



## **World Conference on Social Sciences, Law and Public Policy**

Hosted Online from Toronto, Canada

Date: 26<sup>th</sup> January, 2026

Website: <https://econferencia.com>

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### **OBLIGATIONS TO EDUCATE, INSTRUCT, AND (OR) CARE FOR THE VICTIM AS AN OPTIONAL CHARACTERISTIC OF THE OFFENDER**

Karaketova Dilnoza Yuldashevna,  
Associate Professor at the Department of Criminal Law,  
Criminology, and Anti-Corruption, TSUL, PhD in Law  
E-mail: [d.yu.karaketova@gmail.com](mailto:d.yu.karaketova@gmail.com)  
Phone: +998 90 931 81 66

#### **Annotation:**

This article examines crimes committed by individuals who are legally entrusted with obligations to educate, instruct, and (or) care for the victim, as well as to exercise supervision over the victim, treating such obligations as an optional characteristic of the offender in criminal law. Special emphasis is placed on the heightened social danger of sexual offences committed against minors by employees of educational, medical, and other institutions, the pronounced latent nature of these crimes, and their detrimental impact on the psychological and physical development of victims. Within the scope of the study, the criminal legislation of Germany, France, Spain, and Kazakhstan is analyzed with regard to recognizing the commission of sexual offences against minors by this specific category of persons as an aggravating circumstance. Drawing on examples from judicial practice, the author proposes a broader incorporation of crimes committed by caregivers, educators, and coaches as aggravating qualifying elements in the relevant provisions of the Special Part of the Criminal Code.



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**Keywords:** minors, sexual offences, duty to educate the victim, abuse of trust, latent criminality, pedagogical activity, aggravating circumstances, comparative legal analysis.

One of the most important directions of state activity is the protection of children. The formation of a well-developed member of society is possible only provided that the mental and physical health of minors is safeguarded. Sexual crimes committed against minors cause serious harm to their psychological health and, in some cases, to their physical well-being as well.

Although sexual offences committed without the use of force do not contain elements of physical violence, they nevertheless remain dangerous for both children and society. The high level of concealment of such crimes makes it impossible to bring all offenders to criminal liability.

Sexual offences committed without the use of force are characterized by a high degree of latency; however, crimes committed by close relatives, cohabiting partners of parents, teachers, coaches, and medical personnel are considered even more latent, pose a greater danger to society, and inevitably cause more severe harm to minor victims.

This situation arises from the existence of a relationship of trust between the offender and the victim, as a result of which the victim is unable to adequately assess the nature of the actions being committed. This is because such actions are carried out by a person who is entrusted with the duty to educate and raise the minor. Such individuals are expected to set an example of appropriate behavior within society.

In 2023, the commission of sexual crimes by persons performing duties to educate, instruct, and (or) care for the victim, as well as by employees of educational, upbringing, medical, or other institutions who are legally obliged to



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---

supervise the victim, was introduced into criminal legislation as a qualifying circumstance. Specifically, by Law No. LRU-829 of 11 April 2023 of the Republic of Uzbekistan “*On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Further Improvement of the System for Reliable Protection of the Rights, Freedoms, and Legitimate Interests of Women and Children,*” new aggravating circumstances were incorporated into the Criminal Code. In particular, this circumstance was included in Article 118 (rape), Part Three, subparagraph “v”; Article 119 (forcible satisfaction of sexual needs in an unnatural manner), Part Three, subparagraph “v”; Article 128 (sexual intercourse with a person under the age of sixteen), Part Three, subparagraph “v”; and Article 129 (lewd and indecent acts against a person under the age of sixteen), Part Two, subparagraph “j” of the Criminal Code.

The legislation of the Republic of Uzbekistan contains provisions restricting the engagement of the above-mentioned categories of persons in educational activities. In particular, pursuant to Article 121 of the Law “*On Education,*” individuals who have been charged as defendants in criminal proceedings (until a court verdict enters into legal force or a decision is adopted to exempt them from criminal liability on rehabilitative grounds), as well as persons whose criminal records have not been expunged or removed for crimes against sexual freedom, crimes against the family, youth, and morality, crimes against peace and the security of humankind, crimes against the Republic of Uzbekistan, fraud, crimes against public administration, and crimes related to the illegal trafficking of narcotic drugs, their analogues, or psychotropic substances, are prohibited from carrying out educational activities. The same restriction applies to persons recognized by a court as legally incapacitated or having limited legal capacity, as well as individuals registered with psychiatric or narcological institutions [1].



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Furthermore, Article 26 of the same Law establishes a prohibition on appointing persons previously convicted of intentional crimes to managerial positions within authorized republican executive bodies in the field of education and their territorial subdivisions. Article 28 provides that persons previously convicted of intentional crimes may not be appointed to managerial positions within educational institutions.

Article 15 of the Law of the Republic of Uzbekistan “*On the Status of a Pedagogue*” stipulates a ban on employing persons previously convicted of intentional crimes in positions related to pedagogical activity [2].

The question arises as to why the legislator has classified crimes committed by this category of persons as an aggravating circumstance in cases of sexual offences. This can be explained by several factors.

First, such crimes involve an abuse of trust and responsibility. Individuals such as caregivers, teachers, physicians, sports coaches, nannies, private tutors, and employees of educational or upbringing institutions are perceived by children (minors) as trustworthy and exemplary figures. Their primary duty is to educate, care for, and protect the child. When such a person commits a criminal offence, it constitutes a gross abuse of the trust vested in them; consequently, criminal liability is justifiably aggravated.

Second, the legal vulnerability of minors requires special protection. In many cases, a child is unable to resist such criminal conduct. The minor may be influenced by the offender’s high social status, experience a relationship of dependency, or be subjected to psychological pressure or threats. For this reason, the offender’s position of dominance is regarded as an aggravating circumstance [3].

Third, the latent nature of such crimes must be taken into account. These offences often remain undisclosed, as victims are afraid to report them. Consequently, the



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legislator strengthens criminal liability in such cases in order to enhance preventive measures and deterrence.

Similar approaches are observed in the criminal legislation of foreign states, where such circumstances are likewise treated as aggravating factors. In particular, Paragraph 174 of the German Criminal Code criminalizes sexual acts committed against a minor by a person responsible for the minor's upbringing, education, or supervision as a separate offence.

Under the French Criminal Code, sexual offences committed by a person exercising authority over the victim – such as a parent, teacher, or physician – are considered an aggravating circumstance. This conduct is legally characterized as an abuse of authority.

Article 183 of the Spanish Criminal Code provides for increased punishment where sexual violence against minors is committed by a person responsible for their care or education.

Similarly, Article 122 of the Criminal Code of Kazakhstan establishes liability for sexual acts committed against a person under the age of sixteen. Where such acts are perpetrated by a parent, teacher, caregiver, or guardian, criminal liability is aggravated.

According to scholars who have studied sexual violence against children, offences committed against minors by individuals responsible for their care and upbringing, as well as within schools and sports institutions, occur far more frequently than official statistics indicate. This discrepancy demonstrates the high degree of latency characteristic of such crimes [4].

According to the authors of a study on *the role of international human rights law in preventing sexual violence against children in grooming and institutional settings* [5], caregivers, teachers, and coaches are more likely to establish long-



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---

term relationships of trust with children, and this opportunity is subsequently exploited to commit sexual violence against minors.

The term “*grooming*” originates from the English language and literally means “to prepare” or “to cultivate.” In academic literature, it refers to the process by which an adult establishes long-term trust-based relationships with a child (or the child’s family members) with the intention of later committing sexual abuse. Grooming is most commonly associated with crimes such as human trafficking involving children and the use of children in the production of child pornography. Other researchers note that when sexual crimes against children committed by teachers, coaches, or persons entrusted with the duties of upbringing or supervision are reported, adults often tend not to believe such allegations. There is a prevailing perception that children fabricate such claims due to difficulties related to schooling or sports training. As a result, children who report such incidents once and are not believed are likely to refrain from reporting subsequent occurrences, even when the abuse is repeated [6].

Given that caregivers, educators, and coaches constitute a mandatory characteristic of the offender in sexual crimes against minors, this study, in addition to the above-mentioned articles, seeks to examine the issue through an analysis of criminal cases in which offences were committed by persons performing duties to educate, instruct, and (or) care for the victim, as well as by employees of educational, upbringing, medical, or other institutions who are legally obligated to supervise the victim. In such cases, these characteristics manifest themselves as optional attributes of the offender.

In practice, cases are encountered in which sports coaches inflict bodily injuries on athletes under their supervision. An example from judicial practice illustrates this issue.



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---

*“The suspect, X., was employed as a coach at the private school ‘Ideal,’ located on Yangi Asr Street in N. City. On 11 November 2023, at approximately 11:20 a.m., during a training session, while instructing a minor student, I., a pupil of Class 6B, in taekwondo stretching exercises, the suspect attempted to force the minor to spread his legs, as the child was unable to do so independently. Holding the child by the waist and pressing his legs against the sports hall floor with his hands, the suspect, through negligence, fractured the minor’s right leg, thereby causing a serious bodily injury. As a result, the minor I. was taken to the Republican Specialized Scientific and Practical Trauma and Orthopedics Medical Center for medical assistance. According to forensic medical examination report No. 8441 dated 23 November 2023, the minor sustained a closed spiral displaced fracture of the right femur. The injury was classified as a bodily harm resulting in a prolonged health disorder and categorized as a ‘moderate’ injury.”*

The legal representative of the minor victim, A., submitted an application to the court stating that reconciliation had been reached with X. and that no claims remained against the suspect. The representative confirmed that the damage inflicted upon the child had been fully compensated, that the reconciliation was voluntary, and that no pressure had been exerted. It was further explained that, should the court approve the reconciliation, the right to seek the resumption of proceedings would be forfeited. Acknowledging this consequence, the representative requested termination of the proceedings. Consequently, the court issued a ruling terminating the criminal case without resolving the issue of guilt, pursuant to Part Four of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan, due to reconciliation of the parties [7].

In general, judicial practice demonstrates that the aforementioned categories of persons may also commit other crimes, including intentional infliction of bodily



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harm, negligent infliction of injury, torture, homicide or threats involving violence, abandonment in danger, involvement of minors in antisocial behavior or begging, and unlawful deprivation of liberty through the use of violence.

For these reasons, we consider it necessary to introduce, in the relevant articles of the Special Part of the Criminal Code, the commission of the above-mentioned crimes by persons who perform duties to educate, instruct, and (or) care for the victim, as well as by employees of educational, upbringing, medical, or other institutions who are legally entrusted with the duty to supervise the victim, as an aggravating qualifying element.

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