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## **COMPARATIVE LEGAL ANALYSIS OF LIABILITY FOR TORTURING A PERSON IN THE CRIMINAL LAWS OF SOME FOREIGN COUNTRIES**

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**Abstract:** The article comments on the prohibition of torture in the criminal law, criminal liability for torture, criminal liability for torture in the legislation of the CIS countries, and its special features.

**Keywords:** torture, beating, violence, mental violence, suffering, comparative legal analysis, criminal liability.

The fact that the Criminal Code of the Republic of Uzbekistan defines responsibility for torture and its prohibition shows the importance of protecting the rights and physical integrity of a person in Uzbekistan. Therefore, it is necessary to study the experience of foreign countries when studying the criminal-legal aspects of torture.

Using the method of comparative legal analysis, it is possible to objectively study the specific features of the norms of Article 110 of the Criminal Code of the Republic of Uzbekistan, to determine its positive and negative aspects, ways to improve the norms of responsibility for torture.

It would be appropriate to start by studying the criminal law of foreign countries regarding this act, the legislation of the CIS countries, whose legislation is historically close to the legislation of our country.

It should be recognized that criminal liability for torture exists in the criminal legislation of all CIS member countries.

In the criminal legislation of the Republics of Azerbaijan, Tajikistan, and the Russian Federation, concepts close to Article 110 of the Criminal Code of the Republic of Uzbekistan are given. However, in the legislation of these countries, in particular, in Article 117 of the Criminal Code of the Russian Federation and Article 133 of the Criminal Code of the Republic of Azerbaijan, in contrast to Article 110 of the Criminal Code of the Republic of Uzbekistan, torture through the concepts of “causing physical or mental suffering” and “committing other violent acts” implied.

Also, part 2 of Article 117 of the Criminal Code of the Russian Federation recognizes aggravating circumstances such as “torture for political, religious, racial, national and ideological purposes or for the purpose of hatred or hostility towards a social group”.

The norms of liability for torture provide for special cases of liability for torture committed “for political, religious, racial, national and ideological goals or in the attitude of hatred or hostility towards any social group” as provided for in the Russian Federation, would be appropriate for the Republic of Uzbekistan.

According to part 3 of Article 133 of the Criminal Code of the Republic of Azerbaijan, liability is established for torture specified in parts 1-2 of the article by an official or by abusing his official position [1].

Also, responsibility for torture committed by an organized group, a criminal association is established in the Republic of Azerbaijan.

In this regard, it would be appropriate for the criminal law of the Republic of Uzbekistan to provide for special liability for crimes of torture committed by an official or by abusing his official position.

Also, in the criminal law of the Republic of Tajikistan, liability for torture is strengthened in Article 117, as in the Criminal Code of the Russian Federation. The Republic of Tajikistan, as well as the Republic of Uzbekistan, have the expression “torture by other actions or cruelty” [2].

In our opinion, it is more appropriate to have expressions such as “torture by other acts” or “other acts in the nature of torture” because torture is more inclusive.

According to the Criminal Code of the Republic of Tajikistan, the act of “cruel torture” is an aggravating circumstance, but the question of why such a decision was made remains open. Because torture itself is considered to be “persistent beatings and other acts (of the nature of torture or rape) that cause physical or mental suffering” and this is nothing but cruelty. In our opinion, the presence of such qualifiers in the criminal law of the Republic of Tajikistan creates difficulties in the practice of applying the law.

The Republic of Belarus, the Republic of Ukraine, the Republic of Moldova and the Republic of Latvia have taken a different approach to the criminalization of torture in the UK, which differs from the above countries in the UK.

Article 153 of the Criminal Code of the Republic of Belarus stipulates liability for “torture”, part 1 of which defines torture, i.e. intentional continuous (permanent) pain through methods that do not result in severe or moderately severe bodily injury, and cause special physical and mental suffering of the victim. and torture or continuous beating [3].

The general aspect of this norm in Article 110 of the Criminal Code of the Republic of Uzbekistan is that such a crime is not recognized as torture if it results in severe or extremely severe physical complaints as a result of an intentional act. A similar general aspect exists in the Criminal Code of the Russian Federation.

In the criminal law of the Republic of Belarus, there are norms that directly indicate the intentional commission of torture, and although the legislation of our country does not have such a direct norm indicating the intentional commission of torture, but only the intentional commission of torture is provided for. In the Republic of Uzbekistan, torture is expressed as torture by beating and other actions, while in the Republic of Belarus, it is expressed through methods that cause physical and mental suffering of the victim and in continuous beating. In the Criminal Code of the Republic of Uzbekistan, the concept of physical and mental suffering is also not expressed, but it is studied as a consequence of the act [4]. Also, in the Republic of Belarus, the presence of physical and mental suffering is recognized as a necessary

sign of the objective aspect of the crime. According to the theory of criminal law in the criminal law of the Republic of Belarus, torture is recognized as a crime with material content. In the theory of criminal law of the Republic of Uzbekistan, the crime of torture is deemed to have been completed from the moment the torture was committed by beating or other actions [5]. This indicates that according to the theory of criminal law of the Republic of Uzbekistan, torture is a crime with a formal structure [6]. As a result, the criminal law of the Republic of Belarus is considered to be the source of continuing pain and suffering. In our opinion, there is not much difference between “physical and mental suffering” and “continued pain and suffering”.

According to the Criminal Code of the Republic of Belarus, the aggravating circumstances qualifying for torture are not as numerous as in the Criminal Code of the Republic of Uzbekistan and are almost the same and in contrast to the criminal laws of the Russian Federation, Tajikistan and Azerbaijan, according to the Criminal Code of Belarus, the commission of torture “against a woman whose pregnancy is known to the perpetrator, against a minor, against a person whose moral weakness is known to the perpetrator, or against a dependent person” is considered aggravating the responsibility.

Criminal Code of the Russian Federation provides for more such aggravating circumstances and defines torture as “in relation to two or more persons; against a person performing a service position and public duty or his close relative” is indicated as an aggravating circumstance.

Summarizing the above, it can be said that despite the fact that there are certain differences in the criminal-legal norms that determine the responsibility for torture, they are similar to each other. Only, in the criminal legislation of some countries, including the Russian Federation, the Republic of Tajikistan, the number of aggravating circumstances is greater, and this, in our opinion, served to cover the circumstances related to this act.

In the legislation of Ukraine, responsibility for beating and torture, which is carried out in a different way, is expressed in one criminal legal norm. Part 1 of Article 126 of the Criminal Code of Ukraine is entitled “Beating and torture” and provides for liability for “intentional beating, beating or acts of force that cause physical pain and do not injure the body”. Part 2 of this article establishes responsibility for “those actions committed in the nature of torture, by a group of persons, or with the aim of intimidating the victim or his close relatives” [7]. Such a situation is almost the same as Article 93 of the 1959 Criminal Code of the Uzbekistan SSR entitled “Beating and torture” [8].

In our opinion, the representation of “beating and beating” as an aggravating circumstance of torture in the Ukrainian Criminal Code is inappropriate, because, as we mentioned above, “torture” is an independent crime with a separate content, and torture is manifested by constant beating and beating. From this we can conclude that beating cannot be in the nature of torture, on the contrary, torture refers to continuous beating and punching and other acts of force.



If according to Article 110 of the Criminal Code of the Republic of Uzbekistan, torture is committed by continuous beating, beating and other violent actions, then according to the legislation of Ukraine, such actions are not required to be committed continuously. Repeated stalking is defined under Ukrainian law as the repetition of the same act two or more times. In order to recognize that it has been committed repeatedly, it is generally understood that an act is committed three or more times.

At the same time, it is unclear what is meant by the Ukrainian Criminal Code when the character of “torture” is mentioned in the qualification of torture. In the Criminal Code of the Republic of Uzbekistan, it has been shown that torture is regularly carried out by beating. In the Russian Federation Criminal Code, we can admit that the provision of the article is more appropriate and clearly structured, indicating that the consequence of such an act will be “physical or mental” suffering.

In addition, the structure of torture in Ukraine differs from the Republic of Uzbekistan, the Russian Federation, and the Republic of Belarus in that, in order to be considered as having committed torture in Ukraine, it is not necessary to injure the body.

As a difference in the qualification marks of torture in the Ukrainian Criminal Code, the marks of torture “by a group of persons” and “in order to frighten the victim or his close relatives” are given. These symbols are not available in the Criminal Code of the Republic of Uzbekistan. In the criminal laws of the Russian Federation and the Republic of Belarus, these signs are defined as an aggravating circumstance.

There is no separate article defining liability for torture in the Criminal Code of the Republic of Latvia, Article 130 of the Criminal Code, known as “Intentionally inflicting light bodily harm”, provides for liability for the act of “persistent beating or other torture of a torture nature, if it does not result in severe or moderate bodily injury” [9].

It can be seen that the norms of liability for torture in the Latvian Criminal Code is formed according to the evaluative criteria, which is committed by continuous beatings or other actions of a torture nature. Also, in order for the act to be qualified as torture, responsibility for this crime must have caused serious or moderately serious injury to the body according to the established norms, otherwise it will be qualified as another more serious crime against health. In the Criminal Code of the Republic of Latvia, qualifying marks consisting of aggravating circumstances are not provided for.

The Republic of Moldova and the Republic of Ukraine do not have a separate article on liability for torture. Liability for such an act is based on Article 154 of the Criminal Code, which prohibits “intentional assault or other acts of violence that do not result in the consequences specified in Articles 151-153 of the Criminal Code”.

In the articles we mentioned above, intentional serious injury to the body or other serious damage to health (Article 151), intentional moderate serious injury to the body or other moderate serious damage to health (Article 152) and intentional

minor injury to the body or other minor damage to health liability for crimes such as delivery (Article 153) is provided [10].

Article 154 of the Criminal Code of the Republic of Moldova and Article 110 of the Criminal Code of the Republic of Uzbekistan have two similar aspects, firstly, in the criminal law of both countries, torture is committed by beating and other acts of torture. But in the Criminal Code of the Republic of Moldova, it is not required to do a regular check-up. Secondly, according to the Criminal Code of the Republic of Uzbekistan and the Republic of Moldova, liability for the crime under consideration arises only when there is no serious or moderately serious injury to the body. However, Article 154 of the Criminal Code of the Republic of Moldova, as well as Article 126 of the Criminal Code of Ukraine, excludes criminal liability in cases of minor bodily injury caused by torture. This situation causes some misunderstandings, that is, according to the criminal law of the Republic of Moldova, if as a result of torture, a slight injury to the body (slight damage to health) was caused, such an act is not punishable by Article 154 of the Criminal Code, but by Article 153 (intentionally causing a slight injury to the body or other slight damage to health damage) is qualified. We can see such conflicts in Ukraine [7].

Part 2 of Article 154 of the Criminal Code of the Republic of Moldova provides for several qualifying signs, including the aggravating circumstances of responsibility “against the husband (wife) or close relative”, “using special means of torture”, which do not exist in Article 110 of the Criminal Code of the Republic of Uzbekistan[ 12].

If we dwell on the qualification “in relation to a husband (wife) or a close relative” in Article 154 of the Criminal Code of the Republic of Moldova, as we have mentioned above, in most cases, crimes against health, including torture, arise from family and household disputes, and in this regard, the presence of such a qualifying mark causes many acts to be qualified by Article 154, Part 2 of the Criminal Code of the Republic of Moldova, which causes a number of misunderstandings causes. This situation contradicts the well-known rule in the formation of the qualifying structure of the crime that “circumstances recognized as a sign of qualification should not be typical for many crimes with the main structure” [13].

Thus, the analysis of the criminal legislation of the CIS countries showed that torture is recognized as a crime in all studied Criminal Codes. Despite the fact that criminal legal norms are formulated in different ways, there are also the following common aspects:

- 1) torture is expressed in constant beatings or other violent actions;
- 2) such an act, as a rule, causes physical or mental (psychic) suffering;
- 3) severe or moderate physical injury, and in Criminal Codes of some countries, even mild injury, is a necessary sign of torture.

The issue of criminal responsibility for torture in the Criminal Codes of some foreign countries has been resolved in different ways. We can divide the Criminal Codes of studied foreign countries into three groups:

- 1) Criminal Codes where responsibility for torture is established in a separate

article (Criminal Codes of Austria, Denmark, Thailand, Spain and France);

2) Torture is included in the scope of crimes against harm to the health of state Criminal Codes, where responsibility is defined in special norms for acts committed against certain victims;

3) Criminal Codes where torture is assessed as an act against health.

According to § 83, Part 2 of the Austrian Criminal Code, if the act committed by a person causes “cruel treatment (torture) of the physical integrity of another person and, as a result of this, bodily injury or health damage as a result of carelessness”, such an act is a cause of criminal liability [14]. In addition, according to § 83, part 3 of the Austrian Criminal Code, a person who “commits an independent criminal act three times separately without any reason and using force” is also brought to criminal responsibility. The substances analyzed cover torture. If the former provides for liability for torture that causes injury to the body or health, for the latter liability does not require a consequence, only the presence of three or more episodes in which significant force was used is sufficient. In our opinion, “three or more” specified in § 83-3 of the Criminal Code of Austria is similar to the concept of “comprehensiveness” in Article 110 of the Criminal Codes of the Republic of Uzbekistan.

§ 92 of the Criminal Code Code establishes special liability for torture committed against minors or persons in a weak state. The disposition of this article is defined as “torture that causes physical or mental suffering to another person who is in his care or custody and who is under the age of eighteen or who is in a weak state due to helplessness, illness or mental weakness” [14]. This norm emphasizes physical and mental suffering, but does not specify the method of infliction.

In our opinion, § 245 of the Danish Criminal Code also contains indications of torture, which provides for the liability of a person who commits “relatively sad or cruel, or of a dangerous nature or cruel attack” [16].

Article 296 of the Thai Criminal Code defines “torture or cruel physical harm” [17] as torture.

Part VII of the Spanish Criminal Code, known as “Torture and other crimes against mental integrity”, contains Article 173 [18], which establishes liability for “treatment seriously degrading the honor and dignity of the person”. Article 174 of this section provides for liability for torture committed by an official.

Article 177 of the Spanish Criminal Code provides for liability for causing physical injury to a person as a result of torture. Article 153 of the Spanish Criminal Code provides for “persistent physical violence against a spouse or a person in a cohabiting relationship, or his or her children who are living together, under guardianship or incapacitated, or against the children of the spouse or cohabitant” special responsibility is provided for. This article and § 92 of the Austrian Criminal Code have a number of commonalities. Torture with other symptoms is qualified as bodily injury according to the Spanish Criminal Code.

We can also observe this approach to torture in the French Criminal Code. Section I of the French Criminal Code, known as “Intentional invasion of privacy”, §



1 of the chapter “Invasion of the physical and mental integrity of a person” is devoted to “Torture and cruel treatment”, in which cruel treatment and torture against a person is prohibited. Perpetration of such acts consistently against minors, under the age of fifteen, or against persons whose age, disease, infirmity, physical or mental defect, or pregnancy is visible or obvious to the perpetrator, is considered as a qualifying sign of “Torture and Cruel Treatment” according to the French Criminal Code.

Article 2 § 222<sup>14</sup> of this section provides for liability for acts committed using force against “persons in a weak state” [19].

It should be noted that in French and Spanish legislation, liability for physical and mental aggression is strengthened in separate norms. As we know, in Article 110 of the Criminal Code of the Republic of Uzbekistan, physical and mental torture is not separated.

The second group of Criminal Codes is considered as harm to health caused by torture, and in this group of Criminal Codes, the act committed against certain victims is qualified by special norms (Criminal Code of FRG, Criminal Code of Switzerland).

In § 225 of the Criminal Code of GFR, the guardians are under the age of eighteen, as well as those who are incapacitated due to illness or physical disability under their care or guardianship; was a family member of the perpetrator; is financially dependent on the offender or placed under his care; It is recognized as a crime to inflict pain or torture on persons who are dependent on the perpetrator in the course of service or in business relations, and criminal liability is established for persons who commit such crimes [20]. Other acts related to torture are qualified by articles of the Criminal Code of the Federal Republic of Germany on bodily injury[21].

We can see an analogous situation, which establishes criminal responsibility for a similar crime of torture, in Article 126 of the Swiss Criminal Code [22].

In the third group, we include the laws of the countries where the responsibility for torture is not defined in a separate independent article and is assessed as harm to health (Sweden, Japan, Turkish Laws, Israel’s Law on Criminal Law). Torture is a sign of “invasion” (Swedish Criminal Code II, Part 3, Article 5) [23], “rape” (Japanese Criminal Code Article 208) [24], “beating” (Turkish Criminal Code Article 456) [11], recognized as a sign of “injury” or “invasion” (Article 334 of the Israeli Criminal Code, Articles 378-382) [15].

The following conclusions were reached based on the study of the Criminal Codes of some foreign countries where liability for torture has been established:

1. Despite the differences in approach, in most countries liability for torture is defined in criminal law (Austria, Denmark, Thailand, Spain and France).

2. In many CIS member states, liability for torture is established in separate criminal legal norms and is similar to Article 110 of the Criminal Code of the Republic of Uzbekistan (torture in general and by other actions).

3. Studying the norms of criminal responsibility for torture of some foreign

countries, as we analyzed above, leads to the division of foreign criminal law into three groups: 1) a separate independent crime for torture; 2) criminal-legal norms that consider torture as an act committed against certain victims by special norms and within the framework of crimes such as harming health; 3) criminal law norms that assess torture as harm to health.

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