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EXCEEDING THE LIMITS OF THE NECESSARY MEASURES TO DETAIN A PERSON WHO HAS COMMITTED A SOCIALLY DANGEROUS ACT

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ABSTRACT

In this article opinions on the issue of exceeding the limits of the necessary measures to detain a person who has committed a socially dangerous act were analyzed.

It is also substantiated that premeditated murder, in excess of the necessary measures of detention of a person who has committed a socially dangerous act, is considered a murder clearly disproportionate to the degree of public danger of the crime committed or the circumstances of his detention and the establishment of harm caused to the person is of great importance.

In addition, the author analyzes that in the theory of criminal law, the opinions of the authors are different on the grounds for causing harm in order to prevent a socially dangerous act, that is, scientists believe that the commission of a socially dangerous act or crime by a person may serve as a basis for causing criminal-legal harm. Also, this article reflects that the question of what socially dangerous act was committed by the relevant employee (a person hired by the special service), to what extent the harm can be caused by this person while performing an operational task remains a problem, and this, in turn , requires clarification in the law of the grounds and conditions for the commission of a socially dangerous act or other measure of causing harm in the performance of an operational task.

It is known to us that the study of the exact separation of cases that exclude the criminality of the act, their legal significance, the determination of the limit of its application and the legal significance of cases that exclude the criminality of the act in the Institute of crime and punishmentand to determine the role of these cases in the protection of human rights and freedoms, the interests of

society and the state are one of the important issues in the legislation.

If we consider on the issue of damage during the capture of a person who committed a socially dangerous act, intentional homicide beyond the scope of the necessary measures to apprehend a person who has committed a socially dangerous act is homicide in a manner that is explicitly disproportionate to the degree of danger of the crime committed or the circumstances of his detention.

The grounds for detention has of criminal-procedural importance and they stated in Article 221 Criminal-procedural Code of Uzbekistan, and if the act is not dangerous, then the last necessity applied to the person who committed the crime can not be considered legal. In this case, intentional homicide is quantified by Article 97 of the Criminal Code of Uzbekistan without mitigating circumstances in the qualification. The same rule applies in cases where a person who committed a serious and especially serious crime did not show resistance to the arrestor (or ceased to show resistance) and the need to kill him did not arise from the conditions of detention.

According to this norm, intentional harm to a detainee, which does not correspond to the means and method of detention, the degree of danger of the act and the person who committed a crime, as well as the conditions of detention, is considered to be a violation of the limits of detention and the issue of damage caused in it has the great importance.

Scientists have been working since the Royal Russia era to theoretically develop the problem of separating harm from the necessary defense during the arrest of a criminal, I.I. Slusky was one of the first to draw attention to the need to separate the apprehension of the offender as an independent case. He believed that once the attack was completed, it would be useless to approach the attacker in accordance with the necessary defensive rules to inflict damage, since in practice it would be nothing more than to take revenge if the damage to the person who did not pose a risk, if the need to catch it was not so necessary[1]. At the same time, he argued that the use of force in connection with the need to apprehend a criminal is not only dangerous, but also, on the contrary, beneficial to society[2] and we consider his views to be well-founded.

A.B. Sakharov in his monograph “Criminal Law. Theoretical modeling experience ”included the arrest of a criminal among the exceptions to the criminality of the act [3].

Damage to a person who has committed a socially dangerous act at the time of arrest is first mentioned in the current Criminal Code of Uzbekistan, adopted on 22 September 1994, as an exception to the criminality of the case. This norm is reflected in Article 39 of the Criminal Code of Uzbekistan, according to which harm to a person who has committed a socially dangerous act at the time of his arrest for the purpose of handing him over to the authorities is not considered as a crime, if it does not go beyond the limits of measures necessary for his arrest.

One of the important conditions for harm is to prevent a socially dangerous act by an operative. The Criminal-Procedural Code of Uzbekistan sets out the grounds for apprehending a person on suspicion of having committed a crime. However, in this legislation, when a person who committed a socially dangerous act in the course of

taking measures to be taken by an operative in the event of an assignment refuses to be detained, when there is no other possibility of arresting him, there are no rules for the use of force or restraint against a detainee. It is noteworthy that Criminal-procedural legistlation of most foreign countries stipulates that the measure of harm during the detention of a person who has committed a socially dangerous act shall be used as a last resort[5].

At present, the possibility of causing harm in order to prevent the occurrence of any socially dangerous act in the process of carrying out the assignment between employees of the state body and theoretical scientists, who have the right to inflict damage during the operational assignment, is considered a controversial situation. In this regard, it should be noted that the criminal legislation of our country does not mention this at all. Also, the rules on which harm is not allowed to be done in order to prevent the occurrence of socially dangerous acts are not established in the legislation. However, today's practice and the reforms carried out in the field of judicial law require clarification of these cases.

There are also opinions of the authors on this issue. In particular, A.N. Popov states the measure of harm " can be applied only to a sane individual who has reached the age specified by law, which can be prosecuted" [6]. In our opinion, this idea is a bit thoughtful. This is because in some cases, a socially dangerous act is also committed by a mentally ill person[7]. In such cases, it is necessary to apply medical coercion to the mentally ill person [8]. Damage may be withheld as a last resort when necessary to prevent socially dangerous acts that may be committed by them during the performance of an operational task.

B.V. Sidorov referring to the basics of damage emphasizes that "when a person commits a serious crime, it is possible to prevent the seizure of traumatic supplies to his body". The opinions expressed by the author are also somewhat biased. The reason is that in order to find out that a socially dangerous act that can be committed in an urgent situation is a grave crime, it is required to identify all the structural elements of the composition of the crime. In practice, it is not always possible to identify the offenders (criminal gang) committing a serious or extremely serious crime in the prevention of committing a socially dangerous act.

Commenting on the grounds for the damage, V.S.Komissarov points out, "the use of force against persons who have committed a less serious crime is not allowed under the general law. The necessary basis for the capture is the social danger of committing a serious or extremely serious crime" [10]. However, in the practice of inflicting damage on the operational assignment, there is a need to inflict damage in the case of committing a crime that is not so severe.

In this regard, according to N.G. Kadnikov "the grounds for harm can be applied to violent and violent crimes (the main or additional object of which is the inviolability of the person, his health, life)"[11]. However, this author also ignores the possibility of harm in the form of a socially dangerous act while performing an urgent task. I.S. Tishkevich, however, notes that "violence against individual citizens, representatives of authorities and employees of internal

affairs agencies, when committing crimes related to violation of community order, can cause harm" [12].

However, in practice, the occurrence of the need to inflict damage committed in order to prevent a socially dangerous act remains largely dependent not only on the socially dangerous act of the committed act, but also on the behavior of the operative (person), whether there is an opportunity to commit other actions as a last resort.

In practice, it is most often found in the prevention of crimes related to intentional homicide[13], crimes against peace and human insecurity[14], religious extremism[15], terrorism[16], sexual violence[17], physical and mental violence against a person[18], theft, robbery and invasion[19], mass riots[20], smuggling and violation of customs regulations. Some of them are related to a sudden tense situation during a secret mission or the need to inflict socially dangerous harm in order to maintain confidentiality.

On the basis of damage in the form of socially dangerous acts, N. N.Turesky argues that "when damage is allowed, when a person is the result of committing a crime or when there is a judgment of the court's conviction" [21]. In our view, this does not apply to the exclusion of a single criminal offense, as there is no need to inflict harm in order to prevent certain socially dangerous acts. In this regard, as A.B.Ivanov rightly noted, "the right to use force can exist not only in the fact of committing a crime, but also in the presence of social danger and unsolved or unpunished crimes"[22]. In other words, in order to find out the damage caused is justified, it is not necessary to wait for the criminal's fault to be put on the neck and issue a court judgment.

M.H. Rustambayev argues that the following circumstances can serve as a basis for the arrest of a person who committed a crime: "The person carrying out the arrest can either go out over the incident in the place where the crime is committed, or clearly observe the crime; witnesses or victims can precisely indicate the person who committed the crime; the finding of obvious criminal traces or evidence in the subject himself in either his or her clothing or in his or her accommodation or related items; the existence of a decision on the search for a criminal quot; the fact that the criminal is on the run" [23]. Alternatively, it provides a reasonable opinion about the grounds on which it is impossible to damage. In particular, "it should be noted that a person may not be arrested for a non-criminal administrative offense, a disciplinary act"[24]. By analogy, in fact, in practice, during the performance of an operational task, in practice, no action is required against the person who committed the administrative offense, or in order to prevent such an offense.

From this information, it can be observed that the person who has committed an administrative violation is not allowed to take arrest measures to deliver damage to him if he does not commit a socially dangerous aggression to the person or other citizens taking arrest measures[25].

From the above information, we can say that in the theory of criminal law, the opinions of the authors on the basis of harm in order to prevent a socially dangerous act are different. That is, scientists believe that as the basis of criminal and legal damage, a socially dangerous act or crime is committed or committed by a person[26]. However, the

question of how socially dangerous act was committed by the relevant employee (the person who was hired by a Secret service) in the practice of inflicting harm during the execution of the operational assignment, to what extent it is possible to inflict damage from the side, remains problematic. This, in turn, requires clarification of the basis and conditions for the commission of a socially dangerous act or the application of a different measure of harm during the execution of an urgent task in the law.

Investigation and judicial practice analysis of the materials show that, the harmful measures were used mainly in the form of socially dangerous acts committed by law enforcement officers and citizens (citizens working for state secret services) in connection with the encroachment on the life and health of an individual, on the interests of society and the state, on the community order. On the contrary, there is no need to take damaging measures to expose economic crimes (Chapter 13 of the Special Part of the Criminal Code of Uzbekistan).

This is due to the fact that there was no adequate tension in the covert disclosure of crimes in this area, the identities of the perpetrators were clear, or in many cases, they did not refuse to fall into the hands of public officials or showed real resistance.

In conclusion, the first part of Article 39 of the Criminal Code of Uzbekistan should include the words "*prevention of escape*" and "*arrest*" and should be worded as follows:

Ijtimoiy xavfli qilmish sodir etgan shaxsni hokimiyat organlariga topshirish va *qochishining oldini maqsadida* ushlash *va hibsga olish,* vaqtida unga zarar yetkazish, agar uni ushlash uchun zarur bo'lgan choralarning chegarasidan chetga chiqilmagan bo'lsa, jinoyat deb topilmaydi.

A socially dangerous act is not considered a crime if the person committed is detained and detained in order to prevent the authorities from finding and escaping, causing damage to him in time, not exceeding the limits of the measures necessary to apprehend him.

Causing harm when apprehending a person, who committed a socially dangerous act with a purpose of detention in order to prevent escape, to arrest and give him in charge, if no excess of measures necessary for apprehension occurred thereat, shall not be a crime.

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