Sexual Violence and Abuse of Authority

Sexual Violence and Abuse of Authority (Supreme Court, Joint Sections, ruling of July 16, 2020)

The Joint Sections of the Supreme Court of Cassation have defined the boundaries and clarified the definition of abuse of authority, establishing it as a legal principle.

Prior to this ruling, there were two distinctly opposing judicial interpretations on this matter. Specifically, one view considered abuse of authority in a formal sense, while the other saw it as the exercise of generic superior power over a subordinate. This ruling clarified that:

> ***"Abuse of authority referred to in Article 609-bis, paragraph one, of the Penal Code presupposes a position of dominance, even in a de facto and private nature, which the perpetrator exploits to coerce the victim into performing or enduring sexual acts."***



Abuse of Authority: Coercion or Inducement to Sexual Acts, Punishable by 6 to 12 Years Imprisonment

Article 609-bis of the Penal Code states:

> *“Anyone who, through violence, threat, or abuse of authority, coerces another person to engage in or endure sexual acts is punishable by imprisonment from six to twelve years. The same penalty applies to anyone who induces another person to engage in or endure sexual acts.”*

This law necessitates distinguishing between conduct characterized by coercion, as outlined in the first paragraph, and that characterized by inducement, as outlined in the second paragraph.

Coercion involves the imposition of limits on the victim's will to act, whereas inducement strengthens the subject's intent, facilitating and encouraging the action while leaving the subject's capacity for self-determination intact. In contrast, coercion completely nullifies the victim's ability to resist the imposed action.

Supreme Court: Abuse of Authority Encompasses All Forms of Sexual Coercion, Including in Private Settings

The Joint Sections recognize abuse of authority as any act of dominance that forces the victim to endure sexual acts, including all forms of exploitation and coercion, regardless of public or private context. The ruling explicitly states:

> *"The position of dominance, even in de facto and private nature, involves a relationship between subjects where* ***the victim, recognizing the authority of the perpetrator, endures the acts without resistance.****"*

Abuse of authority thus holds significance as a private act and not necessarily public, with the focus being on the victim who, due to the dominant position of the perpetrator, is forced to endure abuse and violence without the ability to react, given the extreme coercion imposed on their freedom.

This ruling by the Joint Sections is crucial for the protection of vulnerable individuals against de facto abuse of authority, removing its public connotation.

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