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RECONCEPTUALIZING ONLINE SEXUAL HARASSMENT IN THE CRIMINAL LAW - THE PATH OUTLINED IN DIRECTIVE (EU) 2024/1385 AND CROATIAN CRIMINAL JUSTICE RESPONSES

Abstract:

In 2019, President von der Lezen presented the Political Guidelines for the Next European Commission and clearly emphasised, among other things, that the fight against gender-based violence must be a priority within the Union. The creation of preventive measures and measures to protect victims together with successful criminal justice responses to punish perpetrators is a path that must be pursued together with ensuring minimum standards with regard to the normative definition of certain forms of violence. The ideas expressed were reiterated in the Gender Equality Strategy 2020-2025 and it was therefore rightly assumed that one of the driving forces behind the creation of Directive (EU) 2024/1385 would be to provide a binding instrument to harmonise the definition of violent crimes and minimum levels of punishment across the European legal area.

However, the analysis has shown that the Directive does not constitute a comprehensive legal framework, in particular as regards the definition of sexual violence, as the normative consensus advocated in the discussions surrounding the proposal of the Directive has not been fully achieved. Chapter 2 does not contain any classic criminal offence against sexual freedom, such as rape, except for Article 7, para c) which defines "cyberflashing" as a form of cyber harassment. The Directive explicitly defines cyberflashing as "the unsolicited sending, by means of ICT, of an image, video, or other similar material depicting genitals to a person, where such conduct is likely to cause serious psychological harm to that person."

Since the under-regulation of sexual offenses is partly due to the adoption of the principle of minimum harmonization and the permission for states to prescribe other forms of violence, which are not mentioned as offenses in the Directive, in national criminal law, it is specifically examined whether cyberflashing corresponds to the criminal offense of sexual harassment under Article 156 of the Croatian Criminal Code. It will also be observed whether the recent amendments to this offense from 2024 have brought the adopted national normative definition closer to the European model. Based on the relevant municipal courts' case law over the last 12 years, the article examines whether any of the decided cases corresponds to sexual harassment on the Internet and clarifies the main threads of judicial reasoning. The findings can serve as a good guide on how national criminal law solutions can be reconciled with the European requirements of Directive (EU) 2024/1385 in a comparative context.

Keywords:

Directive (EU) 2024/1385, sexual harassment, cyberflashing, harmonization of criminal justice standards

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