



## COMPARATIVE ANALYSIS OF THE ENDANGERMENT UNDER THE CRIMINAL LAW OF SOME DEVELOPED FOREIGN COUNTRIES

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**Annotation:** in this article, from the point of view of the comparative analysis, the legal provisions of the criminal legislation of some foreign countries, devoted to the regulation of criminal liability for remaining in danger, are considered. Analyzed the characteristic features of the method of normative presentation of the elements of the crime, the use of various methods of legal analysis (for example, specific rules). The necessity of implementation of some provisions and norms of the Criminal Code of developed countries in the process of improving the national criminal law has been identified and substantiated. On the basis of the conducted research, the author formulates the main characteristics of the composition of the remaining in danger, put forward a number of proposals and recommendations for improving the regulatory statement of Article 117 of the Criminal Code of the Republic of Uzbekistan (Leaving at risk).

**Keywords:** leaving in danger, dangerous state to life and health, knowingly leaving a person without a help.

**Аннотация:** мазкур мақолада компаратив (қиёсий) таҳлил нуқтаи назаридан айрим хорижий мамлакатлар жиноят қонунчилигининг хавф остида қолдириши учун жиноий жавобгарликни белгилашга бағишланган ҳуқуқий қоидалари кўриб чиқилган. Ушбу жиноятнинг таркибларини норматив тартибини акс эттиришининг ўзига хос хусусиятлари (аниқ нормалар мисолида) таҳлил қилинган. Миллий жиноят қонунчилигини такомиллаштиришида ривожланган давлатлар ЖКнинг айрим қоидалари ва нормаларини жорий этиши зарурлиги асосланган. Муаллиф томонидан ўтказилган тадқиқот асосида хавф остида қолдириши жиноятининг асосий тавсифловчи белгилари шакллантирилган, Ўзбекистон Республикаси ЖКнинг 117-моддаси (хавф остида қолдириши) таркибини аниқроқ норматив акс эттириши юзасидан таклиф ва тавсиялар илгари сурилган.

**Калит сўзлар:** хавф остида қолдириши, тараф, ҳаёт ёки соғлиқ учун хавф тугдирадиган ҳолат, шахсни аввалдан била туриб ёрдам бермасдан қолдириши.

**Аннотация:** в статье с точки зрения компаративного анализа рассмотрены правовые положения уголовного законодательства некоторых зарубежных стран, посвященные регламентации уголовной ответственности за оставление в опасности. Проанализированы характерные особенности способа нормативного изложения составов указанного преступления, использования различных методов юридического анализа (на примере конкретных норм). Выявлена и обоснована необходимость имплементации некоторых положений и норм УК развитых стран в процессе совершенствования национального уголовного закона. На основе проведенного исследования автор формулирует основные характеристики состава оставления в опасности, выдвигает ряд предложений и рекомендаций по улучшению нормативного изложения ст.117 УК Республики Узбекистан (Оставление в опасности).

**Ключевые слова:** оставление в опасности, сторона, опасное для жизни и здоровья состояние, заведомое оставление без помощи лица.

In the state policy of fighting crime, the study of foreign experience in combating criminal phenomena is considered one of the most accessible methods for increasing the effectiveness of the state in this area.

According to the expert, in criminal law of foreign countries, remaining in danger, manifesting itself at various stages of historical development in a variety of constantly changing forms, was

recognized as one type of the crimes against the life and health of a person [1]. So, in the law of Ancient Rome there were norms that establish responsibility for the deliberate failure to provide assistance to a person who suffered as a result of the unlawful act of a person guilty of committing a crime. It should be said that this norm in the theoretical aspect lies at the basis of the doctrine of the all-German criminal law, formed in the 16–19<sup>th</sup> centuries. In practice, we can see an extended interpretation of the obligation to provide a person who is not in a dangerous state and who has the ability to assist a person who is in a dangerous situation with necessary assistance, which follows from the fact that the concept of crime is identified with the religious concept of sin and not give it to our neighbor. For example, as stated in the legal literature of the early 17th century, in Switzerland, because a good swimmer did not help a person in need of it, he was sentenced to death. Also, the universal obligation of assisting a person in danger was defined in Prussia's national law. In the next century, when adopting the German Penal Code, special attention was paid to the norms establishing the responsibility for leaving a person in danger as a result of the act of the perpetrator. In particular, at the beginning of the 19th century, German criminologists Stuubel and Borst noted that mutual assistance of people in such a situation is a requirement of public life and gives rise to corresponding legal obligations.

However, together with the adoption of the norms establishing responsibility for remaining in danger, the norms providing for the cases of exclusion of criminal responsibility for such acts were simultaneously improved. According to researchers G. Ermatov and Sh. Haydarov it is governed by the norms of morality, as a result, it does not give rise to any legal obligations, coercion, punishment or other legal measures. Based on this provision, the issue of criminal responsibility for remaining in danger was terminated [2].

In the future, in order to form new rules while remaining in danger, the scientist Feuerbach conducted his own research, ultimately the introduction of such rules was fully justified by his like-minded Spangenberg: according to him, in the cases prescribed by law, the person whose life and health in danger, by a person to whom the obligation to provide such assistance is imposed by a special obligation, or is inherent in it in connection with the tasks arising from the occupation of a particular post (state Twain employee), or provided by the contract, entails responsibility.

In addition, in another similar theory, inaction (failure to render assistance) is expressed as a violation of the prohibition of the norm (if it is not related to the death of a person), while responsibility is provided if leaving in danger is directly related to the actions of the perpetrator, in addition, the perpetrator was obliged to assist the needy face and had such an opportunity. Naturally, in this case, a causal relationship should be established between the inaction of the person and the harm caused. The object of this crime is the life or health of a person who does not have the possibility of self-defense due to youth, old age or illness. The subject is a person who has taken on the responsibility to help the needy based on their social status and official duty [3].

Also, the notion of remaining in danger covers the responsibility of the inaction of the master or owner of the vessel. He is responsible for not performing certain actions, because on the basis of the law or by-laws, he is obliged to assist the sick or those who have lost the ability to control themselves due to mental illness. The same rule is defined in the case of a doctor's inaction. However, in this case, it is necessary to pay attention to the fact that if the doctor or other person needs help or that person is unable to provide the necessary help to the person in need, no responsibility arises [4].

In general, the essence of remaining in danger is manifested in the following:

- 1) the arrival of a doctor, paramedic, midwife when calling a sick person;
- 2) not assisting a drunken person who is unable to realize the essence of his actions or who is unable to control them (Article 127 of the Penal Code);
- 3) not rendering assistance in case of a ship wreck or in the event of an attack on him (art. 1208, 1256, 1269 Penal Code) [5].

The first section of the Second Book of the Criminal Code of Switzerland is called "Criminal acts against life and health" and covers articles 111-136. Three articles of the section provide for responsibility for remaining in danger [6]. So, in art. Article 127 of the Criminal Code provides for

responsibility for leaving in danger a person in a helpless state. In accordance with it, the direct imprisonment of a life-threatening or health condition or the abandonment of the person in custody or the responsibility for which is entrusted to him by law is recognized as an act entailing a sanction specified in Article 127 of the Criminal Code.

Article 128 of the Criminal Code (“Not rendering assistance”), in turn, provides for liability for not providing assistance to a person who was harmed directly by the guilty person, or to a person who is in a situation that directly threatens his life, as well as to prevent others from giving necessary assistance, art. 129 of the Criminal Code (“Creating a life-threatening situation”) provides for responsibility for the unfair creation of a life-threatening situation for another person.

Norwegian criminal legislation is codified in the form of two codes. The first is the General Civil Penal Code, the second is the Military Criminal Code. For criminal abandonment of danger, liability is provided for in § 242<sup>th</sup> and 243<sup>th</sup> articles of the 22<sup>nd</sup> chapter entitled “Crimes against life, organism and health”, found in the second part “Crime” of the Norwegian General Penal Code [8].

According to § 242, the person who left the other person in a helpless state either created such a situation, left the person in charge of the helplessness, guardianship, or, according to the law or contract, had to watch him, accompany him on the transport, take he is either taken care of in any other way, and also has created a situation that is dangerous for his life by fraud or provocation is brought to criminal liability. The aggravating circumstances of this crime envisage grievous bodily harm or death. But, an official accusation is made only if there is a statement by the victim or upon the death of people, proceeding from the public interest.

In § 242 and 243 articles of the Criminal Code of Norway criminal liability is provided for the aforementioned criminal acts that caused serious bodily harm or serious injury to the victim’s health, his death.

In the Criminal Code of Bulgaria there is a special part (part III. Leaving at risk), consisting of 6 articles (p. 136-141), this part is located in the second chapter of the Special Part called “Crimes against the person” [9]. Article 136 provides for liability for the careless abandonment of the lives and health of workers at risk by violating occupational safety regulations.

Article 137, in turn, provides for responsibility for leaving persons in danger to life and health who are unable to take measures of self-defense due to minority, old age, illness or another helpless state, as well as not knowingly assisting people in dangerous conditions. for the life and health of the situation, in Article 138 - for the deliberate failure to provide assistance to persons under guardianship, the care of the perpetrator and not capable of self-defense from danger due to minority, old age, illness for another helpless state, when the guilty could and should have given them such assistance, Article 139 - for deliberately not rendering assistance to a person in a life-threatening condition, when the necessary assistance could be rendered in a safe way for other people, Article 140 - for the not knowingly rendering by the driver of a vehicle in an accident involving him to when the necessary assistance could be rendered in a safe manner for himself and other persons, Article 141 - for not providing without good reason help by the practitioner in helping the sick or the woman during childbirth, in the second part - when the person knowingly knew that the patient or woman is in a life-threatening condition during childbirth, in part three, responsibility is foreseen for the person who did not provide assistance to the patient without good reason, when the perpetrator was obliged to provide such assistance. In our country, responsibility for such acts is provided for in Art. 166 and 117 of the Criminal Code of the Republic of Uzbekistan.

In the Criminal Code of Denmark, responsibility for remaining in danger is defined in article 250. According to this article, any person who left a person for whom he was supposed to care in a helpless state or left him to fend for himself in a life-threatening situation should be sentenced to prison punishment, while in the presence of aggravating circumstances, for example, if the act led to the death of a person, causing grievous bodily harm, the punishment could be up for eight years in prison [10].

Part Two of the Criminal Code of the Republic of Serbia contains Chapter 7 “Crimes against life and health”, including Articles 57–58 of this chapter the responsibility for remaining in danger is

defined. Thus, in the first part of Article 57 (“Leaving in Danger”), responsibility arises when not providing assistance to a person in a life-threatening situation who is unable to take measures of his own defense or when the person put the victim in such a situation in the second part Responsibility arises if leaving a person in danger led to the infliction of moderate or severe bodily harm, in part three - upon the death of the victim. Article 58 (“Leaving a person in a helpless state”) defines responsibility for leaving a person in a situation dangerous for the life and health of the person, when the guilty person took upon himself the obligation to take care of and care for the victim because of his helplessness, if this the act entailed grievous bodily harm or the death of the victim [11].

In the Criminal Code of the Republic of Lithuania there is a situation similar to the Criminal Code of the Republic of Uzbekistan, i.e. the crime of abandonment is located in the section “Crimes dangerous to life and health”. Article 144 (“Leaving in a helpless state with a threat to life”) provides for liability if a person, due to care for the victim, having the possibility of first aid in a life-threatening situation, did not render such assistance or put the victim in a similar condition [12].

Chapter 2 (“On the unintentional infliction of death and unintentional harm to health”), part 8 (“On deliberate crimes against human health”) of the Book of the Second Criminal Code of Belgium provides the rules “On some culprits inaction”, so the articles 422bis and 422ter remaining in danger [13]. According to 422bis, a person who has refused to come to the aid of a person who is in a situation that seriously threatens his life is held accountable, regardless of whether he himself has found the victim in a threatening situation or he has learned about it from people who have asked him to help. It should be noted that responsibility comes under the condition that the guilty person who refused to help could provide such assistance without danger to his own life and health. Also, if the person did not herself discover the victim in a threatening situation, but found out about it from outsiders, but did not attach any importance to this, because the request did not sound serious, or created a feeling that the threat was not serious, the person who refused to help cannot be prosecuted. If the perpetrator is a minor, the penalty specified in part one is mitigated. According to Article 422ter, every person who has refused to provide assistance to a person to whom it has been able or obligated by law to provide assistance in conditions that do not threaten the life of the perpetrator or others will be held accountable; according to art. 422bis can be brought to justice those who had the opportunity to perform the necessary work, provide services, but refused to do so, as well as those who did not provide assistance in case of accidents, riots, sea catastrophes, floods, fires or other emergency situations, as well as the process of detention of persons committed robbery, theft, while spreading rumors, as well as during the execution of a court decision.

In the Criminal Code of Argentine, in turn, an entire chapter has been highlighted for acts in the form of abandonment of the Havf, so in the 6th chapter of the Criminal Code entitled “Leaving [in danger] people” of Article 106–108 criminalizes the commission of the considered crimes [14].

In particular, Article 106 defines criminal responsibility for leaving a person in a helpless state who was under the guardianship of the perpetrator, either who he should have taken care of, or whom he himself put in an incapacitated state, as well as endangering the life and health of an incapacitated person by his leaving a helpless state. In turn, Article 107 provides for liability if criminal acts are committed by the father or mother towards his children, or children against his parents, or husband / wife, Article 108 specifies the responsibility of the person who did not assist the person considered missing, either in a helpless state, a minor under the age of ten, a wounded, incapacitated person, or any person who is in a life-threatening situation, or if the person has not reported the incident to the authorities.

It should be emphasized that in the process of the historical development of criminal law of foreign countries we can observe the peculiar features of the qualification of the crime of leaving in danger, i.e. distinctive features from the norms of the Criminal Code of the Republic of Uzbekistan.

1) Article 117 of part 1 of the Criminal Code of the Republic of Uzbekistan states “Leaving a person in danger to life or health and unable to take measures to self-preservation without assistance if the perpetrator was obliged and had the opportunity to assist him”

But the legislator did not specify in the norm the rules about which persons specifically are recognized in this case as obliged to assist the victim, and for whom it is impossible to apply this norm. This, in turn, causes problems in the correct qualification of the act in the activities of law enforcement agencies.

In such cases, it is indicated in the criminal law of many foreign countries which persons should either be obliged to render assistance to helpless persons or to other persons who find themselves in a life-threatening situation. Thus, in various variations, but clearly defined circle of persons who are responsible for providing assistance to persons in a dangerous situation.

2) Part 2 of Article 117 of the Criminal Code of the Republic of Uzbekistan provides for responsibility for “leaving in danger, resulting in the death of a person”. In foreign countries, the commission of such acts provides for a different qualification. So, if you look at the historical experience of foreign countries, according to the Penal Code of Germany of 1885, if you left in danger with intent to encroach on the life of a person, in such cases the perpetrator was sentenced under Art. 1519 and 1520 of the Penal Code, as for premeditated murder. When leaving a person in danger without intent to cause him death, the guilty person was punished according to art. 144 of the Charter of punishment, as well as Art. 1515-1518 Penal Code.

3) The peculiarity and distinctive feature of the regulation of responsibility for remaining in danger under the Criminal Code of Switzerland lies in the fact that part two of Article 128 of the Criminal Code establishes responsibility for “disgusting or retaining another person to assist or prevent it”. In our opinion, it is advisable to introduce a separate norm providing for responsibility for such acts in our Criminal Code. From this point of view, in the disposition of the first part of Art. 117 of the Criminal Code of the Republic of Uzbekistan is invited to make the following addition:

“To make part one of Article 117 of the Criminal Code of the Republic of Uzbekistan after the words “either put the injured person in a dangerous state”, add the words “and also to hold another person in rendering assistance or hindering this”.

4) In some foreign countries, the age of persons in a dangerous situation varies, based on this, the range of persons who are obliged to or should assist them is different. Thus, in Germany, the age of persons in need of assistance is delimited as follows: children under the age of three; children aged three to seven years; persons aged seven over the years. In our opinion, it is advisable in the criminal law of our country to also take into account such age indicators established by civil legislation, and clearly define the circle of persons obliged to assist them.

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