

論詐術性交罪

—兼論「宗教騙色」案件之認事用法問題

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關鍵詞：違反其意願之方法、施用詐術、陷於錯誤、同意性交、宗教騙色

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摘要

一般而言，多數學說及實務針對「詐術性交罪」，多侷限於刑法第229條的構成要件而為探討。然而，修正後刑法第221條「違反意願方法性交罪」法文中所指的「其他違反其意願之方法」，不論自文義、體系、歷史、目的解釋等角度來看，解釋上既然不以具有強制、脅迫、恐嚇等類似性質為必要，亦即，「施用詐術」亦屬違反被害人意願之方法，則所謂的「詐術性交罪」，即不應只侷限於刑法第229條此一近乎無用的構成要件而為探討，反而修正後刑法第221條「違反意願方法性交罪」，才應該是「詐術性交罪」適用的核心條文。

在「宗教騙色」案件，行為人所為的「宗教行為」是否屬於「施用詐術」，進而構成詐術性交罪，必須於具體個案中依證據認定之，不能一概而論。其判斷的關鍵在於行為人（被告）在訴訟上就「是否誠摯地相信自己的宗教主張」此一爭點所提出的證據，是否已達使法院產生「有合理懷疑」的心證程度，若是，即不能遽以詐術性交罪的刑責相繩；反之，則應認其所為屬「施用詐術」行為，若被害人亦確實因此「陷於錯誤」而「同意」性交，行為人即應成立詐術性交罪。

A Study on Offense of Fraud-type Sexual Intercourse — Also on the Issues of Identifying Usage of "Sexual Fraud in Religion"

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Abstract

Generally speaking, the most studies and practices constricted their discussions on the constituted elements set forth in Article 229, Criminal Code. However, "other methods against wills" referred in the amendment to Article 221, the Criminal Code, "the Act for Offenses of Sexual Intercourse against wills and method", viewed from perspectives including but not limited to the context, architecture, history and purpose interpretations, since there is no need for force, coercion and intimidation etc. type of interpretation, that is, "applying fraud" also is classified into a method against victim's will, then, the so-called "offense of fraud-type sexual intercourse" shall not constrict it into an almost useless constituted element set forth in Article 229 of the Criminal Code for discussion, on the contrary, "the Offense of Sexual Intercourse against wills and method" in the amendment to Article 221, the Criminal Code, shall be the core clause applicable to "offense of fraud-type sexual intercourse".

In the cases titled "sexual fraud in religion", whether the "religious act" of the actor shall be classified as "applying fraud" and further constitute offense of fraud-type sexual intercourse shall be identified in specific cases which cannot be generalized; the key to the judgment is whether the evidence presented by the actor (defendant) in an argument as to "faithful belief of his own religion" in the law proceedings has achieved the court's level of inner conviction "with reasonable doubts", if yes, then, the offense shall not be charged by offense of fraud-type sexual intercourse expediently; on the contrary, it shall be identified as an act of "applying fraud"; if the victim, indeed, "was trapped in a mistake" and "consented to" the sexual intercourse, then, the actor shall be charged by offense of fraud-type sexual intercourse.