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## Research Article

### SIGNS OF THE OBJECTIVE SIDE OF THE TORTURE OF PERSONALITY

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#### ABSTRACT

This article examines the concept of “the objective side of the crime”, the difference between torture and other crimes, the concepts of “torture”, “violent acts”, “beatings”, “beatings or other acts of torture”, methods of torture, opinions of national and foreign scientists. Based on the analysis, the author made the appropriate conclusions.

#### KEYWORDS

The objective side of the crime, torture, Systematic beatings or other actions of the nature of torture, the victim.

#### INTRODUCTION

It is known that the corpus delicti consists of four elements, namely: the object, the objective side, the subject and the subjective side. Objective signs of a crime, that is, external signs, express to the object and the objective side of the corpus delicti [3].

O.H.Rasulev and a number of authors note that the signs expressing the external state of a socially

dangerous act or omission committed in relation to an object protected by criminal law are embodied in the objective side of the crime [16].

M. Usmonaliev emphasizes that “the objective side of the crime consists in the commission of a socially dangerous, illegal act or omission committed at a certain time and in space, in a certain way, in certain



cases, under certain conditions, with the use of weapons that became an objective reality at the time of the commission of the crime” [23].

From H.R. Ochilov's statement that the objective side of the crime is indicated as a necessary sign of the corpus delicti in the disposition of each article of the Special Part of the Criminal Code [13], it follows that the disposition of the first part of Article 110 of the Criminal Code of the Republic of Uzbekistan contains signs of the objective side of the crime: “systematic torture and torture by other actions, if they did not entail the consequences provided for in Articles 104, 105 of this Code”. The text of the criminal law establishes that torture is expressed in systematic beatings or other actions.

The method of its commission acts as a necessary objective sign of the composition of the crime under study. In the theory of criminal law, the method of committing a crime is usually understood as “the external form of a criminal act expressed in specific methods and techniques used at the time of the commission of a criminal offense” [22]. As such methods in torture, various actions of a systematic or torturous (violent) nature are consistently understood.

M. H. Rustambayev also notes that, from the objective side, torture is expressed in systematic beatings or other actions if they did not entail the consequences provided for in Articles 104, 105 of the Criminal Code [17], and, thus, intentional infliction of light bodily injury, systematic torture, commission of other violent acts are methods of torture and are an integral part of the objective side of the analyzed crime.

In our opinion, the concepts of “systematic beatings” and “other acts of torture” should be considered separately, since the methods of torture specified in

the Criminal Code are distinguished through the binding “or”.

According to M.H. Rustambaev, systematic beatings, as a form of torture, should have a common feature, consisting in the awareness of the culprit of the acts committed by him causing severe pain and suffering to the victim. Considering M.H. Rustambayeva, that torture causes the victim severe physical and mental suffering, pain, it is emphasized that torture consists in committing a crime three times or more times, which indicates the systematic, repetitive nature of the act: “it should be noted that systematic involves not so much the repetition of the same criminal act, as the presence of a number of actions, in the actions of which it is possible to trace the manifestation of a certain general plan or the consolidation of certain criminal skills of the perpetrator – his repeated criminal acts must be interconnected with each other.” The perpetrator of the torture consciously chooses exactly the way in which he achieves the desired consequences – causing severe pain to the victim or causing him suffering. The method and means of inflicting beatings and injuries do not go beyond certain limits, their peculiarity - all this indicates that the intent of the perpetrator is aimed at causing the victim specific physical pain or suffering. The above points allow us to conclude that the torture can be carried out systematically and simultaneously.

Thus, the concept of “torture” consists of systematic beatings, multiple or simultaneous actions that cause the victim severe suffering, physical pain. As a result of the torture, minor bodily injuries may also be inflicted. If such damages were inflicted on the victim, the act is qualified under Article 110 of the Criminal Code and does not require additional qualifications. If, as a result of the torture, a moderate or serious bodily injury was caused, the crime must be qualified under article 104 of



the Criminal Code or the corresponding paragraph of Article 105 of the Criminal Code [20].

Some authors emphasize that in order for the beating to be recognized as systematic, it must be committed not only three times, but also at certain intervals [10].

Some authors, however, argue that in order for a beating to be recognized as torture, it must have been committed for at least one year [15].

Another group of authors emphasizes breaks, time intervals between episodes of beatings and recognizes that the duration of such breaks should not exceed one month, that is, the next beating should be performed until the victim fully recovers from the injury and completely gets rid of the pain [11].

However, it is reasonable to talk about the use of only quantitative indicators when establishing the fact of systematic beatings as a sign of torture is inappropriate. Because this system means not only quantity, but also “quality”.

In this regard, V. I. Zubkova's opinion is noteworthy that “continuous beatings recognize not only the fact of repeated beatings, but also the relationship of beatings, the interdependence of the sequence of behavior of the perpetrator in relation to the same victim” [8]. Similar views are observed in other authors [27].

In our opinion, since beatings are considered as a way of committing torture, beatings should be committed repeatedly (three times or more) with infliction of physical suffering or slight bodily injury to the victim. The infliction of bodily injuries to the victim by the culprit through his or her body organs, any objects or devices does not affect the qualification of torture. In order to recognize the beatings as a sign of the crime

of torture, it is required that the beatings be carried out consistently.

Systematicity in this situation consists of two indicators: quantity and quality. The qualitative indicator is manifested in the relationship, the internal unity of the sequence that characterizes the behavior of the perpetrator in relation to the same victim (victims). The quantitative indicator of systematicity is manifested in the presence of triple beatings. However, when committing the last three beatings, the limitation period for bringing to responsibility between the first beating and the subsequent beating should not exceed one year [4].

The second method of committing torture is other (torturous or violent) actions.

Focusing on acts of a violent nature, among a number of points of view on the definition of violence in the theory of criminal law, L.V.Serdyukov's interpretation is noteworthy that “violence is the influence of one person on another person (group of persons) from the outside, carried out intentionally and unlawfully against his will and entailing causing him organic, physical or mental harm” [21].

In the criminal law doctrine, acts of a violent nature are divided into physical and mental. However, article 110 of the Criminal Code of the Republic of Uzbekistan uses the expression “beatings or other actions”. This concept does not cover, in our opinion, mental violence (threats, intimidation, insult).

M. Usmonaliev noted that “the nature of the danger, the degree of danger, the actual presence or absence of danger, the proximity of the time of its occurrence, the current situation and the opportunities available to a person in such a situation and other circumstances precluding responsibility for harming rights and legally



protected interests as a result of physical or mental coercion or subject to prevention when deciding on criminal liability are being studied” [24].

K.A. Paizullayev rightly believes that “the use of violence is a socio-legal concept. Therefore, when defining it, it is impossible not to dwell on its social characteristics. These signs are always manifested in unlawful influence on a person or a group of persons, in committing a crime against the will of the victim, in intentionally causing harm or harm to health or public interests” [14], he emphasizes.

Of course, it is impossible to list all acts of a violent nature as a method of committing torture. However, as a way of committing torture in the literal sense, the following acts of a violent nature can be listed:

- 1) Prolonged deprivation of food, drink or heat, or leaving the victim in conditions harmful to health, and other similar painful actions [29];
- 2) Infliction of repeated or prolonged pain, i.e. repeated, but not major harm with the help of pinches, cuts, sharp piercing or impassable objects, damage with the help of thermal factors and similar actions.

If the beating constantly has a mechanical effect on the victim's body, then painful actions of a different violent nature can have both mechanical and physical effects on the victim's body (exposure to high or low temperature, electric current), chemical effects (the use of poisonous, potent drugs, etc.), biological effects (infection with dangerous microbes, toxins).

In our opinion, the peculiarity of torture of a different violent nature is manifested in the systematic and duration of its side effects on the victim's body.

G.I.Chechel and a number of other authors, analyzing the concepts of “torture”, “suffering”, “pain”, came

to the conclusion that these concepts can be combined into the concept of “cruelty”, in one word [28].

In this regard, it is rightly recognized that torture is committed with cruelty. But, on the other hand, when establishing legislative norms when establishing criminal liability for torture, this thought did not contain specific methods of commission.

In our opinion, cruelty in a broad sense includes not only physical violence, but also psychological – psychological violence. It is for this reason that even the above terms cannot be replaced with one word by the term “cruelty”. In addition, as we have already recognized above, torture can be committed only with the help of physical violence (systematic beatings or other actions).

Torture can be committed not only as a result of active action, but also as a result of inaction, as specified in article 110 of the Criminal Code of the Republic of Uzbekistan. For example, the commission of torture as a result of inaction manifests itself in cases when the deprivation of a parent (other persons replacing them) of a child of food, heat caused him physical or psychological trauma.

Proceeding from this, it seems to us expedient to replace the phrase “other acts of torture”, provided for in the disposition of the first part of Article 110 of the Criminal Code of the Republic of Uzbekistan, with the expression “other acts of torture”.

A further question that needs to be resolved is whether this “systematicity” can manifest itself even in the torture of other actions or be used only in the infliction of beatings.

In this regard, some authors [1]believe that torture is inherent only in beatings, while other groups of





authors argue that torture by other actions [2] should also be carried out systematically.

However, in our opinion, this opinion cannot be called correct. The first part of Article 110 of the Criminal Code of the Republic of Uzbekistan is formulated with the phrase “Systematic beatings or other acts of torture”, and the sign “systematic” was applied only to beatings.

In addition, the systematic nature of the corpus delicti associated with torture can also form torture by one action when beating or otherwise. Of course, such an act should be in the nature of torture.

Thus, the second way of committing torture is “torture by other actions”, in which, in our opinion, it would be advisable to “torture by other actions”, which follows from the disposition of the first part of Article 110 of the Criminal Code of the Republic of Uzbekistan.

Torture by other actions can inherently be expressed as a result of a prolonged and systematically committed action or inaction that has an adverse effect on the victim's body of physical (mechanical, chemical, biological) effects.

Analysis of the legal literature on the composition of torture leads to the fact that a number of experts [19] recognize torture as a crime of formal content [26], while others [9], pointing to the infliction of mental or physical suffering, argue that it is a crime of material content [12].

It follows from the disposition of the first part of Article 110 of the Criminal Code of the Republic of Uzbekistan that from the moment of committing systematic acts of a violent nature or other acts committed by force, the crime is over and, according to the Criminal Law, does not require the occurrence of any consequences.

As M.H. Rustambayev noted, the crime is recognized as completed from the moment of committing torture involving rape or other actions [18].

Those who recognize torture as a crime of material content rely on the fact of causing “physical or mental” suffering and on the connection that one committed event led to another. At the same time, the physical or mental suffering inflicted on the victim as a result of his torture is indicated.

V.I. Zubkova emphasizes that “physical suffering should be understood as prolonged pain, mental suffering - anxiety and a high level of pressure” [7].

Each crime is committed in a certain place, time interval, circumstances, in one way or another, or with the use of a specific weapon or means. These circumstances always relate to the objective side of the crime and have different socio-legal significance. Each of the listed signs, if it is provided for in the disposition of articles of the Special Part of the Criminal Code, acts as the main feature of the corpus delicti, which, in turn, requires its unconditional definition. The absence of these circumstances in an obviously committed socially dangerous act indicates the absence of the elements of this crime in the person's act [6].

As M. Usmanaliev noted, “...when charged with committing a crime, in order to properly qualify and bring to justice, they must correctly and in detail identify these signs, which are considered signs of the objective side of the crime” [25].

Optional signs of the objective side of torture [5], i.e. time, place, circumstances, method, instrument and means of committing a crime do not matter in qualification, except for the ways in which they express the external side of torture.



Summing up the study of the objective side of torture, the following main conclusions can be drawn:

1. According to the wording in the legislation, the crime specified in Article 110 of the Criminal Code of the Republic of Uzbekistan has a formal composition. The crime is considered to be over from the moment of committing systematic acts of a violent nature or other actions. In order to qualify the crime of torture, the origin of physical or mental suffering is not required.
2. Beating is the infliction of beatings on the victim's body several times (two or more times). Beatings can be inflicted by the perpetrator through the body, through objects or devices, but this does not affect the qualification of the crime. Beatings, which are a crime of torture, should be carried out systematically.  
Systematicity is manifested in this by two criteria: quantitative and qualitative. The qualitative indicator is manifested in the relationship, the internal unity of the sequence that characterizes the behavior of the perpetrator in relation to the same victim (victims). The quantitative indicator of systematicity is manifested in the presence of triple perfect beatings. However, when committing the last three beatings, there should not be an excess of the limitation period for bringing to responsibility between the first and the next.
3. As an alternative method of committing torture, torture by other actions acts. In this regard, we propose in the disposition of the first part of Article 110 of the Criminal Code of the Republic of Uzbekistan to replace the phrase "torture by other actions" with the expression "torture by other actions". Because torture by other actions forming the corpus delicti can be committed by a prolonged, systematic action or inaction that has

an adverse physical (mechanical, chemical, biological) effect on the victim's body.

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- тутилган маълум бир муддатлар давомида жиний жавобгарликка тортилиши ва жиният содир этишда айбдор ёки айбдор эмаслиги масаласи ҳал қилиниши лозим бўлган ҳолларда шахс жавобгарликка тортилмаслиги натижасида жавобгарликдан озод қилинишидир. Ушбу муддат жиният содир этилган кундан бошлаб то ушбу жиният иши бўйича суд ҳукми қонуний кучга киргунга қадар бўлган вақтни ўз ичига олади. Батафсилроқ қаранг: Усмоналиев М. Жиният ҳуқуқи. Умумий қисм: Дарслик. – Тошкент: Янги аср авлоди, 2005. – Б. 536-538.; Очилов Х.Р. Саволлар ва жавоблар (умумий қисм). Ўқув қўлланма. – Тошкент: Янги аср авлоди, 2009. – Б. 104.; Юридик энциклопедия / У.Таджихановнинг умумий таҳрири остида. – Тошкент: Шарқ, 2001. – Б. 145-146.
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