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Research Article

CRIMINAL LEGAL CHARACTERISTIC OF GENOCIDE IN THE REPUBLIC OF UZBEKISTAN

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Khurshida Mirziyatovna Abzalova

Doctor of Law, Acting Professor, Department of Criminal law, criminology and anti-corruption Tashkent State University of Law, Uzbekistan

Abstract

In this article, based on the norms of international law, the Constitution and the Criminal Code of the Republic of Uzbekistan, as well as the legislation of some foreign countries, the features of the criminal law characteristics of genocide as a crime are analyzed, a legal analysis of Article 153 of the Criminal Code of the Republic of Uzbekistan is carried out, relevant conclusions and recommendations are made to improve the norms of criminal legislation.

Keywords

Criminal law, genocide, murder, life, peace, security, life imprisonment.

INTRODUCTION

All over the world, counteraction crimes against peace and security is one of the priority tasks of criminal legislation. In the Republic of Uzbekistan, the protection of the peace and security of

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mankind is provided for in chapter VIII of the Criminal Code of the Republic of Uzbekistan, which includes ten articles. In particular, article 153 of the Criminal Code of the Republic of Uzbekistan provides for responsibility for genocide, the essence of which follows from the norms of international law and the Constitution of the Republic of Uzbekistan¹.

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by UN General Assembly Resolution 260 (III) of December 9, 1948, the Contracting Parties confirm that genocide, regardless of whether it is committed in peace or time of war, is a crime that violates the norms of international law and against which they undertake to take preventive measures and punish for its commission². Thus, the Convention requires States to consider responsibility for genocide as an international crime that encroaches on the peace and security of mankind.

Bv implementing the provisions of the aforementioned Convention, the States established criminal liability for genocide in the Criminal Code. Thus, the Criminal Code of the Federal Republic of Germany, defining genocide as actions aimed at completely or partially destroying a national, racial, religious or group, establishes distinctive an absolute sanction – life imprisonment³. According to the French Criminal Code, genocide constitutes an act carried out in pursuance of an agreed plan aimed at the complete or partial destruction of a national, ethnic, racial or religious group or a group determined on the basis of any other arbitrary criterion. A similar definition is contained in the Criminal Code of European countries.

Article 357 of the Criminal Code of the Russian Federation provides for liability for actions aimed at the complete or partial destruction of a national, ethnic, racial or religious group as such by killing members of this group, causing serious harm to their health, forcibly preventing childbearing, forcibly transferring children, forcibly relocating or otherwise creating living conditions designed for the physical destruction of members of this group⁴, Article 168 of the Criminal Code of the Republic of Kazakhstan – for intentional acts (draws attention to the form of guilt) aimed at the complete or partial destruction of a national, ethnic, racial or religious group by killing members of this group, causing serious harm to their health, forcibly preventing childbearing, forcibly transferring children, forcibly relocating or creating other living conditions calculated for the physical destruction of the members of this group⁵. A similar definition is contained in the Criminal Code of the CIS

¹ Уголовный кодекс Республики Узбекистан (источник – www.lex.uz).

² Конвенция о предупреждении преступления геноцида и наказании за него, принятая резолюцией 260 (III) Генеральной Ассамблеи ООН от 9 декабря 1948 года (https://www.un.org/).

³ Уголовный кодекс ФРГ (источник – https://constitutions.ru).

⁴ Уголовный кодекс Российской Федерации (источник – http://www.consultant.ru).

⁵ Уголовный кодекс Республики Казахстан (источник – https://online.zakon.kz).



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countries. In turn, the punishment for genocide is severe: the death penalty or life imprisonment.

The Constitution of the Republic of Uzbekistan, providing in the preamble the priority of universally recognized norms of international law, in articles 18 and 24 provides that all citizens of the Republic of Uzbekistan have the same rights and freedoms and are equal before the law without distinction of sex, race, nationality, language, religion, social origin, beliefs, personal and social status, as well as consideration of life human rights as an inalienable human right, the infringement of which is the gravest crime⁶. The implementation of the constitutional norm requires the protection not only of the life of the individual, but also the prevention of attacks against people on the grounds of ethnicity, race, nationality or religious beliefs.

In order to understand the essence of criminal responsibility for genocide, its differentiation from related crimes (premeditated murder, incitement of national, ethnic, racial or religious enmity), it seems appropriate to conduct a legal analysis of the crime under consideration:

The object of genocide is social relations arising from the meaning of the disposition and subject to protection. As M. KH.Rustambayev notes, "the object of genocide is social relations that ensure the safety of life and health of a national, ethnic, racial, religious group of people"⁷. According to V.V.Avanesyan, "a characteristic feature of the genocide prevention system is its two-level structure, including the international (main) and state levels"⁸. In our opinion, we should agree with these authors and determine that genocide encroaches on two objects:

- Public relations that ensure the security of peace and security of mankind;
- Social relations that ensure the safety of life and health, personal freedom of a group of people on national, ethnic, racial, religious or other grounds.

At the same time, the first of the above-mentioned social relations is the main one (the theory of criminal law divides the object into the main and additional) in comparison with the second. This makes it possible to distinguish genocide from crimes against the life and health of the individual.

The key element in the object of genocide is the victim, whose status plays an essential role in the qualification of the act as genocide. Thus, victims of genocide are a group of people (or as the legislator calls "human groups") united by one of such characteristics as *race*, *ethnicity*, *nation* and *religion*.

At the same time, the experience of some foreign countries (Germany, France) expands this list, which is a classic triad, including the category of

⁶ Конституция Республики Узбекистан (источник – www.lex.uz).

⁷ Рустамбаев М.Х. Комментарий к Уголовному кодексу Республики Узбекистан. Особенная часть. Издание второе,

переработанное и дополненное. – Т., 2016. – С. 245.

⁸ Аванесян В.В. Геноцид: криминологическое исследование. Диссертация на соискание ученой степени кандидата юридических наук. Москва, 2010. – С. 172.

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"other people united by an arbitrary criterion." For example, in the Criminal Code of the Republic of Belarus, victims of genocide are human groups defined on the basis of any other arbitrary criterion. In our opinion, the circle of victims should be expanded in order to ensure justice. For example, the literal interpretation and understanding of the genocide does not allow us to qualify the mass murder of people on a different basis (for example, the murder of atheists) under Article 153 of the Criminal Code of the Republic of Uzbekistan. This action will be qualified as premeditated murder, based on the circumstances of the case.

The objective side of genocide is expressed in the commission of one of the acts specified in the disposition of Article 153 of the Criminal Code of the Republic of Uzbekistan. It should be noted that in the Convention on the Prevention and Punishment of the Crime of Genocide, genocide refers to the following actions committed with the intent to destroy, in whole or in part, any national, ethnic, racial or religious group as such:

- a) Killing members of such a group;
- b) Causing serious bodily injury or mental distress to members of such a group;
- c) The deliberate creation of such living conditions for a group that are designed for the complete or partial physical destruction of it;
- d) Measures designed to prevent childbearing among such a group;

e) Forcible transfer of children from one human group to another⁹.

These convention requirements are fully reflected in the disposition of Article 153 of the Criminal Code of the Republic of Uzbekistan, which recognizes socially dangerous acts such as:

- Deliberate creation of living conditions designed for the complete or partial physical extermination of any group of persons on national, ethnic, racial or religious grounds;
- Complete or partial physical extermination of a group of persons;
- Forced reduction of childbearing;
- Transfer of children from one of these human groups to another;
- Giving an order to commit such actions.

The moment of the completion of the genocide is multifaceted, since there are several types of composition of crime (corpus delicti):

- Truncated composition: when giving an order to commit genocide;
- Formal composition: with the deliberate creation of living conditions designed for the complete or partial physical extermination of a group of persons on national, ethnic, racial or religious grounds, the transfer of children from one of these human groups to another.
- Material composition: complete or partial physical extermination of a group of persons, forcible reduction of childbearing (in this case,

⁹ Конвенция о предупреждении преступления геноцида и наказании за него, принятая резолюцией 260 (III)

Генеральной Ассамблеи ООН от 9 декабря 1948 года (https://www.un.org/).



it is necessary to determine the causal relationship between the act or consequences of genocide - in the form of death, bodily injury).

Such a complex structure of the composition practically excludes an attempt, and in some cases, preparation for a crime.

It is necessary to pay attention to the sign "causing serious bodily injury or mental disorder" in the Convention on the Prevention and Punishment of the Crime of Genocide. Causing minor or moderate bodily injury to members of a group is not serious in the sense of the Convention, since it cannot affect the ability of a person to self-actualize as a representative of a national, ethnic, racial or religious group and, as a result, pose a threat to its existence¹⁰. Therefore, we can assume that in the case of genocide, violent acts should, first of all, be understood as grievous bodily harm.

Therefore, we can assume that it should be noted that, based on the content of Article 153 of the Criminal Code of the Republic of Uzbekistan, some methods are mandatory signs (the creation of living conditions designed for complete or partial physical extermination, forcible reduction of childbearing, the transfer of children from one of these human groups to another), the situation is a mandatory sign of the objective side when the creation of living conditions designed for complete or partial physical extermination, in

¹⁰ Москалев Г.Л. Геноцид (ст. 357 УК РФ): проблемы уголовноправовой регламентации и квалификации. Диссертация на turn, a tool, a means, the place of commission of the crime does not matter for the qualification of the genocide, violent actions should, first of all, be understood as grievous bodily harm.

The subject of genocide is a sane individual who has reached the age of 16. The establishment of such an age threshold may cause certain problems when committing a crime by a person who has not reached the age of 16, but is a potential subject of Article 97 of the Criminal Code by age. Thus, when committing genocide by a person aged 14 to 16, the actions of the perpetrator cannot form the composition of Article 153 of the Criminal Code. However, according to article 10 of the Criminal Code of the Republic of Uzbekistan, every person in whose act the presence of the corpus delicti is established must be liable. In the mentioned case, the act of a person aged 14 to 16 committing genocide will be considered as a corresponding crime against the life, health or freedom of the individual.

The subjective side of genocide is a key element of the composition of crime, which allows us to distinguish it from other related compositions. It is expressed in direct intent, that is, a person is aware of the public danger of encroachment on human groups, anticipates the onset of consequences in the form of their extermination, and also wants the onset of these consequences. On the subjective side, the orientation of intent to encroach on the life of a certain category of people (victims) is important. That is, the person

соискание ученой степени кандидата юридических наук. Санкт-Петербург, 2016. – С. 25.



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committing the crime must encroach on the victims on national, ethnic, racial, religious or other grounds.

The purpose of genocide is a prerequisite and consists in the complete or partial destruction of a group of people on national, ethnic, racial, religious or other grounds. Proceeding from this, genocide differs from premeditated murder committed on the grounds of ethnic or racial hatred or religious prejudice (paragraphs "k" and "m" of the second part of Article 97 of the Criminal Code) in that in genocide the subject seeks to completely or partially exterminate a group of people, and in murder the number of victims is narrowed and limited. Motive and emotions do not matter for qualification.

It should be determined that the punishment for genocide is represented by imprisonment for a term of ten to twenty years. However, compared to premeditated murder and terrorism, genocide as an international crime has a high degree of public danger. Consequently, it seems appropriate to increase the sanction of article 153 of the Criminal Code of the Republic of Uzbekistan and provide for a long and life term of imprisonment.

Thus, the following conclusions can be drawn:

1. Criminal responsibility for genocide follows from the norms of international acts, the Constitution of the Republic of Uzbekistan and the goals of the Criminal Code of the Republic of Uzbekistan.

- 2. Victims of genocide are people united in a group on racial, national, ethnic or religious grounds. At the same time, the Criminal Code of foreign countries (Germany, France, Belarus) provides for a wider range of people, in particular using the wording "a group of people determined on the basis of any other arbitrary criterion".
- 3. Taking into account the degree and nature of the public danger of genocide, the age of criminal responsibility should be set at 14 years and provided for as a punishment in the form of life imprisonment.

Based on the above, it seems appropriate to state article 153 in the following wording:

«Article 153. Genocide

Genocide, that is, the deliberate creation of living conditions designed for the complete or partial physical extermination of any group of persons on national, ethnic, racial, religious or other grounds, the forcible reduction of childbearing or the transfer of children from one of these human groups to another, as well as the ordering of such actions —

is punishable by imprisonment from ten to fifteen years.

Complete or partial physical extermination of any group of persons on national, ethnic, racial, religious or other grounds —

is punishable by imprisonment from fifteen to twenty-five years or life imprisonment».



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