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Some questions of qualification of taking to suicide

This scientific article is a systematic research about the questions related to criminal responsibility for incitement to suicide according to the legislation of Republic of Kazakhstan; problems of the technically-juridical constructing of criminal-law norms about responsibility for a crime ponderable the article 105 of Criminal Code of Republic of Kazakhstan; qualifications publicly of the dangerous acts accomplished in form incitement to suicide, on objective and subjective signs.

Key words: human's life, incitement to suicide, the objective side, object, the subjective side, subject.

Избасова А.Б., Жаманкенова А.Ж.

Өзін-өзі өлтіруге дейін жеткізудің саралауының кейбір сұрақтары

Бұл ғылыми мақала Қазақстан Республикасының заңнамасы бойымен өзін-өзі өлтіруге дейін жеткізуі үшін қылмыстық жауапкершілік туралы сұрақтардың, Қазақстан Республикасының Қылмыстық Кодексінің 105-ші бабымен ескерілген қылмыстың жауапкершілігі туралы қылмыстық-құқықтық нормативтердің техникалық заңды құрастырудың сұрақтарының, объективті және субъективтік белгілерге сүйініп, өзін-өзі өлтіруге дейін жеткізудің жасалған қоғамдық қауіпті әрекеттерін саралаудың жүйелі зерттеуі болып табылады.

Түйін сөздер: адам өмірі, өзін-өзі өлтіруге дейін жеткізу, объективті жағы, объектісі, субъективті жағы, субъектісі.

Избасова А.Б., Жаманкенова А.Ж.

Некоторые вопросы квалификации доведения до самоубийства

Данная научная статья представляет собой системное исследование вопросов, связанных с уголовной ответственностью за доведение до самоубийства по законодательству Республики Казахстан; проблем технико-юридического конструирования уголовно-правовых норм об ответственности за преступление, предусмотренное статьей 105 Уголовного Кодекса Республики Казахстан; квалификации общественно опасных деяний, совершенных в форме доведения до самоубийства, по объективным и субъективным признакам.

Ключевые слова: жизнь человека, доведение до самоубийства, объективная сторона, объект, субъективная сторона, субъект.

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SOME QUESTIONS OF QUALIFICATION OF TAKING TO SUICIDE

Suicide. This word in consciousness of each of us is associated with something very terrible, dangerous, deadly. This social, psychological and legal phenomenon which is very dangerous not only to the person, a family and society. It is dangerous to the country, to all mankind. And every year the problem of a suicide becomes even more actual. Annually the quantity of suicides increases, and the most terrible is an increase in quantity of a children's and teenage suicide. According to World Health Organization, Kazakhstan occupies one of leading places in the world by their quantity. Despite it, the suicide problem in our country remains in the shadow, behind the existing social, economic and other problems.

According to article 1 of the Constitution of the Republic of Kazakhstan man, his life, rights and freedoms are the supreme value, and the recognition, observance and protection of the rights and freedoms of man and citizen - the duty of the state [1]. Bringing a person to commit suicide or to attempt at suicide by threats, cruel treatment or systematic humiliation of the victim - a criminal offense under article 105 of the Criminal Code of the Republic of Kazakhstan represents a significant danger to the public [2, p.50]. It is characterized not only in that it is an affront to the natural human right - the right to life, and exceptional cynicism, deceit, immorality, and against the humanistic principles in relationships between people.

If a man deprives himself of life under the influence of others, it forms a kind of the offense, where the direct object of a person's life. Talking about such a versatile and ambiguous social phenomenon as suicide and as a consequence - of incitement to suicide is impossible without a clear understanding of its nature and unambiguous definition. Today, at the legislative level, there is no fixed rule of law definition of suicide. It follows the natural question - how to apply the law, in which the term has the primary meaning? As a general rule today uses the definition recognized in sociology and psychology. Suicide, suicide (from the latin. *suicaedere* - kill themselves) - purposeful, deliberate deprivation of life itself, as a rule, voluntary (although there are also cases of forced suicide) and independent (in some cases by using other people's) [3, p. 11-12].

Suicide itself is not related to the problems of criminal law. However, incitement to suicide is a socially dangerous act, violated one of the fundamental human rights - the right to life [4, p.40]. That is why the investigation led to a suicide Code of Criminal Procedure refers to the exclusive competence of the prosecution. Investigators are required if there is evidence of suicide to check the version of incitement to suicide. The offense under article 105 of the Criminal Code is latent, to reveal such a crime can only be conducting a thorough job on the spot immediately after the body was discovered, interviewing relatives, friends and others who know anything about the circumstances of the suicide and the motives of suicide, as well as collecting material for characterizing the person who committed suicide. This crime is atypical, which is expressed in the fact that the consequences occur as a direct result of the actions of the victim who is forced to commit suicide guilty [3, p.12].

For the sound of criminal responsibility and the right qualifications careful analysis of each feature of the offense and on the basis of aggregate dispositions relevant provision of the Criminal Code and the test action. It should be recalled that the object of the crime provided by Article 105 of the Criminal Code, is the life of another person [5, p. 27]. The distinctive features of the object crime - incitement to suicide: the object of attacks is not all life, and life only mentally healthy person, able at least to control his actions.

Actus reus is expressed predominantly in the active actions to bring the person to commit suicide or to assassinate him. According to the dispositions of Article 105 of the Criminal Code, a prerequisite for responsibility for incitement to suicide is the presence of threats, systematic humiliation of human dignity, the facts of abuse, harassment or bullying perpetrator over the victim, the causal link between the actions of the perpetrator and the victim committing suicide. Therefore, methods of incitement to suicide can be categorized as follows: a) threats b) abuse; c) systematic violations of human dignity. If it is established that the victim was financially or otherwise dependent on the perpetrator, the act must be qualified under Part 2 of Article 105 of the Criminal Code [6].

In our opinion, the crime can be committed and omissions, such failure to provide food, clothing, housing, a person who is required by law to take care of the victim.

Threatened to be understood psychological impact on the victim, was an incitement to suicide (for example, the threat to deprive the housing, financial assistance, livelihood, physical threats and disseminating defamatory information, and others.).

Child abuse is a ruthless, rude behavior, causing the victim physical, mental suffering (beatings, torture, forced meaningless work, denial of food, medical care, bullying etc.). It is important to establish that the ill-treatment of victims is not an isolated and random, but is a system of targeted, continue to act so guilty,

can hardly be considered conclusive opinion that a single case of abuse gives grounds for bringing a person to criminal liability for the offense.

Systematic violations of human dignity - is a manifestation of a long humiliating treatment of victims. It is expressed in the repeated commission of similar actions: insult, mockery, slander, persecution, unjustified criticism, and others. At the same time the offense of incitement to suicide is possible only in cases of systematic humiliation single case of abuse does not form part of the crime. These ways of bringing a person to commit suicide are often combined [4, p. 41].

As stated above, a mandatory feature of the *corpus delicti* is a causal link between the fact of suicide (attempt) and the guilty act, that is it must be established that it was unlawful actions (inaction) of a person that served as the immediate cause, which pushed the victim to commit suicide. If the victim had committed suicide for reasons other than criminal responsibility under Article 105 of the Criminal Code is excluded. Thus, the legality of the deprivation of liberty of the offender, or the rejection of the marriage that caused the suicide of the victim, does not constitute the crime in question.

Actions qualify guilty under article 105 of the Criminal Code not only if the victim committed suicide, but when there has been an attempt to commit suicide (attempt to commit suicide). And you want to establish that this attempt was real, and not with the purpose to scare anyone or to achieve its goals. Thus, the composition of this species is a formal offense.

For the prosecution of this article of the Criminal Code it is necessary to establish that the victim, depriving themselves of life, acted intentionally. If he caused himself death by negligence, the composition of the crime will not. It is also necessary to establish that the perpetrator did not commit actions that may cause the death of the victim. For example, if the victim to escape from rape, jumped out of a third floor window and broke, the perpetrator should be involved for the attempted rape resulting in the death of the victim (if it is established that she was not going to commit suicide and wanted to escape the persecution of the guilty).

The most interesting is the position of the subject and the subjective side of incitement to suicide. The subject - physical sane person who has reached the age of 16, and the person on whom the victim was on a business, financial or other dependence, as well as any other person. If driving to suicide committed by an official, his actions qualify as an aggregate of crimes provided by article 105 and part 4 of article 362 of the Criminal Code (abuse of authority entailed to heavy consequences) [4, p.43]. The subjective aspect of incitement to suicide is a lively debate in the theory of criminal law. Many authors proceed from the fact that the fault in the commission of this crime is most often characterized by negligence, or at least indirect intent. Direct intention, therefore, makes the deed of murder. For example, S.V. Borodin, V.N. Kudryavtsev, A.V. Naumov, B.V. Zdravomyslov believe that the subjective aspect of this crime is characterized by

indirect intent. If a person with direct intent carries the victim to suicide, such activities should be regarded as murder. It is in fact nothing but a method of deprivation of life is not different from applying a mortal wound, poisoning, and so on.

There are cases when the act outwardly similar to the incitement to suicide, is actually a murder. For example, a person commits suicide or attempts to him as a result of physical and (or) mental compulsion to do so. Such cases should be considered as a completed or attempted murder on him, if it is proven guilty of direct intent to deprive the victim's life. The motives of the crime may be different - revenge, hatred, hostile relations, etc.

Talking about the features of the personality of the victim, the criminal law toughens the punishment if the offense was committed against a minor, allocating a separate structure in the third part of article 105 of the Criminal Code.

Today the problem of qualification of a crime under article 105 of the Criminal Code, is particularly acute, as more and more young people become suicide bombers, barely reached 30 years. Of course, the person has the right to decide to live it or not, but we should not forget that under the banal suicide person could deliberately fail and the offender, and despite the fact that the incitement to suicide is a matter of public prosecution, to identify it without the statement of the victim (if attempted suicide) or his family is difficult, and sometimes impossible, if there is no one to report the facts of the systematic humiliation and ill-treatment [3, p.13].

Thus, a small number of crimes registered under article 105 of the Criminal Code, the total mass of crimes against the person, talking about the fact that this structure does not demand a modern criminal justice system and its application in practice is something exceptional, as prove namely that there has been incitement to suicide, not a voluntary and informed care of human life, it is a big problem for law enforcement.

Often the self-destroyed behavior - alcoholism, drug addiction, and in a result criminalization of society is the reasons of commission of a suicide. I want to pay attention to article 200 of the Code of Administrative Offences of Republic of Kazakhstan. According to this article, administrative responsibility is provided for realization of alcoholic products to persons aged till twenty one years [7]. Due to the increase in quantity of suicides among children and teenagers, I consider that it is necessary to make changes to the Administrative Code of RK, separately to allocate and having toughened responsibility for sale of alcoholic products by the minor till 18 years. In my opinion, responsibility for sale of alcoholic products by the minor till 18 years and sale of alcoholic products to persons from 18 to 21 year has to be differentiated, in the first case the type of an administrative penalty has to be more rigid. Also I consider that it is necessary to make changes to article 105 of Criminal Code of Kazakhstan,

having changed a type of punishment only to imprisonment and having toughened punishment by increase in terms.

We are interested in a question. Why any other help in suicide isn't punishable by the criminal law? For example, transfer to the person close to suicide, providing information on ways of suicide, transfer of a rope for hanging, poison for poisoning, etc. In my opinion, similar contribution to commission of a suicide also has to be settled at the legislative level by inclusion of these acts in the Criminal code of the country.

Thus, the state has to fight against the phenomenon, so dangerous to society as a suicide, especially children's and teenager's in all possible ways. The youth is the future of the country. Not without reason our President – the Leader of the Nation lays hopes on youth in social and economic, cultural and political development of the country, in improvement of a demographic situation. Because of shortcomings and problems, we can conclude the need to improve techniques and methods of identifying and disclosing such crimes.

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