



Distinguishing Sexual Harassment From Attempted Rape In The Judicial Practice Of Uzbekistan: Issues Of Legal Qualification And Interpretation

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Abstract

This article analyzes recent judicial practice in Uzbekistan concerning the classification of acts as sexual harassment. Following the adoption of Law No. ZRU-829 in 2023, sexual harassment was officially recognized as an administrative offence. The article reviews several significant cases from 2024 in which actions such as sending sexually explicit messages via social media, initiating sexual activity, inappropriate touching with sexual intent, exposing genitalia, and declarations of love were classified as sexual harassment. A special focus is placed on the legal distinction between sexual harassment and attempted rape. Although these offences may share certain features, the article emphasizes that the presence or absence of violence in the offender's actions constitutes a critical criterion for differentiation. A comparative table of legal and factual elements is proposed to guide judicial assessment of such cases.

Keywords: sexual harassment; attempted rape; administrative offence; use of force; consent; legal qualification; court decisions; Uzbekistan; gender-based violence; interpretation of law

Разграничение Сексуальных Домогательств И Покушения На Изнасилование В Судебной Практике Узбекистана: Проблемы Квалификации И Правового Толкования

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Аннотация

В статье проанализирована современная судебная практика Узбекистана в части квалификации действий как сексуальных домогательств. С момента принятия Закона № ЗРУ-829 в 2023 году сексуальные домогательства официально признаны административным

правонарушением. Рассматриваются знаковые кейсы 2024 года, в рамках которых такие действия, как отправка сексуально откровенных сообщений через социальные сети, инициирование сексуальной активности, неправомерные прикосновения с сексуальным умыслом, демонстрация половых органов и признания в любви, были квалифицированы судами как сексуальные домогательства. Особое внимание уделяется разграничению понятий сексуальных домогательств и покушения на изнасилование. Несмотря на определённое сходство отдельных признаков, статья подчёркивает, что ключевым критерием разграничения выступает наличие или отсутствие насилия в действиях правонарушителя. Также предлагается сравнительная таблица правовых и фактических элементов для применения в судебной практике.

Ключевые слова: сексуальные домогательства; покушение на изнасилование; административное правонарушение; насилие; согласие; правовая квалификация; судебная практика; Узбекистан; гендерное насилие; толкование закона

O'zbekiston Sud Amaliyotida Shahvoniy Shilqimlik Va Zo'rlashga Suiqasd O'rtasini Ajratish: Kvalifikatsiya Va Huquqiy Talqin Muammolari

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Annotatsiya

Ushbu maqolada O'zbekistonda shahvoniy shilqimlik harakatlarini kvalifikatsiya qilish bo'yicha so'nggi sud amaliyoti tahlil qilinadi. 2023-yilda O'RQ-829-sonli Qonun qabul qilingach, shahvoniy shilqimlik rasmiy ravishda ma'muriy huquqbuzarlik sifatida e'tirof etildi. Maqolada 2024-yilga oid bir qator muhim ishlar ko'rib chiqilgan bo'lib, ularda ijtimoiy tarmoqlar orqali ochiq jinsiy mazmundagi xabarlar yuborish, jinsiy aloqani boshlash, jinsiy niyat bilan nojo'ya tegishlar, jinsiy a'zolari ko'rsatish va sevgi izhorlari shahvoniy shilqimlik deb baholangan. Maqolada shahvoniy shilqimlik va zo'rlashga suiqasd o'rtasidagi huquqiy farqlar alohida e'tiborga olinadi. Garchi bu huquqbuzarliklarning ayrim belgilari o'xshash bo'lishi mumkin bo'lsa-da, maqolada zo'ravonlikning mavjudligi yoki yo'qligi ajratuvchi mezon sifatida ta'kidlanadi. Shuningdek, sudlar ushbu holatlarni baholashda foydalanishi mumkin bo'lgan huquqiy va faktologik elementlarning qiyosiy jadvali taklif etiladi.

Kalit so'zlar: shahvoniy shilqimlik; zo'rlashga suiqasd; ma'muriy huquqbuzarlik; kuch ishlatish; rozilik; huquqiy kvalifikatsiya; sud qarorlari; O'zbekiston; genderga asoslangan zo'ravonlik; qonunni talqin qilish

Introduction

Sexual harassment is a form of unwelcome conduct that is generally directed at women, violating their rights and causing feelings of anxiety, fear, humiliation, or offense. It was only with the adoption of Law No. LRU-829 in 2023 that such behavior was officially recognized as an administrative offense [1]. Notably, according to data from the Supreme Court of Uzbekistan, 666 individuals were penalized for acts of sexual harassment in that same year [2].

This article analyzes recent judicial practice in Uzbekistan concerning which types of behavior are classified as sexual harassment. It also offers recommendations for distinguishing sexual harassment from attempted rape.

Materials and Methods

This study is aimed at analyzing the law enforcement and judicial practice in Uzbekistan regarding cases of sexual harassment, as well as identifying the boundary between sexual harassment and attempted rape. To achieve this aim, the following scientific methods were employed: the formal-legal method, the comparative-legal method, the empirical method, and the classificatory-analytical method.

Research Results

The Equal Employment Opportunity Commission defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature [3]. According to General Recommendation No. 19 of the United Nations Committee on the Elimination of Discrimination against Women, sexual harassment includes such unwanted sexually determined behaviors as physical contact and advances, sexually colored remarks, the display of pornography, and sexual demands—whether expressed verbally or through conduct [4].

The Code of Administrative Responsibility of Uzbekistan (CAR) defines sexual harassment as either a single gross act or repeated acts of a sexual nature directed at a person, which are unwanted and degrading to their honor and dignity. These acts may include descriptions of the person's appearance or physical condition, gestures, touches, or comments of a sexual nature (Article 41¹) [5].

In other words, sexual harassment is an unwanted form of sexual behavior manifested in acts that degrade a person's dignity or insult and humiliate them. For example, a man might direct unsolicited sexually suggestive remarks toward a woman passing by. Or a woman of questionable reputation might offer to engage in sexual activity with a man.

The interpretation of Article 41¹ of the CAR implies that any actions of a sexual nature—whether verbal or non-verbal—are subject to administrative liability. The article also outlines specific behaviors falling under this category, such as descriptions of a person's appearance or physical condition, gestures directed at a person, physical contact, or sexually suggestive speech. These acts must contain a sexual connotation, meaning they are intended to cause discomfort, distress, humiliation, or offense to the individual.

Significantly, the article does not specify the gender of either the offender or the victim, thereby allowing for recognition of same-sex harassment. Accordingly, if a man sexually harasses another man—for instance, by inappropriately touching his genitals—such behavior constitutes an offense under Article 41¹ of the CAR.

Analysis of research results

Further analysis of judicial decisions in Uzbekistan clarifies how courts classify certain actions as sexual harassment. The analysis reveals that the following types of conduct are recognized as sexual harassment:

1. *Sending sexually explicit messages via social media.* In a 2024 case, D.M. sent offensive messages to F.Sh., a married woman, via the Telegram messaging app, intending to initiate a romantic relationship. The court ruled that D.M.'s actions were of a sexual nature [6]. From this case, two key conclusions can be drawn: first, harassment may take the form of verbal communication transmitted through social media platforms such as Telegram, Instagram, and others; second, any message containing a request for an unwanted romantic relationship is considered sexual harassment. Notably, messages may also consist of emojis or images, as was noted in another court decision [7].
2. *Initiating sexual activity.* In 2024, T.M. called A.N. and requested sexual contact. The judge ruled that T.M.'s behavior constituted an administrative offense under Article 411 of the Code of Administrative Responsibility (CAR) and classified it as sexual harassment [8]. This case illustrates that offering to engage in sexual activity can be considered a form of sexual harassment. Accordingly, individuals who offer sexual services—such as sex workers—should also be held accountable for such proposals under this article. However, if the conduct constitutes prostitution—that is, the practice or profession of engaging in sexual activity for payment—it falls under the scope of Article 190 of the CAR.

Interestingly, on April 4, 2024, R.Kh. called M.A. and stated: *"If you come to the university dormitory, we can relax together"* (excerpt from the court decision). Although this may appear to be an innocent invitation at first glance, the court interpreted it as an indirect request for sexual activity. The court held that R.Kh.'s words carried a sexual undertone and constituted sexual harassment [9].

3. *Inappropriate touching with sexual intent.* In 2024, Sh.A., while driving his car, intentionally touched P.K., a passenger [10]. It is important to note that if the touch is accidental and unintentional, it does not qualify as sexual harassment. However, in this case, the deliberate act—touching the passenger's hand—was interpreted as having a sexual motive, giving the act a sexual character.

Similarly, if an individual touches another person's neck, leg, chest, hair, face, etc., with sexual intent, the court will hold the offender liable. Such touching may be performed with hands, feet, or even the tongue. For instance, on May 10, 2024, B.B. touched S.M.'s hands, hugged her, and then attempted to kiss her neck, clearly demonstrating a sexual motive behind his actions [11].

4. *Exposure of Genitalia.* On May 4, 2024, after having breakfast in a café, A.A. called over one of the employees, D.E. When she approached, A.A. exposed his genitals to her. The court classified this behavior as sexual harassment [12].

However, a different case involving a man walking naked through the streets of Tashkent also merits attention. His actions were qualified as an administrative offense under Article 183 of the Code of Administrative Responsibility (Minor Hooliganism). Both cases reflect violations of public norms; however, the context in which the acts occurred differed — the former took place in a café (a private establishment), whereas the latter occurred in a public space. Had the café been a public space and had multiple individuals witnessed A.A.'s actions, his conduct could have been classified as minor

hooliganism. Consequently, the court reached the correct conclusion in recognizing A.A.'s actions as sexual harassment, given the setting and the directness of the act.

5. *Declaration of Love*. On May 31, 2024, O.N. declared his love to the underage G.Y., stating that "he loved her and that she liked him." This case illustrates that one can be held liable for expressing romantic interest. The court considered not only the man's statement but also the girl's reaction — whether it was affirmative or negative [13]. Furthermore, according to the Family Code of Uzbekistan, marriage is permitted only between adults [14]. Since G.Y. was a minor, the expression of romantic feelings with the intention of marriage was classified as sexual harassment. However, when an adult man expresses love toward an adult woman, such conduct may not necessarily constitute sexual harassment. Thus, a case-by-case assessment is required to determine whether the expression of affection crosses the threshold into harassment.

A particularly noteworthy case occurred on May 2, 2024. A.R. locked the doors of his car and began touching Sh.T.'s hands, legs, and chest. He also proposed sexual intercourse and attempted to remove her clothing. Sh.T. reacted forcefully by screaming and resisting. The court ruled that A.R.'s conduct constituted sexual harassment. However, the appellate court overturned the initial ruling, emphasizing that A.R.'s attempt to undress Sh.T. against her will had not been fully taken into consideration [15].

In our view, the courts should apply the following criteria to distinguish between sexual harassment and attempted rape.

Table
Proposed Criteria for Distinguishing Between Sexual Harassment and Attempted Rape

No	Criteria	Sexual harassment	Attempted rape
1	Type of offence	Administrative offence	Unfinished crime
2	Objective aspect	Actions or behavior of sexual nature (e.g. initiating sexual activity, inappropriate touching with sexual intent)	Actions directly aimed at the commission of sexual intercourse but not brought to completion due to external factors beyond the perpetrator's control
3	Subjective aspect	Intent to harass a person (e.g. suggesting sexual intercourse without violence)	Intent to rape a person (e.g. using violence to have sexual intercourse, specifically, to penetrate sexual organs)
4	Object	Honor and dignity	Free choice of sexual partner
5	Subject	16 years old natural, mentally fit individuals	14 years old natural, mentally fit individuals
6	Common examples	Offers of sexual intercourse, gestures, touching, and verbal	Tearing off or removing clothes, blows, beatings,

		comments with sexual undertones	inflicting pain to intimidate the victim
7	Punishment	Fines (\$53,83-188,40) or administrative arrest (5-15 days)	Deprivation of liberty (6-20 years)

Conclusion

This article has analyzed several significant court cases in which actions such as sending sexually explicit messages via social media, initiating sexual activity, inappropriate touching with sexual intent, exposure of genitalia, and declarations of love were classified as instances of sexual harassment. Particular attention was also given to the distinction between sexual harassment and attempted rape.

Although these offenses may share similar characteristics, it is essential that courts take into account the proposed criteria — especially the presence or absence of violence in the offender's actions — as this constitutes the key factor that differentiates sexual harassment from attempted rape.

References:

1. Law of the Republic of Uzbekistan dated April 11, 2023, No. ZRU-829 "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Further Improvement of the System for the Reliable Protection of the Rights, Freedoms, and Legal Interests of Women and Children." // National Database of Legislation, April 12, 2023, No. 03/23/829/0208. URL: <https://lex.uz/docs/6430278>
2. "666 people punished for sexual harassment in Uzbekistan in 2023," *Gazeta.uz*, February 9, 2024. URL: <https://www.gazeta.uz/ru/2024/02/09/courts/>
3. "What is Sexual Harassment?" UN Office of the Special Adviser on Gender Issues. URL: <https://www.un.org/womenwatch/osagi/pdf/whatish.pdf>
4. General Recommendations of the Committee on the Elimination of Discrimination against Women. URL: <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>
5. Code of Administrative Responsibility of the Republic of Uzbekistan, dated September 22, 1994. // National Database of Legislation, April 11, 2025, No. 03/25/1055/0330. URL: <https://lex.uz/docs/97661>
6. Judgment of the Kuva District Criminal Court, No. 3-1511-2403/1178, dated June 13, 2024. URL: <https://drive.google.com/file/d/1zCk8gYbWGlSjVjDmxLLuIHjtmRTKY9U/view>
7. Judgment of the Samarkand District Criminal Court, No. 3-1402-2402/1299, dated June 12, 2024. URL: https://drive.google.com/file/d/186cwNCGvDcip_G_RPTq-1q8Ft5gVfxQE/view
8. Judgment of the Saykhunobod District Criminal Court, No. 3-1206-2401/465, dated June 12, 2024. URL: https://drive.google.com/file/d/14JDIVeoQN2cjGyNBSabXZpLNZO_q1KGc/view
9. Judgment of the Cassation Instance of the Andijan Regional Criminal Court, No. 3-1716-2402/632, dated June 4, 2024. URL: <https://drive.google.com/file/d/1mOIomIVdBby624TWjSEZqd-9eIbV12Ql/view>



10. Judgment of the Sharof Rashidov District Criminal Court, No. 3-1302-2401/1400, dated June 11, 2024. URL: https://drive.google.com/file/d/1Io5OTvS2Z479bsVVBq7rh8dn_Bm3Ww_9/view
11. Judgment of the Bulungur District Criminal Court, No. 3-1405-2401/790, dated June 6, 2024. URL: <https://drive.google.com/file/d/1HngfZSKq1uIJh5O4um7cag3mnriTlri/view>
12. Judgment of the Yangiyul City Criminal Court of Tashkent Region, No. 3-1119-2402/1611, dated June 6, 2024. URL: https://drive.google.com/file/d/12oFLcK57371adINseOifaD_tdLnNmDK-/view
13. Judgment of the Mirishkor District Criminal Court, No. 3-1811-2401/713, dated June 4, 2024. URL: https://drive.google.com/file/d/1_au1O5WPb7oX2d_ughPTyZYNQ3q_cbah/view
14. Family Code of the Republic of Uzbekistan, dated April 30, 1998. // National Database of Legislation, No. 03/24/905/0106; April 9, 2025, No. 03/25/1053/0317. URL: <https://lex.uz/docs/104723>
15. Judgment of the Appellate Instance of the Jizzakh Regional Criminal Court, No. 3-1301-2401/2138, dated May 24, 2024. URL: https://drive.google.com/file/d/1FEk3pnMqLo1hjt3xtkt_nom3bSvzagzO/view