

BRIEF ANALYSIS OF THE INCITEMENT TO SUICIDE OR ATTEMPTED SUICIDE Giorgidze A.B.

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Abstract: *the article will consider the issues of subsuming the corpus delicti to suicide or attempted suicide, in accordance with the Georgian criminal law theory and judicial practice. Particular attention will be paid to the issue of improving legislation and the correct interpretation of this crime. The article will present judicial practice, as well as a critical assessment of the prevailing views in criminal theory and practice on the mens rea and actus reus of this crime. The article will support and substantiate the position according to which the mens rea of this crime may not be interpreted as it is accepted today in the criminal law theory or practice of Georgia, and is the prevailing point of view.*

Keywords: *driving to suicide, driving to attempted suicide, intent, negligence, threat, ill-treatment.*

КРАТКИЙ АНАЛИЗ ДОВЕДЕНИЯ ДО САМОУБИЙСТВА ИЛИ ДО ПОПЫТКИ САМОУБИЙСТВА Гиоргидзе А.Б.

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Аннотация: *в статье будет рассмотрен вопрос квалификации состава доведения до самоубийства или попытки самоубийства согласно теории уголовного права и судебной практики Грузии. Особое внимание будет уделено вопросу законодательного уточнения и правильного толкования этого преступления. В статье будет приведена судебная практика, также критически будет оценено господствующее мнение в практике и теории уголовного права Грузии в отношении субъективного и объективного состава данного преступления. В статье будет поддержана и обоснована позиция, согласно которой нельзя считать правильным такое толкование субъективного состава этого преступления, которое на сегодняшний день является господствующим в теории и практике уголовного права Грузии.*

Ключевые слова: *доведение до самоубийства, доведение до попытки самоубийства, умысел, неосторожность, угроза, жестокое обращение.*

Article 115 of the Criminal Code of Georgia criminalizes incitement to suicide or attempted suicide by threatening or ill-treating, or by systematically humiliating honour or dignity. Based on the prevailing opinion in Georgian criminal law doctrine and jurisprudence, this is a crime against life, but it is not murder, since in this case there is no direct or indirect perpetration [1, p. 96]. As we have already mentioned, in Article 115 of the Criminal Code of Georgia, the legislator is limited to several ways of driving to suicide or attempted suicide: threats, ill-treatment, systematic humiliation of honour or dignity. We understand why the legislator limits the composition of Article 115 of the Criminal Code to these methods, since they are the most typical for such cases. Here we may focus on systematic humiliation of honour or dignity, where regularity can be a problem to some extent, since in life even a single humiliation of honour or dignity may lead to attempted suicide. This is especially true of juveniles, when the adolescent psyche is particularly sensitive, impulsive. This fact happened in one of the rural public schools. A teacher humiliated a high school student for not preparing her homework in the presence of classmates. In particular, the teacher told her that she went to school in vain, nothing would come of it, she would have to go abroad, like her mother, and take care of the elderly there, and so on. Because of this fact the girl tried to commit suicide, drank a large number of drugs and fell ill. It is clear that for the most part, systematic humiliation of honour or dignity, as well as threats or ill-treatment may lead to suicide or attempted suicide. In many cases, the systematic nature of the threat or ill-treatment may lead to suicide or attempted suicide, but a legislator does not indicate systematic approach to these methods. The same approach should be applied in cases of humiliation of honour or dignity, since systematicity is not needed here, and it may cause more harm than good to practice. Analysis of judicial practice shows that the definition of the objective composition of incitement to suicide or attempted suicide is sometimes incorrect in the judicial practice. It requires more clarity and clarification, especially when it is done by

the Supreme Court, since the legal precedents of the Supreme Court are a guide for the courts of lower instance, which make the same explanations in similar cases as the Supreme Court. For example, in one case, the court explained that the testimony that did not refer to the violence that took place on the day of the incident, but to the description of previous acts of violence between a victim and a perpetrator, had nothing to do with the assessment of the ill-treatment, since the indictment includes a one-time act of violence committed on the day of suicide - multiple injuries to the head [2, p. 65]. Formally, this is the correct position, but in general, assessment of an action as ill-treatment that may lead to suicide is greatly influenced by violent actions committed up to the day of suicide, since the cumulative nature of violence may lead a victim to the decision of suicide and violence committed directly on the day of suicide may only be a stimulus (the final straw) for the victim to act. For the most part, repeated acts of violence against a victim should be assessed as abusive treatment, since such actions of a prolonged nature have a particular psycho-traumatic effect. However, even a single act of violence may be regarded as ill-treatment, which is evident from the court's discussion. In this case, the court points out the lack of evidence confirming the fact of committing suicide, and therefore changes the legal assessment of the action. It would be nice if the court could discuss in detail the content of the ill-treatment and justify why even a single act of violence that can lead to suicide should not be considered, while the Cassation Chamber finds that the victim sustained head injuries on the evening of the suicide day, after which the victim hanged himself in the toilet of the same apartment. considers that the victim did not commit the victim hanged himself in the bathroom of the same apartment [2, p. 65]. It should also be noted that, unfortunately, the court does not refer at all to the mens rea components of the offender's action, without which it is impossible to say whether this is an incitement to suicide or another violent crime. Beating or other ill-treatment may be assessed as incitement to suicide or attempted suicide only when it is established that the intention of the perpetrator included the fact of leading to suicide. If the perpetrator has no idea that the victim commits suicide during the beating or other abuse, but his or her violence may have such consequences, this action may not be considered as leading to suicide, but we will be dealing with another violent crime. With this approach, we can conclude that it is not necessary to have the intention of an offender regarding suicide or attempted suicide, which is contrary to the will of a legislator and the correct definition of the norm.

As for the mens rea of Article 115, according to the prevailing opinion, it may be committed both with direct and indirect intent [1, p. 98-99; 3, p. 93; 4, p. 220]. This approach is also shared by judicial practice [6.]. According to the dissenting opinion, bringing to suicide or attempted suicide can be committed with indirect intent, while in the case of direct intent, this act must be considered as murder [5, p. 82]. There is a point of view in the Georgian legal literature, according to which a perpetrator may have both intent and negligence in relation to the result in the process of leading to suicide or attempted suicide. According to T. Tsereteli, more often such crimes are committed with indirect intent or negligence, although direct intent is not excluded [7, p. 70]. The question of the mens rea of incitement to suicide or attempted suicide is also a subject of discussion in foreign legal literature, and different points of view can be found [8, p. 21-22; 9, p. 22]. Suicides in Europe and in the United States are represented by different legal constructs. For example, Article 223-13 of the French Penal Code punishes incitement to suicide, the qualifying circumstance is incitement to suicide of a person under the age of 15 [10]. The German Penal Code is completely unfamiliar with the composition of incitement to suicide. Suicide and complicity in suicide are punishable under section 210.5 of the US Model Penal Code. According to the first paragraph of Article 210.5 of the US Model Penal Code, incitement to suicide is equivalent to murder (Criminal Homicide) and it must be committed intentionally [11, p. 121]. Among the foreign criminal codes known to us, a legislator directly indicates only in Article 110 of the Armenian Criminal Code that suicide could have been committed with indirect intent or negligence [12]. It follows that in accordance with the Criminal Code of Armenia, in the case of a direct intent to drive a person to suicide, the action shall not be assessed under this article. This suggests that in this case the act must be considered as murder.

We believe that if there is a direct intention to death in the course of leading to suicide or attempted suicide, the action must be assessed as differentiated, and it may not always be qualified under Article 115 of the Criminal Code of Georgia. It is worth mentioning that justifying this is not an easy task and is related to certain difficulties, which we will discuss below. As known, in the case of suicide or attempted suicide, a person acts with knowledge of the matter and with free will, although free will may be limited, in general he/she has not lost the ability to express his/her will and voluntarily performs an action, which directly leads to the result. Therefore, in this case, the action must be assessed not under Article 115, but under another article, and there is the need to find out what type of perpetration we may deal with. In accordance with Article 22 of the Criminal Code of Georgia, a distinction is made between direct (individual) perpetration, co-perpetration and indirect perpetration. We are dealing with direct perpetration, when a person himself/herself (with his/her mind and hand) commits a criminal act, when he/she has both physical and psychological (knowledge and will) predominance over action. In case of co-perpetration, a person, together with another perpetrator, takes a direct part in the commission of a crime (as the constituent part of

an action). As for indirect perpetration, an indirect perpetrator acts through another person - through the so-called "living weapon". In this case, a person has predominance of a will and / or knowledge [13, p.336]. In accordance with Article 22 of the Criminal Code of Georgia, in the case of indirect perpetration, a person commits a crime: "... through another person who, under this Code, shall not be criminally liable due to his/her age, insanity or other circumstances." [14]. As we can see, at this time, an offender uses another person as a living weapon and commits a criminal act with his/her own hands, while the living weapon itself does not bear criminal responsibility. When we are dealing with a direct intent to drive someone to suicide, under certain conditions we may talk about indirect perpetration, even if at this time the victim kills himself /herself with his/her own hands, he/she is not insane due to age or other circumstances, he/she is aware of the social significance and the consequences of his/her action, and still, we may consider such a case as an (equal to) indirect perpetration. Indirect perpetration may not be discussed only in cases, where a person (including a victim who is being used against himself/herself) is not aware of the actual nature or result of his/her action, etc. (Lack of predominance of will and knowledge), but also in cases where this cognitive ability is deliberately reduced by the offender under various influences in order to use the victim as a weapon against himself/herself. In our opinion, when a perpetrator puts the victim in a situation with direct intent, treats him/her in such a way that the victim commits suicide directly in the process of such treatment or after it ends, and he/she knows about it, it means that he/she dominates over his/her will, and this domination, even if it is indirect due to the voluntary actions of the victim, if it is established that the victim's knowledge and will were limited by the deliberate acts committed against him/her that led him/her to suicide, and this result was the perpetrator's intent, he/she may not be punished under Article 115 of the Criminal Code but must be punished for murder. When mastering the will, we must pay attention to the degree of mastery of the will. It is not necessary to have complete control of the will to speak of indirect perpetration. Dominance over the will may be incomplete, but it can be significantly, largely limited by the influence of an offender. And in this case, we may deal with indirect perpetration. For example, somebody humiliates or otherwise abuses a victim, whereupon the victim tells him/her that if he/she does not stop such treatment, the victim commits suicide, walks up to a window, or do some other act, while the perpetrator continues to further humiliate or further abuse him/her in order to commit suicide (the victim's psychological state has changed so much due to stress, despair that he/she cannot fully control himself/herself). At this moment the victim opens a window and jumps or performs another action leading to suicide or attempted suicide. And if the offender only admits such a possibility or is indifferent to it, the action committed against the victim does not significantly limit the dominance of the victim over his/her own will by its intensity and character, then we will deal with suicide or its attempt. It is worth mentioning that when in the course of ill-treatment, humiliation, or any other process a victim asks a perpetrator to stop it, or if the perpetrator feels that the victim is in a state when he/she may commit suicide, but deliberately continues such treatment to lead the victim to suicide and achieves the result (suicide or attempted suicide), this attempt may not be assessed under Article 115. In this case, even if the victim himself/herself commits the crime, the perpetrator must be punished for premeditated murder, and not for driving to suicide, even if between his/her act and death there is an act of the victim that directly causes the result. In this case, the decisive issue is the content and not the form.

In such a case, the punishment of a perpetrator under Article 115, which provides for imprisonment for up to four years, fails to ensure the application a fair and proportionate sentence and the observance of these principles, taking into account the actions and danger of the perpetrator. If there is a direct intent to commit suicide (in connection with the death of a person), an assessment of the action in accordance with Article 115 may not always guarantee the observance of the principles of justice and proportionality. It is possible that the perpetrator will take advantage of this situation, because when he/she kills a victim with his/her own hands, he/she knows that he/she will be punished much more severely. Therefore, the law may not allow such person to take advantage of this situation and get undeserved privileges.

As for the negligent attitude to the result, then its real existence is quite possible, but in this case, criminal liability may not be assigned under Article 115, and this approach is correct since Article 115 of the Criminal Code is a deliberate crime, as well as the fact of suicide or attempted suicide is also covered by intent. In the case of negligent attitude to suicide or attempted suicide, a person may be punished under another article of the Criminal Code, for a violent or other crime, since in this case the objective attribution of the result cannot be justified.

In conclusion, we share the point of view expressed in the theory of criminal justice, that in the case of driving to suicide, a person may act regarding the result with indirect intent [5, p.82]. But we also admit that a person may have direct intentions regarding the result. But in this case, whether the act should be considered incitement to suicide or murder is a matter of fact and should be decided according to the extent to which the victim's personal domination over his/her will was restricted directly during the ill-treatment or other act, when he/she being in a serious psycho-traumatic situation, immediately commits suicide or attempted suicide, while at this time the offender seeks to destroy the victim's life. Therefore, depending on the specific factual circumstances, when

assessing all objective or subjective circumstances, an action may be assessed as murder, attempted murder, or leading to suicide or attempted suicide.

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