

Comparative Analysis Of The Norms Establishing Liability For Extortion In The Criminal Legislation Of Some Foreign States

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Abstract: The article provides a comparative analysis of the norms establishing responsibility for extortion in the Criminal Code of the Republic of Uzbekistan and similar norms in the criminal legislation of some foreign countries, in particular the Russian Federation, the Kyrgyz Republic, Moldova, Belarus, Tajikistan, Kazakhstan, Italy, France, Germany and England, attention is drawn to the similarities and differences of the criminal responsibility for extortion in these countries, as a result of the analysis, the positive experience of some countries in criminal legislation was approved, proposals and recommendations have been developed to improve article 165 of the Criminal Code of the Republic of Uzbekistan, which provides for liability for extortion.

Keywords: Extortion, theft, blackmail, differentiation, criminal law, relatives of the victim.

Introduction: Comparative legal analysis of the criminal legislation of foreign states allows us to identify and take into account the mistakes and achievements of others in resolving the issues of criminality and punishment of certain acts, and also helps to understand the role and significance of criminal law as a means of social regulation.

It is advisable to conduct a comparative legal analysis of the legislation of foreign states that establish liability for extortion by dividing it into two groups: the first group - states that establish liability for extortion in a separate norm, and the second group - states that do not establish criminal liability for extortion in a separate norm, but include its features in the structure of crimes related to robbery.

The criminal codes of the CIS countries provide for liability for extortion in a separate norm, and these articles are constructively similar, which is due, firstly, to the fact that the Model Criminal Code was developed for the CIS countries in 1996 and that a number of countries based their legislation on this document, and secondly, to the similarity of the history and stages of development of the criminal legislation of these countries.

Article 246 of Chapter 28, "Crimes against Property" of

Section XI of the Model Criminal Code of the CIS countries, "Crimes against Property and Regulation of Economic Activity", establishes liability for extortion [1]. In this code, extortion is divided into three parts, the first of which is classified as a moderately serious crime, the second as a serious crime, and the third as an extremely serious crime. The following are established as aggravating circumstances for extortion: committing an act with the use of force against a person or his/her close relative, causing significant damage to the victim, committed by a group of persons, by an organized group with the aim of obtaining a large amount of property, causing serious harm to health or causing death of a person through negligence, or leading to other grave consequences.

The article establishing liability for extortion in the Model Criminal Code of the CIS countries differs from the article establishing liability for extortion in the Criminal Code of the Republic of Uzbekistan in its qualifying features, for example, such features as committing an act with the use of force against a person or his/her close relative, causing significant damage to health or causing death of a person through negligence, or leading to other grave consequences are not present in Article 165 of the Criminal Code of the Republic of Uzbekistan.

METHODS

In the criminal legislation of some CIS countries, there are differences in some features of the composition of extortion, aggravating circumstances and their level of social danger. Let us dwell on the specific features of the crime of extortion in the Criminal Codes of the Russian Federation, the Kyrgyz Republic, the Republic of Moldova, Estonia, and Armenia.

Russian Federation. Article 163 of the Criminal Code of the Russian Federation establishes liability for extortion. The article consists of three parts, the first part of which establishes that a moderately serious crime, i.e. imprisonment for up to four years, a serious crime, i.e. imprisonment for up to seven years, and a particularly serious crime, i.e. imprisonment for seven to fifteen years, may be imposed [2]. The similarity is evident, first of all, in the signs of the objective side of the crime, in particular, in the methods of committing extortion. The Criminal Code of the Republic of Uzbekistan only provides for extortion by threatening to disclose information that should be kept secret for the victim, spreading fabrications that will embarrass him, and does not provide for the possibility of extortion by threatening to disseminate information that seriously harms the rights or legitimate interests of the victim or his relatives.

An analysis of the aggravating circumstances, that is, the qualifying features, of liability for extortion in the Criminal Code of the Russian Federation revealed several circumstances that are not found in the article establishing liability for extortion in our national legislation, in particular, in paragraph "c" of part 2 of article 163 of the Criminal Code of the Russian Federation, liability for extortion with the use of force, and in part "c" of part 3 of article 163 of the Criminal Code of the Russian Federation, liability for causing serious harm to the health of the victim is especially aggravated. Paragraph 4 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On Judicial Practice in Criminal Cases of Theft, Robbery and Robbery of Other People's Property" states that if intimidation is used in practice, the act should be characterized by the article of the Criminal Code on extortion and, if there are grounds, by the article providing for liability for the act committed during the implementation of the intimidation [3]. Another noteworthy aspect of the article establishing liability for extortion in the Criminal Code of the Russian Federation is its sanction, which stipulates that alternative punishments such as restriction of liberty, compulsory community service, fines, and imprisonment may be imposed for the crime.

Objects of historical, scientific, or cultural value are not

considered objects of extortion, and the looting of objects of this category by intimidating the victim or his or her relatives is qualified by Article 164 of the Criminal Code, which establishes liability for "looting objects of particular value," and this act can be punished by up to ten years in prison.

Kyrgyz Republic. According to the disposition of Part 1 of Article 208 of Chapter 30, "Crimes against Property," of the Criminal Code of the Kyrgyz Republic, adopted in the new edition, extortion is defined as demanding the transfer of property, property rights, or the performance of property-related actions by threatening the victim or his/her relatives with violence or blackmail that is not dangerous to their life or health [4]. It is established that extortion can be committed by threatening to use blackmail, and the section on the meaning of terms of the Criminal Code of the Kyrgyz Republic defines blackmail as threatening to destroy or damage the property of the victim (his/her relatives) or property in his/her possession or custody; kidnapping the victim (his/her relatives), depriving him/her of liberty; is defined as the disclosure of information that is damaging to the reputation of the victim (his relatives) or other information that he intends to keep secret, or in any other way restricting the rights and legitimate interests of the victim (his relatives).

From the disposition, we can understand that demanding property or property rights or committing actions related to property by threatening to use violence that is not dangerous to life or health is considered extortion. The article establishing liability for extortion consists of four parts, and parts 2-4 indicate qualifying features. It is noteworthy that paragraph 1 of part 2 of the article aggravates liability for extortion using violence that is not dangerous to life or health. In this case, just like assault and robbery, violence is divided into two types, namely those that are dangerous to life or health and those that are not. In paragraph 1 of part 3 of article 208, causing serious damage through negligence is defined as an aggravating circumstance.

It should be noted that the amount of property demanded by the perpetrator from the victim through extortion also affects the qualification, in particular, in paragraph 4 of part 2 of article 208, liability is aggravated for committing the crime with the aim of obtaining a large amount of property, and in paragraph 2 of part 3 of article 208, for the purpose of acquiring a very large amount of property. In order to qualify the crime under these paragraphs, it is sufficient for the perpetrator to demand a large or very large amount of property from the victim through extortion. The maximum term of imprisonment that can be imposed for extortion is ten years, which is one of the mildest

sanctions for extortion among the CIS countries.

Article 189 of Section VI of the Criminal Code of the Republic of Moldova, entitled “Crimes against Property”, establishes liability for blackmail [5]. According to its objective features, this article is almost identical to Article 165 of the Criminal Code of the Republic of Uzbekistan, with the difference that in the Criminal Code of Moldova, demanding property or property rights by threatening to kidnap the owner, possessor or user or their relatives and close associates is considered extortion.

Article 189 of the Criminal Code of the Republic of Moldova, which establishes liability for blackmail, consists of five parts and differs from the articles of the CIS countries establishing liability for extortion in the presence of a large number of qualifying features. For example, the second part of the article aggravates liability for blackmail committed with the use of violence not dangerous to life or health, with the threat of death, with damage to or destruction of property, in connection with members of political parties or election competitors. The advantage of including these qualifications in the article itself is that when blackmail is committed with the threat of death, there is no need to additionally qualify the act with an article establishing liability for the threat of death. Also, the third part of the article indicates that the use of violence dangerous to life or health, with extreme cruelty, using a weapon or other objects used as weapons, is a qualifying feature, and it is established that blackmail committed in aggravating circumstances may be punishable by up to fifteen years of imprisonment.

Article 208 of the Criminal Code of the Republic of Belarus establishes criminal liability for extortion, which is defined as “extortion is the demand to transfer property or rights to property or to perform any other action of a property nature, under the threat of using force against the victim or his relatives, destroying or damaging their property, destroying, seizing, blocking, modifying computer information, distributing defamatory information or disclosing other information that they wish to keep secret” [6]. From the definition of the crime of extortion, we can see that criminal liability is established for extortion under the threat of destroying, seizing, blocking, modifying computer information, which is not reflected in the articles of the CIS countries establishing liability for extortion. Indeed, in recent years, there have been many cases of cyberspace where victims' accounts and social network pages are blocked, their data is destroyed, and property is demanded under threat. The second part of the article establishes liability for extortion committed repeatedly or by a group of

persons in advance, or with the use of violence that is not dangerous to the life or health of the victim, or with the threat of killing or causing grievous bodily harm, or with the destruction or damage of property, or with the purpose of obtaining a large amount of property benefit, and stipulates that the punishment may be imprisonment for a term of three to five years. Also, the third part of the article indicates as a particularly aggravating circumstance the commission of the crime by an organized group, or with the use of violence that is dangerous to the life or health of the victim, or with the purpose of obtaining a large amount of property benefit, and it is established that the penalty for extortion may be imposed from five to fifteen years of imprisonment. The inclusion of methods of committing extortion and objects that may be damaged as a result of committing this crime in the parts of the article establishing liability for extortion serves to prevent the qualification of the act as a complex of crimes with other articles.

The second group includes countries where extortion is not considered as an independent crime, but some of the crimes against property are characterized by extortion.

In distant foreign countries, a slightly different approach to the solution of the studied issue is evident. It should be noted that this situation is characteristic of countries with the Romano-Germanic legal system as well as the countries of the Anglo-Saxon legal system.

The criminal code of Bulgaria specifically addresses the crime in question, and Article 213-a of Part V of the Criminal Code of the Republic of Bulgaria establishes criminal liability for “Extortion”, which is understood to mean forcing a person to dispose of his property or rights or to accept property obligations, under the threat of serious consequences, by means of violence against him or his relatives, disclosure of embarrassing circumstances, damage to property or other illegal actions [7]. This crime is committed with the threat of killing or causing serious bodily harm, with the threat of causing minor bodily harm, with the transfer, destruction or damage of property to another person, or by two or more persons, as an aggravating circumstance. It should be noted that Part 4 of this article covers not only the use of violence against the victim or his relatives, but also the death of a person, which is a significant difference between the structure of extortion of the Criminal Code of the Republic of Bulgaria and the criminal legislation of almost all other foreign European countries, not only of the CIS countries, but also of other foreign countries.

In Italian criminal law, violence is also one of the main features of the structure of the crime of extortion. For

example, according to Article 629 of the Italian Criminal Code, extortion (*estorsione*) is defined as obtaining unjustified benefit from harm to another person by using violence against the accused or threatening to do something in his favor [8]. In this case, the subject of extortion itself is not clearly defined in the countries of this group, while extortion, in a broad sense, implies the possibility of obtaining any benefit (not only property or the right to property).

In our opinion, the approach to determining the occurrence of extortion in the legislation of countries belonging to the Roman-Germanic family of law is determined, first of all, by the normative definition of this socially dangerous act given in the Criminal Code of the Federal Republic of Germany. Today, extortion (*Räuberische Erpressung*) is defined by the German legislator in §§ 254-255 of the Criminal Code of the Federal Republic of Germany, along with various types of robbery, as well as liability for "extortion committed by assault". This concept is primarily associated with blackmail, which is carried out within the framework of the main component of assault specified in § 255 and is committed by using violence aimed at endangering the life of the victim or other persons or causing harm to the health of the specified persons [9]. As for the general norm, if we talk about coercion by force or threat of force in the case of extortion, as defined in § 254 of the German Criminal Code, this also allows us to include blackmail in the list of acts of extortion committed by force. In any case, extortion and blackmail are synonymous in German criminal law and legislation. German experts initially considered this offense as an act that could only be committed by force, which equated it with other crimes against property committed by force, in particular, robbery. This norm, in essence, served as the basis for analogues in the legislation of other countries, whose legal systems were often historically formed under the certain influence of the German school of criminal law.

Despite the fact that the French Criminal Code has a largely independent history of origin, extortion, like aggression, is also close to the concept in the countries analyzed above. For example, from the beginning of the 20th century to the present day, the French legislator has established criminal liability for three independent types of extortion:

- extortion, that is, forcing a person to sign a property obligation by using physical or psychological threats;
- chantage, demanding property or signing a property obligation by means of written or verbal threats that embarrass or expose a person's guilt;
- concussion, official extortion;
- menaces - this is a demand to give a sum of money or

fulfill other conditions of a material nature under the threat of murder or other aggression against a person. Today, this approach is reflected in Article 312-1 of the French Criminal Code, which defines extortion as the use of force, the use of force to obtain a signature, an obligation or a waiver of an obligation, or the acquisition of confidential information, material assets or any other property [10]. From the content of the disposition of this criminal law norm, it is clear that the legislator defines several main features characterizing the composition of extortion. First, it describes in detail the objects of criminal aggression, second, it describes in detail the features of the objective side of the composition of the crime, distinguishing three methods of expressing the will of the victim: a) the use of force; b) the threat of violence or psychological violence; c) coercion. Although the term "extortion" does not exist, blackmail in the French Criminal Code is in fact extortion. In general, the composition of extortion in its characteristics fully corresponds to its analogues in the legislation of other countries of Western and Eastern Europe.

A similar situation exists in the criminal legislation of the countries of the Anglo-Saxon legal family. In both England and the USA, extortion is defined as blackmail under the threat of committing almost any actions against the victim or his relatives. In England, unlike the USA, since 1968, a single concept, namely extortion, has been used, which contributes to the uniformity of punishment for this type of aggression. According to the current definition, extortion is understood as unfounded demands made by the perpetrator with the aim of obtaining profit for himself or another person or causing harm to the victim. In the criminal legislation of the USA, the threat is further clarified. It should be noted that the concept of extortion, i.e. the necessary elements of this crime, differ from each other in the legislation of different states. Often, the threat can be expressed in any form, but in some states it must necessarily find its written expression, otherwise the subject of the crime will seem even more vague. In some cases, they are property, in others - "valuable things", in third cases - property benefits, in fourth cases - it is generally the performance of some action against one's will. The approach of the American legislator to determining the status of extortion is also unique, for example, while in most states it is an independent aggression, in the codes of states (New York, Texas) liability for extortion is regulated by laws that establish liability for general robbery [11].

A comparative analysis of the criminal legislation of foreign countries cited above allows us to conclude that the criminal liability for extortion established in the criminal codes of most CIS countries, in particular the

Kyrgyz Republic, Kazakhstan, Tajikistan, Armenia, the Republics of Belarus, and the Russian Federation, is almost identical in terms of the structure of the crime and the structure of the disposition with the norm established for liability for extortion in the Criminal Code of the Republic of Uzbekistan. Only the Criminal Code of the Republic of Moldova establishes criminal liability not for extortion, but for blackmail, and extortion is not included in the code as a separate crime.

At the same time, the criminal laws of Germany, Italy, France, and England show an extremely broad approach to defining the elements of extortion, in particular, the vagueness of definitions in strengthening the threat in the legislation. In countries such as the Netherlands, Sweden, and Switzerland, liability for extortion is not differentiated, and only the main elements of this crime are reflected in other norms of the code.

As a result of the comparative analysis of the criminal legislation of foreign countries, the following proposals and recommendations were developed in connection with the improvement of the norm of responsibility for extortion in our national criminal legislation:

RESULTS AND DISCUSSION

In most cases, extortion is committed in cases involving the threat of death, the use of violence, and the destruction of property, however, paragraph 4 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice in criminal cases of theft, robbery, and robbery of other people's property" states that if intimidation is used in practice, the act should be characterized by the article of the Criminal Code on extortion and, if there are grounds, by the article providing for liability for the act committed while the intimidation was being carried out [3]. Considering that the sanction of the article established for extortion is more severe than the sanction of the norms intended to qualify it as a set of crimes, in order to ensure that extortion is qualified uniformly in law enforcement practice and is free from unnecessary explanations, and also evaluating the cases in the criminal codes of the Russian Federation, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, and the Republic of Azerbaijan as a positive experience, we propose to rephrase Article 165 of the Criminal Code of the Republic of Uzbekistan as follows:

"Article 165. Extortion

Extortion, i.e. the transfer of property or property rights to another person, the provision of property interests, or the transfer of property rights by threatening to use force against the victim or his or her relatives, damage to or destroy his or her property, or

the destruction, alteration, seizure, or blocking of the information resources of the victim or his or her relatives, or the disclosure of information that should be kept secret for the victim or his or her relatives, or the dissemination of defamatory fabrications Demanding the victim to commit acts of a similar nature or putting him in conditions that force him to surrender his property or the right to property - shall be punished by restriction of liberty for a term of three to five years or imprisonment for a term of three to five years.

Extortion:

- a) repeatedly or by a dangerous recidivist;
- b) with the aim of acquiring a large amount of property;
- c) by a group of persons in advance,
- d) using telecommunications networks, as well as the Internet;
- e) using violence;
- f) threatening to kill;
- g) in connection with damage to property or destruction of property, - shall be punished by deprivation of liberty for a term of five to ten years.

Extortion:

- a) with the aim of acquiring a very large amount of property;
- b) by an especially dangerous recidivist;
- c) by an organized group or in its interests;
- d) with the aim of causing serious harm to the victim, - ten shall be punished by imprisonment for a term of one to fifteen years."

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