



ARTICLE INFO

Received: 10th September 2023

Accepted: 19th September 2023

Online: 20th September 2023

KEY WORDS

Serious bodily injury, bodily injury, family (domestic) violence, crime, criminal liability.

COMPARATIVE LEGAL ANALYSIS OF INTENTIONAL CAUSE OF GREIVIOUS BODILY INJURY FROM RELATED CRIMES

Bakhodirova Sabina Ulugbek kizi

Doctoral student at Tashkent State law university

sabina.mamadjanova@gmail.com

+998971331063

<https://www.doi.org/10.5281/zenodo.8361881>

ABSTRACT

The article examines current problems that arise in the practice of criminal law when investigating crimes involving the intentional infliction of grievous bodily harm. In addition, a comparative legal analysis of this crime was carried out in order to distinguish it from other related crimes and the signs of these crimes were considered.

Nowadays, intentional crimes against health are the most common in the Republic of Uzbekistan. According to the Statistics Agency under the President of the Republic of Uzbekistan, crimes inherent in this category are committed more often than crimes against life. Thus, in 2022, the number of intentional murders, as well as attempted murders, totals 721, while the crime under Article 104 was committed in the amount of 1223 in all regions of Uzbekistan.

It should be noted that bodily injuries are divided into degrees of severity.

Article 104 of the Criminal Code of the Republic of Uzbekistan establishes liability for causing grievous bodily harm.

Grave bodily injury is usually understood as unlawful infliction of harm to the health of another person, committed against his will, expressed in violation of the anatomical integrity or physiological function of tissues or organs under the influence of environmental factors.

Intentional infliction of bodily harm contains the following features:

- dangerous to life at the time of infliction;
- entailed the loss of vision, speech, hearing or any organ or the complete loss of an organ's functions, mental or other health disorder;
- associated with a permanent loss of general working capacity of more than thirty-three percent;
- abortion;
- permanent disfigurement of the body;
- in the absence of signs of a crime under Article 126-1 of the Criminal Code (family (domestic) violence).

Here we can see signs associated with harm to health. For example, loss of vision, speech, hearing, etc.

Vision loss is perceived as complete, permanent blindness in both eyes or a condition in which vision is reduced to counting fingers at a distance of 2 meters or less (visual acuity 0.04



or lower). Loss of vision in one eye also applies to serious bodily injury on the basis of permanent disability of more than one third. Damage to the blind eye, which required its removal, is assessed depending on the duration of the health disorder.

Loss of speech means the victim loses the ability to express his thoughts in articulate sounds that others can understand. Loss of tongue is classified as serious bodily injury due to loss of an organ.

Hearing loss should be understood as complete deafness or such an irreversible condition in which the victim cannot hear spoken speech at a distance of 3-5 cm from the auricle. Hearing loss in one ear is classified as a moderate injury based on a 15 percent loss of total disability.

It should be noted that the most important sign of bodily injury in the absence of signs of loss of any organ or loss of function is considered grave if it entailed another health disorder associated with a permanent loss of general working capacity of more than thirty-three percent.

As mentioned above, another sign of Article 104 of the Criminal Code is indelible disfigurement of the body. Damage should be understood as, among other things, a violation of the symmetry of the face, facial expressions, deep scars, cicatrices, ulcerations of the face or neck, separation of the nose, lips, ears and other defects caused by mechanical stress, exposure to flame, aggressive substances, etc., which gives appearance a person has an unpleasant, repulsive appearance¹.

In practice, there are a sufficient number of problems with the distinction between the intentional infliction of grievous bodily harm resulting in the death of the victim (clause “d” of part 3 of Article 104 of the Criminal Code) with intentional murder (Article 97 of the Criminal Code).

The reason for the emergence of such problems is the inadequate establishment of specific objective and subjective elements of the crime.

Analyzing the recommendations given in the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On judicial practice in cases of causing intentional bodily injury” dated June 27, 2007 No. 6, one can see that the infliction of grievous bodily injury resulting in the death of the victim is qualified under paragraph “d” Part three of Article 104 of the Criminal Code only if the perpetrator had the intent to cause grievous bodily harm and reckless guilt to the consequences in the form of death. Moreover, in order to qualify the act in such a way, it is necessary to establish the existence of a causal connection between the grievous bodily injury caused and the resulting death.

Careless guilt in relation to the resulting death can be characterized, in particular, by a method or instrument that does not indicate the awareness of the guilty party of the possibility of causing death, or damage to organs that are not vital, and other similar circumstances².

¹ M.Kh Rustambaev. Commentary on the Criminal Code of the Republic of Uzbekistan. A special part. Second edition, revised and expanded / M. Kh. Rustambaev. -T., 2016. P. 71

² Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On judicial practice in cases of intentional bodily harm” dated June 27, 2007 No. 6, part 1, paragraph 25 // Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan. – T.: Supreme Court of the Republic of Uzbekistan, 2007.



Based on the above, it becomes obvious that there is a complex form of guilt when committing a crime provided for in paragraph “e” of Part 3 of Article 104 of the Criminal Code, where the perpetrator had the intent to cause grievous bodily harm and reckless guilt with consequences in the form of death.

In addition, professor of TSUL Kh. Abzalova believes that intentional grievous bodily harm differs from intentional murder (Article 97 of the Criminal Code) in the following ways:

- in case of intentional grievous bodily harm, the perpetrator intends to inflict grievous bodily harm;
- the method of crime in Article 104 of the Criminal Code of the Republic of Uzbekistan is bodily injury;
- grievous bodily injury is characterized by danger to life at the time of infliction, loss of vision, speech, hearing or any organ, or complete loss of an organ’s functions, mental illness, other health disorder associated with a persistent loss of general working capacity of more than thirty-three percent, interruption pregnancy, permanent disfigurement of the body, health problems for more than four months³.

Also, it is necessary to distinguish between intentional grievous bodily harm resulting in the death of the victim from causing death by negligence. It is necessary to take into account that causing death by negligence presupposes the absence of the perpetrator’s intent both to cause grievous bodily harm and to cause death to the victim, whereas in case of intentional grievous bodily harm resulting in the death of the victim, the intent of the person is aimed at causing such damage to the victim .

In addition, there is a fine line between grievous bodily harm, provided for in Article 104 of the Criminal Code, and family (domestic) violence, provided for in Article 126-1 of the Criminal Code.

The features of Article 104 of the Criminal Code were discussed above; in order to distinguish it from Article 126-1 of the Criminal Code of the Republic of Uzbekistan, the features of this article should be highlighted.

So, family (domestic) violence has the following features:

- obstruction of the right to property, education, health care and (or) work;
- intentional damage to property and personal belongings;
- humiliation of honor and dignity;
- intimidation, isolation from close relatives, committed against a spouse, former spouse, a person living together on the basis of a single household, or a person who has a common child;
- where all actions resulted in health problems;
- committed after the application of an administrative penalty for the same actions, as well as in the absence of signs of another crime.

The most important feature here is the presence of administrative prejudice, which makes it possible to clearly distinguish between domestic violence and the infliction of grievous bodily harm.

³ Kh.M. Abzalova, K.V. Ryzhkova Crimes against life and health (for a wide range of readers), Tashkent-2020. P. 52



It should be separately noted that Article 126-1 of the Criminal Code contains 7 parts, which are divided into causing minor bodily injury, as well as bodily injury that is not life-threatening at the time of infliction and does not entail consequences.

An analysis of judicial practice has shown that most often errors occur in the qualification of the offense in the case of blows to vital organs (for example, single) and a significant number of blows to the body, including vital organs. In this regard, the following examples from judicial practice will be noteworthy.

Thus, accused A., during a quarrel with her partner, while intoxicated, struck him once with a kitchen knife in the chest area, causing life-threatening injuries: wounds to the left thoracic artery, pericardium, and left lobe of the liver⁴. The preliminary investigation authorities qualified A.'s actions as premeditated murder.

However, the court reasonably did not agree with such a criminal legal assessment of the crime, since applying only a single blow with a knife to the chest area, without aiming at a vital organ, by a physically weak woman will not lead to the death of the person. There were no other blows on the part of A., since she did not want to cause the death of the latter, and therefore did not take any other actions (additional efforts) to cause such a consequence.

Thus, the intent of the perpetrator was directed only for causing harm to health, which was not taken into account by the investigative authorities when assessing what happened. In addition, the behavior of the perpetrator after causing harm to health, although it is outside the scope of *corpus delicti*, may, under certain circumstances, indicate a lack of intent to causing death. So, A. called an ambulance, tried to stop the bleeding myself.

However, when in a certain situation, this can only be a manifestation of active repentance of the perpetrator, which is not neutralizes the act as a whole, if the nature of the violent actions indicates intent to cause death. But even if it is not established that the latter wanted the death of the victim, then it should not be forget that with a conscious assumption of a fatal outcome or an indifferent attitude towards it, what was done is nothing more than murder with indirect intent.

Based on the above, as well as the example given in practice, it can be summarized that in practice, in the investigation of criminal cases, investigators quite often face problems of delimiting the intentional infliction of grievous bodily harm resulting in the death of the victim from intentional murder. In order to eliminate such problems in practice, the signs of all these ridiculous elements of crimes should be clearly specified.

References:

1. Criminal code of the Republic of Uzbekistan dated 22.09.1994 [Electronic resource] – URL: <https://lex.uz/docs/111457>
2. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On judicial practice in cases of intentional bodily harm” dated June 27, 2007 No. 6, part 1, paragraph 25 // Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan. – T.: Supreme Court of the Republic of Uzbekistan, 2007.

⁴ Archive of the Court of Zavodskoy District of Minsk (2013) Case N 13-1222.



3. Rustambaev M.Kh. Commentary on the Criminal Code of the Republic of Uzbekistan. A special part. Second edition, revised and expanded / M. Kh. Rustambaev. -T., 2016. P. 1301
4. Abzalova Kh.M., Ryzhkova K.V. Crimes against life and health (for a wide range of readers), Tashkent-2020. P. 136
5. Archive of the Court of Zavodskoy District of Minsk (2013) Case N 13-1222.