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**DISTINGUISHING EXTORTION FROM RELATED OFFENCES:
THEORETICAL AND PROCEDURAL ASPECTS**

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Abstract

This publication considers theoretical and procedural aspects of the institute of extortion. The peculiarities of extortion qualification and differentiation of extortion from related offences are disclosed. The analysis of law enforcement practice with a focus on the criminal procedural features of extortion investigation has been carried out. The problems in the investigated sphere are revealed and the directions of their overcoming are offered by means of increase of the organisational and administrative level of investigation of the analysed categories of crimes, expediency of introduction of strict liability for persons investigating cases of extortion. It deals with a necessity of strengthening the application of technical methods and means of investigation, taking into account theoretical features of the given crime. In general, the analysis of theoretical and procedural aspects of the investigation and differentiation of extortion from related crimes allows us to conclude that it is necessary to toughen criminal-legal approaches. This involves the need to improve the organizational and managerial level of investigation of the analysed categories of crimes, the expediency of introducing strict liability for persons investigating extortion cases, as well as the need to strengthen the use of technical methods and means of investigation..

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1. Introduction

The relevance of this study is due to the fact that the current law enforcement practice requires a clear distinction between extortion and other related offences. Such distinction allows correctly and comprehensively carrying out the qualification of criminal acts.

The special nature of extortion is also due to the fact that it can be committed with the use of violence and attacks both on property and on the person.

The most frequent ones are cases of legal differentiation of features of extortion and robbery, as the main characteristics of such acts allow us to talk about the similarity of these offences.

2. Problem Statement

The main distinguishing features of robbery and extortion will be the timing of violence in extortion in robbery, with the main factor of violence in robbery being its priority. In extortion, violent actions begin to be used against the victim after the main demands concerning the material aspect have been voiced.

The actual orientation of violent actions, threats, psychological violence is shifted in time, with the intention to apply it in the future, and the time period of such application is not specified. The moment of transfer of the material part of the required thing is not specified at all or assumes the transfer of the required thing after voicing the claims of material nature and the actual real possibility of their fulfilment (for example, the beginning of the bank's work, for the possibility of withdrawing cash from the account, etc.).

When making demands of robbery, any threats of retaliation have no future inclination and can be executed immediately. It is the analysed aspect that allows us to talk about the distinction between robbery and extortion in the science of criminal law.

3. Research Questions

However, the time criterion is not the only one. Great attention is also paid to the criminal desire to take possession of another's property. In robbery, the main motive is to take possession of another's property completely and unconditionally. In extortion, the transfer of another's property may be of a secondary nature and covers the desire for revenge in connection with the refusal to satisfy other illegal demands of the extortionist.

The main forms of extortion can be threats:

- i. infliction of physical violence;
- ii. destruction of some or all of the property;
- iii. property damage;
- iv. dissemination of information about the victim or his/her relatives;
- v. dissemination of any other information which, in the victim's opinion, may cause substantial harm to his or her rights and legitimate interests, as well as to the interests of his or her relatives and other interested parties;

- vi. any other information capable of causing moral suffering or destabilising the mental and emotional state of the victim.

In the case of robbery, however, the violence may be in the form of physical violence or the threat of physical violence alone.

As extortion and robbery may form a combination of offences, a number of criteria for their differentiation should be further distinguished.

4. Purpose of the Study

The purpose of the study of the issues of distinguishing extortion from other elements of crime, such as robbery, arbitrariness, is a clear differentiation of criteria that make it possible to unambiguously determine which crime was committed and what punishment should be inflicted on the perpetrator.

5. Research Methods

In the process of investigation, it is necessary to be guided by the decision of the Plenum of the Supreme Court of the Russian Federation of 04.05.1990. It regulates the fact of use of violence in robbery and threat as a means of taking property and in extortion as a way to reinforce the threat. Also in the above decision, emphasis is placed on the time period of committing violent actions and the result achieved: in robbery simultaneously with the use of violent actions, while in extortion the intent is directed into the future.

Analysis of the legal mass, both civil and criminal, allows us to conclude that the subject of the offence in the case of robbery is property. And in the case of extortion, this should include not only property, but also the right to it and other actions of a proprietary nature.

At the same time, the need to distinguish between the analysed crimes often becomes a problem, as, for example, in the case when the property, which is the subject of the crime, cannot be the subject of robbery due to its "immovable" nature and impossibility of alienation, except through the transfer of rights to it in the manner prescribed by law.

A direct sign of the difference between robbery and extortion is the fact that in robbery it is possible to use physical and mental violence dangerous to human life and health. In extortion, mental violence is used, suppression of human will, and violent actions against life and health are only a qualifying feature of extortion.

The temporal moment of robbery is the moment of the attack, while extortion begins at the moment when the perpetrator's demands and claims to property or other property claims are made.

These aspects are also reflected in law enforcement practice. Therefore, for example, the decision of the Supreme Court of the Russian Federation of 03.09.1992 states that in the Kalininsky district people's court of Chelyabinsk, gr. Tokmantsev was convicted under paragraph "b" of part 2 of article 146 of the Criminal Code of the RSFSR. The essence of the case was that, having passed into the lift behind the citizen K., the convict stopped it between floors and took out a folding knife and began to demand money. After refusing to give the money, he repeated his demand, but without receiving it, he left the lift.

The cassation instance and the presidium left the earlier judgement unchanged. In his protest, the Deputy Prosecutor General of the Russian Federation raised the issue of reclassification of the actions to part 1 of article 148 of the Criminal Code of the Russian Federation. He pointed out that there was no intent to seize money and property by means of an attack, and the psychological violence used should be qualified as extortion.

On 03.09.1992, the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation left the protest in this part without satisfaction, pointing out that the actions of Mr. Tokmantsev were correctly qualified. All the evidence in the case was taken into account, since the robbery should be considered completed from the moment of the attack itself, regardless of the result achieved. As it seems obvious from the case materials, gr. Tokmantsev, threatening with a knife, demanded to give him money at the moment of the robbery attack, and not in the future. Therefore, it is reasonable to speak about the absence of qualifying features on the basis of which it would be possible to reclassify from paragraph "b" of part 2 of article 146 to part 1 of article 148 of the Criminal Code of the Russian Federation.

The prosecutor's legal position was based on vague realisation and personal evaluative notions about the moment of property seizure, confusion and the identical understanding of the terms "immediate" and "simultaneous".

In certain situations, it is impossible to determine the beginning of the transition of the right to property, as the moment of transition can be either in the present, i.e. immediately (immediately), or in the near future. For the victim, the biggest problem is the impossibility to think over and realise the correctness and expediency of the actions and decisions taken to take all possible protective measures. Such situation cannot arise in the case of robbery, as time frames are realised and applied in a completely different way.

Analysing other distinguishing features of robbery and extortion, it should be emphasised that robbery is a fast flowing action in time, while extortion consists of several stages. They include an attack, threats with demands, and, in case of non-compliance, the actual use of violence and harm to the victim's health.

The actual demand for the transfer of property and the promise to fulfil the threat in the future constitute extortion as a criminal act while in robbery, one can observe any violent action, the main purpose of which is to overcome the resistance of the victim and immediately take possession of property.

The presence of a weapon in robbery is also a distinguishing feature of this offence. The weapon itself can be replaced by any potentially dangerous objects, which in modern society can be used as such.

The legislator does not provide special requirements and characteristics on the issue of the use of weapons in the process of extortion. Therefore, it is necessary to qualify with special care the actions committed by the criminal in relation to extortion and robbery.

Within the framework of the comparative legal analysis of extortion and related offences, it is necessary to highlight and study of the issues of differentiation between extortion and qualified self-rule provided for in Part 2 of Article 330 of the Criminal Code of the Russian Federation. The latter crime means an action not coordinated with anyone, unauthorised, contrary to normatively established rules and

norms. Their legality is challenged by a natural person (citizen) or a legal entity (organisation), which caused substantial harm, including through the use of violence or threats.

In today's actively developing capitalist society, a great number of cases can be qualified by law enforcement agencies and prosecution authorities as actions containing signs of extortion, but during a more detailed consideration, the latter can be reclassified by the court as actions containing signs of self-rule (Semenov, 2022).

Self-rule in such case should be understood as the actions of a person who threatens or demands to transfer money or other material values in favour of a certain person or to perform any property actions in repayment of a previously rendered service, which is generally untenable.

The actual presence of the above circumstances allows us to speak about the proof of actions falling under self-rule under Article 330 of the Criminal Code of the RF, i.e. the presence of "arbitrariness", ungrounded and unsubstantiated actions, legitimate only from the moral point of view of the offender, excludes extortion.

Within the framework of the issue under consideration, the case between citizen Z., a representative of the legal entity CJSC Vezge, and citizen V., a representative of JSC Kontprok, is of interest. A contract was concluded between these citizens, under which citizen Z. undertook to pay remuneration (30 per cent) in the amount of the debt of JSC Kontprok (108 mln. rubles) to citizen V.

Under the influence of citizen V., the debtor enterprise began to transfer the amount owed, for which the former received part of the sum and began to insist on payment of the remaining promised amount. Citizen Z. did not possess such sum. Then he began to receive threats from citizens V., U. and others about kidnapping, brutal reprisals, threats of violence, demanded to write a receipt on the voluntary transfer of the car and other property. As a result, citizen Z. was harmed, recognised by a medical expert institution as harm to health of medium severity. Under pressure, the receipt for the transfer of the car was written.

Of particular interest from the point of view of criminal law and procedure is the question of the qualification of the actions of citizens V. and U., who committed criminal acts against citizen Z.

The Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation reclassified the actions of V. and U. from paragraph "b" of part 3 of article 163 of the Criminal Code of the Russian Federation to part 2 of article 330 of the Criminal Code of the Russian Federation.

The Presidium of the Supreme Court of the Russian Federation agreed with the decision of the cassation instance, leaving the prosecutor's protest without satisfaction.

In its ruling, the Judicial Board determined that in qualifying the guilty actions, priority is given to the criterion of unlawfulness when transferring extorted property. When transferring the money, a civil law contract was concluded between citizens Z. and V.

In view of the above, it should be particularly noted that the Judicial Board took into account all the signs indicating the unauthorised nature of the act committed, excluding extortion, which made it possible to qualify the offence correctly and to punish the guilty persons for what they had done.

In case the deliberate guilty actions of the persons concerned did not lead to the consequences provided for by the norm of Article 330 of the Criminal Code of the Russian Federation, the actions and consequences should be taken into account and specified depending on the intention, up to the

reclassification of the crime to an offence under administrative law in accordance with Article 19.1 of the Code of the Russian Federation on Administrative Offences (Simonova, 2022).

In general, we can distinguish the following criteria for distinguishing extortion from self-rule. The first is the subject of encroachment. The direct target of self-rule is social relations that provide, on the basis of the provisions of the law or other normative legal acts, the order of actions for the acquisition, change and termination of rights, as well as the realisation by individuals and legal entities of the essence of their duties.

In judicial and investigative practice, certain difficulties arise when criminals use such type of violence as illegal deprivation of liberty and kidnapping to commit extortion. In this situation, the question arises as to whether it is possible to qualify the criminal's actions in relation to the offences under Article 163 and Articles 126, 127 of the Criminal Code of the Russian Federation.

It seems that the most important criterion for the correct decision is subjective. "If the intention of the perpetrator was aimed at taking possession of the guilty property and not at deprivation of liberty, the actions of the guilty party fall under the structure of extortion or other offence. They do not require additional qualifications provided for by Articles 126 or 127 of the Criminal Code of the RF".

If such actions are committed for the purpose of disclosure, they objectively constitute preparatory actions for extortion. The only difference will be in the subsequent actions of the offender. If information is collected for the purpose of subsequent demand for property, right to property or other actions of property nature, the actions of the offender should be qualified as preparation for extortion and no additional qualification under Article 183 of the Criminal Code of the Russian Federation is required (Rozenko, 2022).

6. Findings

Summing up, it can be stated that the structure of extortion has a number of similar characteristics with elements of other crimes, first of all, with elements of robbery (article 162 of the Criminal Code of the Russian Federation) and the composition of qualified self-rule (part 2 of article 330 of the Criminal Code of the Russian Federation). This causes the greatest difficulties in investigative and judicial practice.

In distinguishing extortion from robbery, the most important circumstance is that in extortion, property is distributed not directly when violence is used, but over a certain period of time, which allows the victim to make a certain choice regarding illegal claims to property.

In distinguishing extortion from self-righteousness, it is necessary, first of all, to take into account the presence or absence of an actual, or alleged, contested right of the person who committed the offence.

No less significant aspects are procedural ones applied by law enforcement agencies in the investigation of extortion. Within the framework of existing theoretical and law enforcement problems, it is necessary to pay special attention to the work of law enforcement agencies and officials to identify and suppress extortion as a crime. For this purpose, it is necessary to strengthen explanatory work with potential victims, disseminate legal information about the danger of such criminal acts.

Particular attention should be paid to the work with citizens' claims of extortion, verification of incoming applications. In the aspect of this issue, it is advisable to develop a simple accessible mechanism for filing applications, including through the Internet, the site Gosuslugy (Dmitriev, 2015;

Maiorova, 2022). Filing applications in this way will ensure prompt response to the application, availability of a copy in the personal account of the applicant and the possibility to prove that the application was filed. There is an outgoing number and mandatory response of authorised bodies and officials (Fedorova & Chizhikova, 2022).

The second aspect of formation of law enforcement practice, compliance with criminal procedural legislation is to increase the effectiveness of bodies of enquiry. And investigation is the knowledge and ability to apply the theoretical basis of distinguishing extortion from other offences, competent use of technical means, tactical methods, careful planning of the investigation. At the same time, there is an interrelation and great importance of operational-search activities, recording information, protection of personal data of victims and other information on the case. This situation implies the strengthening of control over the ongoing investigation by the management of investigative bodies, as well as its effectiveness (Abrahamyan & Golubkina, 2019).

7. Conclusion

In general, the analysis of theoretical and procedural aspects of the investigation and differentiation of extortion from related crimes allows us to conclude that it is necessary to toughen criminal-legal approaches. This involves the need to improve the organizational and managerial level of investigation of the analyzed categories of crimes, the expediency of introducing strict liability for persons investigating extortion cases, as well as the need to strengthen the use of technical methods and means of investigation.

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