Comparative-legal analysis of liability for torture in the criminal law of some foreign countries

Omonov Zafarjon Rakhmonalievich
Independent researcher of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan

Abstract: This article provides opinions on the features of torment human. The Criminal Code of the Republic of Uzbekistan provides for special cases of torture for “political, religious, racial, national and ideological purposes or for the purpose of hatred or hostility to any social group” provided for in the Criminal Code of the Russian Federation. eclipse would be expedient.

Key words: torture, beating, violence, mental violence, suffering.

Introduction: The study of the socio-criminological condition of the criminal law prohibition of torture has shown the importance of such a ban in Uzbekistan. Therefore, it is important to study the experience of foreign countries in the study of torture as a crime in the Criminal Code.

Legal-comparative method

An objective study of the specificity of the norms enshrined in Article 110 will allow identifying its pros and cons, ways to improve the criminal law, which determines liability. It would be expedient to study the criminal law of foreign countries in the field we are studying, including the legislation of CIS countries whose legislation for historical reasons is close to the legislation of our country. It must be acknowledged that criminal liability for torture is enshrined in the criminal law of all CIS countries. Criminal Code of the Republic of Azerbaijan, the Republic of Tajikistan, the Russian Federation Concepts close to Article 110 are given. However, in the legislation of these countries, in particular, Article 117 of the Criminal Code of the Russian Federation and Article 133 of the Criminal Code of the Republic of Azerbaijan, in contrast to Article 110 of the Criminal Code of the Republic of Uzbekistan, The disposition is expressed.

Article 117, paragraph 2, of the Criminal Code of the Russian Federation also recognizes aggravating circumstances such as torture “for political, religious, racial, national and ideological purposes or for the purpose of hatred or hostility to any social group.”

The Criminal Code of the Republic of Uzbekistan provides for special cases of torture for “political, religious, racial, national and ideological purposes or for the purpose of hatred or hostility to any social group” provided for in the Criminal Code of the Russian Federation. eclipse would be expedient.

At the same time, Article 133, Part 3 of the Criminal Code of the Republic of Azerbaijan provides for liability for the commission of the crime of torture specified in paragraphs 1 and 2 of the article by an official or abuse of office¹.
The Criminal Code of the Republic of Azerbaijan also provides for liability for the commission of the crime of torture by an organized group, a criminal organization.

In this regard, it would be appropriate for the criminal law of the Republic of Uzbekistan to provide for special liability for crimes of torture committed by an official or in the abuse of office.

The criminal law of the Republic of Tajikistan also stipulates liability for torture in Article 117 of the Criminal Code of the Russian Federation. In the Criminal Code of the Republic of Tajikistan, as in the Criminal Code of the Republic of Uzbekistan, there is a phrase “torture by other actions or cruelty.”

In our opinion, it is preferable to have phrases such as “torture with other actions” or “other actions of a torturous nature” because torture involves more cases.

According to the Criminal Code of the Republic of Tajikistan, “cruel torture” is an aggravating circumstance, but the reason for such a decision remains open. This is because torture itself is “the constant beating and other (torture or rape) acts that cause physical or mental suffering” and is nothing but cruelty. In our opinion, the presence of such qualifications in the criminal law of the Republic of Tajikistan is a legal redundancy that complicates law enforcement activities.

The Criminal Code of the Republic of Belarus, the Criminal Code of Ukraine, the Criminal Code of the Republic of Moldova and the Criminal Code of the Republic of Latvia have a different approach to the criminalization of torture, which differs from the above.

Article 153 of the Criminal Code of the Republic of Belarus establishes liability for the crime of “torture”. According to the disposition of Part 1 of Article 153, torture is intentional infliction of continuous pain and suffering or continuous beating by means that do not intentionally cause serious or moderate bodily injury, but cause special physical and mental suffering to the victim.

The common feature of this norm with the norm enshrined in Article 110 of the Criminal Code of the Republic of Uzbekistan is that such a crime is not recognized as torture if it results in grievous or very grievous bodily harm as a result of an intentional act. A similar general aspect exists in the CC of the Russian Federation. In other respects, differences are observed.

The criminal law of the Republic of Belarus contains norms directly indicating the intentional use of torture, although the legislation of our country does not contain such a direct norm indicating the intentional use of torture, but provides that torture is committed only intentionally. In the Criminal Code of the Republic of Uzbekistan, torture is characterized by continuous beatings and other acts of torture, while in the Criminal Code of the Republic of Belarus, it is manifested in the use of methods that lead to physical and mental suffering of the victim. The criminal law of the Republic of Uzbekistan also does not define such concepts as physical and mental suffering, but it is studied as a consequence of the act. Also, in the criminal law of the Republic of Belarus, the presence of physical and mental suffering is recognized as a necessary sign of the objective side of the crime. This, according to the criminal law theory of torture in the criminal law of the Republic of Belarus, emphasizes the crime...
of torture as a material crime. In the theory of criminal law of the Republic of Uzbekistan, the crime of torture is considered to be completed from the moment of continuous torture with beatings or other actions. This, according to the theory of criminal law of the Republic of Uzbekistan, shows the crime of torture as a formal crime. As a result, the criminal law of the Republic of Belarus is the source of constant suffering and pain. In our opinion, there is no big difference between “physical and mental suffering” and “continuous suffering and pain”.

According to the Criminal Code of the Republic of Belarus, aggravating circumstances in the qualification for torture are not as numerous as in the Criminal Code of the Republic of Uzbekistan and are almost identical and different from the criminal laws of the Russian Federation, Tajikistan and Azerbaijan. In relation to a person, in respect of a person whose helplessness is obvious to the perpetrator or in dependence.

The criminal law of the Russian Federation, on the other hand, provides for more such aggravating circumstances and “applies to two or more persons; in relation to a person performing his official duties and public duty or to a close relative” as an aggravating circumstance.

Summarizing the above, it can be said that despite such differences in the formation of legal norms aimed at the criminal prohibition of torture, the idea is similar in practice. Only in the legislation of some countries, including the Russian Federation, the criminal law of the Republic of Tajikistan has a greater number of aggravating circumstances, and in our opinion, this is appropriate. Ukrainian law, on the other hand, treats it differently, and liability for beatings and torture is set out in a single criminal law. Article 126 (1) of the Criminal Code of Ukraine is entitled “Beating and torture” and provides for liability for “intentional beating, beating or violent acts that do not cause physical torture or bodily harm”. Part 2 of the same article strengthens the liability for “those acts committed in the nature of torture, by a group of persons or for the purpose of intimidating the victim or his close relatives.”

This situation is almost identical to Article 93 of the Criminal Code of the Uzbek SSR of 1959, entitled “Beating and Torture.”

In our opinion, it is inappropriate to use torture in Ukrainian criminal law as an aggravating circumstance for “beating and beating” crimes. Because, as we mentioned above, “torture” is an independent crime with a separate content, and torture is already manifested through constant beatings and beatings. From this we can conclude that beatings cannot be torture in nature, but torture in itself represents continuous beatings and beatings, as well as other acts of a violent nature.

If, according to Article 110 of the Criminal Code of the Republic of Uzbekistan, torture is committed through continuous beatings, beatings and other acts of a violent nature, according to Ukrainian law, such acts are not required to be committed continuously. Consecutive beatings are assessed under Ukrainian law as two or more repetitions of the same act. It is generally understood to have occurred three or more times in order to be recognized as having occurred continuously.

At the same time, it is unclear what is meant by Ukrainian law through the term “torture” in the classification of the crime of torture. The criminal law of the
Republic of Uzbekistan stipulates that torture is committed through constant beatings. We can admit that the criminal law of the Russian Federation is more expedient, indicating that the consequences of such an act will be “physical or mental” suffering.

In addition, the composition of the crime of torture in the Criminal Code of Ukraine differs from the Criminal Code of the Republic of Uzbekistan, the Criminal Code of the Russian Federation, the Criminal Code of the Republic of Belarus in that the criminal law of Ukraine does not require bodily harm.

Another difference in the qualification of torture in the Criminal Code of Ukraine is the issuance of signs “by a group of persons” and “in order to intimidate the victim or his close relatives”. The Criminal Code of the Republic of Uzbekistan does not have these signs. In the criminal laws of the Russian Federation and the Republic of Belarus, these signs are defined as an aggravating circumstance.

There is no separate article in the Criminal Code of the Republic of Latvia establishing liability for torture. However, Article 130 of the Criminal Code of the Republic of Latvia, entitled “Intentional infliction of minor bodily harm”, provides for liability for “continuous beating or other torture of a torture nature unless it results in severe or moderate bodily injury”.9

It is clear that the norms defining liability for torture in Latvian law are shaped by evaluation criteria. As we describe the crime of torture under the Criminal Code of the Republic of Latvia, this act is committed through continuous beatings or other acts of a torture nature. Also, in order for an act to be qualified as torture, it must not result in grievous bodily or moderate bodily injury as is customary for the norms establishing liability for torture, otherwise it will be qualified along with other more serious crimes against health. The criminal legislation of the Republic of Latvia does not provide for qualification marks consisting of aggravating circumstances.

There is no separate article on torture in the Criminal Code of the Republic of Moldova, as well as in the Criminal Code of Ukraine and the Criminal Code of the Republic of Latvia. In addition, there are no norms in the criminal law of the Republic of Moldova that directly prohibit torture. Liability for such an act arises under Article 154 of the Criminal Code, which prohibits “intentional beating or other acts of a violent nature that do not lead to the consequences specified in Articles 151-153 of the Criminal Code.”

Intentional grievous bodily harm or other grievous bodily harm (Article 151), intentional grievous bodily harm or other moderate grievous bodily harm (Article 152) and intentional grievous bodily harm or other minor harm to health liability for crimes such as delivery (Article 153)10.

Article 154 of the Criminal Code of the Republic of Moldova and Article 110 of the Criminal Code of the Republic of Uzbekistan are connected by two conditions. First, in the criminal law of both countries, the crime of torture is committed as a result of torture through beatings and other acts. However, the criminal law of the Republic of Moldova, like the Criminal Code of the Republic of Uzbekistan and the Criminal Code of the Republic of Ukraine, does not require regular beatings. Second, in the Criminal Code of the Republic of Uzbekistan, liability for a crime interpreted as the criminal law of the Republic of Moldova arises only if no serious or moderate
bodily injury was inflicted. However, Article 154 of the Criminal Code of the Republic of Moldova, as well as Article 126 of the Criminal Code of Ukraine, excludes the possibility of criminal liability for the crime of torture if the act causes minor bodily injury. This situation leads to some misunderstandings, i.e., according to the criminal law of the Republic of Moldova, if torture caused minor bodily injury (minor damage to health), such an act is not covered by Article 154, but by Article 153 (intentional minor bodily injury or other minor damage to health). At the same time, part 1 of Article 154 may be punishable by up to three years of imprisonment, and Article 153 may be punishable by up to one year of imprisonment. We can see similar contradictions in our analysis in the Ukrainian Central Committee.

Part 2 of Article 154 of the Criminal Code of the Republic of Moldova has a number of qualification marks. Among them are similar to Article 110 of the Criminal Code of the Republic of Uzbekistan, but there are cases not provided for in the criminal law of the Republic of Uzbekistan. These include “in relation to a husband (wife) or close relative”, “using special means of torture”, etc.

As for the qualification of torture committed under Article 154 of the Criminal Code of the Republic of Moldova “in relation to a spouse or close relative”, as noted above, in most cases, crimes against health, including torture, result from domestic, domestic disputes, and in this connection, the existence of such a qualification mark leads to the qualification of multiple torture offenses under Part 2 of Article 154 of the Criminal Code of the Republic of Moldova, which leads to a number of misunderstandings. This contradicts the well-known rule in the formation of the qualification structure of the crime: “Circumstances recognized as a sign of qualification should not be the norm for many crimes with a basic content.”

Thus, the analysis of the criminal legislation of the CIS countries showed that torture is recognized as a crime in all the CCs studied. Despite the different formulations of criminal law, some general aspects can be identified:

1) torture is characterized by constant beatings or other acts of a violent nature;
2) such an act, as a rule, causes physical or mental (mental) suffering;
3) not to inflict severe or moderate bodily injury, and in some countries even minor injuries in the Criminal Code is a mandatory feature of torture.

The issue of criminal liability for torture in the criminal law of other foreign countries is more diverse. Based on the study of the criminal law of such countries and the criminal prohibition and approach to torture, we can divide the criminal codes of foreign countries into three groups:

1) CCs establishing liability for torture as a separate independent crime;
2) torture is considered in the context of crimes such as infliction of harm to health, and this group of CCs is characterized by special norms for the acts committed against certain victims in CCs;
3) CCs where torture is assessed as harm to health.

The first group includes the JC of Austria, Denmark, Thailand, Spain and France.
According to § 83 § 2 of the Austrian Penal Code, if an act committed by a person “causes cruelty (torture) to the physical integrity of another person and consequently causes bodily injury or damage to health as a result of negligence”, such an act is punishable. In addition, § 83 of the Austrian Criminal Code Under Section 3, a person “who has committed an independent crime three times without any justification and with the use of force” shall also be prosecuted. The substances analyzed include torture. In doing so, the former regulates liability for torture causing bodily or health injury, while the latter does not require any consequences for liability, only the presence of three or more episodes of substantial violence. In our opinion, “three or more” referred to in § 83 § 3 of the Austrian Criminal Code is synonymous with the concept of “continuity” in Article 110 of the Criminal Code of the Republic of Uzbekistan.

§ 92 of the Austrian Criminal Code establishes special liability for torture of minors and minors or persons with disabilities. Under this article, a person who has committed the crime of “torture under his or her care or guardianship and who has not reached the age of eighteen or who has caused physical or mental suffering to another person in a state of incapacity, illness or mental incapacity” shall be prosecuted. This norm emphasizes physical and mental suffering, but says nothing about the method of origin.

In our opinion, § 245 of the Danish Criminal Code also shows signs of the crime of torture. This provision provides for the liability of a person who has committed an “attack which is relatively sad or cruel, or which is dangerous or cruel in nature.”

The crime of “torture or cruel bodily harm” under Article 296 of the Criminal Code of Thailand should also be considered as torture.

The Spanish CC does not have the same article as Article 110 of the CC of the Republic of Uzbekistan, but this CC contains an article that corresponds to Article 110 of the CC of the Republic of Uzbekistan. Section VII of the Spanish Criminal Code, entitled “Torture and Other Crimes against the Integrity of the Mind,” contains Article 173, which establishes liability for “seriously degrading treatment of a person.” Article 174 of the same section provides for liability for torture committed by an official.

However, in the above cases, liability for bodily injury is determined by Article 177 of the Spanish Criminal Code. Article 153 of the Spanish Penal Code provides for “continuous physical violence against a spouse or a person in a relationship, such as living a permanent life, or against his or her children living together, in custody or incapacitated, or the children of a spouse or partner”. provided for special liability for. It can be seen that this norm has a number of commonalities with § 92 of the Austrian JC. Torture with other symptoms is qualified according to the Spanish Criminal Code with substances that cause liability for bodily injury.

A similar approach to accountability for torture can be observed in the French CC as well. France regulates § 1 “Torture and ill-treatment” of Chapter I, “Intentional violation of the inviolability of the person”, Chapter I, “Intentional violation of the inviolability of the person”. This paragraph provides for a criminal prohibition
against ill-treatment and torture. The perpetration of such acts against minors, persons under the age of fifteen, or against persons who appear to be weak or pregnant due to age, illness, disability, physical or mental disability, or who are known to be guilty, is punishable under the French Criminal Code. is a qualification mark.

§ 2 of this section provides for liability for acts committed by force. In this case, a separate article 22214 of the French Criminal Code provides for liability for acts of violence against the “vulnerable persons” listed above.19

It should be noted that the legislation of France and Spain strengthens the responsibility for physical and mental aggression in a separate group of norms. We know that the JK of the Republic of Uzbekistan

Article 110 does not distinguish between physical and mental suffering in general.

The second group of CCs deals with the crime of torture in the context of crimes such as infliction of harm to health, and this group of CCs is qualified by special norms for acts committed against specific victims (GFR CC, Swiss CC).

§ 225 of the GFR CC, the guardians were under the age of eighteen, as well as in their own care or guardianship in a helpless state due to illness or physical disability; who was a family member of the accused; who is financially dependent on the accused or has been placed in his custody; torture or ill-treatment of persons addicted to the offense in the course of service or in a business relationship shall be recognized as a crime and criminal liability shall be imposed on persons who have committed such a crime.20 Other acts of torture are qualified by the articles of the Criminal Code of the Federal Republic of Germany on bodily harm.21

We can see an analogous situation in Article 126 of the Swiss Criminal Code, which establishes criminal liability for a similar crime of torture.22

The third group includes CCs where torture is not considered as a separate independent article and is assessed as harm to health (CCs of Sweden, Japan, Turkey and the Criminal Code of Israel). The crime of torture is a sign of “aggression” (Swedish Criminal Code, Part II, Part 3, Article 5),23 Sign of “violence” (Article 208 of the Criminal Code of Japan)24, “Beating” (Article 456 of the Criminal Code of Turkey),25 “Injury” or “aggression” (Articles 334, 378-382 of the Israeli Criminal Code).26

Thus, studying the experience of foreign countries in establishing responsibility for torture, we can draw the following main conclusions:

1. Although approaches vary considerably, in most countries the responsibility for torture is precisely determined by criminal law.

2. In most CIS member states, the criminal law governing liability for torture is an independent norm and has a common feature (continuous and other acts of torture) under Article 110 of the Criminal Code of the Republic of Uzbekistan.

3. The study of the norms of criminal liability for torture in distant foreign countries, as we have analyzed above, leads to the division of foreign criminal law into three groups: 1) a separate independent crime for torture; 2) criminal law, which considers the act of torture against certain victims to be qualified by special norms.
and considered in the framework of crimes such as damage to health; 3) criminal law norms that assess torture as harm to health.
References