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**ISSUES RELATED TO THE QUALIFYING FEATURES OF  
THE CRIME OF ARBITRARINESS**

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**ABSTRACT**

*This article examines the current problems of the theory and practice of criminal liability for arbitrariness of the Criminal Code of the Republic of Uzbekistan, analyzes the theoretical views of legal scholars and legal issues. In practice, some problems related to the misqualification of norms of arbitrariness have also been studied. At the same time, well-founded, constructive suggestions were made to prevent the crime of arbitrariness.*

**KEYWORDS:** *Criminal Law, Arbitrariness, Foreign, Real or Imaginary Rights, Liability.*

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**1. INTRODUCTION**

In recent years, the country has been consistently working to further improve the judicial system, strengthen measures to reliably protect the rights and legitimate interests of citizens and entrepreneurs, ensure effective justice and increase the role of the judicial community. These tasks are set out in the Decree of the President of the Republic of Uzbekistan dated July 24, 2020 "On additional measures to further improve the work of courts and increase the efficiency of justice." [1] It is no exaggeration to say that the ongoing judicial and legal reforms in the country, the full protection of human rights and freedoms and legitimate interests, and the administration of justice have become the main idea of Uzbekistan's development.

Although the protection of human rights and interests is carried out by different branches of law, it can be said that criminal law has a special place. Because it is better for 10 people who have committed a crime to escape punishment than to punish one innocent person. If we look at the figures given in the above decree, in particular, about 2,300 people were acquitted on unjust charges. More than 3,500 young men and women who could be sentenced to imprisonment for misguided criminals were given lighter sentences on the basis of neighborhood and community guarantees and left in the care of their families. Sixty law enforcement officers have been prosecuted for gross human rights abuses [1].

What this means is that due to the existence of gaps in the collections of criminal law, many people have been unjustly accused and forced to leave society, family and work. To prevent such cases, first of all, an in-depth analysis of the criminal law is required, qualifying each committed crime on the basis and within the requirements of the Criminal Code. The Criminal Code of the Republic of Uzbekistan provides for liability only for socially dangerous acts provided for in the Criminal Code, ie the Criminal Code, which contain all the elements of a crime (object, objective party, subject, subjective party). In order to prosecute and impose a penalty, it is necessary to determine exactly which norm of the Special Part of the Criminal Code the person has violated. In this case, it is necessary to determine whether the criminal content of the act is provided for in the Special Part of the Criminal Code. This process is called the crime qualification process [2, p. 6].

Proper qualification of the committed crime is, first of all, a prerequisite for the administration of

justice and the imposition of punishment for the guilt of the accused in the commission of the crime, which in turn has important socio-political and legal significance [2, p. 149].

In this context, the issues related to the qualification of the arbitrary crime under study can be considered as one of the most pressing issues in criminal law. Let's pay attention to the qualification of the crime "Arbitrariness", which belongs to the category of crimes against the administrative order of the Criminal Code of the Republic of Uzbekistan. Arbitrariness, that is, the arbitrary exercise of real or imagined rights, is a crime that causes significant harm or serious damage to the rights or legally protected interests of citizens or to the interests of the state or society [3].

In particular, the structure of the crime of arbitrariness, the main direct object of the crime is the social relations that ensure the exercise of the rights of citizens in the manner prescribed by law. An additional direct object is the social relations that ensure the rights and legitimate interests of other citizens and legal entities, as well as the fulfillment of the obligations imposed on them. The objective aspect is expressed in the arbitrary exercise of the real or imaginary rights of citizens, which cause significant harm or serious damage to the rights or legally protected interests of the state or public interests.

The fact that a person has real or imagined rights in this crime is an inevitable sign of the act. According to M.H.Rustambaev, a real right is a right that belongs to a person under a law or other normative document, but is exercised in violation of the established procedure. Assumed right is a right that is considered legally relevant by the person but does not belong to them under the law [4].

One of the legal scholars, G.F.Polenov, understood a real right to be a right that legally belonged to the subject. He asserts that an assumed right is a right that does not in practice belong to the subject, but which he mistakenly considers to be his own, legitimate, and relied on. These ideas can be said to be well-founded [5, p. 115].

Determining the criminality of a socially dangerous act, that is, the means of criminalizing it, is only the content of the crime. The analysis of the content of the crime under investigation requires, first of all, to determine which social relations it harms. Indeed, the jurisprudence also requires, first of all, the definition of the scope of criminal protection of a particular relationship and the scope of the object of the crime committed. Otherwise, even if the factual aspect of the act is proved, the innocent may be convicted or the perpetrators of the crime in practice may be unjustifiably acquitted [6, p. 51]. An example of this is the figures given in the above Presidential Decree.

In the theory of criminal law, the object of a crime is understood as a social relationship [7, p. 18]. Social relationships are certain relationships that form between people in the process of life activities [2, p. 115]. Typically, social relations involve certain behaviors of subjects: active human actions and inactions that are prohibited or required by society. It can be said, therefore, that social relations under the protection of criminal law may be the object of a crime, as they are important to society rather than any social relationship. The scope of social relations protected by criminal law is variable and depends on the new relations that arise in society in the social, economic and political spheres. The criminalization of acts that harm the new social relations that have arisen and the inclusion of these social relations in the criminal law as the object of the crime is carried out by the legislature [8, p. 84].

The normal functioning of the state, government and administration, which is the object of the crime of arbitrariness, its essence, development has always been protected by criminal law. In the field of governance, social relations, which are regulated by legal norms, are carried out by the competent authorities [9]. Taking into account the place of Article 229 of the Criminal Code of the

Republic of Uzbekistan in the structure of the criminal law, it can be concluded that the damage is primarily in the interests of the state, in particular, in the sphere of state power acting as a special object of arbitrariness.

The object of the crime under investigation is the normal functioning of public authorities and administration, the rights and legitimate interests of the individual as an object of law and order, and the rights, freedoms and obligations to be exercised in good faith in the manner prescribed by law. The objective aspect of the crime consists of a number of features that characterize the actions of the perpetrator, the specific consequences and the causal link between them. In the case of arbitrariness, the perpetrator acts on his own, that is, without any authority granted by law. Such a procedure should be established by the Constitution, laws and other generally applicable legal acts of the Republic of Uzbekistan (Presidential Decrees, government decrees, decisions of public authorities and administration) [10].

The composition of the crime of the objective party is characterized by the arbitrary violation of the legally protected rights of individuals or legal entities. In some cases, arbitrariness may be related to other criminal acts, such as violence, bodily harm, destruction of someone's property, and the like. In this case, the accused must be charged both arbitrarily and as a cumulative offense under another relevant article of the Criminal Code [11]. For example, a district criminal court ruled that a group (relatives) beat their son-in-law as a result of a family quarrel, inflicted minor bodily injuries, and arbitrarily took a "Malibu luxury" car from his home, assuming he had "lived with my daughter." hides in the house of the person and causes material damage to the groom in the amount of 90 million soums. The court qualified the defendant's actions under Article 109 of the Criminal Code for bodily injury and Article 229 of the Criminal Code for arbitrary actions, and imposed a penalty for the total number of crimes.

According to V.P.Karlov and S.V.Dubovichenko, the peculiarity of this crime is as follows: regardless of the public (general) nature of the object of aggression, ie the public relations arising in the field of governance, the rights and legitimate interests of the person against whom the aggression is committed as the object of the offense between the offender and the victim are the direct object of the crime [12].

Although Article 229 of the current Criminal Code is part-time and covers the narrow range of actions provided for in the disposition, in practice the legislature ignores the fact that arbitrariness is dangerous for various states and societies, as well as harms the rights and interests of citizens. is coming. For example, arbitrariness is committed in a way that is not dangerous or life-threatening or dangerous to life, using mental or physical violence, or conspiracy to commit a crime by a group of individuals, or threatening to use a weapon or cold steel, or using the same weapon. Sometimes in the form of the "samosud" ("Self-Judging") which we often hear and witness. We believe that if each of these manifestations is included in the law as a separate qualification mark of arbitrariness, the actions of the culprit will be given a legitimate and fair assessment.

If we look at the positive theoretical and practical experience of developed countries, we can see that the above cases are reflected in the norms of law. For example, Latvian criminal law criminalizes severe forms of arbitrariness, characterized by the occurrence or repetition of an act by a group of persons, as well as the use of weapons or explosives, which in turn allows for aggravation of punishment.

Another important point is that the subject of the crime, according to Article 17 of the Criminal Code of the Republic of Uzbekistan, "shall bring to justice persons who have reached the age of sixteen before the commission of the crime." One of the general conditions for bringing a person to criminal responsibility is that he has reached the age of criminal responsibility established by law at the time of committing a socially dangerous act. The need to set a lower age limit for liability in criminal law is inextricably linked to the individual's ability to understand the

significance, essence and control of their actions, taking into account, first of all, physiology, general and youth psychology. In this regard, Abdurasulova believes that "the level of consciousness of a juvenile, their ability to understand what is happening and the ability to act consciously, serves to determine the age of criminal responsibility." [13]

From a subjective point of view, this crime is committed with straight or indirect intent. A person knows that he/she is exercising his/her real or imaginary right in violation of the established order, and he acts willingly or consciously allows it. The subject is a 16-year-old sane person. If an official acts arbitrarily using his official position, such an action is considered a violation of the authority or service and is qualified by Article 206 of the Criminal Code. While official crimes are committed only by officials in connection with a career, crimes against administrative order are mainly committed by non-officials [11].

The analysis of case law and theoretical views on the crime of arbitrariness allowed to develop the following proposals. In conclusion, from the above, the following issues remain open in the norm of the law: the use of mental or physical violence, which is dangerous to life and health, or the threat of such violence; committed repeatedly or by a group of persons with prior conspiracy; the use of a weapon or items that can be used as a cold weapon, as well as other serious consequences; as well as cases of arbitrary punishment of an individual. In order to fill this gap in the theory and practice of criminal law, we consider it appropriate to supplement Article 229 of the Criminal Code with the above-mentioned norms and amend it in the following wording.

In order to improve Article 229 of the Criminal Code of the Republic of Uzbekistan, it is necessary to fill in the following special qualifications.

Part 2 of Article. Those actions:

- Causes excessive damage;
- Committed with the use of mental or physical violence or threatening to use such violence, which is dangerous to life and health;
- Committed repeatedly or by a group of persons with prior conspiracy.

Section 3. Those actions:

Using a weapon or items that can be used as a cold weapon;

Causes other serious consequences.

Reforms aimed at liberalizing criminal law also require, among other things, the liberalization of liability for this crime. To this end, it is proposed to supplement Article 229 with the fourth part, based on the establishment of incentive criteria in the criminal law. If a person, after the commission of the crime, assisted in the discovery of the crime and remedied the consequences of the crime, compensated the damage, he shall not be sentenced to deprivation of liberty or imprisonment. In particular, in recent years there has been an increase in cases of arbitrary punishment of individuals and the display of this process on the Internet, so we believe that there is a need to introduce a new article in the criminal law "Arbitrary punishment."

It is proposed to supplement the Criminal Code of the Republic of Uzbekistan with Article 229<sup>7</sup>, Arbitrary Punishment.

***Article 229<sup>7</sup> Arbitrary punishment.***

Intimidation of a person who has committed or is suspected of committing a certain act with the purpose of arbitrarily punishing him by beating, physical or mental violence or use of force is punishable by a fine of up to fifty times the basic calculation amount or up to two hundred and forty hours of compulsory community service or up to one year of imprisonment.

Those actions:

- a) Repeatedly or by a group of persons;
- b) Committed with the use of mass media;

A fine of fifty to one hundred times the basic calculation amount or two hundred and forty to four hundred hours of compulsory community service or up to three years of restriction of liberty or up to three years of imprisonment.

The actions provided for in the first or second part of this article:

- a) With grave consequences, is punishable by up to 5 years of restriction of liberty or imprisonment.

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