

The problem of incest responsibility imposition into Russian legal system

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The family considers the natural and fundamental group unit of society and is entitled to protection by society and the state as it's determined in part 3 of ar. 16 of Universal Declaration of Human Rights. [1] Nowadays such phenomenon as incest still exists. Let's define what this notion means. In this case it's rationally to refer to court practice of USA, which has long history of incest legislation. According to materials of case Haller vs. State "incest consists of sexual intercourse, either habitual or in a single instance, between persons too closely related to intermarry". Through ages sexual relationships among relatives were forbidden not only because they are immoral, but also because they have long going consequences. For example, children born to first-degree relatives have a developmental disability about half the time. [2] Moreover such behavior infringes on the moral basis of society, where the family is one of its value.

Voluntary incest in our country is not forbidden, but marriages between close relatives are illegal. Nevertheless incest is criminal in: Canada, United Kingdom, Germany, Greece, Switzerland, USA (not all the states) and etc.

Police of Canada reported that almost 55,000 children and youth victims (0 to 17 years) went through physical assault or sexual offence in 2009. [3] Of these, about 3 in 10, or close to 15,000 children and youth, were victimized by a member of their own family. In Canada incest is a crime according to ar. 155 of Criminal Code. The government made illegal any sexual relationships between parent, child, brother, half-brother, sister, half-sister, grandparent or grandchild. According to Criminal Code of Switzerland (ar. 213) any person who has sexual intercourse with a blood relative in direct line or with a brother or sister, or a half-brother or half-sister shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.[4] German Criminal Code reveals the notion of incest in section 173, which declines that each person, who performs an act of sexual intercourse with a consanguine descendant shall be liable to imprisonment not exceeding three years or a fine, (ascending line – not exceeding two years or a fine (2)). It's well known the case of Stübing v. Germany, when the person was accused for incest for sentence of one year and four months' imprisonment, and even European Court of Human Rights didn't satisfy the appeal of German citizen. [5]

According to expert researches each year 94,000 of under-age become the victims of crimes. Almost half of them (47,1%) suffer from violent crimes committed by the grown-ups. Almost 11 % (10,340 children) were exposed to sexual abuse. [6] According to another survey covering the court practice of Stavropolskiy Krai of 2003-2007 years the most part of sexual offences against minors are made by the people who have direct relation to the victims. 34 % of them were made by stepfathers, parents and other close relatives of a child. Authors suppose that the reason of such situation lies in breakup of many family values. [7] The legislator must react on these facts. We see it's possible to bring amendments to art. 131-135

and to Chapter 20 of Criminal Code of Russian Federation, making illegal both kinds of incest (voluntary and violent). [8]

Литература

1. 1. Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III) (French) [Электронный ресурс] // United Nations Human Rights, Office of the High Commissioner for the Human Rights, URL: <http://www.ohchr.org/en/udhr/pages/introduction> (Дата обращения 01.01.2013).
2. 2. Todd Ackerman. Houston doctors find dilemma in tests showing incest [Электронный ресурс] // Houston chronicle, February 11, 2011, URL: <http://www.chron.com/news/houston-texas/article/Houston-doctors-find-dilemma-in-tests-showing-1617388.php>, (дата обращения: 03.01.2013).
3. 3. Family Violence in Canada: A Statistical Profile [Электронный ресурс] // Statistics Canada, URL: <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.pdf>, (дата обращения: 01.01.2013).
4. 4. Swiss Criminal Code of 21 December 1937 (status of 1 October 2012) [Электронный ресурс] // The Federal Authorities of the Swiss Confederation, URL: <http://www.admin.ch/ch/e/rs/3/311.0.en.pdf>, (дата обращения: 05.01.2013).
5. 5. Case of Stübing v. Germany (application No. 43547/08) [Электронный ресурс] // European Court of Human Rights, URL: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?p=110314>, (дата обращения: 05.01.2013).
6. 6. Головкин Н.В. Основные черты криминалистической характеристики торговли несовершеннолетними и использования их рабского труда // «Российский следователь», 2011, № 9. С. 3.
7. 7. Коротаяева М.А., Тронева А.М. Особенности личности преступника, совершающего сексуальные преступления против несовершеннолетних / «Адвокатская практика», 2009, № 1. // Справочно-правовая система «КонсультантПлюс», 2013.
8. 8. Уголовный кодекс Российской Федерации № 63-ФЗ от 13.06.1996 (ред. от 30.12.2012) // «Собрание законодательства РФ», 17.06.1996, № 25, ст. 2954.