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### **Objective signs of mercenary — violent crimes**

*Annotation. This article is considered to the criminal-legal characterization of objective signs of mercenary-violent crimes. From the point of view of criminal law, the «attack» differs from its ordinary understanding and contains several contradictions. The attack is an indispensable sign of some crimes, but there is no single approach to assessing its legal nature. Often, in court judgments, the attack is not always reflected, and the emphasis shifts to the violence used in the attack.*

*An attack is defined as an act aimed at achieving a criminal result by using violence against a victim or creating a real threat of its immediate application. But it is not difficult to see that such a judicial interpretation of an attack can not be a universal definition of an attack as a category of criminal law, since it does not give a clear idea of the content of the attack as an indispensable feature of the objective side. From the above definition it is clear that the attack must consist of two successive stages: creating a real danger of violence and direct violence. But the practice shows that not always the attack and violence are inextricably linked.*

*Keywords: mercenary-violent crimes, robberies, embezzlement, criminal offenses.*

Criminal offenses against property are an independent part in the field of criminal and legal protection and have their own specific, distinct from other criminal offenses. Property relations as a whole, including the rights of the owner to own, use and dispose of his property are a uniting element of the criminal offenses dealt with in Chapter 6 of the Criminal Code of the Republic of Kazakhstan.

Among the forms of theft, the most dangerous crimes are assault, combined with violence and robbery, in which encroachment on an additional object is a way of causing harm to the basic. In the forcible embezzlement of someone else's property, the main object is property right, and additional – the life and health of the victim, in spite of the fact that the personality is more important by the degree of significance of protected things. In this case, the legislator of the main object is allocated for communication with the generic.

The differentiation of the forms of embezzlement into violent and non-violent, criminologically and legally justified. In criminological studies it is always noted that violent crimes against property are characterized by a number of specific signs, indicating a higher danger, both of the acts themselves and of the persons who commit them [i].

In determining the additional object of mercenary-violent crimes in the theory of criminal law, the opinion prevails that it is the health and life of a person. Human life is the process of its physiological existence as a biological unit. This is the deep essence of this thing. Officially, life stops with the onset of biological death.

Health is a state of the normal functioning of the human body, which «is the highest inalienable primary human good, without which, in one way or another, many benefits lose value» [ii].

Some scientists dispute the possibility of recognizing the life of the victim as one of the objects of robbery. Proceeding from the fact that the law does not name the intentional infliction of death in the number of signs of robbery, V. A. Vladimirov concludes that the inclusion in the object of robbery the life of the victim would put the need to consider murder just a sign of robbery, whereas murder, being a serious infringement on the person, cannot be an integral part of another, less dangerous crime, which is robbery [iii].

In the theory of criminal law, an additional direct object is always indicated in a specific criminal law norm along with the main direct object.

In our opinion, the life of the victim will be an additional object of robbery, as in point 1 of part 3 of Art. 192 of the Criminal Code of the Republic of Kazakhstan indicate the robbery

committed with causing serious harm to health, which caused by negligence the death of the victim.

Thus, an additional object of assault is only human health, and robbery is the health and life of a particular person.

The objective side of robbery in part 1 of Article 192 of the Criminal Code of the Republic of Kazakhstan is «an attack aimed at stealing someone else's property, combined with violence dangerous to the life or health of an attacked person or the threat of direct use of such violence».

When comparing the presented language, it is possible to identify the following signs of robbery. Firstly, in the Criminal Code of the Republic of Kazakhstan robbery is presented as «an attack aimed at stealing someone else's property». In our opinion, in this case, the use of the word «aim» in the singular is more correct, since when the robbery is committed, the actions of the perpetrator are entirely aimed at achieving one goal—the seizure of someone else's property, and the use of violence against the victim is only a means of achieving a criminal aim.

Secondly, the objective side of robbery is designed in such a way that it is recognized as finished since the moment of the attack.

Some authors in their works indicate that the composition of robbery in the construction of the objective side is truncated [iv]. An important feature of the «truncated» compositions is that «when describing a crime, the legislator associates the moment of its termination not with the complete completion of actions expressing the social and legal meaning of this type of crimes, but with the commission of only a part of these actions, which in the general theoretical plan would mean an attempt on a crime or even a preparation for a crime».

The predominance majority of scientists hold on to the point of view that robbery refers to formal compositions [v]. That is, «the commission of an act specified in the law, regardless of the onset of harmful consequences, is an independent and sufficient basis for the recognition of the crime to be completed» [vi].

Thirdly, the legislative wording of robbery in the Criminal Code of the Republic of Kazakhstan indicates that violence in theft of someone else's property should be applied directly to the person who was attacked.

Despite the differences in the formulations of robbery, it should be noted that the legislator assigns a key place to the attack.

V. Dal in his dictionary, means that attacking someone means «to approach or attack with violence; rush, throw» [vii].

Based on the analysis of the proposed formulations, first of all it can be said that the word «attack» means active, prompt and aggressive actions of someone with the aim of causing harm to the selected object. It is also important that the attack is inextricably linked with violence. In everyday life, the words «attack» and «violence» are used as synonyms.

In the theory of criminal law at the present time there is no single definition of attack. Researching the concept of attack, the authors use different ways, namely, that, first, it is possible to adapt the already existing concepts of attack to the aims of their research. Secondly, it is possible to make an attempt to work out a new concept of attack by choosing different signs that should reflect the essence of the attack.

An attack in robbery is expressed in the use of violence against the person who is being abducted. And therefore it is possible to agree that «attack» and «violence» are identical in terms of their legal significance, and it is almost impossible to make any distinction between them. Simultaneous indication in the law of both attack and violence can be explained to a greater extent by the unsuccessful edition of the rule on robbery than by the desire of the legislator to emphasize that, besides violence against a person, the attack is characterized by some additional signs [viii].

Some authors in their works are trying to define a robbery. Thus, B. S. Nikiforov wrote: «Under the armed assault, one should understand actions of the guilty, which are directly aimed at depriving the victim of ability, ability or the desire to resist the seizure of his property by violence or threat of violence» [ix].

The proposed definition of attack suggests that the attack is the initial stage of robbery, and does not include violence, which is the second stage of the objective side of robbery.

Based on this definition of an attack, it is possible to acknowledge the attempted robbery that will take place when an attack or attempt to attack a victim is committed, but violence has not yet been applied.

Speaking about the time interval between the attack and violence, it should be remembered that an important constructive feature of such a composition as robbery is that the legislator links the moment of its termination by the commission of an attack and therefore an attempt on the commission of this crime is impossible.

Violence is a means of committing embezzlement of someone else's property, and refers to constructive signs of the elements of assault and forcible robbery.

The violence used when stealing someone else's property, Kazakhstan's criminal legislation, according to the mode of influence, is divided into two types:

- 1) physical («... with the use of violence ...»);
- 2) mental («... with the threat of violence ...»).

Each of these types of violence is subdivided according to the nature of the harm done:

- 1) not dangerous for life or health (point «1», part 2, article 191 of the Criminal Code of the Republic of Kazakhstan);
- 2) dangerous for life or health (Article 192 of the Criminal Code of the Republic of Kazakhstan).

Physical and psychological violence is an indispensable element that characterizes the objective side of violent theft of someone else's property.

L. D. Gauchmann notes that the concept of physical violence is characterized by a combination of factual and legal signs. He refers to the actual facts the objective signs, the mode of action, as well as the subjective characteristics characterizing the willful attitude to action. As legal signs, it identifies the illegality and social danger of the action» [x].

In our opinion, physical violence while stealing someone else's property can be expressed both in striking, wounding, that is, exposure to the outer covers of the human body, and in the impact on the internal organs of a person without damaging the outer tissues through poisoning or intoxication by various means.

Mental violence in the formations of robbery and forcible assault is expressed as a threat to use physical violence, with the aim of suppressing the resistance of the victim.

In the Normative Decision of the Supreme Court of the Republic of Kazakhstan of 11 of July 2003 No.8 «On judicial practice in cases of embezzlement» under violence that is not dangerous to life or health, it means beatings or committing other violent actions connected with causing the victim physical pain that did not cause a short-term a health disorder or a minor permanent loss of general working capacity.

The concept of violence dangerous to life or health is explained in the above normative document and represents such violence that resulted in the infliction of grave and moderate harm to the health of the victim, as well as causing slight damage to health that caused a short-term disorder or a minor permanent loss of general working capacity.

Based on this definition, it is possible to assume that violence that is dangerous to life or health while stealing someone else's property is such a physical impact on the victim, which in case of its continuation will lead to death.

Robbery differs from forcible assault by the degree of danger of violence used when disposing of another's property. In case of robbery, violence is not dangerous for life or health, but for assault it is dangerous for life or health. In our opinion, the danger of violence should be determined by its consequences, i.e. proceed from real harm caused to the health of the victim.

In the theory of criminal law, the issues on the delineation of mental violence dangerous and not dangerous for health or life are not clearly resolved. In this case, the solution depends on various factors: the intensity of the criminal's actions, the way the threat is expressed, the subjective understanding by the criminal of the possibility of using the threat in action, the

subjective perception of the threat by the victim, etc., the establishment of which is not always possible.

It is impossible to classify as robbery an attack for the purpose of theft of property, combined with violence, which did not cause any harm to health, although it created a real danger to the health of the victim.

Thus, the nature of violence serves as an objective criterion for distinguishing violent assault from robbery.

### **ТҮЙІН**

Мақалада автор заң әдебиеттеріне талдау жасау негізінде пайдакүнемдік қылмыстарды жасаудың объективтік белгілерін қарастырды.

### **РЕЗЮМЕ**

Статья посвящена уголовно-правовой характеристике объективных признаков кримино-насильственных преступлений.

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