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**ILL-TREATMENT AS AN ACT OF TORTURE  
(IMPROVEMENT OF ARTICLE 127  
OF THE CRIMINAL CODE OF UKRAINE)**

Part 1 of Article 127 of the Criminal Code of Ukraine [1] stipulates that torture is a deliberate infliction of severe physical pain or physical or moral suffering by beatings, excruciation or other violent acts committed for a special purpose. The above gives grounds to assert that acts as beatings, excruciation, and other violent acts as a sign of the objective side of torture. In the criminal law science, this very point of view is shared by the vast majority of scientists, in particular, by S. Bahirov, V. Boiarov, V. Hatseliuk, Yu. Kucher, L. Dorosh, V. Konchakovska, A. Savchenko, V. Stashys, G. Telelnitskyi, M. Khavronik, A. Shulha, V. Pavlykivskyi. Moreover, one can not but emphasize that the given scientific position is based exclusively on the provisions of Article 127 of the Criminal Code of Ukraine. According to the objective properties of torture, this crime is connected with ill-treatment. It is what constitutes an objective side of torture. In the framework of this research, we will prove the latter and define the prospects for the normative character of the act as a component of torture with the use of the concept of “ill-treatment”.

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By its nature, torture is more cruel treatment by the perpetrator rather than violence. Violent behavior, as a constitutive sign of the external side of torture, is detected by means of and based on:

1) types of torture: a) physical - beating (often numerous or those targeted at sensitive parts of the body), jump on the victim, twisting and torsion of the limbs, distortions (pulling out hair, coloring parts of the body, tearing nails, knocking out teeth, etc.) , “Parachute” (the victim is taken by arms and legs and thrown up), “bell ring” (putting a metal object on the head and striking it), “eagle” (forcing long to stand with bent knees on a small chair), “swallow”/”parrot” (the chained behind the back by arms and feet/then hung up and beaten), “envelope” (the head is placed between the knees and hands and legs are chained), “rack” (suspended in uncomfortable poses), “lie detector”, “call to Putin” (electric current is used), “turtle” (placed in a close cage), “shop”/”elephant” (a polyethylene bag/gas mask is put on a head and the victim is deprived of air), “civil defense” (putting a gas mask on the head and letting smoke in through the opening for breathing, dichlofos), “hat of Monomakh” (Putting an item on the head that is covered with ammonia), sexual ill-treatment, “fire test” (the body burns up with iron, cigarettes, open fire, “grill” (tied to an iron frame that is heated to high temperatures), etc.), the use of chemical preparations (introducing substances into the stomach through a rubber hose, doing pharmacological injections, etc.) etc .; b) psychological - deprivation, exhaustion, threats (of murder, infection with incurable diseases, rape, etc.), demonstration of violence against relatives or close persons of the victim, multiple repetition of identical actions with neglect of the victim (for example, systematically repeating only one word, movement, gesture), humiliation (in particular, verbal images), etc.

In the practice of national courts, there are cases when, during torture, the victims were forced to swallow beddings [2], to drink their own blood [3], to eat

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from a dirty canine pan [4], to wear on the head of the injured polyethylene package and they were choked [5; 6], the victims' heads were put in toilets, hair was cut off, burned [7], or dyed [8], the victim was suspended behind the screws on an iron hook [9, P. 58-59], over the rope to the tree with legs "up" [10], clinged to the bed, dragged on the ground [11], stripped naked and poured with cold water [6], making natural needs on the victim [11], pins were put under the nails [12], hot electric irons were applied [13], electric current was used [14; 15] (in particular in the genital area [16]), tear gas [17], rape [18], use of violence for several hours [19], etc .;

2) the contents of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975 [20] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 [21], of which it is believed that torture refers to "cruel, inhuman or degrading treatment or punishment";

3) the practice of the ECHR, which, despite the fact that in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 [22] does not provide for the "cruel" form of treatment and punishment, defines a sign of cruelty as determining the essence of the crime under investigation;

4) recommendations to the Plenary Session of the Supreme Court of Ukraine, which emphasize the fact that under certain circumstances the murder during torture should be qualified as committed on the grounds of special cruelty (Clause 4, Part 2, Article 115 of the Criminal Code of Ukraine) [23];

5) scientific provisions and contemporary European educational developments, within which it is widely recognized that the act in question is related to cruelty. So, even Cesare Beccaria [24, p. 108] noted that torture is a cruelty that is consecrated by custom. According to Xia Yun [25, P. 85], the

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emotional color of torture is that in the history of mankind, all the acts of the crime under investigation represented rudeness, cruelty, savagery. I. Dvorianskov [26, P. 20] and V. Khomych [27, p. 37] The attributes of torture include cruelty. In fact, Katerynychuk [28, P. 45], L. Skrekliia [29, p. 8, 11] and A. Popov [30, p. 361] agree with them, who state that the crime under consideration is a manifestation of cruelty. O. Denysova [31, P. 14] proposes to replace in Part 1 of Article 127 of the Criminal Code of Ukraine the notion of "other violent actions" with "any other form of cruel influence on a person". R. Hur, J. Quiroga [32], J. Murdoch [33], E. Svanidze [34] et al. consider preventing torture precisely within the framework of solving the problem of cruelty.

The above statement proves the indisputable fact that torture is connected with cruelty. The question of the way in which the concept should be characterized as an act of torture is to be investigated into. Thus, in scientific "circulation", in addition to the concept of "cruelty", the notion of "special cruelty" is used (in particular, D. Mykhailenko [35, P.4], P. Krivoshein [36, P. 41], L. Andreieva, P. Konstantynov [37, p. 54], when considering torture, refer precisely to the latter of these concepts). Without deepening into the relationship between these concepts, we note that the latter has no unified solution. Some criminologists (for example, M. Aniiants [38, P. 59], L. Skrekliia [29, P.8]) believe that the above concepts are equivalent. Others (in particular H. Borzienkov [39, P. 53], S. Borodin [40, p. 139], A. Korobeiev [41, p. 192], A. Popov [30, pp. 356, 362]) insist on their differences in content. The author's position on this issue is to be described in two theses: firstly, cruelty is a destructive beginning in a person [42, P. 621], therefore, its manifestations must be the subject of formalization; and secondly, evaluation features should be reflected taking into account the principle of unification of criminal legal terminology [43, P. 212] – so cross-cutting criminal notion must be fixed in the

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Criminal Code. "Ill-treatment" should be one of them. To date, this concept is already enshrined in a number of articles, namely: articles 120, 299, 431, 438 of the Criminal Code of Ukraine. When introducing amendments to the legislation on criminal liability, the norm is targeted at the same concept, it is enough to refer to the Law of Ukraine "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on the Prevention of Violence Against Women and Domestic Violence and the fight against these phenomena" dated 06.12.2017 No. 2227-VIII [44].

Note that so far none of the legislators of the post-Soviet states has described torture through the prism of cruelty. Instead, in the Criminal Code of these states the act as a sign of the external side of torture:

– is not reflected at all (Article 141<sup>1</sup> of the Criminal Code of the Republic of Kazakhstan [45], Article 305<sup>1</sup> of the Criminal Code of the Kyrgyz Republic [46], Article 143<sup>1</sup> of the Criminal Code of the Republic of Tajikistan [47], Article 182<sup>1</sup> of the Criminal Code of the Republic of Turkmenistan [48]);

– is formalized through any action (Article 119 of the Criminal Code of the Republic of Armenia [49], Article 166<sup>1</sup> of the Criminal Code of the Republic of Moldova [50]);

– is fixed by reference to: the application of conditions, treatment or punishment, specific in character, intensity or duration (Article 144<sup>1</sup> of the Criminal Code of Georgia [51]); unlawful physical or mental influence in the form of threats, attacks, beatings, torture, torment or other unlawful actions (Article 235 of the Criminal Code of the Republic of Uzbekistan [52]); causing beatings, excruciation or other violent actions (Article 127 of the Criminal Code of Ukraine [1]).

With regard to the following legislative approaches, note the following:

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– the lack of a normative definition of the behavior of the perpetrator in torture reduces the quality of the legislation on criminal liability and makes it impossible to correctly understand the essence of the crime, and therefore it is a disadvantage in the work of legislator;

– the legislative reference to “any action” creates difficulties in disclosing the nature of the crime and raises the problem of qualification of torture committed through pure inaction [53, P. 86], so it does not deserve a positive assessment as well;

– the normative specification of the act as part of torture looks “winning” against the provisions of the criminal laws, in which the indicated sign is not reflected or limited by any active behavior. Moreover, this specification causes a number of remarks, in particular, how conditions and behavior can be “applied”? Why bother the text of the article with a significant amount of alternative violent actions? Therefore, the following examples of legislative clarification of the behavior of the perpetrator in torture can not be regarded as perfect.

Solving these and other issues, namely: the incorrectly disclosed essence of torture; inconsistency of the formalized feature of an act with the actually existing one; “uncovered” purely inactive and non-violent torture; inadequately provided legal assessment of the social danger of the crime under investigation, perhaps, by consolidating ill-treatment as signs of the objective side of torture. Therefore, given the possibility of resolving a number of issues at once that leads to the imperfection of the rules on criminal liability for torture, by formalizing only the concept of “ill-treatment”, the prospect of this scientific proposal and its legislative initiative seems to be unmistakable.

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*Ill-Treatment as an Act of Torture (improvement of Article 127 of the Criminal Code of Ukraine)*

The article is devoted to the determining the correct approach in the legislative characterization of the act as a sign of the objective side of torture. It is proved that the normative characteristic of torture by indicating beatings, excruciation, and other violent actions incorrectly reflects the essence of this crime. It is argued that torture is related to cruelty. The author's position on the ratio of the concepts of “cruelty” and “special cruelty” is determined. The author analyzes the approaches of legislators of the post-Soviet states to the description of the act as part of torture. It is proved that the act as a sign of the objective side of torture must be formalized by the term “ill-treatment”. The list of issues that can be resolved through consolidation of the concept of “ill-treatment” in Article 127 of the Criminal Code of Ukraine. The prospect of the author's proposal is substantiated.

**Key words:** torture, ill-treatment, beatings, excruciation, other violent actions.

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***Жорстоке поводження як діяння в складі катування  
(удосконалення ст. 127 КК України)***

Стаття присвячена встановленню коректного підходу в законодавчій характеристиці діяння як ознаки складу катування. Доведено, що нормативна характеристика останнього через формалізацію побоїв, мучення, інших насильницьких дій некоректно відображає сутність катування. Аргументовано, що катування пов'язано із жорстокістю. Визначено авторську позицію щодо розуміння співвідношення понять «жорстокість» та «особлива жорстокість». Проаналізовано підходи законодавців пострадянських держав до характеристики діяння в складі катування. Доведено, що діяння як ознака об'єктивної сторони катування має бути формалізована через закріплення поняття «жорстоке поводження». Визначено перелік питань, які може бути вирішено за результатом закріплення у ст. 127 КК України поняття «жорстоке поводження». Обґрунтована перспективність авторської пропозиції.

***Ключові слова:*** катування, жорстоке поводження, побої, мучення, інші насильницькі дії.

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***Жестокое обращение как деяние в составе пытки  
(усовершенствование ст. 127 УК Украины)***

Статья посвящена определению корректного подхода в законодательной характеристике деяния как признака состава пыток. Доказано, что нормативная характеристика последнего через формализацию побоев, мучения, иных насильственных действий некорректно отображает сущность пыток. Аргументировано, что пытки связаны с жестокостью. Определена авторская позиция относительно

▪ Ill-Treatment as an Act of Torture (improvement of Article 127 of the Criminal Code of Ukraine) / Yu. S. Maradina // Часопис Національного університету «Острозька академія». Серія «Право». – 2018. – № 2(18) : [Електронний ресурс]. – Режим доступу : <http://lj.oa.edu.ua/articles/2018/n2/18myskku.pdf>.

понимания соотношения понятий «жестокость» и «особая жестокость». Проанализированы подходы законодателей постсоветских государств к характеристике деяния в составе пыток. Доказано, что деяние как признак объективной стороны пыток должно быть формализовано через закрепление понятия «жестокое обращение». Определен перечень вопросов, которые могут быть разрешены в результате закрепления в ст. 127 УК Украины понятия «жестокое обращение». Обоснована перспективность авторского предложения.

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