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CONCEPT AND LEGAL ANALYSIS OF THE CRIME OF ABORTION IN CRIMINAL PROCEEDINGS

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ABSTRACT

This article reveals the concept of the crime of criminal abortion (abortion) and its characteristics, as well as a legal analysis of the crime of criminal abortion (abortion). Also, based on scientific analysis, national laws and legal documents are highlighted, as well as a number of declarations on the protection of reproductive health and the rights of pregnant women from various attacks. In addition, artificial termination of pregnancy in a place outside a medical institution in the case of criminal termination of pregnancy (abortion), medically possible cases of artificial termination of pregnancy are opinions expressed by legal scholars on the basis of scientific and comparative analysis.

KEYWORDS

Crime, fetus, abortion, victim, obstetrician-gynecologist, criminal liability, risk, medical care, life, health, bodily injury, subject, punishment.

INTRODUCTION

Abortion is an issue related to a woman's reproductive health, choice and right. "Reproductive health is an important aspect of a person's health, which implies the right to procreate and make independent decisions in this area."

Reproductive health is specially protected as the foundation of human development. An attack on reproductive health causes double harm, in addition to harming the health of an individual, it has a negative

impact on the demographic environment in the country and the development of social institutions.

"Reproductive health is a stable physical, mental and social state, which includes not only the ability to procreate, but also the factors that create conditions for it. A group of rights derives from the concept of reproductive health: the right to receive information in this area; the right to use relevant services in the field of health care, etc.

Reproductive rights are guaranteed in national and international instruments. In particular, the newly revised Constitution of the Republic of Uzbekistan stipulates that everyone has the right to life (Article 25), health care (Article 48), state protection of motherhood, fatherhood and childhood (Article 78) [1].

The issue of protecting the reproductive health and rights of pregnant women from various attacks is the 1948 Universal Declaration of Human Rights [2], the 1950 Declaration on Medical Abortion, the 1993 Declaration on the Elimination of Violence against Women. It is reflected in the Declaration. These documents stipulate that the state must pay due attention to the prevention and investigation of acts of violence against women, protection of the rights of the victims, and punishment of the perpetrators.

In the 1994 Cairo conference [3], reproductive health protection is defined as "a set of methods, technologies and services aimed at preventing and solving reproductive health problems". It is stipulated in them that the protection of reproductive health should be an important direction of the state policy, and the obligation to ensure their legal provision at the state level should be established.

According to experts, about 50 million abortions are performed in the world every year, one-third of which are illegal. The number of abortions per thousand people is 5.1 in Germany, 7.7 in Austria, 13.87 in France, and 83 in the Russian Federation. At the same time, the number of abortions in developing countries remains at the same level - about 37 abortions per thousand women. According to statistics, illegal abortion in practice has no effect on these numbers, because women who want to get rid of pregnancy cannot be stopped by the fact that abortion is against the law [4].

Analysis of statistical data on this crime shows a decreasing trend. In particular, the crime of criminal abortion (abortion) in 2014 - 9 (17 persons), in 2015 - 20 (29 persons), in 2016 - 10 (17 persons), in 2017 - 11 (12 persons), in 2018 - 11 (27 persons), in 2019 - 6 (6 persons), in 2020 - 3 (3 persons), in 2021 - 1 (1 person), in 2022 - 3 (6 persons) were committed [5].

Abortion is a dangerous procedure for a woman's health, and must be performed under the strict supervision of a qualified specialist doctor and under the necessary conditions. In other words, a pregnant woman allows possible damage to her health, and the state allows only a specialist obstetrician-gynecologist to carry out such activities in order to reduce the risk. At the same time, the state prohibits people who do not have the necessary qualifications to perform abortions.

Abortion is not prohibited by law, only certain requirements must be met in its implementation. In particular, in accordance with paragraph 2 of the regulation on the procedure for the implementation of artificial termination of pregnancy [6] approved by the order of the Minister of Health of the Republic of Uzbekistan No. 124 dated June 12, 2020, termination of pregnancy Termination of pregnancy by an obstetrician-gynecological institution with the written consent of the husband and wife, in the absence of a husband, the woman's own consent or the consent of her parents, or in the case of her being a minor or incapacitated, by other legal representatives. based on the application of voluntary consent to the application of voluntary suspension. Artificial termination of a woman's pregnancy is carried out in an obstetric and gynecological institution registered according to the address of residence or place of permanent residence or place of temporary stay.

Artificial termination of pregnancy outside of a medical institution, artificial abortion of the fetus, even in cases where it is possible from a medical point of view, causes criminal liability. Artificial termination of pregnancy is carried out in outpatient or inpatient conditions, depending on the duration of pregnancy and the method of artificial termination of pregnancy. In the period of up to twelve weeks of pregnancy, artificial termination of pregnancy with drugs is carried out in the primary outpatient polyclinic, and surgical termination is carried out in outpatient conditions at the outpatient polyclinic of the obstetrics-gynecological institution.

If a pregnant woman has high-risk comorbidities or medical indications that threaten the life of a pregnant woman, artificial termination of pregnancy up to twelve weeks of pregnancy, regardless of the method, must be performed by the gynecology department of the medical institution. It is carried out in stationary conditions.

Artificial termination of pregnancy in the period from twelve to twenty-two weeks of pregnancy, regardless of the method, in the gynecology department of the medical institution, artificial termination of pregnancy in periods after twenty-two weeks of pregnancy. Regardless of the method of termination, it is carried out in an inpatient setting in the obstetric department of a medical institution.

Artificial termination of pregnancy is not allowed if the following conditions exist: a) severe or moderately severe goiter, inflammatory processes of the genitals, regardless of location in the presence of foci of pus, severe infectious diseases and other such; b) when the fetus is older than 12 weeks; c) having an abortion before 6 months after the previous abortion, as well as in other cases provided for in the instructions on the implementation of abortion, medically impossible.

The analysis of legislation shows that artificial abortion (abortion) must meet the following requirements:

- 1) requirements related to the term of the fetus. That is, abortion can be performed until the fetus is 12 weeks old. It is during this period that a pregnant woman has the right to independently solve the issue of motherhood;
- 2) requirements for the place of artificial abortion. That is, this medical practice should be carried out only in medical organizations that have the right to engage in medical activities, including obstetrics and gynecology;
- 3) requirements imposed on the subject of artificial abortion (abortion). That is, this medical practice should be carried out only by doctors with higher medical education in the relevant specialty;
- 4) requirements for a woman's consent. That is, a pregnant woman must agree to abortion after being informed about the procedure and its consequences.

As we have seen, abortion can be legal or illegal, and illegal abortion can have the characteristics of a criminal, administrative or disciplinary act. For example, non-compliance with the rules and requirements of the implementation of this work by a person who has the right to carry out an artificial pregnancy (abortion), if it does not damage the tax of a pregnant woman, his actions will cause disciplinary action.

"Illegal abortion (abortion) is the result of conscious actions of a pregnant woman or third parties. Artificial abortion (abortion) by a pregnant woman herself is not a cause of responsibility, because it is considered as harming her health.

From the point of view of humanitarianism, women who have had criminal abortions, as well as those who

have artificially aborted the fetus themselves, will not be held criminally liable. On the contrary, a pregnant woman is seen as a victim in a criminal abortion. It should be noted that criminal abortion is one of the few crimes that require the victim's consent to cause harm. In this regard, it is necessary to clarify the issue of the scope of independence of a person in renouncing intangible rights belonging to him. "In other words, there will be a conflict of public and private interests. A pregnant woman consents to the possibility of harm to her health by a person who does not have relevant qualifications, and in turn, the state does not allow such persons to perform artificial insemination.

Taking these circumstances into account, some legal scholars suggest "decriminalizing this crime, taking into account that a woman agrees to harm her health while committing this crime." However, one cannot agree with this opinion, because "in the process of abortion, a woman's life and health are in danger, and if she is not provided with the necessary medical assistance in time, this danger will increase."

At the same time, "abortion can be done artificially or arbitrarily. Arbitrary termination of pregnancy (abortion) is carried out without the will of the woman and without external intervention or according to medical instructions.

The legal analysis of criminal abortion should be started from the object of the crime.

M.H. Rustambaev considers the object of this crime to be "social relations to ensure the safety of the life and (or) health of a pregnant woman (not the fetus)" [7].

According to O.S. Kapinus and V.N. Dodonov [8], "the object of criminal abortion (abortion) is a social relationship that ensures the safety of a person's right to health."

According to another group of authors, "the object of this crime is the life and health of a pregnant woman. The objective side of the crime is manifested in the active actions of the perpetrator aimed at aborting the fetus. The methods of abortion can be different, and they do not affect the qualification of the crime.

According to A.A. Allanova, "the object of the crime of criminal abortion is social relations to ensure the safety of the life or health of a pregnant woman (not the fetus)" [9].

The objective aspect of this crime is artificially aborting a fetus in places other than medical facilities or when it is medically impossible (by an obstetrician or gynecologist) or in any way (by any person other than an obstetrician or gynecologist). can be done.

In this regard, according to O.S. Kapinus and V.N. Dodonov [8], "illegal abortion (abortion) is the artificial abortion of a fetus outside a medical institution by persons who do not have the necessary medical training; non-observance of the period during which pregnancy can be aborted; aborting the fetus without the consent of the pregnant woman."

"The objective aspect of the crime of criminal abortion is expressed in any actions aimed at aborting the fetus. The crime is related to the initiation of actions aimed at abortion by a person."

"Criminal abortion (abortion) is a formal crime, which is considered complete from the moment the fetus leaves the mother's womb. At the stage before that, we can only talk about criminal attempted abortion. Basharti, if a live child is born into the light world during an abortion and is deprived of life, the act should be qualified as intentional murder.

"Complying with the rules and requirements set by the person who has the right to artificial insemination

(abortion) excludes criminal liability. Basharti, if such a person violates the rules of artificial insemination (abortion) and harms the health of a pregnant woman or causes her death, his act is punishable by the norms of the Criminal Code of Ukraine for crimes against life and health. will be held accountable."

"In qualifying the crime of abortion, the place where the crime was committed - places other than medical facilities - is considered as an important condition for criminal prosecution."

The subject of the crime of criminal abortion is a doctor obstetrician or gynecologist (Part 1 of Article 114 of the Criminal Code) or a person who has reached the age of 16 and does not have a higher medical education in the relevant specialty (the second part of Article 114 of the Civil Code).

Therefore, in the criminal law, criminal responsibility is not established by medical surgery, but by the lack of conditions (grounds) for its performance (for example, the period of the fetus exceeds 12 weeks) and the accused person is a doctor or medical doctor who does not have the appropriate medical education. 'connects with an uninformed person (the second part).

The study of forensic practice shows that the fetus may not die as a result of the crime of criminal abortion. That is, the person's actions to accelerate the birth of the fetus are qualified by Article 114 of the Criminal Code, even if the defendant and the victim did not intend to destroy the fetus.

The subjective side of the crime of criminal abortion is characterized by the correct intent of the crime. When a person performs actions aimed at aborting a fetus, he must understand the social danger of artificially aborting a fetus against the law. Based on the specific characteristics of the subject of this crime, it is known

that he understands not only the danger of his actions, but also their illegality.

According to Sh. M. Rashidov [10], "the purpose and motives of committing a crime can be different (malice, sympathy, etc.), and they do not affect the classification of the crime, but they are important in individualizing the punishment." "can be considered".

A.A. Allanova [9] said, "The crimes provided for in the first and second parts of Article 114 of the Criminal Code are committed only with the right intention. The motive and purpose of committing the crime does not affect the qualification of the crime.

"The crime of criminal abortion (abortion) is committed on the subjective side in the form of intent or carelessness (when harming the health of a pregnant woman or causing her death). The motive of the crime can be different (desire to help the woman get rid of the fetus, malice, etc.)."

In short, the subjective side of the crime is characterized by the right intention. That is, from the subjective point of view, this crime is committed only intentionally, the culprit is fully aware that he is conducting illegal medical practice, he knows that as a result of his actions, the woman's fetus will be aborted, and he wants such a result. The analysis of judicial investigation practice shows that the crime of criminal abortion (abortion) is committed with malice in most cases.

The issue of the subject of the criminal abortion (abortion) crime also has the status of a special subject. In particular, the crime provided for in the first part of Article 114 of the Criminal Code is committed by a special subject - a doctor, obstetrician or gynecologist.

"The special subject of the crime is considered to be a sane natural person who has reached the age of

criminal responsibility, who has the additional features directly specified in the provisions of the article of the Criminal Code, or the article of this Code means a person who is defined as a result of legal interpretation of the act recorded in the disposition or has the characteristics stipulated by the norms of other legal documents".

P.K. Krivoshein [11], "the participation of third parties (spouse, neighbor, etc.) in the abortion of the pregnant woman was determined, and the reasons for premature birth are family-domestic (heavy lifting, taking psychoactive substances, falling from a hill, overheating of a pregnant woman's body, etc.), a person without a relevant higher medical education who participated in this process and helped a pregnant woman should be a subject of a crime", he writes. We believe that such an opinion cannot be accepted, because there is no causal connection between third parties and the miscarriage.

According to A.A. Allanova [9], "the subject of the crime provided for in the first part of Article 114 of the Criminal Code is a doctor obstetrician-gynecologist, and the subject of the crime provided for in the second part of Article 114 of the Criminal Code is any sane person who has reached the age of 16 "may be".

Taking into account that the subject of the crime in criminal abortion is a special subject (highly educated medical worker), the penalty of deprivation of certain rights is provided as an additional penalty in the criminal law.

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