

Issues of Qualification of the Crime of Murder or Threatening of Violence and Differentiation From Similar Crimes

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Abstract:

This article analyzes the issues and characteristics of the crime of killing or intimidation with the use of violence and distinguishing it from similar crimes. The article examines the opinions expressed by many scientists on the issues of qualification of the crime of killing or intimidation with the use of force and distinguishing it from similar crimes, and the author justified his scientific views on this. In addition, in the article, violence in the use of violence to kill or intimidation with the use of violence used in attempted murder, the difference between murder or intimidation with the use of violence from crimes related to murder or the use of violence, actions during the preparation for murder, actions in the act of killing or intimidation with the use of violence scientific analysis based on. Also, the author put forward his conclusions based on the analysis of the issues of qualification of the crime of killing or intimidation with the use of force and distinguishing it from similar crimes.

Keywords: crime, health, responsibility, punishment, murder, violence, intimidation, victim, risk, assassination, injury, intent, extortion, trial, act, motive, insult.

It is important to distinguish crimes that are dangerous to life or health from similar crimes. As noted by legal scholars, "In the qualification of any act, it is necessary to identify the features that distinguish it from similar crimes, to analyze the composition of the crime in a comprehensive manner, and to determine the aspects characteristic of its structural elements" [1].

Threatening to kill or use violence

In the practice of judicial investigation, there are some problematic issues related to the qualification of intimidation with the use of violence or killing.

In particular, killing or intimidation with the use of force should be distinguished from assault, such as bodily injury, intentional homicide.

Because, at the initial stage of these crimes, a person can threaten the victim with killing or violence. In the same way, a person may inflict minor physical injuries or hit the victim with the intention of killing or threatening to use violence.

It should be noted that the big difference between the sanctions of Articles 97, 104, 105 and 112 of the Criminal Code also shows that the basis of the defense position of the accused and the defense lies in the fact that the act is qualified as endangerment rather than intentional murder.

In the case of threats to kill or use violence, in order to determine whether there are sufficient grounds to fear that this action will be carried out, judicial investigation practice focuses on whether the threat is reinforced by this or that action.

The crime of attempted murder and the crime of intimidation with the use of violence or murder are distinguished primarily by their objective aspect.

For example, if the accused sets fire to the victim's house in order to scare him, if the victim is inside this house, does it fall within the scope of Article 112 of the Criminal Code or should it be considered as an attempt under Article 97 of the Criminal Code? it is natural to ask that question.

Article 112 of the Criminal Code stipulates that killing or threatening to use violence is considered a crime if there are sufficient reasons to fear that this action will be carried out.

That is, at the time of the threat, the victim must believe that the perpetrator wants to kill or use violence. In this sense, the accused acts so that the victim feels real danger, believes in his criminal goals.

In other words, in this situation, according to its objective characteristics, killing or threatening to use violence is similar to attempted murder. It is in these cases that the distinction between assassination and intimidation becomes important.

The main difference in these crimes is the subjective side of the crime, that is, in the case of attempted murder, the criminal acts with the intention of killing, while in the case of intimidation, he acts with the aim of creating such an impression on the victim.

The absence of the intent to kill in such outwardly similar actions can be conditionally determined by analyzing the circumstances of the crime.

For example, although the accused has favorable conditions for intimidation (secluded, poorly lit, no camera surveillance, he is alone with the victim, the accused has a cold or other weapon in his hand, the victim does not have the opportunity to resist), he does not use them. , which is the basis for qualification of this act under Article 112 of the Criminal Code.

Although the actions committed by the accused did not lead to the death of the victim, but by their nature, the act indicates a desire to kill the person (for example, an explosive device failed to explode due to a malfunction, a firearm did not fire), such actions, although they were not repeated after failure however, intentional homicide should be assessed as an attempt.

If, based on the nature of the committed act, it is not possible to prove the intention of the accused to deprive the victim of his life, and there are no other evidences proving the direction of the intention, the qualification of the crime becomes complicated. In this regard, different opinions are expressed in the scientific literature.

In particular, some authors state that "intimidation can be assessed only when there are no physical actions aimed at harming the health of the victim",[2] "serious proof of attempted murder is the act of committing violent acts" [3].

In attempted manslaughter, the force used is intended to cause death, where the death is caused by circumstances attributable to the accused. In the case of threats to kill or use violence, violence is used in order to strengthen the intention expressed by the accused.

"When reinforcing the intimidation with violent actions, the accused controls the amount of violence used, and acts so that the violence does not cause death or serious injury to the victim's health" [4].

Intimidation to kill or violence differs from the crime of murder or violence in that intimidation to kill or violence ends with the act intended to threaten and involves no further action.

In the case of crimes related to killing or using violence, actions aimed at carrying it out are carried out after being threatened.

In distinguishing between these crimes, it is important to determine the subjective side of the crime, what the intent is aimed at.

For example, even if threats to kill or use violence are committed in connection with assault or minor bodily injury, these actions should be included within the framework of this crime.

Because, while committing these actions, the criminal's goal is to frighten the victim, and hitting or inflicting minor injuries is a means of achieving this goal.

In the case of intentional bodily injury or murder, the intentional infliction of bodily injury or loss of life is aimed at. In this case, it is necessary to make an assessment taking into account the nature of the inflicted injury and the purpose of the perpetrator's actions.

Article 112 of the Criminal Code of the Republic of Uzbekistan is similar to Article 165 (Extortion) of the Criminal Code.

In particular, Article 165 of the Criminal Code (Extortion) is objectively committed by threatening the victim or his relatives with violence, damage or destruction of property, or disclosure of information that should be kept confidential for the victim.

In Article 112 of the Criminal Code, the method of committing the crime is intimidation. The main difference between these two crimes is that in Article 165 of the Criminal Code, the crime is aimed at demanding the transfer of property or property rights, the transfer of property interests, or the performance of property-related actions. There is no such requirement in Article 112 of the Civil Code.

If we refer to the judicial investigation practice, although the actions of the accused who demanded money by means of intimidation in the criminal case considered by the Namangan city court on April 3, 2023, were qualified by the set of articles 112 and 165 of the Criminal Code in the court of first instance, in subsequent instances it was decided not to qualify the act under Article 112 of the Criminal Code[5].

In our opinion, this is the correct approach as intimidation is covered by the objective aspect of Article 165 CrPC and does not require further qualification under Article 112 CrPC.

In general, there are two contrasting approaches to intentional and criminal intimidation.

Some authors "evaluate intimidation as an expression of intent to commit a crime in the future and refuse to distinguish it as an independent crime" [6].

Other authors believe that it is appropriate to distinguish killing or intimidation with violence as an independent crime.

In particular, A.V. Naumov "to qualify the act as killing or intimidation with the use of force is not related to the determination of the intention of the person to commit the act promised in the future, because the danger is from affecting the psyche of the victim, from the attempt of the perpetrator to intimidate him, to force him to change his usual way of life consists" [7].

"The difference between intent and intimidation is manifested in the fact that intent has both an internal content (intent to kill) and its external expression, although not carried out by a specific act; and in the second case, it is expressed in actions aimed at the integrity of the internal content (intimidation, encouraging the victim to behave in a way favorable to the perpetrator) and its strengthening" [8].

"If intimidation is characterized by a wide and diverse scope of action, the methods of execution of an attempt to kill or use violence are relatively limited" [9].

Threats to kill or use violence must also be distinguished from premeditated murder.

"Preparation for murder is by its very nature aimed at future execution, and does not directly threaten the object of aggression during preparation" [10].

It is known that the actions aimed at preparing to kill people take on a subtle, hidden character.

As S. V. Borodin noted, "even if the guilty person has taken some preparatory actions before killing, he performs these actions secretly in order to avoid disclosure of his crime and to evade criminal responsibility" [11].

Threats to kill or use violence are clearly aimed at the victim as soon as possible.

At the same time, the question of how the act should be qualified is also important when the acts of preparation for killing or the use of violence are brought to the attention of the victim.

It is the basis for distinguishing the elements of this crime, and it is important whether one or the other specific actions deviated from the scope of preparatory actions or not.

That is, if the information about the crime being prepared is not intended to complete the crime, with the aim of influencing the victim, leading him to his own direction, then the act should be qualified as intimidation with the use of force or killing.

If the information about preparation for the crime is communicated to the victim regardless of the subject of the crime, then the act must be evaluated as preparation for the crime.

Intimidation to kill or use violence is included in other articles of the Criminal Code (103, 115¹, 118, 119, 126¹, 135, 1413, 147, 155, 164, 165, 235, 244, 264, 267, 277, Articles 282) should also be distinguished.

It should be noted that Article 112 of the Criminal Code is general in relation to these crimes. In these crimes:

- a) intimidation is seen as a part of the objective side as a method of committing this crime and another crime with the help of intimidation, for example, defamation (Article 118 of the Civil Code), human trafficking (Article 135 of the second part of the Criminal Code, Clause "a"), the right to vote or trust obstructing the exercise of powers of the representative (Article 147 of the Civil Code), invasion (Article 164 of the Civil Code), extortion (Article 165 of the Civil Code);
- b) intimidation only against a certain category of persons, for example, against a wife (husband), ex-wife (ex-husband), a person living together on the basis of the same household or a person

who has a common child (Article 126¹ of the Civil Code) or the boss (Article 282 of the Civil Code) is committed;

- c) the subject of intimidation (for example, information containing naked photo and/or video images of a person's body and/or genitals) is clearly defined (Article 141³ of the Civil Code);
- d) intimidation is manifested as the purpose or motive of committing a crime - intimidating the population (Article 155 of the Civil Code), giving consent to take organs and (or) tissues from a person for transplantation (Article 115¹ of the Civil Code).

Also, when analyzing 30 criminal cases related to killing or intimidation with violence, it is shown that this crime is committed together with the following crimes:

When the crimes related to murder or violence are studied, this crime is more often committed together with hooliganism (Article 277) (26 percent);

At the same time, this crime is intentionally inflicting moderately serious bodily harm (Article 105), extortion (Article 165), kidnapping (Article 137), unlawful deprivation of liberty by force (Article 138), resisting a representative of authority or a person performing a civil duty (Article 219), insulting (Article 140), fraud (Article 168), torture (Article 110), intentional infliction of minor bodily harm (Article 109, second part), intentional destruction or damage to property (Article 177) is also committed.

Summing up from the above, the following conclusions can be put forward:

1. The force used in attempted murder is intended to cause death, where the death is caused by circumstances beyond the control of the accused, and in the case of killing or threatening to use force, the force is used in order to strengthen the intention expressed by the accused;
2. Intimidation to kill or violence differs from crimes related to murder or violence in that intimidation to kill or violence is completed by the act aimed at the threat and implies that no further actions are committed thereafter. In the case of crimes related to murder or violence, actions aimed at its implementation are made after being threatened;
3. If intimidation is characterized by a wide and diverse range of actions, the methods of execution of an attempt to kill or use force are relatively limited;
4. Preparation for murder is also by its nature aimed at future execution, and does not directly threaten the object of aggression during preparation. Actions aimed at preparing to kill a person acquire a subtle, hidden character. Threats to kill or use violence are clearly aimed at the victim as soon as possible;
5. Intimidation to kill or use violence as a method of committing a crime from other articles of the Criminal Code (103, 115¹, 118, 119, 126¹, 135, 141³, 147, 155, 164, 165, 235, 244, 264, 267, Articles 277, 282) should also be distinguished. Article 112 of the Criminal Code is general for these crimes.

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