1. INTRODUCTION

Legal possibility of reconciliation between the offender and the victim is a great achievement of the modern Russian criminal law. Prior to adoption of the current criminal law, reconciliation could only be possible in a procedural manner in criminal cases of private nature. Otherwise, the principle of publicity of the criminal prosecution was exclusively applied.

Reconciliation in criminal law is a concept that determines conditions and procedure for the offender exemption from criminal liability or punishment on grounds of his agreement with the victim to end the conflict, based, as a general principle, on compensation of harm caused.

Reconciliation rules being included in the Criminal Code of the Russian Federation (hereinafter referred to as the CCRF) are considered as an act of restitution to a person of the right to choose means of protection of his rights and freedoms and as an evidence of free disposition in criminal law [1]. It seems that the use of private law methods in criminal law relations is one of the most effective means of restoring human rights violated as a result of a crime. It is no coincidence that reconciliation with the victim is considered as mediation in criminal proceedings [2] and the basis of restorative justice [3]. It is important to note that, by and large, academic evaluation of restorative justice is positive. Most studies show that its elements reduce the likelihood of second offense. A study at the University of Pennsylvania (USA) in 2007 also showed that conciliation procedures in criminal law have the highest level of victims' satisfaction compared to any other method of justice [4].

Reconciliation is possible in the cases of personal crime, as well as other crimes against humanity that cause harm to individuals and legal entities, as per the law and the criminal and political goal of reconciliation [5]. The offender may be exempted from criminal liability or punishment after making peace with the victim and making amends for the harm caused. Both the person who committed the murder (Article 106 of the CCRF) and the person who committed a simple theft (Part 1 of Article 158 of the CCRF) may be considered such an offender.

The concept in question may also be applied in case of a sexual offense. In the Russian doctrine, it is customary to attribute sexual crimes to acts for which responsibility is provided by the norms of Chapter 18 of the CCRF: rape (Article 131 of the CCRF), sexual assault (Article 132 of the CCRF), coercion to acts of sexual nature (Article 133 of the CCRF), sexual intercourse and other acts of sexual nature with a person under the age of sixteen (Article 134 of the CCRF) and indecent assault (Article 135 of the CCRF).

The purpose of this study is to determine the conditions and legal effects of the reconciliation with a sex offender. To achieve this goal it is required to solve the following tasks:

- to study criminal law for possible grounds for reconciliation with a sex offender;
- to establish the conditions for reconciliation with a sex offender;
- to determine the legal consequences of reconciliation with a sex offender;

- to formulate proposals for improving legislation and its application.

2. METHODOLOGY

The grounds for reconciliation with a sex offender have been determined by studying the provisions of the General Part of the CCRF (Chapters 11 and 12), the notes to Articles of the Special Part of the CCRF (Chapter 18), as well as the materials of judicial investigative practice.

Conditions for reconciliation with a sex offender, as well as legal consequences, have been established by studying the provisions of the criminal law and the decisions of the Plenum of the Supreme Court of the Russian Federation.

The following private methods were used as a part of the study: legal analytics, legislative technique and expert evaluation method.

3. RESULTS

The study identified the following forms of reconciliation with a sex offender subject to subsequent legal effects in the form of exemption from criminal liability or punishment.

1. Reconciliation with a victim in accordance with Article 76 of the CCRF for individuals who have committed coercion to acts of sexual nature (Article 133 of the CCRF), as well as sexual intercourse with a person under the age of sixteen (Part 1 of Article 134 of the CCRF), and indecent assault (Part 1 of Article 135 of the CCRF) without circumstances aggravating the nature of the crime, may entail exemption from criminal liability.
2. Imposition of a judicial fine as per Article 762 of the CCRF - for individuals who have committed the abovementioned crimes may also result in exemption from criminal liability.
3. Change of conditions as per Article 801 of the CCRF entails exemption from punishment for the same category of persons.
4. Reconciliation with the victim (Article 76 of the CCRF) and a change of conditions (Article 801 of the CCRF) when changing the grade of offense from grave to medium-gravity - for persons who have committed rape (parts 1 and 2 of Article 131 of the CCRF), sexual assault (parts 1 and 2 of Article 132 of the CCRF), sexual intercourse and other acts of sexual nature with a person under the age of sixteen (parts 2 and 3 of Article 134 of the CCRF), and indecent assault (part 2 of Article 135 of the CCRF) may result in exemption from punishment.
5. Marriage in accordance with Note 1 to Article 134 of the CCRF - for persons who have had sexual intercourse with a person under the age of sixteen (Part 1 of Article 134 of the CCRF) entails exemption from punishment.

4. DISCUSSION

1. It is debatable whether a sex offender can be exempted from adverse legal consequences due to reconciliation with the victim. Foreign researchers also express their doubts concerning application of the concept [6]. In the majority of decisions, courts also do not consider reconciliation with the victim to be a sufficient ground to exempt the offender from criminal liability. Thus, the Supreme Court of the Kabardino-Balkarian Republic, refusing to reconsider the Nalchik city court order, confirmed the legality and validity of its decision to reject the application to dismiss the criminal case initiated under Articles 134-135 of the CCRF in connection with reconciliation with the victim. The Supreme Court has stated in its ruling that, in accordance with Article 25 of the Code of Criminal Procedure of the Russian Federation, the court may, on the victim's request, terminate criminal case against a person accused of committing a crime of minor or medium gravity (part 1 of Article 134 and part 1 of Article 135 of the CCRF provide for liability for crimes of minor or medium gravity, respectively) if this person has made peace with the victim and made amends for the harm caused. However, it is not the obligation but the right of the court to terminate the criminal case following the reconciliation of the parties. As appears from the criminal case, FULL NAME1 was convicted of a number of crimes, the target of which is sexual immunity of a person under the age of sixteen, as well as their normal physical, mental development and moral formation, which makes it impossible to apply Article 76 of the CCRF.

The courts of the RF tend not to apply liability exemption rules in cases of sex crimes due to the traditional perception of all persons who have committed a sexual crime, especially against minors, as cold-blooded maniac rapists, which is strongly supported in the Russian society. Part 1 of Article 134 and part 1 of Article 135 of the CCRF provide for liability for non-violent sexual acts with a person aged fourteen to sixteen years committed by a person aged 18 or over. Many criminal cases are initiated according to the above standards against boys of eighteen who have had sexual contact with girls of 14-15 years by mutual agreement. There is often no conflict between them, and reconciliation is formalized because the victim does not want her beloved to have criminal records, as the criminal case against him is initiated without taking into account her opinion. In criminal cases of non-violent sexual offenses, persons who have reached the age of fourteen and who are procedurally considered victims, as a rule, do not consider themselves as such. They become convinced of their own status as victims during the trial. Kathleen Daley rightly points out that from the perspective of the victim, the reconciliation process in such criminal cases for minors may be less victimized than the trial [7]. Legislator, due to the level of public danger of the crimes in question, classified them as low and medium gravity; therefore, there should be no doubt that the perpetrators of crimes provided for in Part 1 of Article 134 or Part 1 of Article 135 of the CCRF may be exempted due to reconciliation with the victim. There are also a few court

decisions confirming this fact. Thus, the Volgograd Regional Court upheld the lawfulness and validity of the decision of a lower court on the release of K., accused of committing indecent assault in accordance with part 1 of Article 135 of the CCRF, from criminal liability due to reconciliation of the parties. In the case, it was found that the victim R. and her legal representative Ya. made and submitted a handwritten termination of the criminal case against the defendant K., who continues to live together with the victim. The lower court fully investigated all the circumstances of the case, objectively assessed the social significance of the crime committed and reasonably concluded that the criminal case could be terminated. An argument of the prosecutor's cassation appeal on the impossibility of closing the criminal case, since the crime violated the right to sexual integrity of a minor, is not legal, and therefore cannot serve as a ground for refusal to dismiss the case due to reconciliation with the victim.

2. The grounds for considering the concept of a judicial fine a form of reconciliation of the parties are provided by the provisions of the criminal law where the offender must make amends for the harm caused by the crime, that is, provide property, including monetary, compensation for moral damage, provide any assistance to the victim, submit apology to them or take other measures aimed at restoring the rights of the victim violated as a result of the crime. The offender can perform the listed actions only in case of no opposition on the part of the victim, which indicates the termination of the conflict between them.

Types of crimes where liability exemption due to fine imposition is possible are the same as in case of conciliation with a victim as per Article 76 of the CCRF (Article 133, part 1 of Article 134, part 1 of Article 135 of the CCRF). It causes doubts and similar criticism from scientists. Some researchers suggest changing the wording of Article 762 of the CCRF by adding a provision on exemption prohibition on such a ground for crimes against sexual integrity of minors [8, 9].

Nevertheless, this form of reconciliation also works for persons who have committed a sexual offense (of minor or medium gravity). Thus, the Gagarinsky district court of the Smolensk region terminated the criminal case due to application of a criminal law measure in a form of fine imposition against N., accused of committing two crimes under Part 1 of Article 134 of the CCRF. In the case, it was established that in court N. pleaded guilty to the commission of the indicated crimes, acknowledged offense, voluntarily compensated for the harm caused, and also offered apologies to the victims and their legal representatives, which were accepted by the latter.

3. According to Article 801 of the CCRF, a person who has committed a crime of minor or medium gravity for the first time is exempted from punishment if it is found that, due to a change of conditions, this person or crime committed by him has ceased to be a menace to the public. The indicated categories of crimes include acts for which liability is provided for in Article 133, Part 1 of Article 134 and Part 1 of Article 135 of the CCRF. As previously stated, the last two types of crimes are often characterized by the absence of conflict, so the continuity of voluntary

relationships, confirmed by changes in personal life of the offender and the victim, aimed at creating a family (the beginning of cohabitation, a wanted pregnancy, etc.) is sufficient for application of the rule in question.

In relation to coercion to acts of sexual nature and the person who committed it, reconciliation of the offender with the victim may result from a change of conditions, which could be evidenced, for example, by the beginning of a romantic relationship between them, a desire to have a child, marriage.

4. The above considered separate forms of reconciliation: reconciliation with the victim (Article 76 of the CCRF) and a change of conditions (Article 801 of the CCRF) can be applied in criminal cases of violent sexual offenses (parts 1-2 of Articles 131 and 132, Parts 2-3 of Article 134 and Part 2 of Article 135 of the CCRF), if, when sentencing or varying the sentence of a lower court, the court concludes that the category of crime may be changed to a less serious (moderate).

Although some researchers [10] consider it necessary to limit the number of offenses where downgrade is possible, this procedure seems to be quite acceptable. Mitigating circumstances can be established in the case, which significantly reduce the social danger of the act and the person who committed it, for example, the victim's immoral conduct or the offender being minor. The judicial practice also does not exclude the possibility of changing the category of sexual crime. Thus, the Supreme Court of the Republic of Crimea, when refusing to transfer a cassation appeal on revision of the appellate ruling, confirmed the legality and validity of the decision of the appellate court on changing the crime category established under part 3 of Article 30, Clause "b" of Part 2 of Article 131 and Clause "b" of Part 2 of Article 132 of the CCRF, from grave crimes to categories of moderate severity.

5. Note 1 to Article 134 of the CCRF provides for an exclusive special basis for exemption from punishment, which is a special case of reconciliation due to a change of conditions (marriage). However, unlike Article 801 of the CCRF, where the court itself defines validity of grounds for punishment exemption, this norm remains disputable. Firstly, the punishment for a crime of moderate gravity depends entirely on the formal procedure for marriage registration, which may cause various abuses. Secondly, the conditions for the notes application indicate some citizens' inequality. The laws of the constituent entities of the Russian Federation shall enable marriage before a person reaches the age of sixteen. Some entities allow for it, while others don't. In this regard, the note under consideration places at a disadvantage offenders living in the territories of various constituent entities of the Russian Federation.

5. CONCLUSION

Even though Note 1 to Article 134 of the Criminal Code may have some positive effect, it appears to be rather little and controversial. Therefore, it is proposed that this note be withdrawn, and the possibility of punishment exemption be left to the discretion of the court when applying the norms of the General Part of the CCRF.

Alongside that, the application of these standards should be the rule, not the exception. All statutes that can improve the legal situation of a person who has committed a sexual offense should be actively used by courts. There is no doubt that courts should not prejudge criminal liability or punishment exemption of a sex offender. A qualitative analysis of all the circumstances of a criminal case is required [11]. However, there should be indicated in the Resolution of Plenum on court practice in sexual cases that all forms of reconciliation with a person who committed the sexual offense discussed in this study are possible.

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