



The Importance Of The Motiv And The Purpose Of The Crime For The Qualification Of The Plundering

Abduqodirov Farkhodjon Fakhritdin Ugli

Doctoral Student Of The Academy Of The MIA Of The Republic Uzbekistan

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ABSTRACT

The article deals with the legal analysis of the subjective side that is considered to be one of the elements of the crime of plundering. During the analysis, the form of guilt in the commission of plundering, the motive and purpose of the crime are studied. As a result, it is determined that today's court proceedings are carried out as a result of changing or annulment of court verdicts related to robberies, misunderstanding of the requirements of current legislation and inaccurate assessment of its subjective side due to some deficiency in the law. In order to eliminate these problems, the author's proposals on introduction of the concept of plundering in the criminal law, understandable use of the terms prejudice and bribery, as well as amendments and additions to the decision of the Plenum of the Supreme Court to provide clear and unique qualification of robbery.

KEYWORDS

Plundering, Subjective Side, Guilt, Motive, Purpose, Mercenariness, Other's Property, Openly.

INTRODUCTION

It is expedient to start with the analysis of the expressions of motive and intention in criminal law, first of all, from the analysis of the

importance of the motive and intention of the crime in qualifying the looting. Motive and intention are necessary elements of a

particular crime and may be reflected in the disposition of the article of the special part of the Criminal Code, which provides for this composition. However, even if the motive and intention are not specified in the norm, their identification is important in resolving the issue of criminal liability of the person who committed the crime.

Motive and intention are indicators of the desire for a result, and we think the difference is that it determines the stage of mutual aspiration. In this regard, V. N. Kudryavtsev states “the motive is an internal excitement that is not directed to a specific object. The idea that the intention indicates what result should be achieved to satisfy this motive” is close to the truth [1, p.101].

According to A.I. Rarog, motive arises from needs and contributes to the formation of the intention to a certain extent, the intention together with the motive leads to the desire to achieve the desired result in a certain way [2, P.113].

M.Kh. Rustambayev also expressed his opinion on this issue, saying that the motive for the crime is a conscious or unintelligible internal desire of certain needs and interests, which the person relies on when committing a crime. It is the motive that influences a person’s mental and volitional state to achieve a premeditated criminal goal [3, p.177].

Hence, if the motive for the crime is an internal force that incentivizes the person to commit the crime, the intention is an imaginary result that the subject expects from the action to be taken. Accordingly, criminal and criminal-procedural law is required to determine the motive for a socially dangerous act committed

by a person. The reason is that the motive determines the nature of the crime, the degree of social danger of the act, the cause of the act, the specific characteristics of the subject, as well as mitigating and aggravating circumstances.

It is obligatory to determine the motive for the crime, even if the motive is not directly specified in the offense of looting, as well as in the disposition of robbery. The doctrine is formed that the motive of all crimes related to robbery is greed (selfishness) in the theory of criminal law [4, B.12].

Part VIII of the Criminal Code is biased in the legal sense of the term “the motive is defined as “selfishness - an intention expressed in the pursuit of material or other property gain or material costs from the crime committed”. In particular, the Article 14 of the Plenum of the Supreme Court of the Republic of Uzbekistan of September 24, 2004 No. 13 “On Judicial practice in cases of intentional murder” clarifies the motive as an acquisition of ownership, housing and similar rights) or material costs (return of property, debt, payment for services, fulfillment of property obligations, alimony, etc.). Both the legislature and the practice were distracted by the theory, calling the accused’s sole intention to gain material gain a prejudice in the law and a greed in the Plenum’s decision. Indeed, according to Sh. L. Montesquieu, “the concepts in the law should be clear, excluding the possibility of different interpretations” [5, p.367].

It should be noted that only in textbooks, commentaries and other literature it is noted that selfish motives and intentions are among the most dangerous signs of looting. The existence of the term looting in the disposition

of robbery is considered to be the robbery of another's property for malicious purposes and with the same motive. It is obvious that textbooks, commentaries, and other literature have no legal force and cannot be used in law enforcement practice. This problem can be solved only by defining the concept of "looting" in the eighth section of the Criminal Code, entitled "Legal meaning of terms", clearly indicating the signs of looting.

According to A. M. Abdukhalikov, the perpetrator of the looting is motivated by hooliganism, revenge, enmity and other vicious intentions. However, the main motive that incentivizes a person to commit looting is greed, that is, his intention is to gain property for the benefit of himself or others by committing a crime. It is the motive of prejudice that determines the nature and intention of the guilty actions [10, p.13]. This situation is somewhat controversial, and it cannot be said that the motive of the person who committed the crime with the motive of hooliganism, revenge, enmity, greed prevails, the motive of the crime is usually the only motive to commit the crime.

Although the subjective categories being analyzed, i.e., motive and intention, seem closely related to each other, they are not similar in content and describe the volitional process differently. In this case, the question naturally arises that "Is greed the motive or intention in looting?". If the intention is an imaginary result of an action of the offender intended to satisfy this or that need, the motive arouses the person's desire to commit an action and directs it to a specific intention. There is also a motive for looting, such as taking possession of another's property for one's own benefit and being materially

interested in it. Thus, the motive forces the subject to set a clear intention.

Looting differs from other crimes that are similar in objective features by the motive and intention of the crime.

According to T.Vorobyeva and A.Santalov, the main distinguishing feature of looting from hooliganism is the intention of taking property. The purpose of possession of property in harassment is to disregard the rules of conduct in society, to disrespect the individual, and in looting, to appropriate property and use it at will [11, p. 11]. We partially support the views of T. Vorobyeva and A. Santalov, because looting differs from hooliganism not only in its purpose, but also in its motives.

In this regard, we support L. D. Gauxman's opinion that open looting of another's property, for example, possession of his hat with malicious motives and intent, is qualified as looting, and possession as a result of hooliganism is qualified as hooliganism [12, p. 84-85].

An accused person (N.A.M) openly robbed of 50,000 soums and a Samsung Duos telephone worth 250,000 soums at a mercenary residence in Altirik district in order to openly loot the property of another person (R.N.T.), on November 3, 2020, at 4:30 p.m. This case is considered by the Altirik District Court qualifying that insulting N.R. with obscene words, shouting, and beating him on various parts of his body, a condition that caused minor damage to his health for no more than six days. The court qualified the case under the Article 166, Part 1 and the Article 277, Part 1 of the Criminal Code of the Republic of Uzbekistan and issued a verdict of guilty [13]. In this case,

we agree with the court's legal assessment of the situation, as the defendant's intent is not only to openly loot another's property, but also to disregard the rules of conduct in society. The peculiarity of the ulterior motive is that the looter takes the property of another without taking compensation for his own property and his own voluntary use [14, B 56-57]. Therefore, it is no looting in the event of arbitrary, erroneous assumption of property from the victim, including the temporary seizure of property for the purpose of reimbursing the value of the looted property, as well as for the purpose of returning it when necessary.

For instance, citizen (T. T.) said that he would pay for a Nokia 5530 mobile phone worth 150,000 soums, which he had given to a citizen for purchase, in 2-3 days on November 20, 2012, at 5:30 pm,. He thought that K. K cheated his phone because he did not pick up the phone for the call he made without seeing the citizen K. K. On November 23, 2012, the Judicial Board dismissed the case in accordance with the first paragraph of the Article 83 (1) of the Criminal-procedural Code, stating that the case of the citizen T. T. withdrew his application and returned his phone was not considered a crime [16].

The analyzed criminal cases show that the difficulty in qualifying looting in judicial-investigation practice is related to determining its motive and intention. As a reason for this, we can show that motive and intention are inextricably linked with the inner spiritual world of the individual. In this regard, R.I. Mikheeva argues that one of the main reasons for the error in determining guilt is the misunderstanding and interpretation of the subjective characteristics of certain forms of criminal activity, such as intent and negligence

established by criminal law [17, p. 23]. E. Zabarnuk and Z. Soktaev admit that currently criminal law does not sufficiently take into account the motives and intentions of the offender, as well as the subjective side of his subsequent behavior, namely the psychological aspects [18, p. 47-48]. The surveys conducted by Y.M. Brainin showed that sentences that were amended or revoked due to misidentification of motive and intention accounted for 21% of the sentences that were amended or revoked by the total cassation instance [19, p. 170]. The above points show how important the motive and intention of the crime are in qualifying the act.

If we focus on extortion, which is a form of looting, Paragraph 12 of Plenum Resolution No. 11 of 17 April 1998 "On certain issues in judicial practice in criminal matters in the field of economics" states that "claiming a debt from a debtor cannot be described by the Article 165 of the Criminal Code, but in some cases should be assessed as arbitrarily (Article 229 of the Criminal Code). In our view, this correct approach proves once again that the subject of looting crimes can only be someone else's property. It is advisable to apply this direction to the qualification of looting.

In some foreign countries, for example, paragraph 7 of Resolution No. 27 of the Plenum of the Supreme Court of the Russian Federation of 22 December 2002 "On Judicial practice in cases of theft, looting and invasion" reads as follows. "Unlawful misappropriation of another's property without a malicious intent does not constitute robbery or theft, such as the temporary use or misappropriation of another's property for the purpose of future return. Based on the circumstances of the case, if there are grounds, the act should be qualified

by the Article 330 or another article of the Criminal Code of the Russian Federation” [20].

In addition, Resolution No. 8 of the Plenum of the Supreme Court of the Republic of Kazakhstan of 11 July 2003 “On Judicial practice in cases of looting” [21], Resolution of the Plenum of the Supreme Court of the Republic of Belarus of 21 December 2001 Resolution No. 15 “On the application of the legislation of the court in consideration of cases related to looting” [22] stipulate that theft or looting of another’s property for the purpose of temporary use and subsequent return to the offender, or as a result of an alleged right, was not constituted theft or looting.

In conclusion, today, the judicial practice also requires that this positive foreign experience be implemented in the relevant decision of the Plenum of the Supreme Court of the Republic of Uzbekistan in order to prevent further errors and omissions by the judicial authorities, as well as to ensure a proper legal assessment of the actions of offenders. In this regard, we propose to supplement the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan “On the judicial practice of criminal cases of theft, looting and invasion of another’s property” with the following 51 paragraph:

– “51. Theft and looting by the offender as a result of temporary use or presumed right to property without the intent to maliciously constitute a crime of theft and looting. The act should be qualified under the Article 229 or other articles of the Criminal Code in case there are sufficient grounds”.

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