



Improvement of Responsibility for the Crime of Child Replacing and Adoption Secret Disclosure in the Criminal Law of the Republic of Uzbekistan

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<i>Article History</i>	<i>Abstract</i>
Received: 06 June 2023 Revised: 05 Sept 2023 Accepted: 11 Sept 2023	<i>This article examines the issues of replacing a child in the criminal legislation of the Republic of Uzbekistan and strengthening responsibility for a crime related to the disclosure of the secrecy of adoption.</i>
CC License CC-BY-NC-SA 4.0	Keywords: <i>Family, Child, Exchange of children, Adoption, Custody and guardianship, Divulging secrets, Low intentions, Greed, Envy, dislike, Motive</i>

1. Introduction

Article 124 of the Criminal Code provides for criminal responsibility for intentionally replacing a child with greed or other low intentions. Similarly, Article 125 of the Civil Code refers to the legislative family and another crime against young people - provided responsibility for disclosing the legally protected secret of the adoption of orphans or children deprived of parental care against the will of the adopters or the guardianship and guardianship body.

The general, special and related objects of these crimes are similar to the crimes mentioned in Articles 122 and 123 of the Criminal Code analyzed in the previous paragraph. According to A. Atajonov, the direct object of the crime of replacing a child is the maintenance of kinship ties with the blood family of a child who has been separated from his parents, and social relations that ensure the conditions for his normal development and formation [1]. We cannot agree with this opinion, because the author has a one-sided approach to the object of the crime. In our opinion, this article of the Civil Code protects not only the social relations related to the rights of the child, but also the social relations related to the rights of parents to raise and take care of their children. In this regard, we believe that the following opinion of M.H. Rustambaev is relatively correct: the object of the crime is the social relations that arise in the protection of the rights of the parents related to the upbringing of the child, as well as in the protection of the child's legal rights and interests in the future [2].

Therefore, **the main direct object** of this crime is social relations that protect the rights of parents to raise and care for their child and the right of the child to live and be raised in his family, as well as other legal interests arising in the future. In Article 73 of the Family Code, parents have the right and obligation to educate their children, and in Article 65, every child has the right to live and be brought up in a family, to know his parents, to benefit from their care, and to live with them. **The additional direct object** of this crime is social relations that protect the interests of society and the state, protecting fatherhood, motherhood and childhood.

One of the controversial issues in the text of Article 124 of the Criminal Code is the problem of the victim of the crime. Because in this article, the norm about replacing the "child" is defined. However, according to the legislation, in particular, the Law "On Guarantees of Children's Rights", a child means a person (persons) who have reached the age of eighteen (adult) [3]. In order to understand this issue correctly, scientists have emphasized that this symbol of the crime structure ("child") should be

interpreted in a limited way, and the victim is considered to be a newborn baby as a rule [4]. Sh.Yuldosheva also put forward a certain approach to this issue: changing a child is an action expressed in replacing a newborn or nursing baby with another (for example, a sick child with a healthy child, a girl with a boy, a child of one nationality with another, etc.) [5]. Nevertheless, in our national legislation, a child means a minor under the age of 18. We believe that the above opinions contradict the concept of a child defined in our national legislation. In Article 124 of the Civil Code, we believe that it is not the fact that the child who is considered a victim is still a baby, but the fact that his parents or relatives do not have the opportunity to recognize this child, their perception is important. For example, the child's parents may not have seen him since he was a baby or until he turned 18. We believe that in such a case, the replacement of a child by certain methods also forms part of this crime.

Scholars have put forward different views regarding the direct object of revealing the secret of adoption. In particular, according to M.H. Rustambaev, the direct object of the crime is social relations, family interests, and normal mental development of children aimed at creating conditions for the normal development of adopted children [6]. A.Otajanov includes in the list of these relations the social relations that determine the order of keeping the secret of adoption [7]. Supporting the generalized opinions of these scientists, we believe that **the main direct object** of revealing the secret of adoption is the normal physical and mental development of adopted children, the interests of the family, and social relations that ensure the procedure for keeping the secret of adoption and **the additional direct object** is social relations that protect the interests and prestige of society and the state in connection with the secrecy of adoption.

The objective aspect of the crime provided for in Article 124 of the Criminal Code is expressed in the substitution of a child. This is done through actions related to replacing the child with another child, and the crime is considered completed from the moment the child is replaced.

The crime provided for in Article 125 of the Civil Code is objectively expressed in disclosing the secrets of adoption without the consent of the adoptees, guardianship and guardianship authorities in their absence, or disclosing information that the adoptees in the registry office are not the real parents.

The subject of these two crimes can be any sane individual over the age of 16.

In the composition of these crimes, the problem of the subjective side has an important criminal-legal significance. Determining the content of this concept makes it possible to correctly answer a number of theoretical and practical questions (the structure of the crime, the scope and content of its subjective side). The nature of the crime, its social danger is largely determined by the subjective motivation, aspiration, desire, and inclination to commit the crime. Unlike other elements of criminal law, the norms of criminal law nearly always refer to the subjective aspect of criminal law. The legislator, as a rule, expresses the symptoms of this element through the motivation, feelings, etc. of the guilty person.

The subjective side of crimes is defined by the criminal law, and is manifested in a set of signs describing the internal (mental) side of socially dangerous aggression, which consists of the specific form of guilt, the motive, the goal of aggression, and the emotional state of the subject of the crime.

In order to qualify intentional crimes, not only the form of the crime, but also the direction of the intention is important, in which it is necessary to understand the direction of the subject's voluntary actions required by certain desires and motives in order to achieve certain socially dangerous consequences through concrete methods.

It should be mentioned that the definition of motive is not given in the criminal law. However, when creating separate criminal elements, the legislator uses different concepts as an indicator of motive. At the same time, almost all used motivational concepts are straightforward and do not create problems for the law enforcement officer to understand, perceive, interpret the motive (greed, racial or national enmity, religious bigotry, etc.). At the same time, the understanding of the motive of the crime depends on what meaning the legislator gives to the concept that is used instead of the motive of the specific crime [8].

Researcher U. Zakirova summing up all the motives and goals and classified them as 1) malicious; 2) not malicious; divided into two groups [9]. However, in our opinion, it is inappropriate to divide motives and goals into only two groups. Therefore, U. Zakirova includes motives and goals clearly specified by the legislator as malicious motives and goals (by means of greed; with malicious intentions; in pursuit of malice or other interests; the motive of hooliganism; on the basis of national, racial, religious or social discrimination; the motive of revenge, etc. -robbery of property, etc.).

Today, the concept of "low intentions" exists in some criminal structures of the Criminal Code. The term "low intentions" is widely used in criminal law, for example, it was added to the constructive structure of articles 124, 125, 131, 133, 137, 139, 1412, 227, 230¹ of the Criminal Code as a sign of the subjective side. In many cases, it comes with ulterior motives (which are labeled as ulterior motives and other low motives). So, malice is undoubtedly one of the low intentions, but in the eyes of the legislator, there are other low intentions. Consequently, non-inferior motives are also envisaged.

Unfortunately, this scientific-theoretical and practical problem deepens due to the fact that almost no attention is paid to it in the legal literature. Until now, in the doctrine of criminal law, stable scientific views on the low intentions of a person have not been developed, according to which criteria and why this or that motive should be considered low is abstract. Even in today's criminal legislation, this concept is used without revealing its content in a concrete norm, the list of low motives is drawn up subjectively by scientists and experts, quite arbitrarily.

In legal literature, inferiority (ambition, baseness, malice, cowardice, misunderstanding of duty, etc.) is understood very widely [10]. And A. Atajonov comments on the origin of the concept of "low intent" of the motive of the subjective side of the crime from the specific content of the crime structure, and if it is included in the necessary sign of the crime structure, only if the intention of the culprit was committed with low intentions. In particular, in the crimes of exchanging a child (Article 124 of the Civil Code) or disclosing the secret of adoption (Article 125, Part 2, Clause "b") of the Criminal Code, other low intentions mean taking revenge on the child's relatives, the child or the adopted persons, not seeing them. is understood as behavior that indicates a particular immorality, such as wanting to harm [11].

In addition, according to S.I. Nikulin, "low motives are motives that grossly violate the rules of etiquette (for example, on the basis of revenge, nationalism and racism)" [12]. Researcher A.I.Chuchaev takes a similar position. In his opinion, revenge, jealousy, replacing a healthy child with a sick one, among other low motives [13]. Here, we are talking about morals, motives that are contrary to society's values.

Some scientists, for example, A.N. Ignatov, include the issue of recognition of specific motives as low within the jurisdiction of the court. According to him, greed, revenge, jealousy, envy and other motives considered by the court to be low can be considered as low motives [14]. It is difficult to support this opinion, because it is clear that the interpretation of the constructive element of the criminal offense, leaving the interpretation to the subjective discretion of the judge, in practice causes arbitrariness and distrust of the court.

In turn, the researcher E.Gil adds the following to low intentions, which are the basis of criminal liability in the criminal law, as a constructive symptom in the qualification of concrete elements of a crime, which aggravates and alleviates responsibility. For example, motives based on greed, thuggery, revenge, national, racial or religious enmity seem favorable to him. For him, all motives and goals that are not related to the determination of responsibility in the criminal law, its strengthening, are motivations that do not have low content.

We cannot agree with this opinion either, because E. Gil unjustifiably includes all criminal-legal motives in the category of low motive. In addition, this drags the criminal law not in the way of legislation, but in areas with non-concrete, evaluative and abstract categories, such as philosophy, ethics and culture.

Under low intention, the legislator leaves the law to the subjective discretion of the law enforcer without specifying a specific goal and motivation, which can lead to more complexities in practice

and the formation of different law enforcement practices. In our opinion, each term used in the legal text should be unambiguous, free of synonymy, and consist of official words. We will consider the above problematic issues on the example of specific criminal elements.

2. Materials And Methods

3. Results and Discussion

Article 124 of the Criminal Code establishes responsibility for replacing a child. The subjective side of replacing the child is characterized by guilt, the condition of which is not defined in the norms of the Criminal Code, but is clearly defined in the interpretation of the article. A reference to extortion or other low motives excludes the existence of a reckless form of guilt in the crime.

Substitution can only be done intentionally, and since the composition of the remaining crime is structured in a formal form, it is impossible to divide the case into a straight or curved form. Since the consequences are not included in the scope of the objective aspect of the crime, there is no reason to include the mental attitude towards them as part of the intent. Therefore, the intention to replace a child is typical for formal structures, and consists of an individual's understanding of the social danger of replacing one child with another.

The law specifies the motive - extortion or other low intention as a necessary sign of the subjective side of the crime. Extortion is the desire to obtain material benefit or to avoid material costs after committing a crime, in which material gain can be intended immediately or in the future, for example, as a result of blackmail.

According to M.H. Rustambaev, revenge and jealousy can be the base motives for replacing a child [15]. In our opinion, low intentions in replacing a child are manifested not only in revenge, jealousy, but also in the desire to have a healthy child instead of a physically disabled child, etc. They can also be expressed in the desire to change the child based on discrimination, gender or appearance. The desire to use a child for conducting certain medical experiments, to use its organs or tissues for transplantation, to use it in sexual or various illegal religious rituals can also be included in low intentions (of course, in this case, crimes with the relevant articles of the Criminal Code are created).

As the researcher U. Zakirova rightly notes, low intentions are not considered a legal term, in terms of meaning and content, low intentions have an intangible appearance [16].

The category of low motives includes a very wide range of motives with varying degrees of antisociality. But the Criminal Code does not allow individualization of responsibility depending on the content of this subjective factor, which, in our opinion, can be considered a shortcoming of the Criminal Code. At present, the differences between the intentions to replace can be reflected only in the punishment, the motivation itself affects the degree of social danger of the crime.

The behavior manifested in the fact that parents voluntarily agree to exchange their children, for example, the desire to have a child of the other sex, is inherently immoral, but not illegal. At the same time, in practice, such actions can be considered as "trafficking of minors". However, in our opinion, it is not appropriate to include such actions in transactions related to minors, because taking another child in exchange for one's own child cannot be equated with receiving any material benefit or benefit as a result of these actions.

One more crime against the institution of the family is disclosure of the secret of adoption, provided for in Article 125 of the Criminal Code.

The subjective side of the act in question can be manifested only in the form of correct intention. The person realizes that he is disclosing the legally protected secret of the adoption of orphans or children deprived of parental care against the will of the adopter or guardianship and guardianship body and wants to carry out these actions.

A necessary sign of the subjective side of paragraph 2, paragraph "b" of the analyzed crime is the presence of malice or other ulterior motives. A malicious motive includes motives related to the desire to obtain a certain property benefit. Other low motives can be expressed in jealousy, revenge, etc.

In our opinion, the legislature limited malice or other low motives only to other persons, because the disclosure of the secret by a person who is bound by his profession or position to keep the adoption secret has in itself a great social risk. Other low motives may include motives known to Article 125 of the Criminal Code (for example, revenge, invisibility, enmity).

For example, the case of a grandmother who told her 11-year-old granddaughter the whole "truth" about her adoption in order to take revenge on her daughter-in-law, who recently broke up with her son, is known to judicial investigation practice. His grandmother told his classmates about the child's adoption.

When analyzing the motives of these crimes, determining the nature of their inferiority is especially problematic, which significantly expands the opportunities for "arbitrariness" of law enforcement officials. Scientists who have conducted research on this issue say that the lack of definition and meaning of low motive in the criminal law causes mistakes and unclear situations in the application of the criminal legal norm, which ultimately has a negative effect on the imposition of a just punishment for a criminal act and the prevention of crimes [17].

In fact, clarifying criminal intentions in the law is the main requirement for the correct classification of the crime.

With the above in mind, we offer the following:

first, to remove the category of "low intentions" from the disposition in Articles 124 and 125 of the Criminal Code and replace it with the motive of "other personal interest";

secondly, using the existing developments in the doctrine of criminal law, in order to improve the normative regulation of low motives, to critically review the structure of each low motive crime, and reveal it as much as possible in the construction of the structure;

thirdly, it is appropriate for the Supreme Court of the Republic of Uzbekistan to provide the courts with a special explanation on the correct classification of crimes committed with low intentions.

Correct understanding and determination of the motive and purpose of the crime, in particular, removing the abstract category of "low intent" in the criminal law and replacing it with a broad description of the motivation based on the structure of the concrete crime, effectively serving the law enforcer to solve the crime, qualify it and impose a punishment, and prevent future crimes.

It is explained by the fact that the act provided for in Part 1 of Article 125 of the Criminal Code is not high in social risk, that the act can be committed due to carelessness, that criminal consequences are not provided for, that the punishment related to deprivation of liberty is not provided for in the sanction of the norm, and so on.

In addition, the analysis of statistical data shows that cases of this category are rarely seen in judicial practice. In particular, in 2014, the courts closed the case against 1 person in connection with 1 criminal case based on the amnesty act, in 2015, in connection with 3 criminal cases, 3 persons were sentenced, of which 1 person was sentenced, and 2 persons were dismissed due to the reconciliation of the parties, in 2016, 4 persons were convicted of 2 criminal cases, 3 of them were sentenced (1 person was sentenced to a fine), and the criminal case was closed against 1 person.

4. Conclusion

In addition, the analysis of the criminal legislation of foreign countries Russian Federation (Article 155 of the Criminal Code), Kazakhstan (Article 135 of the Criminal Code), Moldova (Article 204 of the Criminal Code), Armenia (Article 169 of the Criminal Code), Azerbaijan (Article 175 of the Criminal Code), Tajikistan (Article 173 of the Civil Code) indicates that the criminal responsibility for disclosing the secret of adoption in the states arises only "if it is committed by a person who is obliged to keep the secret of adoption according to his professional activity or service position, as well as by another person out of malice or other low intentions."

Based on the above, it is proposed to remove the first part from Article 125 of the Civil Code, which provides for criminal responsibility for revealing the secret of adoption, and supplement the Criminal Code with Article 481, which provides for responsibility for this act.

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