由實務判決探討宗教性侵害問題

黄 惠 婷*

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關鍵詞:宗教、性侵害、性自主、強制、違反意願

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摘 要

憲法第 13 條規定人民有信仰宗教之自由,但宗教行為之自由與宗教結社之自由,在必要之最小限度內,仍應受國家相關法律之約束。宗教行為觸犯妨害性自主罪,屬侵害性自主權最嚴重的強制性交罪,應優先考量。強制性交罪的強暴、脅迫與恐嚇都是具有違反他人意願的強制方法,違反意願是強制的效果,因此,本罪之成立以該當強制罪為前提。行為人以宗教之名行詐術而實現性交目的,倘若令他人心生畏懼,他人也認識通知的惡害內容非由行為人實現,非恐嚇,而是警告。此外,行為人以人類力量無可操控或支配的方法令人心生畏懼,不僅難以成立恐嚇危安罪,亦非強制性交罪的「恐嚇」。是以,參考刑法第 341 條乘機詐欺罪與第 344 條重利罪,建議在刑法第 225 條增訂「知慮淺薄」與「身心處於困頓致輕率」要件。至於單純詐術型的宗教性侵害行為,考慮行為人與被害人之間,是否存有因扶助或照護所形成的依賴或信任關係,行為人濫用關係或機會,得以成立刑法第 228 條。

The Discussion on Religious Sexual Assault by Court Decisions

Huei-Ting Huang

Abstract

According to Article 13 of Constitution of Taiwan, the people shall have freedom of religious belief. However, freedom of religious behavior and association should restricted by national laws. Religious behavior violating sexual offenses is the most serious crime of forcible sexual intercourse. The forcible sexual intercourse of threats, violence and intimidation are against one's will. Therefore, declaring sexual intercourse should base on forcible. A conduct who frightens someone by incontrollable power, is hard to convicted him/her of intimidation, hence, refer to Article 341 and 344 of Criminal Law, suggest Article 225 of Criminal Law should revise and augment the elements of "ignorance" and "the person who's mental and physical are under weary circumstance". As for deceptive-type of religious sexual assault, it should considering whether there has relationship of supporting or caring between the offender and the victim. Suppose the conduct abuse this relationship or opportunity, he/she is violate s Artic le 228 of Criminal Law.