

COMPLICATIONS IN CLASSIFYING SUICIDE INCITEMENT AS A CRIME

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Abstract: The article describes and evaluates Georgian legislation in comparison to foreign legislation, as well as, based on the practical analysis, highlights the critical elements of the actual composition leading to suicide and suicide attempt. The problem of identifying whether a crime leading to suicide, or a suicide attempt qualifies for prosecution before investigative bodies and national courts is the main concern. Because of this, the article analyzes topics covered by European and National Court judgments on human rights. The intricacies of the suicide investigation are explained based on the author's personal professional and practical knowledge, likewise, the conditions that need to be proven all through the case investigations. This article provides an overview of the problems with the current legislative architecture, its weaknesses, and basic suggestions for improving them.

Keywords: Suicide; Suicide Attempt; Suicidal Behavior; Suicide Investigation.

1. Introduction

Nowadays, aggression and violence are widespread all over the world. More harm is caused by an uncontrolled expression of aggressive energy than by natural disasters. Many suicides in the modern world are driven by subtle or rudimentary psychological elements. Humanity cannot interfere with aggression and cannot transform it and this creates a fertile ground for mass destruction. The mass media - newspapers, TV shows, and films depicting dramatic events and scenes of aggression and violence - also play an important role in all of this (Donadze G., 2020). Life is the most precious thing that a person has and the worst thing about this problem is that not only do criminals encroach on this value, but people become suicidal themselves. Suicide (Latin. Sui caedere - to kill oneself) - is a voluntary, independent, and deliberate killing of life. (<https://en.wikipedia.org>, 2022) Suicide is not a socially adequate action: the increased number of suicides, especially among

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minors, is an unequivocal indicator of social problems that require the state to respond. One of the main tools of the state's response is the law. Suicide cannot be legally ignored in a state that defines itself as a social state. Based on the basic right to life, a person does not have the right to dispose of his own life, and the state can reflect this in the legislation accordingly. Attempting suicide is not punishable, suicide is also not punishable, which is natural and logical (Constitution of Georgia). Article 115 of the Criminal Code of Georgia envisages responsibility for leading a person to suicide or attempted suicide, which is caused by threats or cruel treatment, or systematic humiliation of his honor and dignity (Criminal Code of Georgia). To qualify the crime. As a rule, the objective side of the crime is manifested in the realization of the external behavior of the person.

2. Criminal responsibility for leading to suicide under foreign law

France was the first country to decriminalize suicide in the 18th century during the French Revolution. In Germany, criminal liability for suicide was abolished by Frederick I in 1751, in Great Britain it happened only in the second half of the 20th century. Under the Suicide Act of 1961, suicide and attempted suicide were abolished as criminal offenses. Currently, Western European countries more and more officially declare freedom from the dogmas of any religion, but in reality, the negative attitude towards voluntary death dictated by the Christian tradition still dominates.

For the mentioned crime, which affects human life, responsibility is provided in accordance with national legislation in foreign countries, leading to suicide is the only crime against human life, which is not provided for in the article of murder since leading to suicide is committed by the subject not directly, but indirectly. Suicide is a crime that threatens society (Wilbur L., 1904) since its consequences not only violate the biological process of human existence but also negatively affect the normal functioning of social relations.

The codes of foreign countries related to the crime of suicide can be conventionally divided into three groups:

1. They are completely or partially similar to the criminal law code of Georgia.
2. Provides responsibility for leading to suicide, but is essentially different.
3. Does not assume responsibility for the suicidal crime.

The first group together with Georgia includes the codes of Estonia (Criminal Code of Estonia), Azerbaijan (Criminal Code of the Azerbaijan Republic), Russia (Criminal Code of the Russian Federation), Moldova (Criminal Code of the Republic of Moldova) and Romania (Criminal Code of Romania). Provisions of the norm provide for responsibility for suicide and attempted suicide.

According to Article 191 of the Criminal Code of Romania, "Determining or facilitating suicide:

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(1) The fact of determining or facilitating the suicide of a person, if the suicide has taken place, is punishable by imprisonment from 3 to 7 years.

(2) When the act provided for in para. (1) it was committed against a minor aged between 13 and 18 or against a person with diminished discernment, the penalty is imprisonment from 5 to 10 years.

(3) Determining or facilitating suicide, committed against a minor who has not reached the age of 13 or against a person who could not realize the consequences of his actions or inactions or could not control them, if the suicide took place, is punishable by imprisonment from 10 to 20 years and the prohibition of the exercise of certain rights.

(4) If the acts of determination or facilitation provided for in para. (1)-(3) were followed by a suicide attempt, the special punishment limits are reduced by half.

Despite the fact that, like the Criminal Code of Georgia, the Romanian Criminal Code declares suicide as a punishment, Article 191 of the Romanian Criminal Code defines the facts of determining and facilitating suicide, and the above-mentioned article provides a separate sanction for committing a crime against a minor, which is not provided for in the Criminal Code of Georgia. It is a rather high sanction to establish or facilitate suicide, committed against a minor who has not reached the age of 13 or against a person who cannot understand the consequences of his action or inaction or could not control them, in this case, the Criminal Code of Georgia assigns different qualifications and Article 115 does not provides a sanction for the mentioned, but whoever does not know the result of his action or inaction, his action can be qualified as murder.

The dispositions of the articles of the Criminal Code, which belong to the second group of states, are essentially different, criminal liability is established for any action that results in the suicide of another person. These countries are Lithuania (Criminal Code of Lithuania), Poland (Polish Criminal Code (Kodeks Karny)), Norway (Norwegian Penal Code), Austria (Austrian Criminal Code), Switzerland (Swiss Criminal Code), and Japan (Penal Code of Japan). The reason for assigning these countries to the second group of the criminal law code is the presence of norms that provide criminal liability not only for suicide but also for aiding or abetting suicide.

For an objective consideration of this problem, it is necessary to take into account that there is a third group of states whose codes do not have norms that provide for criminal liability for any action related to the suicide of another person. Among them are the criminal codes of Sweden, China, and the Republic of Korea. But, also according to Article 252 of the Criminal Code of the Republic of Korea, "a person who kills another with his own request or agreement" which in a way means assisting suicide.

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Both modern Georgian judicial practice and legal science follow the opinion that inciting, assisting, or organizing suicide are not punishable actions (Jishkariani B., 2016). The argumentation of this approach is invariably taken from German literature. In particular, the argument of complicity is given, according to which it is impossible to punish the instigator of suicide due to the accessory nature of complicity established in Article 23 of the Criminal Code of Georgia, because there is no crime of the executor (suicide), nor can his accomplice be punished (Turava M., 2011).

2.1. Qualification of leading to suicide by objective criteria

The object of suicide is the life and health of a person, regardless of his age, physical condition, and intellectual development. The object of suicide is life, the right to life, and social relations in which the safety of life is ensured. The object of this crime is the life of a rational, stable human who has been led to a suicide attempt or suicide. Persuading a (mentally) deranged person to commit suicide is considered an intermediate execution and is qualified as intentional homicide under the relevant article. Harassment is considered to the extent that driving a rational person to commit suicide depends on threats or cruel treatment of him or systematic humiliation of his honor or dignity. Thus, the offender's action is more serious in terms of danger. Considering that modern Georgian criminal law is the law of action, therefore the basis of responsibility is not the danger of a person, but the action stipulated by the criminal law code.

A mandatory sign of the objective side is the stacking of results in the form of suicide or attempted suicide. A causal connection between the offender's actions and their consequences in the form of suicide or attempted suicide is also necessary. The elements of this crime will be present only if the suicide or attempted suicide was the result of threats, cruel treatment of the victim, or systematic humiliation of his human dignity. The crime is considered completed from the moment of suicide or attempted suicide. Any preparatory action (writing a suicide note or expressing suicidal intent) does not constitute a crime.

2.1.1. Threat

The legislator established the following actions as a mandatory sign of the objective side of leading to suicide: threats, cruel treatment, and systematic humiliation of human dignity. At least one of the above is sufficient, and it is not excluded that there are two or more methods of action at the same time. Compared to earlier years, the list of ways to lead to suicide has increased. In addition to cruel treatment and systematic humiliation of human dignity, the law also refers to the method of committing the crime as a threat. Moreover, this list does not include all possible cases, because they are very diverse. The objective side of the composition under consideration should include an indication of the method of psychological pressure

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leading to suicide, because of which the possibility of bringing criminals to criminal responsibility will increase. In modern criminal law doctrine, it is generally accepted that threat should be understood as the psychological influence of the offender on the victim. The threat should not be abstract, it should be concrete and perceived by the victim. The victim must have reason to fear such a threat, which must give him a feeling of hopelessness and the impossibility of further existence. Under the influence of such mental violence, a person decides to commit suicide. The form of expressing threats can be written or oral, open, or anonymous. For the qualification of suicide, the form of expression does not matter. The threat can be expressed to the victim through his relatives and the Internet.

2.1.2. Cruel treatment

Cruel treatment, such as leading to suicide or attempted suicide, involves inflicting physical and moral suffering on the victim. The concept of cruelty is a rather broad evaluative concept.

Improper treatment of the victim can be manifested both in actions and inaction. For example, acts of torture, bodily harm, beating, spreading defamatory information, insults, bullying, and inaction can be expressed in the form of deprivation of food, water, clothing, and housing.

Cruel treatment is the same inhumane treatment, which at the same time is degrading. Cruel treatment is the behavior that intentionally causes severe physical or mental suffering to a person. Cruel treatment of a person or systematic humiliation of honor and dignity during which he is grossly insulted in front of others makes a person forced to act against his will. Cruel treatment means the heartless, rude attitude of the offender towards the victim, which has a systematic character. Cruel treatment is a broad evaluative concept. It includes various actions that torment the victim physically and mentally (beating). Deprivation of livelihood, restriction of freedom, expulsion from home, etc.

2.1.3. Systematic humiliation of honor or dignity

Compared to the above-mentioned methods of leading to suicide, the humiliation of human dignity should be characterized by a systematic character. It follows from this that the systematic humiliation of human dignity occurs when several actions are committed, for example, constantly insulting the victim, bullying, spreading false information, and mocking in a cynical form due to physical disability (Andrea J Romero, 2013). We will dwell on the issue of systematicity in more detail because there is no unity of opinion in the theory of criminal law, some believe that systematic humiliation of human dignity is characterized by the presence of at least three actions, while others explain that there must be several repeated acts of insult. Systematicity must be counted two or more times, Because the dose of systematic humiliation of the dignity of the person himself, depending on the severity of the

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character of some offenders, is twice enough. The humiliation of human dignity can be manifested in a few actions, which can consist of insulting the victim, mocking, harassing, slandering, making obscene jokes, and making fun of the physical disability of the victim. (Bauman S., Russell B. Toomey, Jenny L. Walker, 2013)

2.2. Georgian model of investigation of suicide cases

Interrogation of the victim is of essential importance for the investigation and opening of the crime. In this case, the victim owns all the information on the case, by questioning him/her, the most extensive information should be obtained to solve a specific crime. We need to be attentive and pay attention to all the details while interrogating him. The prosecutor recognizes the person as a victim, and the investigator conducts the questioning. However, a person who has been harmed because of a crime can be questioned (interviewed) as a witness and after that be recognized as a victim, which does not conflict with the applicable legislation, and if the victim dies, a family member of the deceased or any close relative will be recognized as a victim by the prosecutor.

In cases of suicide, the following circumstances must be determined during the questioning (inquiry) of the victim:

- Where and how long he has known the offender?
- What kind of relationship did he have with him, and what caused such aggression towards him
- How often and what kind of insults he inflicted on him, remember in detail, what the specific case was, and how long it lasted.
- Is there anyone who witnessed these facts, did they ever call for emergency help because of what happened? Who among the neighbors witnessed the insults, did they see him in a state where there were injuries on his body
- In his opinion, why he insulted him, what he demanded from him.
- After any such abuse, did they go to the hospital, or did they find help anywhere else.
- When was the last time a physical assault took place, did anyone see the incident, did anyone come to him after the crime, a neighbor, an acquaintance.
- If he has a friend or neighbor who has been telling him bad news.
- Is there any damage to the body due to physical abuse.
- What made him decide to kill himself, where is the knife with which he tried to kill himself, who called an ambulance.
- When was the last time he saw and where is the guilty person now.

According to the testimony of the victim, if he explains that a neighbor saw the incident or later told them something, it is necessary to interrogate (interview) them as a witness and obtain detailed information about the incident.

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If the victim himself represents the thing with which he tried to kill himself, it needs to be removed immediately, in order to legally recognize the investigative action conducted without a judge's ruling due to an emergency case, within 24 hours after the beginning of the investigative action, the prosecutor petitions the court for the legal recognition of the investigative action conducted in an emergency case. In this case, it is necessary to interrogate neighbors living nearby as witnesses. They may not have witnessed the abuse, but the noise they heard will provide a lot of interesting information to the investigation. The doctors of the ambulance brigade who took him to the hospital are to be identified and questioned as witnesses. (in case of transfer) it is necessary to obtain a medical history, From the civil registry service and check the conviction of a person exposed to a crime. When we have already received evidence, that is, the victim and witnesses will be interrogated, the guilty person will be arrested and personally searched, and the protocol of the accused's arrest and the personal search will be filled. In order to legally recognize the personal search, within 24 hours after the start of the investigative action, the prosecutor petitions the court for the legal recognition of the investigative action conducted in an emergency, after which the accused will be interrogated (interviewed) in compliance with the procedural legislation.

It is also possible to conduct a search of the defendant's residential apartment due to urgent necessity without a judge's order, since the defendant may be storing items obtained through criminal means or other items or substances prohibited by law. Within 24 hours after the start of the emergency search, the prosecutor petitions the court for legal recognition of the investigative action conducted in an emergency case. After that, the defendant will be interrogated (questioning) in accordance with procedural legislation.

After all of the above, when the set of facts and information obtained gives grounds for a reasonable assumption that a person has committed a crime, the prosecutor issues a decision on the person's accusation, which is presented to the accused within 48 hours of arrest. In the same period, the prosecutor must file a petition in the court regarding the selection of preventive measures against the accused.

It should also be noted here that in practice, in the case of a person's death, if there are no signs that a murder has been committed, the investigation begins under Article 115 of the Criminal Code of Georgia. In such a case, it is necessary to conduct a forensic medical examination on the corpse by the investigator, based on the relevant resolution, in order to determine the cause of death.

Whenever such cases are investigated, it is necessary to establish whether there was any kind of pressure on him and whether the actions of any person led him to commit suicide. The investigator must find out the mentioned issues, and if the investigation

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proves conclusively that the person died of natural causes, a decision will be issued to stop the investigation.

2.3. Practice of the European Court of Human Rights

According to the decision of January 20.2022, in the case, Edzgeradze v. Georgia (ECHR, no. 10905/02) (app. no. 59333/16), the European Court found a violation of the procedural part of Article 2 (Right to life) of the Convention. The European Court was considering the case of Mamuka Mikautadze, who committed suicide the day after being questioned at the Ministry of Internal Affairs. On July 5, 2013, Mamuka Mikoutadze was interviewed related to a drug crime investigation, during which allegedly physical and psychological violence was used against him. He was questioned as a witness about the alleged possession of cannabis by his friend. Mikoutadze committed suicide on July 6, 2013. Before committing suicide, Mikautadze claimed that the police used physical and psychological violence against him during the interrogation in order to force him to testify against his friend. The disputing party considered that the ongoing investigation of the case was not effective, among them, the conducting of the investigation, even for a limited period, by the General Inspectorate of the Ministry of Internal Affairs, was a significant violation, since it is a fact that the most questions about the circumstances of this case were related to the employees of the Ministry of Internal Affairs, which gave rise to a reasonable doubt that Mikoutadze committed suicide as a result of their alleged criminal actions. Accordingly, the investigation conducted by the Ministry of Internal Affairs called into question the independence and effectiveness of the investigation (<https://www.interpressnews.ge>, 2011).

The court evaluated the investigation as a whole and focused on the fact that in 2016 the investigation was closed by the prosecutor's office due to the absence of a crime, pointing out that the investigation left crucial questions related to the case unanswered. In particular, during the interrogation, was Mikoutadze really taken to another room and if so, what happened there?! Also, the court saw the most significant investigative flaw in the fact that the investigation did not make any hypothesis/explanation as to why a person (<https://doi.org>, 2022), who had no suicidal intentions, psychological or other types of problems, could commit suicide after contact with the police.

3. Conclusions

As a result of the analysis of the objective aspect of leading to suicide, it should be noted that according to the construction, the composition of leading to suicide is formally material. Causation is indirect since the consequences of suicide or attempted suicide do not result from the actions of the perpetrator but are mediated by the actions of the victim themselves. It is advisable to add psychological pressure

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to the disposition clause of the suicide clause. Also, in Georgian legislation, like in many foreign countries, there should be a separate component for the criminalization of suicide, which allows the punishment for these actions to avoid the principle of accessory. Considering that modern Georgian criminal law is the law of action, therefore the basis of responsibility is not the danger of a person, but the action stipulated by the criminal law code.

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