

The Emergence of the Identity of the Victim in the Crimes of Premeditated Murder

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ABSTRACT

This article discusses the emergence of the identity of the victim in crimes related to premeditated murder, the behavior of the victim and the actions of the victim in relation to the offender.

After the commission of a crime in judicial practice, the attention of state and law enforcement agencies will be focused only on the offender, and the victim of the crime will be forgotten. All actions will be aimed at solving the crime and punishing the accused. However, the relationship between the two persons who are participants in the crime, that is, the offender and the victim, remains aside. In this case, the study and victimological analysis of crime and the study of the victim's behavior, the prevention of victimism are one of the areas of criminological science.

In criminology, the relationship between the victim and the accused is studied in detail, the issues of the behavior of the victim in the commission of a crime go beyond the scope of criminal law and are associated with the social sphere.

Indeed, the study of the victim of crime and its behavior began in the middle of the 19th century, and much scientific progress has been made since then. But we observe that practice in matters relating to the victim lags far behind.

Victimology is the doctrine of the victim, the subject of which is "the relationship that forms the relationship between the accused and the victim." According to victimologists, victimology arose as a separate direction in the West, first within the framework of

criminological research and research, and then separated into a separate independent branch: social and political changes in society; reduction of the system of social support and material support, the growth of unemployment; reduction of legal guarantees of compensation for harm caused to the victim as a result of a crime; growing attention to human rights and freedoms in society; increase in the number of crimes against the person; Crime prevention measures are conditioned only by such factors as a decrease in the activity of the criminal and a change in thoughts aimed at prevention.

Victimology as a new scientific direction creates new opportunities for studying the dynamic development of the behavior of the offender and the victim of a crime, which considers the influence of the offender and the victim as an initiative or response, the behavior between them, the propensity of certain categories of persons to victimization, types and types of victims of crimes.

Victimology is a branch of criminology that includes some aspects of criminology, psychology, sociology and pedagogy. I. A. Fargo notes that the true role of victimology as a science of crime victims is not yet clear, and in the future it may look completely different.

S. B. Khodzhakulov states that “Victimology, in its content, studies not only the harm caused as a result of a crime, but also the harm caused as a result of various events.” Based on this, victimology covers not only criminal or other types of offenses, but also various negative situations and events in the study of the victim.

Today, much attention is paid to the victimological analysis of crimes. Such problems are interpreted in various aspects in the literature.

In a broad sense, victimology is the scientific field of human behavior in which the behavior of the victim creates dangerous situations and increases the likelihood of becoming a victim of crimes or random non-criminal events. There is a widespread notion among sociologists that victimology is the science of a person whose behavior deviates from the requirements and norms of safety.

Victimology as a new scientific direction has created new opportunities for studying the dynamic development of the behavior of the offender and the victim of crime. At the same time, the effect of the initiative or reaction of the offender and the victim, the behavior between them, the tendency of a certain category of persons to victimize, the types and types of victims of crimes are manifested.

Also, some criminologists say that “A crime is not only a socially dangerous act, but also covers the causes, conditions and victims of the crime. “The offender and the victim are inseparable concepts,” they emphasize. According to them, all the circumstances of the crime are formed around the offender and the victim, and in the course of the criminological analysis of the crime, its criminological-legal and socio-victimological features are studied.

I. V. Limanskaya says: “Although victimology is part of forensic science, it is necessary to study and prevent victims of violent crimes.” Developing his ideas, criminologists focus on all violent crimes and murders that threaten public relations. Of course, the relationship between the victim and the perpetrator comes first. This means that it is necessary to study all the participants in the crime.

Intentional killings, motivated by greed, pretentiousness and aggressiveness, are always associated with the identity of the victim. Analyzing the emergence (genesis) of the victim in the crime of premeditated murder, the identity of the victim plays an important role in the process of criminalization of the perpetrator, and the mechanism of these crimes includes three main links -

motivation, planning and execution. In this case, the victim participates as an element of an inevitable situation, starting with the mental state and behavior of the offender, adherence to this mechanism, as well as the motivation for criminal behavior.

Criminological study of the motivation of criminal behavior begins with the identification and analysis of external and internal factors that determine the intention of a person to commit murder. The appearance of such a tendency is associated only with the characteristics of the guilty person and constitutes the beginning of the crime. The presence of such persistent motives and their implementation in the crime of premeditated murder are more related to the personality of the perpetrator than the victim.

According to criminological studies, many factors influence the growth of intentional homicides and victims, the level of public danger. One of these factors is the formation of the motivation of human behavior. According to A. N. Ilyashenko, in order to effectively study the factors of formation of the personality of a criminal, it is necessary to study the motives of criminal behavior. After all, behavioral motivation is inextricably linked with the personality, its characteristics and interests.

An analysis of criminal cases shows that selfish motivation based on the use of violence predominates in the commission of domestic crimes, and it can be combined with motives of self-interest. In two-fifths of the crimes examined, the victims were relatives and family members of the perpetrator, and the crimes were based on hostile personal relationships or alcohol abuse. About two thirds of the persons who deliberately killed a person in the domestic sphere were in a state of alcoholic intoxication when committing crimes, about two percent were in a state of drug intoxication.

The amount of damage caused by crimes committed while intoxicated is high. Those who abuse alcohol cause suffering not only to the victims and their relatives, but also to their loved ones.

Thus, it should be noted that it is difficult to show a clear boundary between the motives of violence and malice, aggression. At the same time, the tendency to aggression can be determined by the influence of external circumstances, a certain life situation, and various environmental factors can tend to excite aggression. But in the crime of premeditated murder, such factors are the presence of the victim and the behavior of the victim. The study of a large number of cases of such crimes allows us to identify several factors that determine the motivation for aggression-violence, which are directly related to the victim.

For example, the presence of factors that impede the achievement of a particular goal. In this case, this factor may be due to the fact that the victim creates obstacles to certain behavior of the perpetrator, or the physical presence of the victim creates such obstacles, regardless of his personality or behavior. This allows the subject to choose between two or more situations, objects or events. Also, the unlawful actions of the victim in the form of verbal abuse, intimidation, negative attitude towards the perpetrator or his relatives, the use of physical force, undoubtedly, are motivating factors for the crimes of intentional murder.

Although persistent motives are less determined by the personality and behavior of the victim, they are involved in the motivation and manifestation of intentional killings. For example, certain features of the character or behavior of the victim, manifested under certain circumstances, can become a stable motive associated with the personality of the perpetrator - a factor that encourages the realization of jealousy. The possibility of aggression also depends on how the subject interprets the situation. Usually the behavior of the victim, which he subjectively

perceives, does not always correspond to his real character.

Our research on victimological prevention confirms the conclusion that the majority of homicides (about 85%) are caused by interpersonal conflicts, sometimes of a protracted nature (especially in the family sphere). It is in such conflicts, under the influence of mutual insults, insults, intimidation, that the motives of aggressive behavior are formed: anger, jealousy, hatred, etc.

In studies on victimological prevention of intentional homicides, it is almost impossible to assess the role of the victim in this link in the genesis of the crime (positive or negative). In this case, it can be assessed in a certain way only if it is approached from the standpoint of the subjective attitude of the guilty party. But in any case, the influence of the victim on the motivation of criminal behavior is somewhat stronger.

Under the influence of the formed motive, the subject plans to commit a crime, trying to achieve a certain goal. most of the crimes of premeditated murder are committed during a quarrel, under the influence of the situation, in a state of strong mental excitement.

The perpetrators themselves can create favorable conditions for the commission of a crime. Such people always find a reason for conflict. For them, any situation can become a basis for suspicion of infidelity, uncontrollability, give free rein to their behavior and lead to the commission of a crime. In most cases, the offender at the moment of committing a criminal act is angry, frightened and excited due to mental excitement. Emotions make it difficult or limit his perception of behavior.

The main elements of the criminal mechanism include the conditions for the moral formation of a criminal, criminal motivation, a specific life situation, a decision to commit a crime, and the behavior of the victim in a situation of committing a crime.

In general, the subject chooses the personality of another person as an object of motivation, which is motivated by self-affirmation, protection of the personality of the humiliated, or the desire to resolve interpersonal conflict. The possibility of achieving the goal is determined by the presence or absence of obstacles.

Thus, when planning a crime, the subject takes into account the physical and mental capabilities of the victim to resist violence, the forms of such resistance (active or passive).

The carelessness of the victim, frivolity, lack of hope for anyone's help, his presence at the place or time of the victim, and other similar circumstances may be taken into account by the offender as conditions conducive to the commission of an intentional crime.

Sometimes, when planning a crime, the subject perceives the victim, who belongs to a deviant environment, as a convenient object for achieving his egoistic goal. The subject himself neutrally tries to justify his criminal behavior and even evaluate it as socially useful. Such aspects are characteristic of homosexuals, prostitutes, drug addicts and other aggressive antisocial behavior. Although the motivation of such persons is not directly related to the nature of the victim, when planning a crime, their behavior is taken into account as a socially unacceptable characteristic, and the victim himself is a person of a category less protected by the state and society. . For this reason, it seems safe for the perpetrator to use such victims as objects of aggressive-violent tendencies.

The final link in the genesis of murders is the victimological situation, which is the interaction of the perpetrator and the victim during the direct commission of the murder. At the stage of planning a crime, the subject evaluates the possibilities of a potential victim only as conditions conducive to the commission of the planned act. This creates grounds for the behavior

of the victim to have a significant impact on his development and the execution of the plans of the criminal in the conditions of aggression that began when the crime was committed.

Negative (reckless, unethical or wrongful) behavior of the victim may motivate or create conditions for its commission and facilitate its commission. It is necessary to take into account the victimological features of intentional homicides when developing measures to combat crime and prevent it. To do this, first of all, it is necessary to determine the circle of persons, social roles and situations that have properties that encourage or contribute to the commission of a crime.

In the process of studying the external environment of victims of intentional murder, the situational element of the criminal act and the objective side of the crime, it is necessary to correctly assess its significance in the genesis of the crime. It should not be forgotten that the usual socio-psychological characteristics of the victim, combined with the personality characteristics of the offender, can cause the subject to be prone to aggression.

Eliminating the causes of committing serious aggressive crimes of intentional murder requires the development of thoughtful, evidence-based social, economic, political, legal and special victimological and criminological measures that can create conditions for reducing the level of aggressiveness in society. It is important to reduce the number of factors motivating these crimes.

V. I. Polubinsky and A. L. Sitkovsky spoke about the crime of premeditated murder: "A crime is the behavior of two persons acting in parallel, they still meet, and which of them is a criminal or a victim depends on his personality, conditions, situation of commission will be established crime," they said. I. V. Limanskaya highlights the criminological and criminal law aspects of this "unity". To such, he, in turn, refers to the crimes caused personally by the victims of their behavior. Such behavior solves the question of the degree of influence on the commission of a crime and the problem of criminal liability.

In criminal law, the process of victimization is studied in crimes committed by the victim under the influence of strong emotional arousal caused by the victim as a result of antisocial, immoral behavior. In such cases, the behavior of the victim as a victim is a mitigating circumstance. It should be recognized that science studies the unlawful behavior of the victim and the attitude of the accused towards him, but pays little attention to the problem of criminal liability.

In fact, one of the main characteristics of the crime of intentional murder is that the commission of this act is directed against a person who has a certain legitimate interest.

Criminal law includes a number of crimes that differ in their characteristic features. But we will combine it into a group for a more extensive scientific study. A.L. Repetskaya, who used aspects of such coordination and methods of committing acts as criteria, identifies the following common features: the presence of a criminal act; the relationship of the object of aggression, that is, the entry into social relations that protect the physical interests of a person; the manner in which the crime was committed, such as the use of violence or the threat of violence; presence of intent in crimes with the use of violence or threats of violence.

It is known that the victim of the crime of premeditated murder is only an individual who, as a result of the crime, has suffered some harm. It should be remembered that the damage caused to the victim as a result of a crime is not always the same.

In general, the concept of "victim" appears in various aspects in the system of criminal law sciences. In substantive and procedural law, the term "victim" is used as the term "victim" in

Bulgarian and Romanian criminal procedure law. Foreign sources use the term "wounded" or "damaged". From the point of view of the Uzbek language, all of the above terms have the same meaning, but from a legal point of view, their meaning is different.

Some scientists (A.N. Krasikov, D.V. Rivman, L.V. Frank and others) include persons who have been harmed as a result of the direct commission of a crime as victims of the crime of premeditated murder. In this sense, one can agree with their opinion.

In the course of changes in the economic and political spheres, lawmaking and legislative activity, the victim finds his place in criminal law relations, teachings on ensuring the rights and freedoms and security of the individual. According to Article 54 of the Code of Criminal Procedure of the Republic of Uzbekistan, "if there are grounds to believe that the socially dangerous act of the victim, as well as the mentally ill person caused moral, physical or property harm to a person, such a person is recognized as a victim."

In Article 27 of the Code of Criminal Procedure of the Russian Federation, "A victim is a person who, as a result of a crime, has suffered moral and physical harm." The concept of "victim" in these codes is understood from the point of view of criminal procedure legislation. These differences indicate a mixture of substantive and procedural criteria.

In the essence of legal criteria, the victim in the literature is distinguished by belonging to the system of substantive law. According to V. G. Kvashis, in order to define the concept of "victim" of a crime, it is necessary to turn to criminal law. The concept of "victim" essentially refers to this right and is derived from the knowledge of damage, that is, the damage caused to someone by this or that crime is taken into account.

In objective reality, the appearance of the victim does not depend on the behavior of persons authorized to carry out investigative actions, but only when harm is caused to a person. The criminal procedure law is only concerned with establishing the fact of causing harm and participation in a criminal case. The law requires that the victim "appear" during such a process.

The information presented highlights the problem of facilitating the use of legal criteria in law enforcement practice. The introduction of the concept of "victim" in the criminal law is the principle of interpretation of the law. It is incorrect to use the same term more than once in different parts of the legislation. In our opinion, it is not enough to have the essence of the victim in the material and procedural sense. The correct interpretation of the criteria is necessary in the practice of applying the law. Because it is necessary to distinguish between the victim in the criminal law sense and the victim before the case is considered in court. It differs in that the victim participates in the process and requires damages. On the other hand, the commonality of terms extends to issues of criminal law.

In some literature, proposals have been put forward to call a person who has been harmed as a result of a crime in criminal law and criminal procedure legislation "victim" in the criminal law sense, but "victim" in the criminal process. These provisions lead to deviations from the framework of the theory.

V. G. Kvashis, explaining the concept of the victim, identifies the following features: "The victim can be an individual or a legal entity. A victim is a person who has suffered moral, physical or material harm. The harm to the victim must be caused as a result of the crime. If there is no crime, there will be no victim."

When determining the content of the term victim, the crime is completed or not completed, the presence of aggression and harm, the victim; it is necessary to indicate such general features as their connection with the act.

Notions appeared in the literature that victims could be harmed not only by a crime, but also by a dangerous act of the mentally ill, and they deviated from theory and found expression in laws. In criminal law, there are several reasons for conflicting actions: firstly, as a result of this activity, a harmful consequence occurs. For example, if the harm to a person exceeds the limits of "last necessity", then it is not necessary to talk about the necessary measure in the criminal law context. Secondly, an interesting provision for criminal tort law is that it contains "similarities" to certain types of crimes. Criminal laws protect individual and collective rights, as a rule, their violation is expressed in some specific forms.

An integral feature of a crime is a violation of rights (damage), which is the basis for the "appearance" and participation of the victim. If the rights protected by criminal law are violated by a person who has reached the age of criminal responsibility, but who is in mental development, not associated with mental disorders, then the harm will be of a dangerous nature for society. This act is expressed in "last necessity" and "necessary defense", "physical or mental coercion or intimidation", and the object of this act is the victim.

It should be noted that moral, physical and property damage is the basis for the "appearance" of the victim.

The Decree of the Plenum of the Supreme Court of the Republic of Uzbekistan dated April 28, 2000 No. 7 "On some issues of application of laws on compensation for moral damage" put an end to the disputes on compensation for moral damage. In accordance with paragraph 2 of part one of this resolution, "moral harm is understood as mental and physical (humiliation, physical pain, damage, discomfort, etc.) suffering that he experienced (survived) as a result of a criminal act (inaction) committed in towards the victim."

Inclusion in the theory of criminal law of a theoretically unified concept of the victim, in turn, fully reveals all types of harm caused to the victim from the crime. It also serves to address issues that arise in practice and to define the unique status of the victim of a crime in criminal law.

When looking at the victim of a crime from a criminological point of view, it is necessary to evaluate the crime as a dynamic and genetically influencing factor. In our opinion, if we evaluate victimology as a part of criminological science that studies the victim, who is an individual, then the concept of "victim" is relatively better than the concept of "victim". Because the concept of "victim" means great sacrifice, and the concept of "victim" helps to conduct victimological research, not limited to substantive and procedural law.

When conducting a victimological study, it is important to analyze the characteristics of the crime, the moral, mental and emotional aspects of the victim. Rejecting them would prevent us from exploring all the real factors of interaction in an unstable situation. In certain unstable situations, the set of characteristics and advantages of an individual who is at risk of becoming a victim of a crime remains not fully disclosed.

Based on this, we can say that victimology is characterized not only by the "ordinary victim", but also by various situations that lead to the choice of the victim or characteristics that affect the motive of the crime from a socio-psychological point of view. That is why it is important to investigate these situations. Victimology considers not only the "victim" himself, but also why and under what circumstances he becomes a victim of a crime, the emergence (formation) of a criminal situation, and to what extent it influences the formation of a criminal motive.

Like any human personality, the personality of the victim includes a system of moral and

spiritual characteristics, attitudes, intentions, beliefs, life goals, mental and comparative aspects of dreams. The moral and spiritual characteristics of a person are interconnected with his social characteristics. Like other characteristics of a person, characteristics that influence the commission of a crime in certain situations play an important role in the social life of this person. And it is formed under the influence of certain social conditions. Thus, the interpretation of the socio-moral characteristics of the individual is seen as the relationship between the individual and society.

In our opinion, the emergence of the identity of the victim in the crimes of premeditated murder, the study of the identity of the victim of crimes, his status and relationships in society gives rise to the need to study the following issues:

- 1) socio-demographic characteristics characterizing gender, age, social origin, occupation, marital status of the victim, etc.;
- 2) the results of a person's life and upbringing, which make it possible to determine the process of his formation in the family, school, at work and in other places;
- 3) the views and habits of the victim, the motive of behavior, attitude towards society and work;
- 4) surrounding, in particular social groups, such as the views, values, attitudes associated with the views of the victim.

The status of the victim affects the scope of the study of the crime. In a number of articles of the criminal law of the Republic of Uzbekistan there are signs that allow one to reason and classify the status of the victim of a crime. For example, crimes committed with the use of violence against a person or his close relatives in connection with the performance of his official, professional, civic duty; crimes committed against a pregnant woman, a young child, a weak or dependent person. At the same time, the criminal law provides for appropriate signs of the status of the victim as aggravating circumstances and punishment of the perpetrator.

On the basis of the above circumstances, the court qualified the criminal actions of Sh. as committed by “two or more persons” and “in” Part 2 of Article 97 of the Criminal Code of the Republic of Uzbekistan, as committed by “a person in a weak condition who is clearly guilty.”

As for how this issue is regulated in the criminal legislation of foreign countries, many CIS countries, including Kazakhstan (Article 110, part two), Kyrgyzstan (Article 111, part two), Russian Federation (Article 117, part two), Georgia (Article 126, part two), Azerbaijan (Article 132, part two) and Moldova (Article 154, part two) of the Criminal Codes of the states, an act “in relation to two or more persons”, “in connection with the performance of official duty or civil duty in against close relatives of a person”, “against the background of interethnic or racial hatred”, “a group of persons by prior agreement”, “an organized group”, “a hired person” is regulated as a case of aggravated punishment.

Based on the foregoing, we consider it appropriate to apply the positive aspects of the criminal legislation of some foreign countries to the second part of Article 97 of the Criminal Code of the Republic of Uzbekistan. From this point of view, in our opinion, we propose to supplement the second part of Article 97 of the Criminal Code of the Russian Federation with aggravating circumstances related to the commission “in relation to a minor”.

In this case, it is important to determine the specific characteristics of the status of the victim, and such signs as his worldview, behavior, relationships between the participants in the crime, that is, the victim, the offender and a third person, are taken into account, regardless of whether the victim is one or more people.

It should be noted that the problem of the behavior (actions) of the victim before the commission of the crime, during the commission of the crime, sometimes after the commission of the crime is considered the main victimological problem, and their study is the focus of research. Because in many cases the behavior of the victim is the cause of the crime.

Based on the foregoing, it is necessary to take into account the behavior of the victim in determining the limit of criminal liability of the perpetrator during the period of serving the sentence.

When we examine the victim's status, his role may be overt or covert. The word "open" should be understood as the victim, recognized as subjects of criminal procedure. The hidden role of the victim differs from the victimological point of view. It is he who creates such concepts as "potential", "latent" and "accidental victim".

Summing up, this type of victims can be attributed to: firstly, victims who fall into a state of weakness as a result of naivety or gullibility, mental illness or mental underdevelopment, unusual appearance, medical, physical weakness or alcohol use, drugs, etc .; and secondly, victims of crime as a result of conflict between the perpetrator and the victim. In this case, the actions of the victim have an emotional impact on the offender (for example, the offender falls into a state of passion directly due to the actions of the victim), or as a result, an intent or other negative motive may be formed. quarrels; thirdly, crimes committed with the aim of inducing the victim to a specific action related to causing harm to a person or his relatives; fourthly, crimes of a complex victimological nature are being studied. These include crimes for which it is impossible to determine who is the victim and who is the perpetrator at the time of the crime. The conflict takes such a form that the victim of the threatened crime becomes the subject of the crime. An example of this is the crime of intentional homicide, which goes beyond self-defense.

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