



 Research Article

ISSUES OF LEGAL ASSESSMENT OF STRONG EMOTIONAL EXCITEMENT IN THE QUALIFICATION OF CRIMES UNDER THE CRIMINAL CODE OF THE REPUBLIC OF UZBEKISTAN

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ABSTRACT

One of described by the Criminal Code of the Republic of Uzbekistan psychological states of individual that affect the qualification of the offense is a crime in the state of heat of passion. Strong emotion, as one of the most important psychological states of persons is enshrined in criminal law (the Article 55 of the Criminal Code) as a circumstance mitigating punishment. In addition, it is a constructive sign of crimes stipulated by the Articles 98 and 106 of the Criminal Code.

This article analyzes the main principles in understanding issues of classification of affective crimes in accordance with articles 98 and 106 of Criminal code of the Republic of Uzbekistan. The analysis provides specific suggestions for improving the criminal law of the Republic of Uzbekistan.

KEYWORDS

Affect, heat of passion, criminal law.

INTRODUCTION

Over the past years, the national criminal legislation has undergone significant changes aimed at improving its norms, implementing advanced international standards and foreign practices in order to unconditionally ensure the rights and freedoms of citizens.

A historically significant stage in the reform of the judicial and legal system was the adoption of an Action Strategy on five priority areas of development of the Republic of Uzbekistan in 2017-2021, which determined the most important directions of state policy in the field of improving criminal and criminal procedure legislation.

In particular, further liberalization of criminal legislation and decriminalization of certain categories of crimes have been carried out, the list of non-custodial punishments has been expanded.

As it was noted in the Concept of Improving the Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan, "At the same time, a number of problems and shortcomings remain in judicial and investigative practice, including those caused by the imperfection of certain norms of criminal and criminal procedure legislation that hinder the effective implementation of the country's criminal law policy. In particular, there are legal gaps in the system of criminal and criminal procedure legislation that hinder the effective protection of the rights, freedoms and legitimate interests of citizens, ensuring legality and objectivity during pre-trial and judicial proceedings in criminal cases."

In this regard, it should be noted that with the liberalization of criminal legislation and the imposition of a fair punishment on the guilty, it is of particular importance to conduct a deep scientific analysis of the existing norms of criminal law, and to make proposals for solving problems that arise when they are applied in practice.

II. Problems in legislation

One of the main requirements for sentencing is the application of the principle of justice enshrined in the criminal law to the person who committed the crime, in proportion to the public danger of the act committed by him, as well as taking into account the level of public danger of the act, the circumstances mitigating and aggravating the punishment.

Undoubtedly, taking into account his psychological state is of particular importance when assessing the

actions of a person who has committed a crime by law enforcement agencies. The purpose of this, first of all, is the correct assessment of his behavior from a criminal-legal point of view. To achieve this goal, it is necessary to have information about the psychological side of the person's activity, to establish his behavioral mechanism and other signs of the subject.

One of the psychological states of a person described by the Criminal Code of the Republic of Uzbekistan (hereinafter referred to as the Criminal Code of the Republic of Uzbekistan) that affect the qualification of a criminal act is the commission of a crime in a state of strong emotional excitement. Strong emotional excitement, being one of the most important psychological states of persons, is fixed in the criminal law (Article 55 of the Criminal Code) as a circumstance mitigating punishment. In addition, it is a constructive sign of the crimes provided for in articles 98 and 106 of the Criminal Code of the Russian Federation.

Of particular practical importance is the correct establishment of the state of affect. To date, there are some difficulties in establishing the commission of a crime in a state of strong emotional excitement (affect) in practice. This is due to the fact that, firstly, the introduction of the concept of "affect" into the Criminal Code of the Republic of Uzbekistan as a synonym for the concept of "strong emotional excitement" leads to a different understanding from scientific and practical points of view of the place and role of this criminal law norm. Similar visions and concepts in practice also have a negative impact on the definition of a "state of strong emotional excitement" and the appointment of a fair punishment to a person who has committed a crime in such a state.

Although articles 98, 106 of the Criminal Code describe how strong emotional excitement arises and list the reasons that cause it, there are no specific norms in the

criminal law that give an understanding of what is strong emotional excitement (affect), what psychological states we can attribute to this concept, the range of understanding of the reasons that cause it affect. As N.Zhumaniezov notes, the concept of "a state of strong emotional excitement", being broader than the concept of "affect", includes, in addition to the state of affect, also emotional tension [1]. Without joining this opinion, we can say that the enumeration in the relevant articles of the Criminal Code of the reasons that induce states of strong emotional excitement does not mean that this concept is defined and that the concept of "affect" is much narrower than the concept of "strong emotional excitement". Taking into account the fact that the concepts of "strong emotional excitement" and "affect" are correlated as general and particular, we consider it appropriate to introduce the concept of "strong emotional excitement (affect)" into the relevant articles of the Criminal Code;

Secondly, in most criminal cases, determining the condition of persons who committed a crime, without conducting a forensic psychological examination of the behavior of the perpetrator at the time of the crime, as not being in a state of strong emotional excitement, leads in practice to an incorrect qualification of criminal cases of this category. For this reason, crimes of this category are in the minority in the current statistics. In particular, it is possible to trace the following ratio of crimes committed in a state of strong emotional excitement (affect) to the total number of crimes in the republic: in 2015. - 0.02 %, in 2016 - 0.03 %, in 2017 - 0.01 %, in 2018 – 0,009 % [2];

Thirdly, the problems of qualification of crimes committed in a state of affect are connected not only with the problems of its application in practice, but with the need for further improvement of the criminal

law. The content of the current norms of articles 98 and 106 of the Criminal Code leads to their different interpretation in practice. For this reason, the urgent task of today is to develop a unified point of view on the uniform understanding and application in practice of these norms and, thereby, the need for further improvement of the norms of the Criminal Code.

In psychological science, the following are the most important signs of strong emotional excitement (affect):

The first is a sudden occurrence. According to the reasoned statement of F.S.Safuanov, "Accordingly, this legally significant sign (a sudden transition of the quality and intensity of the emotional state to a new level, and then exit from this level) from the standpoint of general psychology determines the three-phase occurrence and development of the current characteristic of criminally relevant emotional reactions and states" [3].

The second – affect is also characterized by violence and sharpness. In these situations, a person, as a rule, is deprived of all his internal (physical and psychological) resources and directs them to a single goal.

The third – affect leads to a violation of a person's psychological activity and takes it out of the norm. This disorder manifests itself both in the behavior of the person and in the violation of the function of his higher nervous organs. As a result, a person cannot be aware of his actions, his evaluative function in relation to the existing state is violated, aimlessness and uncertainty in his actions are felt.

The fourth is that the affect arises simultaneously with the equally repetitive process that awakens it. "It manifests itself in the form of abrupt, disordered,

repetitive, stereotyped actions of an aggressive nature. A large number of injuries inflicted on the victim often creates an outwardly deceptive picture (from the point of view of the objective side of the crime), as if the perpetrator acted with extreme cruelty, although in fact he was in a state of passion" [4]. For this reason, in almost all cases, the appropriate instrument of the crime is selected, i.e. when committing a crime, the guilty person may use, as a weapon of crime, the first thing that catches his eye, an object. All this indicates that in a state of passion, the consciousness of the person is in despair and primitive signs are manifested in it [5].

The fifth is that in a state of affect, abrupt changes occur in the control organs of the nervous system of the face. This is manifested in changes in the breathing process, increased heartbeat, redness of the face and skin, dryness in the mucous membrane of the oral cavity, as well as changes in the voice [6].

From this it can be seen that affect does not allow a person to consciously control himself. It is for this reason that it is also considered difficult to prevent crimes committed in a state of passion, because these crimes, being directly related to the psychology of a person, require an individual approach from the law enforcement officer to the psychology of the criminal and the behavior of the victim [7].

III. Conclusions and suggestions

From the structure of articles 98, 106 of the Criminal Code of the Republic of Uzbekistan, from the content of the norms provided for in them, it can be seen that although the criminal law does not include the concept of "affect", it provides for specific psychological criteria that determine strong emotional excitement (affect). When preparing the conclusion of a forensic psychological examination, it is necessary to take into

account these criteria, it is not necessary to try to make it voluminous by comparing it with other psychological criteria and signs.

If we proceed from the content of Articles 98, 106 of the Criminal Code, the time, the sharpness of the occurrence of a state of strong emotional excitement and other signs should serve to distinguish criminal-legal affect from other emotional states. The reason for this conclusion is that the legislator has fixed in the criminal law the sign of "sudden occurrence". In this case, the legislator singled out the sign of "sudden occurrence" separately, fixing it as the most important sign of the objective side of the crime. In addition, in order to establish the presence of strong emotional excitement (affect) in the actions of a person, it is necessary to determine a number of other circumstances, in particular, the negative behavior of the victim - violence, grave insult, as well as other illegal or immoral actions (inaction). The absence of these signs does not allow to qualify a socially dangerous act in accordance with Articles 98 and 106 of the Criminal Code.

Based on the above, we can draw the following conclusions:

Firstly, the three different directions available today (general psychological, criminal law and forensic psychological) in the understanding of affect, in turn, are the reason for the different interpretation of crimes committed in a state of strong emotional excitement, and their incorrect qualification in practice. In all cases when experts give a legal assessment of a state of strong emotional excitement (affect), it is necessary to be guided by specific signs and criteria defined by the legislator. Due to the fact that the concepts of "strong emotional excitement" and "affect" cover an extremely wide range of mental states that affect the consciousness and will of a

person to one degree or another, but there are no specific types of "affect" in expert practice, therefore it is necessary for a uniform understanding of criminal law the categories "affect" should be included in the text of Articles 98, 106 of the Criminal Code of the Republic of Uzbekistan "strong emotional excitement (affect)".

Secondly, the consolidation of two elements of crimes committed in a state of strong emotional excitement (affect) in the current Criminal Code of Criminal Law does not mean that the legislator has defined the concept of "a state of strong emotional excitement (affect)". At the same time, when understanding this concept, it is necessary to be guided not by the signs provided for in psychological science, but by the signs and criteria provided for in Articles 98 and 106 of the Criminal Code.

These articles of the Criminal Code of the Republic of Uzbekistan need clarification by the Plenum of the Supreme Court of the Republic of Uzbekistan, since there is no consensus either in practice or in the science of criminal law regarding the content of the concept of "a state of strong emotional excitement (affect)". This situation creates difficulties in the practical application of these articles.

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