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PROTECTION OF PERSONS IN A HELPLESS STATE FROM CRIMINAL ASSAULT AND ISSUES OF CRIME CLASSIFICATION

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ABSTRACT

This article analyzes current problems of the criminal-law classification of crimes committed against persons in a helpless state. It examines the practice of applying the aggravating circumstances provided for in Article 56, Part 1, Paragraph “b” of the Criminal Code (CC), the legal content of the concept of “helpless state,” and how it differs from other special victim characteristics. On the basis of judicial practice and research data, the article substantiates the need to define the procedure for imposing punishment where aggravating circumstances are present, and proposes improving Paragraph “b” of Part 1 of Article 56 of the CC and introducing a new Article 56[1].

Keywords: helpless state, defenseless person, victim, aggravating circumstances, classification of crimes, individualization of punishment, minors, judicial practice.

In accordance with Article 13 of the Constitution of the Republic of Uzbekistan, the human being, his or her life, liberty, honor, dignity, and other inalienable rights are the highest value [1]. The obligation to respect and protect these rights and freedoms is imposed on the State.

In criminal law, the degree of social danger is measured by the value of the object of the assault and the amount of harm caused. When a person in a helpless state is attacked, not only a specific object (for example, health or life) but also society’s highest spiritual and moral values and the principles of humanity and social justice come under serious attack. This increases the social danger of the act several times over compared with ordinary cases. According to judicial practice, under normal circumstances a person can defend himself or herself against an assault, flee, resist, or call for help, which may mitigate the criminal consequence or prevent it altogether. However, if the victim is in a helpless state (for example, paralyzed, asleep, an infant, or unconscious), the offender’s achievement of the criminal aim and the occurrence of grave consequences become inevitable, since there is no obstacle in the way. In the chain of causation, the victim’s defenselessness acts as a catalyst that accelerates and aggravates the consequence. It follows that heavier liability for committing a crime against victims in a helpless state arises because of the victim’s distinctive characteristics, of which the offender is aware and which he or she exploits to achieve the criminal aim effectively. Based on the principle of legality, under which the criminality of an act and its punishability are determined only by criminal law, the following types of crimes committed against victims in a helpless state can currently be distinguished: (a) crimes against life (intentional homicide, driving a person to suicide, incitement to suicide or assistance in it); (b) crimes against health, including those involving injury to health (intentional infliction of grave or moderately grave

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bodily harm) and those not involving actual injury (torture, coercion to give human organs or tissues for transplantation, leaving a person in danger); (c) crimes against the family, youth, and morality (evasion of the duty to provide financial support to parents, domestic violence, and indecent acts against a person under sixteen years of age); (d) crimes against personal liberty, honor, and dignity, namely those against personal liberty (human trafficking) and those against sexual freedom (rape and the violent satisfaction of sexual desire in an unnatural manner).

It is quite interesting that in most norms of the Special Part of the Criminal Code, the description of a victim in a helpless state is interrelated with the age criterion, that is, being a young child or a minor. Assaults on young children or on other persons in a helpless state are combined into a single qualifying element. It follows that, within the elements of the crimes of homicide and infliction of grave or moderately grave bodily harm, the legislator has equated young age with a helpless state.

If we consider the effect that crimes committed against a “person in a helpless state” have on the degree of social danger of the act, the note to Article 118 of the Criminal Code singles out another important feature of such a person: the inability to understand, or to correctly comprehend, what is happening. This feature may be absent, and in many cases is absent, in the other categories of persons listed in Article 56, Part 1, Paragraph “b” of the CC: a pregnant woman, a person dependent on the offender, a young child, or another defenseless person. The only exception is a minor under fourteen years of age who, according to the note to Article 118 of the CC, cannot understand the nature and significance of the acts committed against him or her because of his or her age and is therefore considered to be in a helpless state.

This article analyzes current problems of the criminal-law classification of crimes against persons in a helpless state. The author examines the practice of applying the aggravating circumstances provided for in Article 56, Part 1, Paragraph “b” of the Criminal Code of the Republic of Uzbekistan and identifies the legal gaps in them. The article considers the legal content of the concept of “helpless state,” its difference from other special victim characteristics such as minority, pregnancy, and dependence, and the shortcomings in how courts assess this circumstance. Drawing on empirical research data from criminal cases, the author substantiates the need to establish in law the procedure for imposing punishment where aggravating circumstances are present. The author puts forward proposals and recommendations for amending Article 56, Part 1, Paragraph “b” of the Criminal Code and for adding a new Article 56[1].

In particular, these circumstances include the person’s minority, that is, being under fourteen years of age; the person’s material or other dependence on the offender; the woman’s pregnancy, where it is known to the offender; the person’s defenselessness; the inability to understand or correctly assess what is happening; and the inability to offer active resistance to the offender or otherwise defend oneself, including the inability to flee the assault. Where these circumstances are absent, the aggravating circumstances provided for in Article 56, Part 1, Paragraph “b” of the CC are not taken into account in sentencing.

It should be noted that the structure of the norm enshrined in Article 56, Part 1, Paragraph “b” of the Criminal Code is not particularly successful and requires further improvement.

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In view of the above, Article 56, Part 1, Paragraph "b" of the CC should be amended and supplemented and set out in the following wording:

An analysis of investigation and court practice materials shows that, among crimes against property, the crimes most often committed against persons in a helpless state are theft, fraud, robbery, brigandage, and extortion, that is, the crimes provided for in Articles 164, 165, 166, 168, and 169 of the Criminal Code, respectively.

The need to classify crimes in precisely this way follows from the provisions of Article 56, Part 2 of the CC. According to it, an aggravating circumstance provided for as an element of a particular crime may not be taken into account again when imposing punishment. This provision is intended to prevent the same circumstances from being counted twice in the classification of a crime and the imposition of punishment.

At the same time, where aggravating circumstances are present, punishment is imposed only within the sanction of the norm that provides for liability for the specific crime. Meanwhile, where qualifying circumstances of the same kind are present, the sanction of the relevant norm may provide for even more severe penalties. Therefore, we conclude that these circumstances should be enshrined as a qualifying element in the elements of certain crimes against the person and crimes against public safety. This is because, when such crimes are committed, applying only the provisions of Article 56 of the CC is insufficient to achieve the purposes of punishment and to fulfill the other tasks of criminal legislation.

For example, the Mirabad District Court for Criminal Cases convicted K. under Article 110, Part 1 of the CC. The case materials show that K., while intoxicated and knowing that his father, A., was in a helpless state, caused minor harm to his health during a quarrel arising from personal enmity. However, the verdict contains no indication that Article 56, Part 1, Paragraph "b" of the CC was applied, and the criminal case file does not reflect the effect of this aggravating circumstance on the sentence.

A study of judicial practice found that the aggravating circumstances provided for in Article 56, Part 1, Paragraph "b" of the Criminal Code are taken into account in only 10% of cases and are insufficiently taken into account in the remaining ones. Of the respondents, 47.5% explain this by the lack of clear legal regulation of the procedure for imposing punishment where aggravating circumstances of a certain degree are present.

In addition, in response to the question "If there were no such victims or very few, what do you think is the reason?", 40% of respondents answered that "there are no such cases at all"; 37% said that "such cases exist but are not identified"; 13% indicated that "criminal cases are not initiated"; and 10% cited other reasons.

In addition to enshrining the concept of such a person in criminal law and establishing criminal liability for putting a person into a helpless state, the further improvement of legislation in the area of criminal-law protection of persons in a helpless state should be carried out in the following main directions:

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