

LEGAL SIGNIFICANCE OF THE STATE OF PHYSIOLOGICAL AFFECT IN THE REPUBLIC OF UZBEKISTAN

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Abstract. *This article discusses issues related to the legal significance of the state of physiological affect in the Republic of Uzbekistan. The criteria for expert assessment of this condition are considered, taking into account the actions of the subject of the study.*

Keywords: *physiological affect, physical violence, mental violence, threat, grave insult, law.*

It is known that the main task of a forensic psychological examination to determine the emotional state of the subject is the diagnosis of physiological affect. The basis of the expert assessment is the analysis of the conflict situation, personal characteristics, individual qualities of the subject and the psychophysiological state at the time of the affective reaction, the subject's behavior during the period before and after the act.

For the occurrence of affect, a sufficient reason is the personal significance of the traumatic factor for the subject. This factor is due to frustration in the hierarchy of human needs. These are biological, instinctive, social needs and values of the "I". If it is impossible to satisfy them within the limits of the social norm, the subject is forced to switch to an "emergency" method of resolving a conflict situation [1]. Such reactions easily arise in a person in circumstances that pose a threat to their life, health, or social status; for honor, dignity, self-esteem or with insults towards close and significant others. This could be: children, family members and loved ones. It is these circumstances that are understood by law as "violence", "serious insult" or "other illegal actions" aimed at the perpetrator or his relatives. These circumstances are considered factors that provoke the subject to respond, "affectively" react.

In the criminal legislation of the Republic of Uzbekistan there are ideas regarding the category of violent influences in circumstances where the "personal" factor is of particular importance. The set of circumstances that are provoking (affectogenic) includes:

- 1) violence;
- 2) grave insult;
- 3) other illegal actions.

According to M.Kh. Rustambaev, violence used by the victim against the perpetrator can be either physical or mental. By physical violence, the author understands "inflicting any degree of severity of bodily harm on a person, beatings, using physical force against him, torture, killing relatives, close people, committing violent acts of a sexual nature, etc." [2].

According to our research position, the noted circumstances have a combination of factors ("murder of relatives, close persons, committing violent acts of a sexual nature, etc.") [2], which also includes a factor of a psychological nature, namely, the "passing" factor reactions", related to the infliction of fatal injuries caused by the infliction of insults (moral and physical) to close

people, which include blood relatives. In this case, we are talking, in our opinion, about “displaced affect.”

In our opinion, when committing an affective tort, the so-called “displaced affect” may occur, when the victims are not the perpetrators of the conflict, but persons remotely associated with them. The difficulty of expert assessment of “displaced affect” is associated with the impossibility of establishing a direct connection between the unlawful actions of the accused and the previous negatively colored experiences of the victim. And this circumstance is related to an affective tort provoked by the behavior of the accused, whose actions were directed against the physical and social integrity of a person who occupies a certain place in the value orientations of the person who committed a crime against human life and health.

To “mental violence” (according to the legislation of the Republic of Uzbekistan) as a threat of physical violence against a person or his loved ones, with destruction or damage to property, disclosure of information that a person would like to keep secret, etc., i.e. the threat of causing moral, physical or property harm, in this case, according to our concept, circumstances of the following significance include, namely:

- 1) threat, as a factor of psychological pressure that confuses the stable personal values of the respondent (accused);
- 2) threat, as a factor that removes a person under moral pressure from a stable state;
- 3) a threat that creates an obstacle (frustration) to the implementation of the social and value guidelines of the person acting as the accused.

According to M.Kh. Rustambaev, it should be noted “that violence emanating from the victim and causing a state of physiological affect in the perpetrator must be unlawful. Otherwise, a state of strong emotional excitement and the commission of murder on its basis cannot be considered a mitigating circumstance. For example, a police officer, without violating the law, takes measures to detain a violator of public order, and the latter, in a state of passion, kills him.

Based on this, it should be noted that the use of violence by a representative of the authorities or the public in the presence of grounds provided for by law and in the manner prescribed by law cannot be the basis for retaliatory actions that cause death; such actions cannot be qualified under Art. 98 of the Criminal Code, and in the presence of certain signs should entail liability for the perpetrator under the relevant part of Art. 97 of the Criminal Code.”

In our opinion, the above-mentioned provision has no legislative basis, since if a crime is committed in a state of physiological affect, then the personality of the victim provoked it, and it does not matter in principle what professional affiliation the victim, who is the source of the provoked analyzed criminal tort, belongs to.

As for “serious insult as a circumstance capable of causing a state of strong emotional disturbance, representing a gross humiliation of the honor and dignity of the guilty person, deeply traumatizing his psyche,” this context relates to both the humiliation of the moral and personal, socially significant dignity of the accused, value whose orientations were devalued and brought into mutually exclusive positions.

According to M.Kh. Rustambaeva, “a grave insult is an evaluative concept, and any offensive words or facts cannot be recognized as a grave insult. As noted by M.M.Kochenov, “violence or insults on the part of the victim should not be understood too straightforwardly” [3]. This situation depends on the personality characteristics of the accused and can be perceived by the accused differently, depending on his condition, mood, and motivational sphere.

In our opinion, the factor of subjective severity of the insult inflicted by the victim on the accused is of fundamental importance and is diagnosed by forensic psychological research in the content of which both the personal characteristics of the accused and the characteristics of the conflict situation in the context of which the criminal tort occurred are revealed.

In the legislation, “other unlawful actions of the victim, which can also cause the perpetrator to develop a state of strong emotional disturbance, should be understood as such actions that cannot be recognized as either violence or insult and at the same time are characterized by a gross violation of the rights and legitimate interests of the perpetrator or his loved ones (for example, slander, arbitrariness, infection with a sexually transmitted disease, failure to provide assistance to a patient, etc.)” [1]. In our many years of expert practice, we have not encountered such cases that would involve “other illegal acts.”

In psychology, there is a certain opinion about physiological affect, the main tendency of which is an acute conflict situation. A person in this affectogenic situation feels the need to find a suitable way to “get out” of the current situation. But when an individual cannot find and practically implement an adequate solution, he finds himself between the objective need to act and the subjective impossibility of finding the right way out. In this situation, a person falls into the power of “affect”. Naturally, if a person sees an adequate solution to an acute conflict situation, then affect does not occur.

Despite the fact that a conflict situation with the likelihood of physiological affect is the main criterion, its presence cannot be considered sufficient for the occurrence of affect. Here, an important role is played by the individual psychological characteristics of the individual, the frustration state of the subject at the time and before the commission of the crime. And then comes “relief” due to the removal of the “obstacle”, liberation from “pressure”, elimination of the conflict situation, which is accompanied by depletion of energy resources up to lethargy, extreme fatigue, and weakness of emotional reactions. The concept of individual characteristics also includes the constant type of higher nervous activity of the subject of research [4].

As noted in modern psychological literature, physiological affect has specific dynamics. It would be a mistake to assume that affect always occurs at the first exposure to a stimulus [5]. In psychological practice, conditions are often encountered as the cause that prepares an affective explosion.

In the legislation of the Republic of Uzbekistan, there is also one of the criteria for the dynamics of physiological affect as “suddenness”. “Suddenness of affect is its physiological feature, when a calm state of a person’s psyche turns into an emotional outburst, explosion, in response to unlawful violence or serious insult, or other unlawful actions of the victim. According to M.Kh.Rustambaev, “the sign of surprise cannot be understood narrowly.”

According to theoretical principles, as well as the results of our practical experience, the concept of “suddenness” has a subjective, psychologically justified meaning for a person who committed a crime in a special emotional state. Investigative authorities often have conflicting interpretations of this very factor of surprise. In our opinion, the study of this factor is intended for expert psychologists who determine the qualitative, subjective significance of the experience of this very “suddenness”.

According to the ideas of M.Kh.Rustambaev, “in most cases, the culprit in a state of strong emotional excitement immediately realizes it, i.e. commits any actions leading to the death of the victim.” Therefore, the murder in question can only be committed through active action. A sudden

and rapidly developing affect always needs a release, and it finds it in actions. There should be practically no gap in time between the occurrence of physiological affect and its implementation. However, at the same time, cases where the death of the victim is caused after some time has passed since the commission of the unlawful act, but this state was provoked by the previous behavior of the victim, should be considered murder committed in a state of strong emotional excitement. For example, the perpetrator raped a woman and fled. She told her husband about everything, he ran to the scene of the crime, but did not find the criminal. After a certain time, the wife, accidentally seeing the rapist on the street, pointed him out to her husband, because of this, the latter experienced a state of strong emotional disturbance, and at that moment he killed the rapist” [1].

One cannot but agree with the author’s theoretical provisions regarding the criteria necessary to ascertain the state of physiological affect in the subject of a crime. However, the example given by the author from the practice of criminal offenses raises the possibility of its critical rethinking. The case of the murder of the wife's rapist can be attributed to the state of strong emotional disturbance in which the husband of the raped woman was. But the dynamics of the emotional state in which the accused was found does not correspond to the dynamics of the mechanisms of the state of physiological affect in its objective meaning. Our practical experience and theoretical knowledge allow us to define the emotional state of the subject as a “state of frustration,” which also relates to the limitation of emotional self-control in traumatic circumstances.

According to L.M.Balabanova, the above-mentioned state refers to a “transient” state that causes “a drop in the level of activity and orientation in socially significant circumstances” [6]. At the same time, L.M.Balabanova does not reveal the essence of the legal significance of this condition of the subject who committed a violent crime. “A drop in the level of activity and orientation in socially significant circumstances,” in our opinion, is characteristic of psychopathic individuals, the aggressiveness of whose manifestation does not correspond to the quality of the influencing circumstances. Based on our research position, the author of this concept (Balabanova) replaces the concept of “psychopathic reaction” with the concept of “reaction to traumatic circumstances that exceed the limits of the adaptive capabilities of the subject of the response.” And in this case, there are contradictions that introduce uncertainty into the true meaning of legally significant emotional states.

So, affect is one of the types of emotional states that suddenly arise during strong emotional disturbance, manifested in an acute reaction to psycho-emotional stress. Many authors, in accordance with their theoretical positions, pointed to a sufficient variety of external and internal manifestations of affect (E.K. Krashnushkin 1928, G.K.Ushakov 1978, V.A.Gilyarovskiy 1946). These authors paid attention to either the predominance of emotional disorders, or impairments of consciousness, or motor impairments [6].

According to N.E.Bachernikova, “in a state of physiological affect, males committed suicide attempts in 86% of cases, and aggressive acts in 14%” [6]. The author of this position also attracts our attention with the statement that after affective release (committing a crime in a state of physiological affect), “already in the first hours, patients give a full account of what happened, retaining a critical assessment in memory, showing a feeling of remorse.” When examining these patients, the author observed “neither psychopathological nor somatoneurological symptoms due to the emotional stress suffered.”

Probably, the author's theoretical positions are related to some other emotional state, but from our point of view, not defined in the concepts of "physiological affect". At the same time, the predominant "suicidal" component in the phenomenology of affect in N.E.Bachernikova reflects our categorical position of disagreement, since "suicidology" in human manifestations has a fundamentally different direction and theoretical basis for study.

Practice shows that the repetition of traumatic situations causes the accumulation of negative experiences (accumulation), which subsequently results in "affective explosions." It is precisely these affective states that have necessitated the development of forms of educational measures and methods of therapeutic treatment, eliminating the likelihood of an affective explosion, i.e. their "sewer". In this context, our attention is focused on the psychological analysis of the illegal actions of the accused. In expert practice, there are often cases where the subject's affective reaction occurs after repeated repeated violent or offensive acts on the part of the victim. This state in forensic psychology is described as affect that occurs through the "last straw" mechanism and is considered as "cumulative affect" [7, 8].

In the end, it should be noted that when considering this issue, it is necessary to take into account the mentality, ethnoculture, social, everyday and religious characteristics of the contingent. As a result, we come to the conclusion that without begging other forms and methods of research (as additional confirmation of the proposed hypothesis) of physiological affect, the most accurate, scientific approach to characterization and diagnosis in revealing the essence of the manifestation of an aggressive emotional state is purely psychological methods and methods of disclosure causes and consequences of affective tort. When determining physiological affect, it is necessary to take into account individual personal characteristics and the gradational nature of the course of affect. This research method makes it possible to see a certain structure at each stage of a criminal reaction in an affective state and scientifically substantiate the cause and effect of physiological affect.

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