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Research Article

Criminal-Legal Problems of Qualifying the Crime of Illegal Abortion

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ABSTRACT

This article analyzes the criminal-legal characterization of the crime of illegal abortion, its objective and subjective features, the subject of the crime, and the theoretical and practical problems associated with the qualification of the act. The provisions of Article 114 of the Criminal Code of the Republic of Uzbekistan are examined in close connection with legislation on the protection of reproductive health. Furthermore, the approaches in the criminal legislation of the Russian Federation and Germany are comparatively analyzed, highlighting their significance from the perspective of improving national legislation. Conclusions and proposals are put forward regarding issues related to determining the time of completion of the crime, the pregnant woman's consent, causal links, and forms of guilt.

KEYWORDS

Illegal abortion, reproductive health, corpus delicti, qualification, object of the crime, special subject, direct intent, negligence, comparative-legal analysis.

INTRODUCTION

The protection of human life and health is one of the priority tasks of a constitutional state. This task acquires special significance in relations

associated with reproductive health, as the artificial termination of pregnancy is directly linked to a woman's health, access to medical

care, the right to make decisions regarding her reproductive life, and the safe implementation of these decisions. In particular, the Constitution of the Republic of Uzbekistan guarantees the right to life, the right to health care, and the state protection of motherhood, fatherhood, and childhood. Legislation on “Safeguarding the Reproductive Health of Citizens” also serves as one of the key foundations for the legal regulation of these relations.

There is a fundamental distinction between performing an artificial termination of pregnancy in compliance with established statutory procedures and conducting this practice unlawfully; abortion itself is not an absolutely prohibited medical procedure. Conversely, compliance with established statutory timeframes, medical indications, procedural conditions, and appropriate medical care requirements is mandatory. The violation of these requirements may entail various legal consequences depending on the nature of the act. Article 114 of the Criminal Code of the Republic of Uzbekistan establishes liability for the illegal performance of an abortion. Applying this norm requires not only identifying the objective elements of the crime but also determining the legal status of the perpetrator, the pregnant woman’s consent, the violation of medical rules, the resulting consequences, and the causal link between the act and the consequences.

The relevance of this issue lies in the fact that equating a medical rule violation with the corpus delicti of a crime, or conversely, overlooking certain elements of an illegal abortion, may lead to the misqualification of the act. Therefore, theoretically clarifying the concept of criminal abortion, analyzing the elements of the crime in their interrelation, and comparing foreign legislative approaches with national law hold significant theoretical and practical importance.

METHODS

The purpose of the study is to analyze the structural elements of the crime of illegal abortion provided for in Article 114 of the Criminal Code of the Republic of Uzbekistan, identify theoretical and practical problems arising in its qualification, and develop proposals aimed at improving legislation.

The normative and legal framework of the study comprises the Constitution of the Republic of Uzbekistan, the Criminal Code, the Law “On Safeguarding the Reproductive Health of Citizens,” and the Regulation on the Procedure for Implementing Artificial Termination of Pregnancy, approved by the Order of the Minister of Health No. 124 dated June 12, 2020.

Furthermore, the study employed methods of criminal-legal analysis, a systematic approach, formal-legal, comparative-legal, and logical analysis. National and foreign scientific views regarding the object, objective side, subject, and subjective side of the crime were also compared. Based on a comparative-legal approach, Article 123 of the Criminal Code of the Russian Federation and the norms of the German Criminal Code pertaining to the termination of pregnancy were examined, allowing for a systematic analysis of similarities, differences, and opportunities for legislative improvement between foreign and national legislation. The scientific and practical significance of the study lies in its service to distinguish the elements of a criminal offense from the violation of medical procedures during the qualification of criminal abortion, determine the subject of the crime and the form of guilt, and systematically assess issues of liability for grave consequences.

DISCUSSION AND RESULTS

Before proceeding directly to the discussion, it is necessary to clarify the concept of criminal abortion and the content of the object of the crime. In defining the concept of illegal abortion, it is first essential to establish the boundary between a lawful medical procedure and an act punishable as a crime. Part 1 of Article 114 of the Criminal Code of the Republic of Uzbekistan provides for liability for the artificial termination of pregnancy performed by an obstetrician-gynecologist outside of medical institutions or in a manner medically contraindicated.

Part 2 establishes liability for the performance of such an action by a person who does not have the right to perform an artificial termination of pregnancy. Based on this norm, criminal abortion can be characterized as an act associated with the artificial termination of pregnancy carried out in violation of statutory conditions. Here, the unlawfulness of the medical procedure is determined not solely by its outcome, but also by the statutory conditions of its execution, the location, and the appropriate legal status of the practitioner.

However, we must also take into account that any violation of medical procedure does not automatically entail liability under Article 114 of the Criminal Code. That is, the existence of the corpus delicti must be determined by the signs established in criminal legislation. For instance, a professional breach by a medical worker does not inherently constitute the corpus delicti of a criminal abortion; rather, the act must be checked for strict compliance with the signs indicated in the disposition of Article 114.

According to the Regulation "On the Procedure for Artificial Termination of Pregnancy", pregnancy may be terminated at the request of a woman up to twelve weeks, and regardless of the gestational age if there are medical indications posing a threat to the pregnant woman's life.

Consequently, the twelve-week period is not interpreted as an absolute ban for all situations. Therefore, in determining medically contraindicated circumstances, the current edition of the relevant regulatory document, the medical indications at the time of the procedure, and the specific circumstances of the case must be taken into account.

At this juncture, it is advisable to analyze the structural elements of this crime. Regarding the object of this crime, M.X. Rustambayev links the object of criminal abortion to social relations aimed at ensuring the safety of the life and health of a pregnant woman. In the comparative criminal law research of O.S. Kapinus and V.N. Dodonov, the protection of personal health and the safety of medical care also occupy a prominent place in evaluating illegal abortion.

In our view, it is well-founded to recognize social relations associated with the protection of the pregnant woman's life and health through safe medical procedures as the direct object of the crime provided for in Article 114 of the Criminal Code. Such an approach explains the essence of the crime not merely through the termination of the fetus, but through the hazard that unlawful medical intervention poses to the woman.

Along with defining the object of the crime, this conclusion helps distinguish the act from other offenses. In particular, compelling a woman to artificially terminate her pregnancy is provided for as an independent crime in Article 115 of the Criminal Code. Therefore, although the unlawful performance of an abortion and the coercion of a woman into such a procedure are closely related, they are evaluated on the basis of distinct criminal-legal features.

The objective side of criminal abortion is manifested, first of all, in actions aimed at the artificial termination of pregnancy. Part 1 of Article 114 of the Criminal Code outlines two

alternative features of the act: the first is performance outside a medical institution, and the second is performance in a manner medically contraindicated. In applying these features, the meaning of the disjunctive conjunction “or” is significant: if an authorized physician performs an abortion outside a medical institution, the presence of medical counterindications is not required as a separate condition.

Likewise, even if the procedure is conducted within a medical institution, if it is performed under medically contraindicated conditions, the relevant feature of the first part may arise. Nevertheless, in both scenarios, all necessary elements of the act must be proven. Part 2 covers the execution of such an act by a person not authorized to perform artificial termination of pregnancy. Under this composition, the location of the procedure or the presence of medical counterindications is not an independent defining criterion as in the first part. The core issue here is whether the person who performed the procedure possessed the legal right to engage in such activity.

At this point, distinguishing the location of the procedure, medical conditions, and the professional status of the person is of critical importance in qualifying an illegal abortion. Confusing these criteria can obliterate the distinction between the first and second parts, leading to misqualification. The issue of the time of completion of the crime is also a significant theoretical problem. In some scientific views, criminal abortion is evaluated as a formal composition crime, where the expulsion or termination of the fetus indicates the completion of the crime. However, the formal structural nature of the crime does not serve as a basis to evaluate any preparation or initial action directed at the procedure as a completed crime.

In our opinion, during qualification, answers must first be given to questions of whether the perpetrator’s actions were directly aimed at the artificial termination of pregnancy, whether the signs of the corpus delicti provided by law have emerged, and whether the event determining the completion of the crime has occurred.

If actions aimed at terminating the pregnancy have begun but the crime is not completed, qualifying the act as an attempted crime or another stage is determined based on general rules and the specific circumstances of the case. If a live child is born during the abortion process and subsequently dies, evaluating the act solely under Article 114 may be insufficient. In such cases, the live birth of the child, the cause of death, the perpetrator’s intent or negligence, and the causal link between the actions and the consequence must be investigated separately. The presence of intentional homicide or another criminal composition is determined independently on the basis of relevant norms. Therefore, evaluating the objective side requires going beyond the external appearance of the medical procedure to establish the legal signs of the act, the conditions of execution, and the time of completion.

The issue of the subject of the crime is also of substantial importance in qualifying Article 114 of the Criminal Code. The first part of this article envisages an act committed by an obstetrician or gynecologist. Part 2 pertains to the actions of a person who has no right to perform an artificial termination of pregnancy. The uniqueness of the subject in the first part lies in the fact that the law directly indicates the professional status of the individual. Therefore, this composition can be characterized as a crime with a special subject. In this regard, along with possessing medical education, the person’s specific status as an obstetrician or gynecologist and their right to

perform the procedure must be determined. In the second part, the primary criterion is that the person lacks the right to perform an abortion. Therefore, determining liability under this part cannot be limited solely to information regarding the person's medical education. Their authorization to perform the relevant procedure must be verified on the basis of current legislation. In particular, A.A. Allanova also emphasizes the necessity of distinguishing between the subject of the crime provided for in Part 1 and Part 2 of Article 114 of the Criminal Code.

At the same time, determining the liability of third parties when they participate in performing a criminal abortion requires separate analysis. For instance, if an individual assisted a pregnant woman but did not commit actions leading to the termination of the fetus, their participation and the causal link to the consequence must be proven. The mere fact of assisting the woman is insufficient to automatically recognize the person as a subject of the crime under Article 114. Thus, on the issue of the subject of the crime, professional status, the right to perform the procedure, the actual actions of the individual, and their connection to the consequence must be examined in an interrelated manner.

Furthermore, accurately determining the form of guilt is of special significance in qualifying a criminal abortion. That is, it is necessary to distinguish between the primary acts envisaged in the first and second parts of Article 114 of the Criminal Code and the consequential composition in the third part. In analyzing the subjective side of the primary act, it must be determined whether the person was aware of the actions directed at the artificial termination of pregnancy, carried them out consciously, and what their attitude was toward the legally defined signs of the act. However, resolving the issue of whether the

perpetrator was aware of the unlawfulness of their action solely based on whether or not they possess medical education is incorrect.

In our opinion, this circumstance should be evaluated on the basis of all evidence in the case. Although the motive and purpose of committing the crime may vary, they do not affect the qualification of the crime and should instead be taken into account when imposing a sentence. Nevertheless, it must be taken into account that the conclusion regarding the non-influence of motive and purpose on qualification applies to cases where they are not provided as independent signs in the legal norm.

Part 3 of Article 114 of the Criminal Code covers circumstances where the actions envisaged in the first or second parts negligently cause the death of the victim or other grave consequences. Consequently, analyzing this part requires distinguishing the form of guilt regarding the primary act from the form of guilt regarding the additional consequence. The perpetrator may have intentionally carried out actions aimed at the unlawful termination of pregnancy, yet either failed to foresee or negligently permitted the death of the woman or other grave consequences while having the duty and capability to foresee them. In such cases, the consequence alone is insufficient for the application of the third part; the form of guilt required by law and the causal link between the act and the consequence must also be proven.

If the perpetrator's intent was directly aimed at the victim's death or another independent criminal composition, the issue of applying norms concerning crimes against life or health based on the content of the intent and the committed actions is resolved, rather than relying solely on Part 3 of Article 114.

Examining the legislation of foreign countries is also of significant importance in establishing

liability for criminal abortion. In particular, Article 123 of the Criminal Code of the Russian Federation establishes liability for the artificial termination of pregnancy by a person who does not possess higher medical education in the relevant specialty. Part 3 of this article envisages circumstances where the act negligently causes the death of the victim or serious harm to their health.

A distinctive feature of the approach in Russian legislation is that the primary composition of the crime establishes the possession of appropriate medical qualifications by the practitioner as the central criterion. In Article 114 of the Criminal Code of Uzbekistan, along with the person's authorization, the performance of the procedure outside a medical institution or in a medically contraindicated manner is also specified as an independent sign of the first part. While this difference demonstrates that national legislation links the act not merely to the professional status of the individual but also to the conditions under which the medical procedure is performed, foreign experience implies the importance of clearly defining the corpus delicti and articulating criteria related to medical qualifications.

In the criminal legislation of the Federal Republic of Germany, acts related to the artificial termination of pregnancy are regulated not within a single general ban, but through the differentiation of grounds for liability, legal exceptions, and requirements placed on medical activity. Paragraphs 218, 218a, 218b, and 218c of the German Criminal Code cover various aspects of this issue, and a comparative analysis of these norms is important from the standpoint of clarifying the crime composition provided in Article 114 of the Criminal Code of the Republic of Uzbekistan and establishing the boundary between a medical violation and a criminal act. A unique aspect of Paragraph 218 is that the

legislature does not limit itself to defining the primary composition of illegal abortion, but also evaluates separately circumstances associated with acting against the pregnant woman's will and endangering her life and health.

Furthermore, Paragraph 218a regulates liability related to the termination of pregnancy in greater detail, providing for situations where the crime composition under Paragraph 218 is not considered to exist upon the fulfillment of certain conditions, as well as circumstances under which the termination of pregnancy is not unlawful. In particular, the pregnant woman's request, compliance with the established counseling procedure, the execution of the procedure by a physician, and adherence to statutory timeframes are relevant for proper legal evaluation. In addition, specific situations involving medical necessity to avert the risk of severe harm to the pregnant woman's life or physical or mental health are separately regulated.

Paragraph 218b of the German Criminal Code establishes liability for violating requirements concerning medical opinions and issuing incorrect medical opinions. Specifically, the law requires that in certain instances prior to the termination of pregnancy, a written opinion must be obtained from a physician other than the practitioner performing the procedure. Conducting the procedure without such an opinion or knowingly issuing an incorrect opinion affirming the existence of necessary conditions when they do not exist may entail criminal liability. The comparative-legal significance of this procedure is that violations of requirements regarding medical opinions are regulated through a separate legal norm rather than being subsumed generally into the composition of illegal abortion. Paragraph 218c of the same code provides for liability for the violation of certain obligations that must be fulfilled by a physician

during the process of terminating a pregnancy. These include failing to give the pregnant woman the opportunity to state the reasons for requesting the termination, failing to provide proper medical counseling regarding the content, stages, risks, and potential physical or mental consequences of the procedure, and failing to determine the gestational age through a medical examination in certain cases prescribed by law.

Comparing these approaches in German legislation with Article 114 of the Criminal Code of the Republic of Uzbekistan reveals a significant difference in regulatory methods. Uzbek legislation provides for liability in the first part of this article for the artificial termination of pregnancy by an obstetrician-gynecologist outside medical institutions or in a medically contraindicated manner, and in the second part for the actions of a person not authorized to perform such a procedure. In German legislation, alongside the primary composition of pregnancy termination, certain medical opinions and violations of professional obligations are regulated through distinct norms.

In our view, German experience possesses aspects relevant to Uzbekistan; in particular, in applying Article 114 of the Criminal Code, the relationship among the person's right to perform the procedure, compliance with medical conditions, the pregnant woman's consent, and the resulting consequences must be evaluated consistently. Thus, Paragraphs 218-218c of the German Criminal Code regulate relations associated with the artificial termination of pregnancy through differentiation based on grounds for liability, legal exceptions, medical opinions, and professional obligations. This experience affords the opportunity to draw scientific conclusions regarding increasing the precision of the crime composition's signs, establishing the boundary between a medical

violation and a criminal act, and shaping consistent criteria in law enforcement practice to improve Uzbek legislation.

In Sh.J. Haydarov's research, a criminal case reviewed by the Kokand City Criminal Court on criminal cases on June 1, 2012, under case number 1-361/2012, is cited as an example. As the author notes, actions aimed at accelerating the birth of a fetus, even in the absence of an intention to destroy the fetus, were qualified under Article 114 of the Criminal Code. This situation demonstrates the importance of correctly determining the nature of the act and the perpetrator's intent when qualifying a criminal abortion. Here, on the basis of forensic medical expert conclusions, medical documents, and other evidence, the causes of the termination of pregnancy and the causal link between the act and the resulting consequence must be established. Therefore, comprehensively investigating the practitioner's authorization, gestational age, the nature of the medical intervention, and the form of guilt is of vital importance in investigating cases under Article 114.

The recommendations of the World Health Organization on organizing abortion as a medical service also emphasize the importance of safe medical services, the involvement of specialists with appropriate knowledge and skills, and respect for women's needs. This approach, in turn, implies the necessity of analyzing the issue of criminal liability without detaching it from the tasks of medical safety and the protection of reproductive health. Consequently, a comparative analysis based on foreign experience requires paying special attention to two issues in national legislation: first, clearly defining the status of the person authorized to perform an abortion; second, accurately determining the form of guilt and the causal link between the primary act and

the death of the woman or other grave consequences.

The relevance of problems associated with criminal abortion is also confirmed by international statistical data. According to World Health Organization data, an average of 73.3 million abortions were performed worldwide each year between 2015 and 2019. Furthermore, according to estimates for 2010-2014, approximately 45 percent of abortions were performed in unsafe conditions. These figures demonstrate the international significance of safeguarding reproductive health, complying with medical safety requirements, and properly qualifying acts associated with the illegal termination of pregnancy.

Overall, the analyses show that in properly qualifying the crime of illegal abortion, it is necessary to comprehensively determine the objective and subjective signs of the act, the authorization of the individual, and the causal link with the resulting consequences. Foreign experience and international statistical data serve as clear evidence of the vital importance of ensuring medical safety requirements and improving national legislation.

CONCLUSION

As a result of the analysis of the above scientific research, the following conclusions were reached regarding the issue of qualifying the crime of illegal abortion.

First, in applying Article 114 of the Criminal Code, merely identifying a violation of the procedure for performing an abortion is insufficient; the signs of the crime's composition, the legal status of the person who committed it, and the form of guilt must also be determined.

Second, in distinguishing between Parts 1 and 2 of Article 114, the location where the abortion

was performed, medical indications, and the person's authorization to perform it must be evaluated in their interrelation.

Third, in applying Part 3 of Article 114, the causal link between the victim's death or other grave consequences and the act, as well as the form of guilt regarding the consequence, must be established.

Fourth, foreign experience demonstrates the importance of harmonizing the regulation of medical safety, the professional authorization of the individual, and the assurance of the pregnant woman's rights. Clearly defining these criteria in improving national legislation serves to reduce legal uncertainties in the qualification of criminal abortions.

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