CRITERIA ABOUT “STRONGLY AGITATED MENTAL STATE” IN VIETNAMESE CRIMINAL LAW

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КРИТЕРИИ О «СОСТОЯНИИ СИЛЬНОГО АФФЕКТА» ВО ВЬЕТНАМСКОМ УГОЛОВНОМ ПРАВЕ

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ABSTRACT

A state of strong agitation is one with the norms to the provisions of the 2015 Penal Code. In order to determine whether the offender's spirit is strongly agitated or not and to distinguish between "agitation" and “strong agitation”, it is necessary to consider all aspects objectively and comprehensively. The author's article aims to clarify the factors affecting the offender's spirit such as: time, circumstances, location, development, underlying and direct causes of the incident; the relationship between the victim and the offender, the cultural and political level, temperament, and personality of each party.

АННОТАЦИЯ

Состояние сильного аффекта (волнения) является одним из смягчающих обстоятельств в соответствии с нормами Уголовного кодекса 2015 года. Чтобы определить, сильно ли возбужден дух преступника или нет, и провести различие между «возбуждением» и «сильным волнением», необходимо объективно и всесторонне рассмотреть все аспекты. Статья автора направлена на выяснение факторов, влияющих на дух преступника, таких как: время, обстоятельства, место, развитие, основные и прямые причины инцидента; отношения между жертвой и преступником, культурный и политический уровень, темперамент и личность каждой стороны.

Keywords: Penal Code; strongly agitated mental state; agitation; Supreme People's Court; Vietnam.

Ключевые слова: Уголовный кодекс; состояние сильного аффекта; агитация; Верховный народный суд; Вьетнам.

The issue of strongly agitated mental state in the Penal Code was first guided at Point b, Section 1, Chapter 2 of Resolution No. 04-HĐTPTANDTC/NQ dated November 29, 1986 of the Council of Judges of the Supreme People's Court, guiding the application of a number of provisions in the section on crimes of the Penal Code. Accordingly, “*A state of being agitated is a state in which the offender is not completely self-controlled and cannot restrain his/her criminal behavior. In general, such strong agitation must be immediate due to the victim's serious illegal behavior causing a reaction leading to murder, but in some cases, due to the victim's illegal behavior being relatively heavy and repetitive in nature, the provocation has been simmering and prolonged, and at some point the victim's illegal behavior continues, causing the agitated person to lose control; if this new provocation is isolated, it is not considered strong provocation, but if the whole process of the development of the incident is considered strong or very strong”.* Trial practice shows that distinguishing between the two crimes of murder and murder in a state of strong mental agitation and intentionally causing injury or harm to the health of another person with intentionally causing injury or harm to the health of another person in a state of strong mental agitation is very difficult, and must be based on the judgment of the person conducting the proceedings. Therefore, the current proceedings still have many different views. According to the provisions of Article 123 and Article 135 of the 2015 Penal Code, to determine the case where the offender is strongly mentally agitated due to the illegal act of the victim, the following factors must be considered: 1) there must be a serious illegal act of the victim; 2) the illegal act of the victim must occur against the offender or against the offender's relatives; 3) the illegal act of the victim must be the cause of the offender being strongly mentally agitated.

The mental state of the offender at the time of committing the murder is strongly agitated.

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A mentally agitated person is a person who is no longer fully aware of his or her behavior as usual, but has not completely lost the ability to perceive. At that time, they lose the ability to control themselves and do not fully see the nature and level of danger to society of their behavior; their mental state is almost like that of a madman (a person with dementia). This state only occurs for a moment, after which their mental state returns to normal as before.

In the case where the offender is mentally agitated but has not lost the ability to control himself, it is not considered strongly agitated and does not fall into the case of murder in a state of strong mental agitation. However, their criminal responsibility is reduced according to the provisions of Point e, Clause 1, Article 51 of the Penal Code.

Determining whether a person is mentally agitated or not is a complicated issue. Because each person's psychological state is different, the same incident but one person behaves differently from another; some people are mentally agitated, but there are also people who are normal, calm as if nothing happened, and each person's behavior is also very different. For example: **A** has an illicit relationship with another person, immediately runs home to get a knife to stab his wife's lover to death, but **B** encounters this situation and calls his wife back to educate her, after that the couple still lives together, while **C** encounters a similar situation and files for divorce. Therefore, there is no standard to "measure" the state of strong or weak mental agitation of a person, but it must be based on each specific case, comprehensively considering the details of the case, the offender's personality, the course of events, occupation, cultural level, social activities, living conditions, temperament, illness, family circumstances, relationship between the offender and the victim… from there to determine the level of mental agitation, whether strong or not, and how strong.

From a psychological perspective, it is possible to explain the mechanism of criminal behavior in which "strong agitation" is the result of the interaction between both external and internal factors of the offender. Accordingly, the cause of agitation can be a moment of outburst, or it can be a repetitive, smoldering behavior, but its consequence - "strong agitation" leading to "acting to vent anger" is only a temporary state. In other words, at the time of committing the crime, the person is no longer fully aware of his behavior as usual but has not completely lost the ability to perceive. At that time, "they lose the ability to control themselves and do not fully see the nature and level of danger to society of their behavior; this state only occurs for a moment, after which their spirit returns to normal as before; the mental state is agitated at different levels". On the victim's side, it is also necessary to determine whether the illegal act has reached a serious level or not in order to comprehensively assess whether the offender's mental state is strongly agitated or not. It can be seen that in social life, individuals have different circumstances, living conditions and personal factors with different needs and interests. To satisfy their needs and interests, each subject has different methods and ways to achieve that goal.

Therefore, whether a person's spirit is in a state of strong agitation or not, there is no "common denominator" to assess, even though the same manifestation may give rise to the cause of agitation. Therefore, to accurately assess whether a person's mental state is strongly agitated or not, it is necessary to consider objectively and comprehensively in all aspects. In particular, it is necessary to evaluate the whole and carefully consider the relationship between characteristics, specifically in terms of time, circumstances, and location. In addition, it is necessary to consider the nature, extent and "type" of damage from the victim's behavior towards the offender and relatives. These can be sudden, shocking, strongly inhibiting or continuous acts, suppressing, overwhelming, oppressing, mistreating the offender and relatives. Often these are cases of the victim being abused for no reason, with an arrogant, sarcastic, unjust, ungrateful attitude, and contempt for the offender and relatives.

The relationship between the victim and the offender and the relationship of the offender himself with the abused relatives:

Firstly, regarding the relationship between the victim and the offender, in principle, the closer the relationship between the two subjects, the more closely related, the more directly related, especially when the victim commits an illegal act, and is a "lower-class" or "lower-class" person such as the child, grandchild, or great-grandchild of the offender, the more intense the inhibition will be. On the contrary, it is also necessary to carefully consider cases where the person committing the illegal act is the grandfather, grandmother, father, or mother of the offender. At this time, the recognition of whether the mental state of the child or grandchild is strongly agitated or not requires more rigorous assessment. Moreover, in these relationships, the rarer the previous illegal act of the victim is, the higher the level of agitation will be for the offender when confronted.

Secondly, it is also necessary to consider the relationship between the offender and their relatives when the victim commits a serious illegal act. Normally, the closer the relationship is in terms of marriage, blood, upbringing or between two subjects with special sacred feelings, deep gratitude or the person being abused is the pride, the model of morality, lifestyle, personality of the offender, the higher the level of agitation of the offender will be if he/she has to witness the violation of the law happening to them.

Reality shows that for each person, social ethical standards will affect the individual's consciousness, be absorbed, cultivated, internalized and become knowledge, emotions, obligations, responsibilities, ethics. From there, each person builds his/her own behavioral guidelines in specific conditions and circumstances. Therefore, in principle, the better the person's personal background, the more clearly, decisively and strongly he/she expresses his/her dissatisfaction with the wrong, the unreasonable, the illegal. In addition, people with hot tempers, straightforward and straightforward personalities are more easily provoked

to wrongdoings than others. Elderly people and people with little life experience are often less restrained when it comes to things that are “unpleasant to the eyes and ears.” People with illnesses often have low self-esteem, are depressed, restless, frustrated and easily provoked if violations occur. In other words, causing damage to the life and health of victims in these cases deserves more “sympathy” than in normal cases.

Occupation, reputation, cultural level, politics, personality, character of each party: It can be seen that the concepts, viewpoints, and ethical thoughts are widely spread in society, therefore, they have been deeply rooted, firmly rooted in each person, influencing human actions and habits. In terms of specific manifestations, it can be seen that the more senior a person is, the more attached and proud they are of their professional traditions or professional secrets, the greater the need to protect their professional honor. People with prestige and respect for honor also react more strongly to acts of defamation, insult, distortion, and rudeness. People with a high cultural level have a better ability to control themselves against external influences. People with hatred and antipathy towards a specific subject will always think of revenge. People with strong or calm personalities have their own ways of handling similar situations. People who are responsible for those around them and for the community are often more strongly agitated with irresponsible behavior, betrayal, etc.

Living conditions: Living conditions, especially socio-economic conditions, are factors that strongly influence human behavior, expressed through the lens of that person's personal consciousness. These are factors that determine the origin, motivation, and tendency of legal behavior and ethical behavior. Therefore, the limits of reaction of each person living in different conditions will not be the same even though they originate from the same manifestation that gives rise to the reaction. In particular, there are cases where people living in many different countries and locations form different ideas about law compliance, leading to different understandings of their limits of behavior. This may stem from different concepts and laws that are prescribed, even contradictory, between countries. Social activities and manifestations after committing a crime: Shown in the active participation in social activities, communication relationships or not to be able to assess the ability to adapt to circumstances and other impacts. In addition, psychological manifestations after committing a crime such as whether the subject feels satisfied, contented, excited or on the contrary, remorse, regret, fear... to assess the mental state.

Therefore, to determine whether the mental state is strongly agitated or not, it is necessary to comprehensively study all factors and evaluate through both the mechanism and the relationships between those factors. This is of great significance in ensuring the accuracy of the process of applying criminal law in practice.

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