

ISSUES OF LIABILITY FOR CRIMES IN THE FORM OF TORTURE UNDER AGGRAVATING CIRCUMSTANCES, AS WELL AS TAKING INTO ACCOUNT THE POSITION OF THE VICTIM IN THE CRIMINAL LEGISLATION OF THE CIS COUNTRIES

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Article Info	ABSTRACT
<p>Article history: Received May 05, 2024 Revised May 20, 2024 Accepted May 25, 2024</p> <p>Keywords: <i>Punishment, prestupleniya, motivation, istyezaniya, prestupleniya protiv zdorovya, telesnyx poverjdeniy, prichinenie, fizicheskikh, psikhicheskikh, stradaniy.</i></p>	<p>The issues of responsibility for crimes in the form of torture under aggravating circumstances, as well as taking into account the position of the victim in the criminal legislation of the CIS countries are discussed.</p> <p>During the analysis of the article, the issues of criminal liability for crimes in the form of torture in the criminal legislation of the Republic of Uzbekistan and certain developed foreign countries, the CIS countries in the aspect of the legal status of the victim, the prevention of victimhood of these crimes were studied, and proposals were developed regarding the improvement of some legislative acts and amendments and additions to the criminal legislation.</p> <p>This is an open-access article under the CC-BY 4.0 license.</p> 

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INTRODUCTION

In the Criminal Code of the Republic of Uzbekistan, among crimes against health, torture is included in the category of serious crimes, while despite the fact that measures to prevent these crimes have been developed, there is no significant reduction in the number of these crimes.

The purpose and motivation of the crime of torture may be different, the correct establishment of motivation serves an accurate and objective qualification of the crime

and the correct sentencing of the perpetrator. Because, in practice, there are cases of incorrect qualification of crimes. One of the reasons for errors and shortcomings is the incorrect interpretation of the motivation of the crime, which requires a deep analysis of the objective and subjective features of the crime in relation to other similar crimes.

In the criminal legislation of some CIS countries, including Kazakhstan, Kyrgyzstan, Belarus, Estonia, Latvia, and Ukraine, the issue of responsibility for torture is considered among the category of crimes against the person, and the actions of the victim are taken into account in the process of sentencing.

Thus, in the Criminal Code of the Republic of Latvia, crimes against health are included in Section 13, entitled “Criminal acts against personal health (Articles 125-131)” [1].

Article 125 of the Criminal Code of the Republic of Latvia provides for liability for serious bodily harm, in the case of systematic bodily harm this creates a crime in the form of torture[2].

Section 2 of the Criminal Code of the Republic of Ukraine, entitled “Crimes against the life and health of a person” [3], provides for liability for torture. Article 126 of the Criminal Code of the Republic of Ukraine defines criminal liability for beatings and torture. As stated in the article, intentional striking, beating or committing other violent acts that caused physical pain and did not result in bodily harm give rise to torture. Aggravating circumstances include the commission of the same acts by a group of persons, or with the purpose of intimidating the victim or his relatives. Also, Article 127 provides for liability for torture[4].

Article 117 of the Criminal Code of the Russian Federation is similar to Article 110 of the Criminal Code of the Republic of Uzbekistan, in which case torture is expressed in systematic beatings or other violent actions.

Article 117 of the Criminal Code of the Russian Federation has specific features. Thus, 1. Causing physical or mental suffering by systematic beatings or other violent actions, if this did not entail the consequences specified in Articles 111 and 112 of this Code, shall be punishable by restriction of liberty for a term of up to three years, or forced labor for a term of up to three years, or imprisonment for the same term.

2. The same act committed:

- a) against two or more persons;
- b) against a person or his relatives in connection with the performance of official activities by this person or the fulfillment of a public duty;
- c) against a woman, obviously for the perpetrator is pregnant;
- d) against a person obviously under age or a person obviously in a helpless state or in material or other dependence on the perpetrator, as well as a person kidnapped or taken hostage;
- d) with the use of torture;
- e) by a group of persons, a group of persons by prior conspiracy or an organized group;

g) by hire;

h) for reasons of political, ideological, racial, national or religious hatred or enmity, or for reasons of hatred or enmity towards any social group, shall be punishable by imprisonment for a term of three to seven years[5].

If we look at the differences between torture and causing serious bodily harm (Article 111 of the Criminal Code), causing moderate bodily harm (Article 112 of the Criminal Code) and causing minor bodily harm (Article 115 of the Criminal Code), only Article 111 of the Criminal Code of the Russian Federation specifies intentional causing of serious bodily harm, according to which, “Intentional causing of serious bodily harm is considered to be damage that is dangerous to human life, or that has resulted in the loss of vision, speech, hearing or any organ or the loss of an organ’s functions, termination of pregnancy, mental disorder, drug addiction or substance abuse, or that has resulted in permanent disfigurement of the face, or that has caused significant permanent loss of general working capacity of at least one third or a complete loss of professional working capacity that is known to the perpetrator” [6].

Article 132 of the Criminal Code of the Republic of Azerbaijan dated January 31, 2005 provides for liability for battery, in accordance with this article, “Intentional battery or other violent actions that caused physical pain must not entail the consequences specified in Article 128 of the Criminal Code.

Article 133 provides for liability for torture, as follows: 133.1. Causing physical or mental suffering by systematic battery or other violent actions, if this did not entail the consequences specified in Articles 126 and 127 of this Code, shall be punishable by imprisonment for up to three years.

133.2. The same act committed:

133.2.1. against two or more persons or a person taken hostage or kidnapped, or committed for hire;

133.2.2. against a woman who is known to be pregnant;

133.2.3. by a group of persons, a group of persons acting in concert, an organized group or a criminal community (criminal organization);

133.2.4. against a person known to be a minor or a person known to the perpetrator to be in a helpless state;

133.2.5. against a person or his close relatives in connection with the performance by this person of official activities or the fulfillment of a public duty, shall be punishable by deprivation of liberty for a term of three to seven years.

133.3. The commission of the acts provided for in Articles 133.1 and 133.2 of this Code by an official using his official position or at his instigation for the purpose of obtaining information from a person or forcing him to confess, or for the purpose of punishing an act committed or of which this person is suspected, shall be punishable by deprivation of liberty for a term of five to ten years[7].

At first glance, the provisions of this norm seem similar, but they differ from each other in aggravating circumstances.

RESULTS AND DISCUSSION

Chapter 19 of the Criminal Code of the Republic of Belarus “Crimes against the life and health of the individual”, Article 154 provides for liability for torture. According to this article, “1. Intentional infliction of prolonged pain or suffering by means that cause special physical and mental suffering to the victim, or systematic beatings that do not entail the consequences provided for in Articles 147 and 149 of this Code (torture), shall be punishable by arrest for up to three months, or restriction of liberty for up to three years, or imprisonment for the same term.

2. Torture committed against a pregnant woman, or a minor, or a person in a helpless state or in a dependent position, known to the perpetrator, shall be punishable by restriction of liberty for a term of one to three years, or imprisonment for a term of one to five years[8]”.

Chapter 20 of the Criminal Code of the Republic of Georgia dated July 22, 1999 is devoted to “Crimes against the Person”, Article 125 provides for criminal liability for battery, and Article 126 - for torture.

In particular, according to Article 126, “1. Systematic battery or other violence that caused physical or mental suffering to the victim, but did not entail the consequences provided for in Articles 117 or 118 of this Code, shall be punishable by restriction of liberty for a term of up to two years or imprisonment for a term of up to three years.

2. The same acts committed:

- a) against two or more persons;
- b) against a woman, known to the perpetrator to be pregnant;
- c) in connection with the official activities of the victim or his close relatives;
- d) against a minor, a person in a helpless state or in material or other dependence on the perpetrator, known to the perpetrator;
- d) in connection with being taken hostage;
- e) by hire;
- g) due to racial, religious, national or ethnic intolerance;
- h) using official position, - shall be punishable by imprisonment for a term of three to six years with or without deprivation of the right to hold office or engage in activities for a term of up to three years[9]” .

Article 110 of the Criminal Code of the Republic of Kazakhstan provides for criminal liability for torture. Thus, “1. Causing physical or mental suffering by means of violent actions committed with particular cruelty, mockery, with the purpose of causing suffering to the victim, if this act did not result in causing serious or moderate bodily harm, - shall be punishable by correctional labor in the amount of up to one thousand monthly calculation indices, or by community service for a term of up to six hundred hours, or by imprisonment for a term of up to three years.

2. The same act committed:

1) against a person known to be a minor or a person known to the perpetrator to be in a helpless state or in material or other dependence on the perpetrator, as well as a person kidnapped or taken hostage;

2) against two or more persons;

3) against a woman known to the perpetrator to be pregnant;

4) excluded in accordance with;

5) by hire;

6) motivated by social, national, racial, religious hatred or enmity - shall be punishable by imprisonment for a term of four to seven years [10].

As you can see, in contrast to the legislation of Kazakhstan, some aggravating circumstances of Article 110 of the Criminal Code of Kyrgyzstan and Article 110 of the Criminal Code of Uzbekistan are very similar.

The second chapter of the Criminal Code of the Republic of Moldova provides for “Crimes against life and health”, according to Article 154 of this code, (1) Intentional infliction of moderate bodily injury or other moderate the severity of harm to health, not life-threatening and not entailing the consequences specified in Article 151, but causing a long-term health disorder or significant permanent loss of working capacity by less than one third, shall be punishable by unpaid community service for a term of 140 to 240 hours or imprisonment for a term of up to 3 years.

(2) The same act committed:

b) against two or more persons;

c1) against an obviously minor or pregnant woman, or by taking advantage of the obviously or obviously helpless state of the victim, due to old age, illness, physical or mental disabilities or other factors;

d) against a person in connection with the performance of his official or public duty[11]

CONCLUSION

In conclusion, we would like to note that the analysis of the criminal legislation of some developed foreign countries and the CIS countries regarding the crime of torture shows that in the criminal laws of such countries as Latvia, Ukraine, Belarus, Georgia, Azerbaijan, Kazakhstan, Kyrgyzstan, and the Russian Federation, the issue of “causing physical or mental suffering by systematic beatings or other violent” is defined as a mandatory qualifying feature of the act. In addition, the Criminal Codes of almost all the studied states, including the Criminal Codes of Kazakhstan, Kyrgyzstan, the Russian Federation, the Republic of Belarus, Georgia, Azerbaijan, and Moldova, indicate the following circumstances as aggravating features: “in relation to two or more persons”, “in relation to a person or his relatives in connection with the performance of official activities by this person or the fulfillment of public duty”, “as a result of religious, national or ethnic intolerance”, “by a group of persons by prior conspiracy”, “by an organized group”, “by hire”.

Based on the above, some positive aspects of the criminal laws of individual foreign states, in our opinion, should be introduced into Part Two of Article 110 of the Criminal Code of the Republic of Uzbekistan. From this point of view, in our opinion, Part Two of Article 110 of the Criminal Code should include such aggravating features as “in relation to two or more persons”, “in relation to a person or his relatives in connection with the performance of official activities by this person or the fulfillment of a public duty”, “as a result of religious, national or racial intolerance”, “by a group of persons by prior conspiracy”, “by an organized group”, “by hire”.

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