



**ANALYSING THE PRACTICE OF APPLYING THE PROVISIONS OF THE
CRIMINAL CODE OF THE REPUBLIC OF UZBEKISTAN CONCERNING
EXTREME NECESSITY**

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Jumanazarova Marjona Botir qizi

An independent researcher of the Tashkent

State University of Law

botirqizi@gmail.com

ABSTRACT

This article provides a legal analysis of the practical application of extreme necessity as a condition that excludes criminality of an act. An in-depth analysis of the application of the norms of extreme necessity in the field of law enforcement has been carried out. The statistical data analysis revealed existing shortcomings during the research. Recommendations have been presented to eliminate the problems identified in the project study.

Keywords

extreme necessity, legal conditions, mitigating circumstance, obligation, proportionality, danger, exemption from responsibility, conviction, criminal cases, violation, citizens' rights and freedoms.

The practice of applying the institution of extreme necessity should be based on the principle of reasonable justification of the actions taken to eliminate the danger that threatens the interests protected by law. The importance of the role of the extreme necessity in criminal law, the fact that circumstances excluding the criminality of all acts are formed based on it, as well as the fact that we meet the elements of the extreme necessity in a number of articles of the special part of the Criminal Code of the Republic of Uzbekistan show how great the theoretical and practical importance of extreme necessity is. Nonetheless, in practice, the situation regarding the application of the citizen's right to extreme necessity is surprising. Despite the fact that the institution of the extreme necessity has gone through long historical stages of its development, it is difficult to find the practice related to the application of this article in the Criminal Code.

When examining the court decisions published online by the courts in criminal cases (as of October 19, 2022, 187,731 criminal cases were considered, of which 149,213 were considered at the first instance, 28,629 at the appeal instance, 9,057 at



the cassation instance, and 832 at the repeated cassation¹) it was found that none of them was acquitted in accordance with Article 38 of the Criminal Code of the Republic of Uzbekistan, or the act was found to have been committed beyond the limit of extreme necessity, and this act was not taken into account as a mitigating circumstance. In response to our appeal to the Supreme Court of the Republic of Uzbekistan, it was reported that no acquittals were issued in accordance with Article 83, Clause 2 of the Criminal Procedure Code of the Republic of Uzbekistan using Article 38 of the Criminal Code of the Republic of Uzbekistan between 2018 and June 2022. It is reported that the verdict of acquittal was not issued, considering the act as a extreme necessity or the act was not found to have been committed beyond the limits of extreme necessity and it was reported that no convictions had been issued. Also, the response indicated that there is no statistical information on the application of clause "e" of Article 55, Part 1 of the Criminal Code of the Republic of Uzbekistan².

There are significant issues when courts are established to enforce necessary norms.

During the investigation of over 187,000 criminal cases, it was found that in some instances, the extreme necessity was not utilized. Additionally, there were situations where Clause 'e' of Article 55, Part 1 of the Criminal Code could have been applied.

One such example is the following criminal case. On October 23, 2018 at 00:40, A., who was driving a "Lasetti" car with a warrant, passing through the area of "Kyzil Chali" neighborhood of Amudarya district lost control to avoid the danger of colliding with a car that appeared suddenly. He lost control and hit a tree on the north side of the road, causing a traffic accident. He was driving on the border asphalt road of Urgench-Mang'it-Republic of Turkmenistan. As a result of this incident, minor B. sitting in the back left seat of the car gets injured. According to the conclusion of the forensic examination appointed in connection with this case, it was determined that minor B.'s body was injured at a "severe" level. On December 6, 2018, the Khojaly District Court on criminal cases considered the criminal case against A. regarding the gross violation of Section 77, Parts 1, 2, 3 of the "Traffic Rules", approved by Resolution No. 370 of the Cabinet of Ministers of the Republic of Uzbekistan. In the court, A.'s actions were evaluated as an act provided for in Article 266, part 1 of the Criminal Code of the Republic of Uzbekistan, and his reconciliation in accordance with Article 66¹ of the Criminal Code is taken into account. In accordance with the petition of the victim B. requesting the termination of the criminal case in connection with reconciliation, the criminal case against A.

¹ <https://public.sud.uz/report>

² Letter of the Supreme Court of the Republic of Uzbekistan dated August 12, 2022 No. 97935-s/22.



was terminated in connection with reconciliation³. This criminal case analysis suggests that the driver took emergency action to prevent a collision with another car and protect the lives of the driver, passenger, and several people in the second car. The ruling of the judge is being challenged on the basis of whether the driver took the least dangerous action at the time to avoid a greater risk. Additionally, it is important to consider whether there are alternative methods to eliminate the danger before resorting to A, as well as whether A. himself created the danger or not. These factors are crucial in assessing the situation as a extreme necessity.

There are more than a thousand criminal cases related to the violation of the safety rules of the movement of vehicles or their use (one of the most reviewed cases), none of them take into consideration of the driver's actions related to the prevention of a greater danger. The possibility of decision-making by the driver in the real situation at that moment were not taken into account. It can be said that the situations related to the circumstances that exclude the criminality of the main act are being carried out in the same direction.

Paragraph 2 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the verdict" states that the verdict of the court "... shall be legal, reasonable and fair...", "... respect the honor and value of the person, protecting the rights and freedoms of citizens ..." is the main goal. And it is stated that the sentence "... should be issued on the basis of the presumption of innocence..."⁴. Any deviation from the principles outlined in this paragraph, on any grounds, may render the judgement unlawful. As the protection of citizens' rights and freedoms is paramount, it is crucial to determine whether extreme necessity exists when an act is committed. This decision can be said to be a repeated explanation given to the courts that if the act is committed in cases where the criminality of the act is excluded in the paragraph 2 of part 2 of paragraph 9, then an acquittal will be issued due to the fact that the act does not contain a criminal element (paragraph 2 of Article 83 of the Criminal Code).

It can be assumed that the reason why the citizens' right of extreme necessity is not being implemented is that the judges do not know how to apply the norm of extreme necessity or are not allowed to apply it. This statement is objective and clear, avoiding any biased or figurative language. The sentence structure is simple and the technical term 'norm of extreme necessity' is explained upon first use. The grammar, spelling, and punctuation are correct. No changes in content have been made. It is often perceived that the use of circumstances which exclude the criminality of an act can lead to suspicion of corruption within the state. This

³ Criminal case No. 352041/2018-57 of Khojaly district court on criminal cases.

⁴ Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the Correctness of the Court's Judgment" // May 23, 2014, No. 07.



perception has led judges to refrain from applying these norms, according to anecdotal information available to us. If we consider that corruption should be addressed and studied at a higher level, it is unfortunate that its existence is being tackled by limiting and violating citizens' rights. To prevent such situations, we suggest that the Supreme Court of the Republic of Uzbekistan develop an explanation in the form of a separate Plenum decision on the application of the norms of extreme necessity.

According to statistics, there were 2,660 crimes committed in 2018, 2,660 in 2019, 2,423 in 2020, 3,118 in 2021, and 2,454 crimes in the first nine months of 2022 under Article 266 of the Criminal Code of the Republic of Uzbekistan⁵. It is possible to see that the crimes related to the violation of the safety rules of the movement of vehicles or their use increased by 28.7% in 2021 compared to 2020, and in the 9th month of 2022, this figure was almost equal to the total number of crimes committed by the same type of crime in the 12th month of 2020⁶. At the stage of proceedings before the court, if the circumstances excluding the criminality of the act are found, the criminal case will be terminated by applying Article 83, Clause 2 of the Criminal Code. For example, in 2019-2021 and 11 months of 2022, a total of 17,576 cases were completed by the investigators and investigators of internal affairs bodies under Article 83, Part 2 of the Criminal Code of Uzbekistan⁷. In the same context, the largest part of the closed criminal cases was the violation of the safety rules of the movement of vehicles or their use (Article 266 of the Civil Code), which amounts to 1999 cases.

Continuing the analysis of the application of the norm of extreme necessity, first of all, it is necessary to emphasize that this norm is often encountered in the activities of law enforcement agencies. In the conditions of protection of the rights and interests of citizens, employees of law enforcement agencies may endanger and harm the rights and interests of other citizens or the same citizen, as well as their own.

For example, most of the processes of pre-investigation, investigation, preliminary investigation and collection of evidence for the purpose of proving a criminal case in court are related to the restriction of the rights of citizens, which are strengthened by the constitution. Based on our opinion, according to the Law of the Republic of Uzbekistan "On Quick Search Activities"⁸, the internal affairs, state security service, state security service of the President of the Republic of

⁵ <https://stat.sud.uz/> date of application 16.11.2022

⁶ https://t.me/aoka_uz date of application 16.11.2022

⁷ Letter No. 7/9-J-302 dated December 23, 2022 of the Center for Legal Statistics and Quick Accounts of the Ministry of Internal Affairs of the Republic of Uzbekistan.

⁸ The Law of the Republic of Uzbekistan "On Quick Search Activity" // Collection of legal documents of the Republic of Uzbekistan, 2016, No. 17, Article 173.



Uzbekistan, state customs service bodies, as well as the Bureau of Compulsory Enforcement and Department of Combating of Economic Crimes under the General Prosecutor's Office of the Republic of Uzbekistan carry out 16 types of fast-search activities such as the collecting data, collecting samples for comparative examination, purchasing for inspection, taking control, checking objects and documents, rapid surveillance, determining the identity of a person, residences and other places, buildings, structures, plots of land , inspection of technical and transport vehicles, control of mail, courier shipments and telegraphic messages, listening to conversations conducted through telephones and other telecommunication devices, receiving information transmitted through them, receiving information about connections between subscribers or subscriber devices, quick input, under control delivery, disguised operation, fast experiment. And all of them are inevitably associated with violation of basic human rights and freedoms. Also, carrying out 14 types of investigative actions specified in the Criminal procedure code of Uzbekistan is also related to the violation of basic human rights and freedoms. For instance, the Constitution of the Republic of Uzbekistan guarantees several rights, including the right to confidentiality of correspondence and telephone conversations, the right to freedom and privacy, protection from interference in one's private life, and the right to privacy of residence. These rights are upheld. However, the detection, prevention, and cessation of crimes, as well as the identification of individuals who are preparing to commit, committing, or have committed them, are more important than the protection of individual objects. Therefore, their violation can be justified.

Thus, on the basis of a comparative analysis of the Criminal Procedure Code of the Republic of Uzbekistan, the Law "On Urgent Search Activities" and the criminal law norms of extreme necessity, it is logical to come to the conclusion that the legal regulation of the main activities at the stage of proceedings before the court is based on the legal acts of extreme necessity.

In traffic safety activities, controversial situations often arise that lead to a extreme necessity. One such situation is the forced stop of a vehicle when the driver fails to comply with the demand to stop. Legal assessment of such actions is often difficult due to the need to determine the basis for the use of firearms. An example of such situations can be given the situation that happened on January 7, 2022 on Yangishahar Street in Tashkent. According to the information service of the Ministry of Internal Affairs, the citizen A.A., born in 1976, was in a state of strong intoxication tried to escape on the "Malibu" under his control, without obeying the legal requirements of the staff of the National Security Service serving here, endangering the lives and health of others. Employees used firearms in order to prevent serious consequences that may occur due to illegal actions of the driver.



Traffic safety officers may not use firearms under any circumstances during their activities. The use of firearms is justified only in cases where the driver poses a real threat to the life and health of other persons. For example, if the driver blatantly violates the traffic rules and tries to hide from the pursuit by not responding to the repeated demands of the traffic police officers to stop (exceeds the speed limit on this part of the road, changes the lane sharply, does not respond to the specified road signs and traffic lights, is under the influence of alcohol or under the influence of drugs). Even in the listed situations, the use of weapons must be the extreme necessity measure to eliminate the danger.

Therefore, when making a legal assessment of the situation of using firearms, it is necessary to determine whether traffic safety officers have the opportunity to push the car to the side of the road, use other forces and means at their disposal, block the road with heavy vehicles, use special tools, and take measures to close the road by establishing contact with neighboring posts or not.

Law enforcement officers may sometimes need to take extreme measures in their line of duty. In the process of apprehending a criminal, extreme necessity may arise. Law enforcement employees who cause property damage to innocent citizens are exempt from responsibility. This situation has also found its place in the legislation. For example, in paragraph 111 of the regulation "On the procedure for the service of employees of the National Guard of the Republic of Uzbekistan"⁹, paragraph 100 of the regulation "On the procedure for the service in the state customs service bodies of the Republic of Uzbekistan"¹⁰, paragraph 118 of the regulation "On the procedure for the service in the internal affairs bodies"¹¹ define that "If an employee causes damage during the performance of his duties in the case of necessary defense or extreme necessity, during the apprehension of a person who has committed a socially dangerous act, or during the execution of an order or other task, as well as due to taking a reasonable risk related to his professional activity, the issue of releasing him from responsibility shall be in accordance with the procedure established by law".

Our analysis shows that law enforcement officers may face extreme situations during the inspection, inquiry, and preliminary investigation stages before the actual investigation. These situations are protected by both laws and legal

⁹ Decision of the President of the Republic of Uzbekistan dated April 22, 2021 No. PQ-5089 "On measures to improve the procedure for service by employees in the National Guard of the Republic of Uzbekistan" // National database of legal documents, 04/23/2021, 07/21/5089 No. /0372.

¹⁰ Decree of the President of the Republic of Uzbekistan dated April 12, 2018 No. PQ-3665 "On the organization of the activities of the state customs service bodies of the Republic of Uzbekistan" // National database of information on legal documents, 04/13/2018, No. 07/18/3665/1071.

¹¹ Decision of the President of the Republic of Uzbekistan dated November 29, 2017 No. PQ-3413 "On measures to radically improve the procedure for working with personnel of internal affairs bodies and organizing their service" // National database of legal documents, 30.11.2017, 07/ No. 17/3413/0334.



documents. Prior to this investigation, the approach of inspection, inquiry, and preliminary investigation bodies towards citizens' acts of extreme necessity can be observed as follows.

In response to the appeal to the General Prosecutor's Office of the Republic of Uzbekistan, we received an official letter stating that no person's action was qualified as a extreme necessity and no criminal case was refused or terminated during the years 2018-2021 and the first half of 2022¹². It can be concluded that over the past five years, the prosecutor's office did not consider a case in which there was a state of extreme necessity. There are two possible interpretations: either no one has violated the rights and interests protected by other laws in order to defend against a threat to a person's rights, the interests of society or the state, or the prosecution authorities are having difficulty determining the nature of the act. Due to our shortcomings in the application of such rights, citizens are not able to protect their own rights or the rights of others. Instead, they are only educated in how to become victims. This is because the individual's interest in avoiding risk is lost when faced with the threat of liability.

In conclusion, it can be argued that failure to address the shortcomings in the application of extreme necessity norms undermines the provision of people's rights and freedoms. A country with a developed criminal law should strictly adhere to the norm of extreme necessity.

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