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## Certain aspects of the definition of persistent disability in the qualification of intentional infliction of grievous bodily injuries

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The article considers permanent disability as one of the socially dangerous consequences that occur as a result of intentional infliction of serious bodily injuries. A number of existing problems with determining the degree of persistence of disability may lead to errors in the qualification of crimes under article 147 of the Criminal Code of the Republic of Belarus.

**Keywords:** serious bodily injury, the objective side, the loss of ability to work, resistance, significance, harm to health, degree.

В статье рассматривается стойкая утрата трудоспособности как одно из общественно опасных последствий, наступающих в результате умышленного причинения тяжких телесных повреждений. Ряд существующих проблем с определением степени стойкости утраты трудоспособности могут повлечь ошибки при квалификации преступлений, предусмотренных ст. 147 Уголовного кодекса Республики Беларусь.

**Ключевые слова:** тяжкое телесное повреждение, объективная сторона, утрата трудоспособности, стойкость, значительность, вред здоровью, степень.

**Introduction.** The objective side of any crime characterizes its outside. With regard to the material elements of the crime, socially dangerous consequences are a mandatory sign of the objective side of the criminal act. Such compositions include, in particular, intentional infliction of grievous bodily injuries, as evidenced by the construction of the criminal law norm provided for in Art. 147 of the Criminal Code of the Republic of Belarus (hereinafter – the Criminal Code) [1].

Intentional infliction of grievous bodily injuries can be carried out both by action and by inaction.

On the physical side, the action is characterized by the active behavior of a person. It always manifests itself in body movement, but does not come down only to it, since it usually includes not one, but several body movements (for example, a killer shot from a pistol includes a number of movements associated with aiming and pressing the trigger of a pistol). But the main thing for a criminal act is not physical, but a social characteristic, which is its public danger. A socially dangerous action is an action that causes harm to objects protected by criminal law, or puts them at immediate risk of harm. If the actions are not socially dangerous, then they cannot be recognized as criminal and cannot entail criminal liability.

The article under consideration will focus on persistent incapacity to work as one of the socially dangerous consequences resulting from intentional infliction of grievous bodily injuries. Currently, there are a number of theoretical, legal and applied problems in determining the degree of persistent disability, which, in turn, can lead to errors in the classification of crimes under Art. 147 of the Criminal Code.

**The main part.** On the objective side, intentional infliction of grievous bodily injuries is expressed as unlawful infliction of harm to the health of another person. Harm to the health of another person can be caused both by action and by inaction. At the same time, all the variety of inactions that can cause bodily harm can be divided into 3 groups: causing bodily harm through physical (mechanical, electrical, thermal, etc.) actions; causing bodily harm by chemical means; inflicting bodily harm by mental influence [2, p. 403].

Infliction of grievous bodily harm is also possible with a mental impact on the victim. Mental influence is the influence on the body of another person by influencing his psyche with the help of mental factors of the external environment, which is the content of mental violence [3, p. 45].

Intentional infliction of grievous bodily harm by omission is possible if a person refrains from committing certain actions that he or she must and may have committed against another person.

An obligatory sign of the objective side of the *corpus delicti* is an act whose concept and essence are determined by a complex of features and signs of a criminal legal orientation. The act must be socially dangerous, unlawful, conscious and strong-willed, complex and concrete in content [4, p. 149].

According to the criminal legislation of the Republic of Belarus, damage is considered serious in case it is:

- 1) life-threatening;
- 2) resulting in loss of vision, speech;
- 3) resulting in loss of hearing or any organ or loss of the organ's functions;
- 3) resulting in termination of pregnancy;
- 4) mental disorder (illness);
- 5) resulting in a health disorder connected to a persistent disability by at least one third;
- 6) resulting in a health disorder associated with skeletal bone injury for a period of more than 4 months;
- 7) resulting in indelible disfiguration of the face or neck.

Life-threatening injuries are those that themselves threaten a person's life or, in their normal course, naturally end in death. In assessing the risk to life of such injuries, prevention of fatalities caused by medical care or other incidental factors should not be taken into account [5, p. 8]. The list of injuries dangerous to life is contained in the Instruction on the procedure for conducting a forensic medical examination to determine the severity of bodily injuries (hereinafter – the Instruction).

Let us consider some problematic issues related to the definition of persistent disability.

Working capacity refers to the ability to work, depending on the state of a person's health. The Criminal Law of the Republic of Belarus does not provide an accurate definition of persistent loss of general ability to work. The forensic literature indicates that the general ability to work is a combination of the ability of a person to perform unskilled work and provide self-care [6, p. 144].

The essence of the considered sign of grievous bodily injury is not the production changes of the body as a result of the harm caused to health, but only anatomological and pathological. Touching upon the qualitative criterion of loss of general working capacity, the Criminal Code of Belarus pays special attention to its «persistence». A persistent form of disability implies irreparability or, in other words, the corresponding outcome of the disease with an adverse clinical prognosis due to the nature of the injury. However, there are cases in which it is impossible to fully judge the nature of the course of the disease and only when observed in dynamics can the result of such an injury be objectively assessed. For example, cases where an accurate prognosis is not possible and there is a need for long-term treatment.

The loss of overall working capacity should be significant. The sign of significance is also not determined by the legislator either in the Criminal Code or in the Instruction. And, for example, in Art. 147 of the Criminal Code there is no indication of the significance of the loss of general working capacity. Moreover, Art. 149 of the Criminal Code (intentional infliction of less serious bodily injury) refers to a significant persistent disability by less than one third, Art. 153 of the Criminal Code (intentional infliction of light bodily injury) – a minor persistent disability [1]. Therefore, in our opinion, it is advisable to fix in Art. 147 of the Criminal Code the sign of significant persistent loss of general working capacity in order to eliminate the existing legal gap.

When determining the degree of disability in the event of harm to the health of a disabled person, a number of questions also arise. Note 1 in paragraph 11 of the Rules on Forensic Medical Examination of the Nature and Severity of Bodily Injuries in the Republic of Belarus 1999 (no longer valid) states that in persons with disabilities, the persistent loss of working capacity due to the damage was defined as in practically healthy people regardless of disability and its group [7]. Rightly noted M.I. Galyukova «if the harm to health caused to a disabled person of the 2nd or 3rd degree caused changes in his level of health, then, apparently, the medical and labor commission should transfer him to the 1st or 2nd disability group, respectively. But it is almost impossible to assess the harm to health caused to a disabled person of the 1st group based on the economic characteristic at the moment» [8, p. 128–129].

Since 2016, the Instruction on the procedure for conducting a forensic medical examination to determine the severity of bodily injuries entered into force, approved by Resolution of the State Committee of Forensic Examinations of the Republic of Belarus № 16 as of 24.05.2016. This Instruction replaced the Rules of Forensic Medical Examination of the Nature and Severity of Bodily Injuries in the Republic of Belarus of 1999. The adoption of the document was due to the need to update the regulatory framework after the formation of the State Committee of Forensic Examinations. No fundamental changes were made in the procedure for conducting forensic medical examination. Improvements were made to the conceptual apparatus, taking into account new trends in medicine, and a table of the percentage of persistent loss of general working capacity due to the traumatic effects of physical, chemical, biological, mental and other environmental factors was developed and highlighted in the annex.

Returning to the procedure for determining the degree of disability of a disabled person in the event of bodily harm, we note that it is not present in the new Instruction. At the same time, it follows from paragraph 15 of this Instruction that «the exacerbation of previous diseases after bodily injury, as well as other consequences of bodily injury arising due to accidental circumstances, individual characteristics of the body, shortcomings in the provision of medical care, are not grounds for changing the severity of bodily injury. In such cases, the expert's opinion indicates the nature of the deterioration or complication that has occurred and the causal relationship to the injury» [9].

In the 1930s there were already attempts and proposals were made to replace the percentage system with a single list of diseases and consequences of bodily injuries to determine the degree of prolonged loss of ability to work [10, p. 172]. In our point of view, this proposal is of clear interest. Such work will require a number of legal and medical studies, but this will eliminate the problem of «irrational comparison» of various types of injuries (diseases) with their percentage of harm to human health. If there is a long course of illness due to injury and waiting for its outcome is required, then, in our opinion, we can be guided by an additional temporary criterion indicating the persistence of disability (for example, 2 or 3 months from the moment of injury).

**Conclusion.** Thus, having briefly considered the legal gaps in determining the degree of disability in the event of bodily injury, we believe that it is necessary to consider at an in-depth scientific and practical level the issues that have arisen in determining the persistence of disability. On the same basis, the Manual on the Procedure for Conducting a Forensic Medical Examination to Determine the Severity of Bodily Injuries should be adjusted accordingly.

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