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OBJECTIVE AND SUBJECTIVE ELEMENTS OF THE OFFENCE OF DRIVING A PERSON TO SUICIDE THEORY AND JUDICIAL PRACTICE

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Abstract. Drawing on case materials, the article analyses the object, the subject matter, the objective side, the perpetrator and the subjective side of the offence under Article 103 of the Criminal Code of Uzbekistan. It substantiates the multi-object nature of the offence, the victim's personality as the subject matter of the encroachment and the indirect nature of causation. The author proposes definitions of "blackmail" and "systematic conduct" and amendments to Article 103 and to the relevant Plenary Resolution of the Supreme Court.

Keywords: driving to suicide, object of crime, cruel treatment, blackmail, systematic conduct, causation, form of guilt, indirect intent.

Driving a person to suicide is among the most difficult offences to classify in law-enforcement practice. The principal difficulty is that the victim's own volitional decision intervenes between the perpetrator's conduct and the victim's death, while the victim is frequently deceased. Consequently, investigators and courts encounter serious difficulties in establishing the manner of commission, the systematic nature of the conduct, causation and the form of culpability.

This article aims to examine the objective and subjective elements of the offence under Article 103 of the Criminal Code of the Republic of Uzbekistan from theoretical and practical perspectives, identify contentious issues in investigative and judicial practice, and develop proposals for resolving them.

The study employs formal-legal, systemic-structural, logical and comparative-legal methods. Its empirical basis comprises an analysis of approximately 200 criminal cases and judgments under Article 103, together with the findings of a questionnaire survey of investigators working in prosecutorial bodies.

The object and subject matter of the offence. The object of a crime consists of social relations protected by criminal law against which the criminal encroachment is directed.[1] The object helps determine the nature of the encroachment's social danger;[2] without identifying it, an act cannot be properly classified.[3] Criminal-law scholarship traditionally distinguishes general, special and immediate objects.[4] E. F. Pobegaylo and V. B. Malinin emphasize that this offence is characterized by its 'exceptional immorality' and indifference to another person's mental condition.[5]

Scholars differ as to the immediate object. M. H. Rustambayev associates it with relations recognizing human life as the supreme value and prohibiting the degradation of human dignity.[6] D. I. Elmurzaev[7] and V. Sh. Ayupov[8] identify the right to life; N. Lysak and D. Lopatkin,[9] A. A. Tsyrkalyuk[10] and V. B. Khatuev[11] identify human life; and F. Tohirov refers to the life of another person.[12]

In our view, the immediate object has a multi-object structure. Its principal object comprises relations safeguarding the right to life; additional objects include the victim's health, honour and dignity, and the inviolability of private and family life. As Yu. A. Ukolova rightly observes, driving a person to suicide cannot occur without harm to that person's health and dignity.[13] The safety of the life and health of the victim's close relatives may constitute an optional object. In one case examined, for example, the perpetrator threatened to reveal a secret concerning the victim's sister and disrupt her wedding; unable to bear the anticipated disgrace, the victim died by suicide.[14]

Whereas the subject matter of homicide is the life of a particular person,[15] the encroachment in the offence under consideration is not directed immediately at life. Following V. Ya. Tatsiy's observation that

identifying the nature of an encroachment often begins with identifying its subject matter,[16] we conclude that the subject matter here is the human personality: the perpetrator influences the victim's psychological state, self-esteem and will, thereby compelling the victim towards self-destruction.

Methods of commission. The offence under Article 103 is a result-based offence: its objective element comprises conduct, a harmful consequence and a causal relationship. Resolution No. 20 of the Plenum of the Supreme Court of 11 September 1998 describes cruel treatment as harsh and merciless conduct causing physical or psychological suffering to the victim.[17] Such conduct also includes deprivation of housing, heating or means of subsistence and unjustified dismissal from employment.[18] In our opinion, the offence may also be committed by omission: where a person under a duty of care systematically deprives the victim of food, medication or shelter, that omission may constitute one of the gravest forms of cruelty. In one case, the perpetrator repeatedly deprived an ill and helpless mother-in-law of food, following which the victim died by suicide.[19]

Whether cruel treatment must consist of a single act or repeated conduct remains disputed in practice. N. I. Korzhansky maintains that certain instances of beating cannot be classified as cruelty,[20] whereas A. N. Krasikov considers attacks on honour and dignity relevant only where they manifest the perpetrator's cruelty.[21] If cruel treatment is interpreted exclusively as a pattern of conduct, a person who commits three relatively minor acts may incur liability while someone who commits a single exceptionally brutal act, such as torture or rape, may escape liability under this provision. We therefore propose replacing the expression 'cruel treatment' in the statutory disposition with 'acts of cruelty', a formulation encompassing both individual cruel acts and a continuing pattern of conduct.

Judicial practice also demonstrates the danger of conduct described as 'coercive control'. In one case, the perpetrator, motivated by unfounded jealousy, repeatedly humiliated his spouse, restricted her attendance at relatives' weddings and ceremonies, and isolated her socially; the victim subsequently died by suicide.[22] Although individual acts of this kind may not independently constitute criminal offences, their cumulative effect can undermine the victim's will and contribute to a suicidal state.

Blackmail merits particular attention. A blackmailed person may take their own life not so much out of fear as out of anticipated humiliation and the perception that the blackmail will never end. In view of the absence of a statutory definition in national legislation, we propose the following definition: blackmail is threatening violence against the victim or persons close to them, damage to or destruction of their property, or disclosure of information that the victim wishes to keep confidential, for the purpose of compelling another person to perform, or refrain from performing, an act of a non-property nature. Article 120 of the Criminal Code of Ukraine recognizes blackmail as an independent method of committing this offence.[23]

The Plenum's resolution states that an ordinary insult or a single minor affront to dignity does not constitute the offence under Article 103.[24] The Explanatory Dictionary of the Uzbek Language defines 'degradation' as portraying someone as inferior or insignificant, while 'humiliation' denotes treating someone in a degrading manner.[25] Given that Article 126[1] of the Criminal Code, introduced in 2023, employs the term 'humiliation', we consider it appropriate, for terminological consistency, to replace 'degradation' with 'humiliation' in Article 103. There is likewise no official interpretation of 'systematic conduct'. We therefore propose that the Plenum define it as acts directed against the victim's honour and dignity that are committed regularly, on three or more occasions, over a period of days, weeks or months.

Consequences and causation. The socially dangerous consequence takes the form either of the victim's death or of the victim's survival following an attempt to take their own life. In criminal law, an 'attempt' denotes a stage of an intentional offence that remains incomplete for reasons beyond the offender's control.[26] Since suicide is not a criminal offence, describing the victim's conduct using the criminal-law term

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'attempted offence' is terminologically inappropriate. We therefore propose replacing the corresponding expression in the statutory disposition with 'causing a person to attempt to take their own life'.

M. H. Rustambayev stresses that classification under Article 103 requires proof that the victim died by suicide specifically as a consequence of the perpetrator's conduct.[27] Causation in this offence is indirect: the perpetrator's conduct contributes to the formation of a suicidal decision in the victim's mind and creates the conditions for its implementation. S. S. Niyozova notes that, in most cases resulting in acquittal because causation was not proved, the underlying conduct had in fact occurred.[28] Harm to health inflicted during cruel treatment must be classified separately where appropriate: in one case examined, the defendant was convicted under Article 103(2) and Article 110(1) of the Criminal Code.[29]

The analysis indicates that convictions generally rely on a combination of evidence: witness testimony concerning complaints made by the victim to relatives before death; records of medical consultations and bodily injuries; complaints submitted to prevention inspectors or mahalla bodies and protection orders; mobile-phone correspondence and voice messages; a suicide note; and the findings of a comprehensive post-mortem forensic psychological and psychiatric examination. The convergence of at least three such categories of evidence can provide a persuasive basis for establishing causation.

The perpetrator and subjective element. The general perpetrator is a natural person of sound mind who has reached the age of sixteen. As Sh. Yo. Abduqodirov observes, the age of criminal responsibility is determined with reference to the individual's psychophysiological and social development.[30] Under paragraph (a) of Article 103(2), the perpetrator has a special characteristic: the victim is materially or otherwise dependent on that person.[31]

The subjective element concerns the individual's mental attitude towards the act and its consequences;[32] in I. M. Tyazhkova's formulation, it represents the internal content of the psychological processes occurring in the person's consciousness.[33] E. Zabarnuk and Z. Soktaev rightly note that insufficient attention is paid to the perpetrator's behaviour before and after the offence.[34] The form of culpability is disputed in scholarship: some authors consider that the offence may be committed with any form of culpability,[35] others recognize intent alone,[36] and still others accept indirect intent and negligence.[37] Most national scholars refer to indirect intent or negligence.[38]

In our view, culpability must be assessed at two levels. As regards the conduct itself—cruelty, threats and humiliation—the perpetrator invariably acts with direct intent: they recognize that they are causing suffering and wish to do so. As regards the consequence, however, culpability may take the form of direct intent, indirect intent or negligence. N. N. Yarmysh's position that an adult person of sound mind should be presumed obliged to foresee the possible consequences of such treatment is persuasive;[39] many scholars nevertheless reject recklessness as a form of negligence applicable to this offence.[40] Since the victim possesses consciousness and will and ultimately performs the act resulting in their own death, even direct intent on the perpetrator's part does not necessarily make the conduct homicide,[41] except in cases involving minors or persons incapable of understanding the significance of their actions.

Motive and purpose are not essential elements of the offence, but they are important for sentencing. In the cases studied, recorded motives included a desire to impose one's will (37.1%), a propensity for violence (36.2%), mercenary motives (22.8%), an affective state (12%), envy (7.8%) and personal hostility (5.4%).

Resolution No. 20 of the Plenum of the Supreme Court characterizes the subjective element solely in terms of indirect intent or negligence. In light of the foregoing analysis, we propose restating paragraph 6 as follows: '6. In terms of its subjective element, driving a person to suicide may be committed with direct or indirect intent, or with negligence in relation to its consequences. The form and type of culpability shall be taken into account when determining the sentence.' Incorporating definitions of 'systematic conduct' and 'blackmail' into the resolution would also promote consistency in judicial practice.

Conclusion

- The immediate object of the offence has a multi-object structure: relations safeguarding the right to life (principal object); health, honour and dignity, and the inviolability of private and family life (additional objects); and the life and health of the victim's close relatives (optional objects). Its subject matter is the human personality.
- Article 103 should replace 'cruel treatment' with 'acts of cruelty', 'degradation' with 'humiliation', and the terminology of a suicide 'attempt' with wording referring to an 'attempt to take one's own life'; blackmail should be included as an independent method of commission.
- Causation is indirect in nature; a comprehensive post-mortem forensic psychological and psychiatric examination, assessed alongside the totality of evidence, is crucial to establishing it.
- Culpability in relation to the perpetrator's conduct invariably takes the form of direct intent, while culpability in relation to the consequence may involve direct or indirect intent or negligence. This distinction should be reflected in the Plenum's resolution.

Taken together, these findings support a more differentiated approach to the legal classification of conduct under Article 103. Legislative clarification of the methods of commission, the evidentiary assessment of indirect causation, and the distinction between intent relating to the conduct and culpability relating to its consequences would strengthen legal certainty and promote more consistent judicial decisions.

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