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ARBITRARY PUNISHMENT: LYNCHING

Khushvakt Ashurovna Kurbonova*

*PhD Student,
Higher School of Judges under the Supreme Council of Judges,
Republic of UZBEKISTAN

ABSTRACT

This article describes the development of scientifically-based, well-founded, constructive proposals for improving the norm provided for in Article 229 of the Criminal Code of the Republic of Uzbekistan as a result of identifying and analyzing current problems in the theory and practice of criminal liability for arbitrariness. Arbitrary crime has a special place among the crimes against the order of management provided by the Criminal code of the Republic of Uzbekistan. To date, the judiciary has accumulated some experience in the application of the crime of arbitrariness by investigators, but in practice there are still some problems with the misapplication of the norms of arbitrariness, pending resolution. In practice, new types of arbitrariness have emerged, and Article 229 of the Criminal Code of the Republic of Uzbekistan, which consists of only one part, is not sufficient to qualify these acts and requires supplementing them with provisions providing for liability for assessed or assessed types of arbitrariness. All of the above problems indicate the relevance of this research topic and require scientific research.

KEYWORDS: *Arbitrariness, Right, Real Or Imagined Rights, Norm, Responsibility, Samosud - Arbitrary Punishment.*

INTRODUCTION

In the introduction to the Universal Declaration of Human Rights, “Considering that the disregard and violation of human rights has led to atrocities that afflict the human conscience, it has been declared that the creation of a world in which people have freedom of speech and religion and live in fear and need is a noble human endeavor; it was stated that human rights should be protected by law in order to prevent them from being forced to revolt” [1].

Similarly, Article 198 “The rights and freedoms of citizens enshrined in the Constitution and laws are inviolable, and no one has the right to deprive or restrict them without a court decision”

of the Constitution of the Republic of Uzbekistan and Article 26 of the Constitution of the Republic of Uzbekistan state that the case of any person accused of committing a crime shall not be considered guilty until it is tried in a lawful and transparent manner.

If we look at ancient history, humanity was born, its rights and obligations have emerged in any time and place, and measures have been taken to protect them. However, arbitrary punishment for violated rights is strictly forbidden, and even in Islam, arbitrary punishment of a person (samosud) is prohibited by Sharia law [2].

THE MAIN FINDINGS AND RESULTS

According to the Great Legislative Dictionary, arbitrary punishment (samosud) originated from the practice of dispute resolution in medieval countries and was related to the right to use force (with a fist), for example, in Germany, vassals settled disputes by force of arms [3].

In recent times, the term "samosud" has been widely used in society as an arbitrary act that reflects the use of physical and mental violence. What is "samosud", "samosud"– "Lynch" (Lynch's court dictionary in the United States brutally punished Negroes and revolutionaries in public without trial) is a crime, that is, to punish without resorting to the law. This differs from ordinary revenge in that in revenge, the victim himself or those close to him seek revenge against the perpetrator, while in "samosud" (arbitrary punishment) they seek to protect society from an impending threat by providing justice, as they see fit, by harming or punishing the perpetrator [4].

Although these crimes are common in society today, there are cases of arbitrary punishment of a person suspected of committing a crime or a violation of another law or a certain order without resorting to the relevant authorities, without a trial or investigation; it is a manifestation of the arbitrary use of arbitrary mental or physical violence.

Although the current Criminal Code of the Republic of Uzbekistan does not provide for liability for arbitrary punishment of a person (Samosud), this crime, in its composition, nature and other legal aspects, is a separate qualification of the crime of arbitrariness under the Criminal Code. In practice, this crime was classified by the judicial authorities under other articles of the Criminal Code (Articles 109, 105, 165, 277 and other articles), i.e. as crimes against the person, health or economic crimes. As a result, actions taken as a result of the exercise of a real or imaginary right, which is a necessary sign of the objective aspect of the crime of arbitrariness, are ignored. For example: According to the verdict of the Criminal Court in 2020, 4 women (relatives) conspired to catch victim A in a public street, cut her hair with a shotgun and caused minor bodily injuries as a hooliganism under Article 277 of the Criminal Code. Looking at the content of the crime committed, the women accused of the crime committed the crime as a group to intimidate the victim with beatings and insults in order to punish them arbitrarily for violating another family. The crime was assessed as hooliganism by the preliminary investigation and the court. According to the law, hooliganism is a crime against public order; Intentional disregard for the rules of behavior in society means a gross violation of public order (interpersonal relations, rules of conduct, formed social life) established by normative legal acts, norms of etiquette and morals, customs and traditions.Also, in the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 9 of June 14, 2002 "On judicial practice in cases of hooliganism", the courts ruled that hooliganism is different depending on the nature of the intent and the

purpose of the act they must be able to distinguish between crimes. Including insults, beatings in the family, at home, relatives, acquaintances; actions such as minor bodily injury, if they were the result of a personal disagreement or as a result of the victim's improper conduct, should be assessed as a crime against the person and qualified by the relevant articles of the Special Part of the Criminal Code [5].

Although the crime in the example above is properly qualified from the point of view of the current criminal law, in practice the main purpose of these actions is arbitrary punishment (samosud). Unfortunately, the absence of a norm in the current Criminal Code, which provides for arbitrary punishment, precludes the correct assessment of certain criminal acts.

In the context of the crime under investigation, although the law does not require emotions to qualify the perpetrator's actions, they must be taken into account in cases where the offense is motivated to some extent by the victim's illegal conduct. In our view, in addition to guilt, the goal is also important in the structure of arbitrariness.

In this regard, we believe that Article 229 of the Criminal Code should be supplemented with an article entitled Arbitrary Punishment (samosud) as a special qualifying feature or in the form of a special norm.

If we pay attention to the international experience in this regard, "samosud"is carried out not only to protect their rights, but also for revenge. In Russia, "samosud" escalated en masse after the February Revolution of 1917, because the police, who was formed after the abolition of the police, could not fight such crimes because the state power was empty and weak. In fact, more than 10,000 "samosud" movements were carried out during the revolution [6].

In America, "samosud" began in 1848 in the camps of California during the golden age and was carried out in the form of vigilantism (from the English - awareness committee). In this state, too, as a result of the weakness of the government (victim), the criminal committees (mainly thieves and rapists) were caught and punished by the people's courts (*jury trial*- sudprisyajenyx) independently [7.]

"Samosud"- the responsibility for arbitrary punishment was first included in Article 6 of the "*Dvinskaya Charter Diploma* -DvinskoyUstavnoyGramoty" in 1397-1398 [8].The "*Dvinskaya Charter Diploma*- DvinskayaUstavnayaGramota" is a source of law that defined the judicial and administrative powers of the prince in the territories belonging to the prince after the unification of Prince Dvinsky's lands with Moscow in 1937 [9.] According to Ukrainian sociologists, "the sharp decline in public confidence in the police and the courts is turning people into self-governing courts," but the facts show that the verdict of the angry crowd will not be fairer than the verdict of the judges. According to lawyers, repression against offenders is also an offense [10].

In the course of the study, we can conclude that an effective fight against criminal arbitrariness (including arbitrary punishment-samosud) requires a concerted effort to identify the causes and conditions that lead to crime and to prevent them.

This means that in any state and society, as a result of simple legal illiteracy, misunderstanding or incorrect choice of the rule of law applicable to the situation, these crimes are increasing in number and form; it can be concluded that it leads to misapplication of the law as a result of

failure to disclose it as a latent crime or, conversely, to qualify it with other articles of the Criminal Code.

Taking all this into account, the existing judicial practice, which does not differ in the uniformity of arbitrariness, as well as proposals for the criminalization of arbitrary trial as a criminal act, which is a specific type of arbitrariness, its legal and technical expression; the appearance of the offense as determined by the lawyer; indicates the need for a detailed study and analysis of the content of arbitrariness in order to determine the need for changes for compliance with the internal content.

CONCLUSION

Based on the above, taking into account the theory and practice, we believe that Article 229 of the Criminal Code, which provides for the crime of arbitrariness, should be supplemented with an article entitled Arbitrary Punishment (samosud) as a special qualifying feature or as a separate special norm.

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