

Section 12. Criminal law and criminology

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Some legal aspects of personal injury according to criminal law

Abstract: This article discusses some of the legal aspects of injuries in the criminal law of the Republic of Kazakhstan.

Keywords: criminal law, criminal code, injury.

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The right to the highest attainable standard of health is one of the fundamental rights of every human being irrespective of race, religion, political belief, economic and social status [1].

The development of History of State and Law takes an important place in the development of concept of crimes against the health of the individual. This can help to understand the current situation in the field of criminal law.

As early in the ancient world crimes against the health of the individual were considered as one of the most serious. The State exercised blood feud practices, although some countries followed such idea as a cash ransom.

For example, in Ancient India, caste society played an important role. Class and caste nature of law in ancient India is observed when considering responsibility for crimes against the person. In this case, if the offender and the victim belonged to the same varna, causing injuries was subject to money penalty while serious injury or fracture was subject to expulsion.

A prominent contribution to the development of law was made by Ancient Greece and Rome. They classified crimes against the person, which in addition to murder, included the infliction of injuries, beating, slander and insult.

In the early middle ages, both in Russia ("Russkayaprawda") and Western Europe (Salic law (Kingdom of the Franks), "Coutumes de Beauvaisis" (France), "Survey of Saxon Law" (Germany), "Survey of Swabian Law" (Germany), "Law of pandects" (Germany), "Carolina" (Germany), "Common law" (England), "Law of equity" (England) specified bailout for the personal injury.

In later centuries, the injury was considered a criminal offense, with punishment from flagellation to prison.

The Constitution of the Republic of Kazakhstan establishes the right of citizens to health protection and medical

care [2]. So the current state of legal regulation in terms of infliction of harm to the health of man and citizen is specified in the following article.

The crime itself against the health of the individual can be divided into the following categories:

- intentional infliction of harm (serious and moderate, light, beatings, torture, threat of injury, compulsion to removal of organs, infection with venereal diseases or AIDS);
- unintentional injury (in the heat of passion, when exceeding the limits of necessary self-defense, by negligence);
- medical (illegal abortion, lack of medical care, the illegal occupation in private medical practice or private pharmaceutical activities);
- failure to give assistance to persons in mortal danger;
- indirect, which may cause harm to the health of the individual (inducement to use narcotic drugs or psychotropic substances, violation of sanitary-epidemiological rules, withholding of information about the circumstances which provide a risk to the life or health of people, the production or sale of goods, performance of works or rendering of services which do not meet safety requirements etc.).

Among them a special attention is given to intentional infliction of harm to health which constitutes a special social danger. Intended infliction of harm to the individual refers to intentional infliction of harm, health risks and infection with sexually transmitted diseases and AIDS.

"Intentional infliction of serious harm to health" states that the infliction of serious bodily harm specifies the infliction of grave damage dangerous to human life, which results in a loss of vision, speech, hearing or any organ or loss of its function, abortion, mental disorder, drug addiction or substance abuse, as well as disfigurement of the face, or causing significant permanent disability not less than one-third or complete loss of working ability. All of these actions shall be punished by imprisonment for the term from three up to seven years.

The same acts committed in aggravating circumstances, such as:

- 1) in relation to the person or his relatives who carries out official activities or social duty;
- 2) with particular cruelty, abuse or torment to the victim being helpless;
- 3) committed in a dangerous way;
- 4) committed by contract;
- 5) from molester motives;
- 6) motivated by ethnic, racial, religious hatred or enmity;
- 7) in order to use organs or tissues of the victim;
- 8) committed by a group of persons, upon previous concert or by an organised crime group;
- 9) against two or more persons—which shall be punished by imprisonment for the term from five up to ten years.

Acts stipulated by the first or second part of article 106 of the Criminal Code of the RK which by negligence result in death of the victim, or committed by a criminal group shall be punished by imprisonment for the term from eight up to twelve years [3].

Intentional infliction of grievous bodily harm is the most dangerous crime that infringes the safety of human health. The health in this case is considered to be the natural state of an organism characterized by the absence of any pathological changes.

Current criminal code rejects using the traditional term of “bodily injury”, which stands for distortion of the anatomic integrity of organs and tissues or their physiological functions resulting from exposure to environmental factors.

Replacement of the term “bodily injury” to “damage health” the criminal Code is quite reasonable in some cases. Not every injury, even if it results from exposure to environmental factors can be regarded as a bodily injury. The term of “injury to health” covers also a harm that is not associated with the distortion of the anatomic integrity of organs and tissues or physiological functions of organs and tissues.

This are such disorders as responsive mental and neurological conditions resulting from adverse mental effects on the victim, or infectious diseases where one person passes the culture of pathogenic microbes to another. Besides, it can be professional or venereal diseases, poisoning, mental disorder, drug addiction or substance abuse, etc.

However, according to the original developers of the draft Criminal Code, the use of the term “bodily injury” did not mean a General rejection of the term “bodily injury” in cases where damage to health was associated with disruption of anatomic integrity or physiological functions of organs and tissues (there is no reason to abandon practically approved regulations of forensic determination of the severity of injuries). “Bodily injury” was supposed to consider, mainly as a generic term, and in some cases, the term “other impairment of health” as a “addition” to “bodily injury”.

Therefore the draft Criminal Code of the Republic of Kazakhstan specified the intended infliction of heavy harm to the health as an intended bodily harm, dangerous to life or which

resulted in certain grave consequences to health of injured person, as well as infliction of other harm dangerous to life or which caused the consequences mentioned above.

In the final version of Part 1 Article 106 of the Criminal Code the term «bodily injury» is not used, since there is tautology, which may cause serious difficulties for the practical application of the specified regulation. Originally it states «intended infliction of harm dangerous to life of a person» or resulted in certain grave consequences, on the other hand it refers to «other harm to the health, which is dangerous to life», as if it is not the same. The only way out of this situation is to make corresponding changes in the Article 106 of the Criminal Code by recovering the draft version of the Criminal Code.

Article 107 “Intentional infliction of moderate bodily harm” Part 1 states that the intentional infliction of moderate harm which is not dangerous to human life and doesn’t have consequences referred to in Article 106 of the Criminal Code, but which caused long-term health disorder or significant loss of working ability to less than one third shall be subjected to restriction or imprisonment for a term not exceeding two years.

The same acts committed in aggravating circumstances, such as:

- a) against two or more persons;
- b) in relation to the person or his relatives who carries out official activities or social duty;
- c) with particular cruelty, abuse or torment to the victim being helpless;
- d) committed by a group of persons, upon previous concert or by an organised crime group;
- e) from molester motives;
- f) motivated by ethnic, racial, religious hatred or enmity;
- g) more than once, — subject to restriction or imprisonment for a term up to three years.

Intentional infliction of moderate bodily harm as opposed to grievous harm is characterized by the fact that it is not dangerous to human life, and does not cause consequences specified in Article 106 of the Criminal Code. However, it causes long-term impairment of health of the injured person or a significant permanent loss of working ability to less than one-third, or both.

The object of crime under the Article 107 of the Criminal Code, form social relationships which ensure the security of citizens health.

The objective aspect of the crime in question is illicit infliction of moderate bodily harm to another person.

The objective part is specified by the following:

- a) socially dangerous act (action or failure to act);
- b) criminal consequences in the form of moderate damage to human health;
- c) causal relationship between the criminal act and mentioned criminal consequence.

The moderate injury is considered to be causing the victim long-term health disorder, as well as a significant permanent loss of ability up to less than one-third.

Long-term health disorder refers to temporary loss of ability (disease, disability etc.) directly related to injury. The significant permanent loss of general working ability to less than one-third refers to the loss of such a ability from 10 to 30% inclusive.

The moderate injury includes, as an example, cracks and fractures of small bones, one or three ribs on one side, dislocations of small joints, constant difficulty in speech, loss of a finger or toe, moderate concussion of the brain, etc. [4].

Bodily harm is considered to be short-term health disorder, as well as light permanent loss of ability. The short-term health disorder should be related to the injury for the period of not more than three weeks (21 days).

Insignificant loss of working ability meant refers to permanent loss of general labor ability to 5%.

The infliction of light bodily harm includes, as an example, the loss of the finger (except the thumb and forefinger), impaired vision and hearing, related to permanent loss of general labor ability, multiple bruises and scratches, etc. [5].

The abovementioned crimes are considered to be crimes against the health of an individual. The right to health, unlike other human rights, just recently have been stipulated in the Constitution of many countries. The constitutions of XVIII–XIX centuries did not specify the right to health, although other human rights were proclaimed. Internationally, the human right to health was recognized in 1948: “Everyone has the right to a living standard which includes food, clothing, housing and medical care and the necessary social services, adequate for the health and well-being of himself and his family”.

Great importance of such benefits as life and health, give place to their full protection and care.

Today, one of the most important tasks of the state in the field of law is the protection of citizens, including their health, as a component part of the general policy of the state to strengthen the society.

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Cruelty to animals in Kazakhstan: moral and legislative aspects

Abstract: This article discusses the issues related to animal cruelty. Some problems of the moral side of such acts. Particular attention is paid to the legal aspects in the Republic of Kazakhstan in the field of animal protection, as compared with foreign countries, we have it developed quite weak.

Keywords: morality, assault, fighting, prevention.

The problem of cruelty to animals in Kazakhstan is not paid so much time and effort as it should be, especially compared with other countries where animal rights are protected quite efficiently. Many people underestimate the importance of the moral aspects of the problem of cruelty to animals, and in fact treatment of animals is reflected in the moral and ethical, economic and social aspects of life in any society and affects the feelings and interests of many people. Cruelty to

animals forms among offenders a sense of indifference to the living beings suffering, as well as the seeds of violence and aggression towards the people around them. These actions have an impact on the consciousness of those who commit acts of cruelty to animals and to people who witnesses such acts. It is especially dangerous for young children to witness such acts, as it may impose a negative impact on the rest of their life, as well as affect the attitude of the children to violence in the