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المجموعة المتحدة للقانون، المحامي بالنقض نجاد البرعي
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Unwanted Touching and Sexual Gestures

Sexual Harassment

**Its elements, forms, punishment, aggravating circumstances,
distinguishing between it and similar crimes**

Summary



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This is an unofficial translation of the paper issued by the United Group Law Firm in Arabic titled “Unwanted Touching and Sexual Gestures.” The United Group Law Firm is not responsible for this translation. It is only responsible for the paper it issued in Arabic.

The United Group Law Firm and Consultancy issued a research paper on the crime of sexual harassment in terms of definition of the crime and describing the physical and mental elements of the crime, criminal intent, how to prove the facts of harassment, with examples of the actions and utterances that fulfill the crime. The paper also shows the penalty and the aggravating circumstances, as well as similarities and differences between the crime of harassment and some crimes, such as assault through committing sexual acts or insinuations, rape, defilement and indecent acts.

The paper was issued in Arabic in 14-A4 pages (cover, introduction and the topic of the paper) in Simplified Arabic font size 14.

The paper answers these questions through examples and judicial applications to assist research and legal professionals in setting the boundaries between the crime of sexual harassment and suspected crimes. The paper can be summarized in the following points:

- Articles 306 bis (a) and 306 bis (b) may provide a definition of sexual harassment as “any act towards others in public, private or frequented place through sexual or indecent acts, insinuations or gestures, whether by reference or utterance or any other means, including wired or wireless means of communication with the intention on part of the perpetrator of obtaining a benefit of a sexual nature from the victim.”
- The law does not distinguish between sexual harassment against men or women as both acts are punishable.
- There are many forms of harassment, including:
 - Bargaining harassment: It is the harassment committed by the employer with the aim of encouraging subordinates by mentioning work privileges, such as promotions, obtaining better interests, protection, keeping the position, allowances and bonuses in return for sexual favors.
 - Intimidation harassment: In return for the previously mentioned sexual demands, but in the absence of mutual consent where the perpetrator resorts to intimidating the victim with the disappearance of interests or missed opportunities.
 - Verbal harassment: Making comments and jokes with sexual content, or making sounds of a sexual nature, to inquire about the sexual experience of the other party, using sexual



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expressions or making sexual jokes. Also, when a perpetrator follows a girl a long distance repeating: “Why don’t you come with me!”

- Non-verbal harassment: The display of pictures, posters or sex films to the victim; sending emails with sexual content, getting too close to fence in the other party; forcing the other party to utter indecent expressions; using facial expressions, hand gestures or winking, biting the lips, moving the tongue in a sensual way or looking hungrily at the female’s body; making signs that invite her to join the perpetrator, or wait for him in a certain place; pursuit of the victim; giving the victim a paper with their name, address or phone number; addressing messages that include phrases or stories that have a sexual connotation at the victim; lending the victim sexual novels; or the perpetrator stopping his car next to the female to get in the car.
- For an act to be labeled as sexual harassment, the law requires that the perpetrator aims to obtain a benefit of a sexual nature. Once this intention is negated, the incident falls under another incriminatory description, which is “subjecting others to sexual acts, nuances or insinuations” but not sexual harassment.
- Sexual harassment can be proven through all means, such as witness testimony, cameras surrounding the location of the incident, through emails or telephone call recording or filming with the mobile phone camera, provided the evidence is legitimate and impartial. Thus, a perpetrator may not be subjected to torture to obtain a confession. Hacking and decryption of a personal computer or telecommunications systems is not considered legitimate, nor is evidence obtained through searching a defendant’s home without obtaining permission of the Public Prosecution or evidence obtained from telephone monitoring.
- The penalty of sexual harassment is imprisonment for a period not less than one year and a fine not less than EGP20,000 or either of the penalties. If the offender is a relative of the victim or has a professional, family, or study authority over the victim, or if the offender exercised any pressure due to circumstances, or if the crime were committed by two or more persons, at least one of whom was carrying a weapon, the penalty of imprisonment is not less than two years and not more than five years, and the fine is not less than EGP20,000 and does not exceed EGP50,000.

The law increases the penalty of the crime of sexual harassment in the following cases:

- If committed by an origin of the victim, such as the father, grandfather on the father’s side, or grandfather on the mother’s side.
- If committed by a person in charge of bringing up the victim, or supervising her, such as the guardian, the stepfather, the uncles (on the mother’s and the father’s sides), the foster father and the teacher.
- If committed by those who exercise authority over the victim, such as an employer, work superiors and department managers.



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- If committed by a hired server of the victim's, such as maids, porters, cooks, or the private driver.
- If the crime was committed by two or more persons, or if one of them carried a weapon.

Some acts similar to sexual harassment are punishable by more severe penalties, including:

- Full sexual intercourse between a man and a woman without the woman's explicit consent (the crime of rape). Sexual harassment is similar to rape in that they are both committed without the consent of the victim. They are different in that rape involves full sexual intercourse, while harassment does not involve full sexual intercourse. Moreover, rape is committed on part of a man against a woman, while harassment may take place between any two sexes.
- The intentional breach of the victim's decency through an act committed against their body, often touching a sensitive part of the body (defilement). Sexual harassment is similar to defilement in that they both do not require full sexual intercourse. They differ in that harassment is committed through words or deeds, contrary to defilement which is only committed through deeds.
- Every physical act that breaches the decency of others (indecent act) and indecent acts are similar to sexual harassment in that each constitutes a breach of the decency of others. Both crimes do not require a difference in the sex of the perpetrator. Harassment may be committed on part of a man against another man, a woman against another woman. Also, a public indecent act may be committed on part of a man or woman, if they commit a decency breaching act, whether themselves or towards others. Both crimes are similar in the absence of consent of the victim. They are different in that sexual harassment is committed in actions and words, while indecent acts, whether public or not, do not involve words.
- The commitment of an act that constitutes the crime of sexual harassment in conjunction with a similar crime to it, in what is known as multiple crimes of the same act, the judge shall apply the most severe punishment of one of the crimes to the exclusion of others.