

Crimes of passion (An Irresistible Impulse) in Kazakhstan

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Abstract

The article presents the main results of theoretical review on the study of the phenomenon of affect and definition, classification, legal aspects of affective states, as well as the results of statistical processing of data on crimes in the state of affect are provided in Kazakhstan for the last 5 years according to the provided statistical data from the database of the General Prosecutor's Office of the CLSaSA (Committee on Legal Statistics and Special Accounts) of the RK. The relevance of this study is the study of the phenomenon of affect in Kazakhstan, as well as the processing of statistical data on affective suicide, as little-studied and not sufficiently developed phenomena. It is important to note the difference in approaches to understanding the term physiological affects (PA), which actually has no direct analogue in the English-language bibliography. In some respects, the concept of an "irresistible impulse" based on passion corresponds to it. Both conditions can significantly affect a person's behavior and their ability to control their actions, while both can serve as mitigating circumstances in law. At the same time, physiological affect is usually short-lived and characteristic of sane individuals, while an irresistible impulse can be a chronic condition associated with a mental disorder. Subsequent research may be devoted to the issues of comparing the two above concepts from a forensic perspective.

Keywords: affect, crime, domestic violence, emotional state, victim of violence.

1. Introduction

Currently, many researchers in the legal, psychological or criminological field, are increasingly turning to the concepts and theories of affect, drawing up a psychological portrait of alleged participants in crimes, as well as statistical regional data. The theoretical study of the affect and crime phenomenon for crime of passion is of great importance for both lawyers and

psychologists, as it allows to understand the complex relationship between emotions and criminal behavior. Crimes of passion, characterized by impulsive and emotionally charged actions, present unique challenges to understanding. Conceptualization and structuring of the role of affect is necessary to build effective arguments, as well as to assess the mental states and motives of the accused. The study of the emotional factors underlying crimes of passion will allow legal and psychological specialists to ensure jointly a fair trial, provide appropriate intervention and contribute to the rehabilitation of persons involved in such incidents. Thus, the study of affect and crimes of passion is relevant for specialists in the field of forensic psychology, as it throws light on the emotional dynamics underlying impulsive criminal behavior and serves as the basis for efforts to eliminate and prevent such phenomena in society.

2. A theoretical review of the affect phenomenon.

There are different definitions of the affect state from different authors. The affect phenomenon has been studied for a long time and has caused controversy about many aspects, from the moral side to the psychological and legal. The issues of mitigation in crimes under the influence of a strong emotional outburst began to be discussed during the Russian Empire, and were later studied and identified by some well-known psychologists as Z. Freud, S.L. Rubinstein, I.P. Pavlov, A.N. Leontiev, F.S. Safuanov, V.N. Kudryavtsev, V.V. Guldán, B.V. Sidorov. Affects are called differently in different countries and legislations, for example, they can be defined as strong emotional excitement or crimes of passion.

According to Freud [1], affect means warning signals that work alongside the protective aspects of personality, performing the functions of the Ego. In turn, S. L. Rubinstein [2] in his work "Fundamentals of General Psychology" defines the concept of affect as a fast and intense emotional process that can lead to impulsive actions and is not easily controlled by conscious will. B. V. Sidorov [3] in his work "Affect, its criminal-legal and criminological significance" claims that affect is a psychological concept characterized by clear boundaries and typical features. In his opinion, affect is an intense, quickly arising and short-term emotional state that significantly worsens a person's perception of the surrounding world and understanding of the objective meaning of current events. In essence, affect is a strong emotional state that significantly limits a person's ability to perceive correctly and interpret the surrounding environment. According to Safuanov F.S. [4], affect is an emotional state that significantly affects consciousness and behavior, and according to Kudryavtsev V.N. [5], strong and short-term emotional experiences with intense physical and motor manifestations. According to A. N. Leontiev's definition, affect is an emotional process characterized by intense, short-term outbursts of emotions, often accompanied by strong physical reactions. Chizh V.F. [6], argues that affect is a violation of normal mental processes caused by the intrusion of a representation accompanied by strong emotions. The most common disorder is the delay of mental processes due to the strong emotions' presence. The violation does not cause the performance itself, but the strong emotions associated with it. All affects tend to initially monopolize consciousness with one dominant representation and its accompanying strong emotion, displacing all other thoughts. T.P. Pechernikova and V.V. Guldán, in their work entitled "Topical issues of forensic complex psychological and psychiatric examination", argue that the complexity of assessing

affective reactions by experts is due to several factors, primarily the possibility of a wide combination of "normal psychological" and "pathological" mechanisms within the affective spectrum. Affect can manifest itself differently in healthy people and in people with mental disorders, while both groups are capable of experiencing intense emotional reactions. These reactions can either correspond to the characteristics of a typical psychological response ("physiological affect"), or develop into an anxious psychotic state ("pathological affect"). Therefore, the differentiation of normal and pathological affective states during assessment requires careful consideration and experience due to the variability and coincidence of these reactions in different people and in different mental health conditions.

Thus, according to these definitions and statements of the authors, it is possible to see the repetition of the same processes and signs of affect, such as intensity, short duration, strong excitement, emotional instability and surge, and also to understand the regularity and phases of affect.

There are three permanent phases of affect [4]:

- the first phase is preparatory, characterized by suddenness and unexpectedness of the explosion. However, with cumulative affect, this period can last for a long time (from months to several years).
- the second phase is an affective explosion, where there is a narrowing of consciousness and a violation of motor regulation, up to stereotypy.
- the third is the post-affective phase, motor and mental asthenia or exhaustion occurs. With interrupted affect, it may not occur or occur unnoticed or later, so defining this type of affect presents some difficulties.

In the current Criminal Code of the Republic of Kazakhstan, affect is defined as [7]:

1) Murder committed in a state of sudden strong emotional distress caused by violence, persecution, serious insult or other illegal actions of the victim, as well as long-term psychological trauma caused by systematic illegal or immoral behavior of the victim, is punishable by restriction of liberty for up to three years or imprisonment for the same term. In addition, if the murder is committed by two or more victims under similar circumstances, the punishment is imprisonment for up to five years (Article 101 of the Criminal Code of the Republic of Kazakhstan).

2) Intended infliction of serious bodily harm in a state of sudden strong emotional distress caused by violence, persecution, serious insult or other illegal actions of the victim or caused by long-term mental trauma from systematic illegal or immoral behavior of the victim is punishable by a fine or correctional labor in the amount of up to one hundred and twenty monthly calculation indices, or community service for up to one hundred and twenty hours, or arrest for up to thirty days (Article 111 of the Criminal Code of the Republic of Kazakhstan).

And also, in psychology, affect (from Latin *affectus* - emotional excitement, passion) is understood as a strong and relatively short-term state associated with a sharp change in life

circumstances important to the subject and accompanied by pronounced motor manifestations and changes in the functions of internal organs[8].

Professor B. Sidorov considered it right to include only the concept of "affect" in the law, since, in his opinion, "a simplified but inaccurate interpretation of a well-known psychological concept, the desire to translate it into a language more understandable to a wide range of people, does not play a positive role, but on the contrary, significantly complicates the correct and uniform application of the norms governing responsibility for crimes committed in a state of passion"[9]

As A.I. Martsev writes, "the state of physiological affect retains the ability to realize the value of one's own behavior and guide it within the boundaries of the normal course of emotional processes of a healthy person. Appearing externally as impulsive, automated movements, affective actions retain their conscious-volitional basis and can rightfully be classified as volitional behavioral acts. Thus, the state of passion does not deprive the person who committed the murder of sanity. It is able to recognize the nature of the actions performed and direct them. Therefore, the physiological affect should be distinguished from the pathological one. The latter differs from the physiological affect by a deep clouding of consciousness, which deprives the perpetrator of the opportunity to realize and direct his actions and, accordingly, excludes the grounds for criminal liability[10].

There is no consensus in the legal literature on what the intent in this crime should be. Some criminologists believe that a murder in a state of passion can be committed with both direct and indirect intent. Others believe that the crimes in question can be committed only with indirect intent, because with affect, "intent arises suddenly, a person largely loses control of his actions, cannot regulate their intensity[11].

Establishing the presence of physiological affect is usually a difficult task for criminologists, forensic medical experts and specialists in related industries, requiring in-depth knowledge in the field of psychology, psychiatry, as well as the availability of proper practical experience. Since each case related to the qualifications of crimes where the manifestation of PA took place is individual, the relevant field of knowledge constantly requires new empirical data and analytics on the mentioned issues. This determines the relevance of this study.

From the point of view of law, the study of PA in the context of criminal offenses is complicated by discrepancies in terminology used in different countries, jurisdictions, and legal systems. The same can be said about the schools of forensic experts, forensic medical experts from different countries. Thus, the ideas of the criminal law and criminalistic schools of post-Soviet countries about PA as an optional element of the corpus delicti often only partially coincide with the ideas of representatives of Western science[12].

Modern research covering various aspects of PA as an element of the corpus delicti is devoted to such issues as the criminal law and psychological characteristics of affect[13].

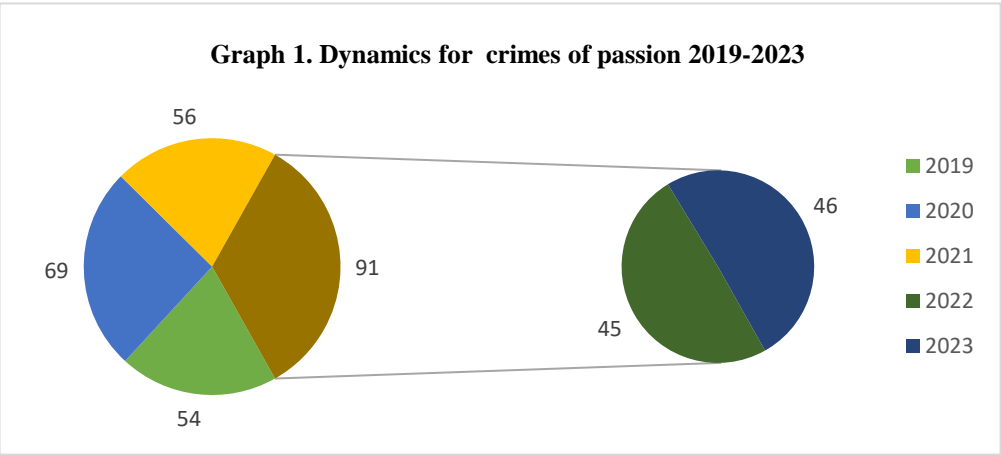
A. Musa says that violence is characterized by "cruelty, aggression, oppression and coercion. Usually this behavior is far from urbanization, in which aggressive impulses and energies are invested initially. Such as beatings and murders of individuals, destruction of property and the use of force to coerce and conquer the enemy"[14].

The results of the statistical data study on crimes committed in a state of passion in Kazakhstan.

The data in the form of absolute numbers presented in table 1 were taken from the database of the Prosecutor General's Office for Committee on Legal Statistics and Special Accounts (CLSSA) [15] in March 2024. Based on the information presented in this table, if from 2019 to 2020 there is a noticeable increase in the number of murders in a state of passion by 27%, then starting from 2020 in Kazakhstan there is a noticeable decrease in the number of murders in a state of passion. So, in 2022, this trend continued and decreased by 35% compared to 2020. And in 2023, compared to 2021, it decreased by 18%.

Table 1 - Statistics of murders committed in a state of passion (Article 101) for 2019-2023

Year	Number of murders
2019	54
2020	69
2021	56
2022	45
2023	46

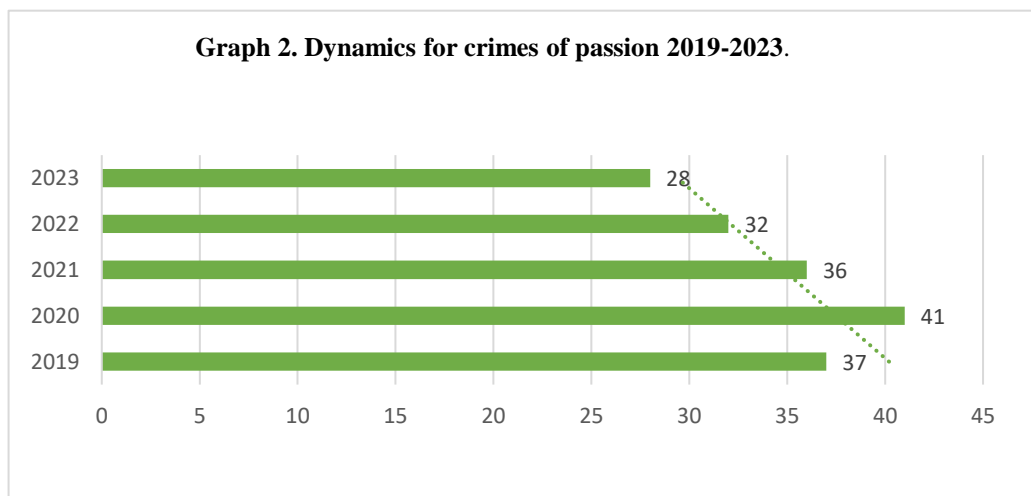


Thus, according to graph 1, we can see a trend of an increase in the number of murders from 2020 and further decrease until 2023. In 2023, compared to the previous 2022, there is an increase by one the data provided in table 1 in the form of absolute numbers. The peak of homicides is in 2020 and it can be assumed that many biopsychosocial factors influenced this. For example, during the period of quarantine and restriction, when the level of unemployment and debt burden of the population, domestic violence, and in a situation of instability of the economic sphere in the country increased, led to a deterioration of mental state, emotional stress and all this could lead to an accumulation of affect, emotional tension and subsequently to an affective explosion and an increase in delinquency.

Table 2. Statistics of moderate and severe harm to health in a state of passion (Article111) for 2019-2023.

Year	Number of crimes
2019	37
2020	41
2021	36
2022	32
2023	28

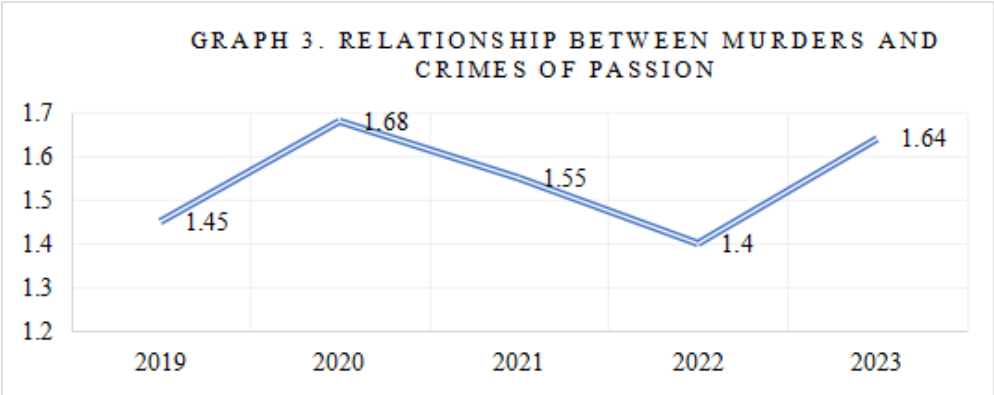
Graph 2. Dynamics for crimes of passion 2019-2023.



The situation is similar with crimes motivated by passion. According to Table 2 and Graph 2, there is an increase in the number of harm cases to health caused by passion by 2020 and then a natural decrease in the level of crime. Compared to 2020, in 2022 the number of moderate and serious harm to health decreased by 21%, and in 2023 by 31%. If we compare 2023 with 2022, then in 2023 the number decreased by 12.5%. All this also confirms our statement about the influence of the political and economic situation in the country during the pandemic, as well as the influence of biological and psychological factors on human well-being, as well as the relationship between psychological well-being and crime rates.

Table 3. Coefficient (ratio) of murders and crimes committed in a state of passion

Year	Ratio (husband, facts/attempts)
2019	$54/37 \approx 1,45$
2020	$69/41 \approx 1,68$
2021	$56/36 \approx 1,55$
2022	$45/32 \approx 1,40$
2023	$46/28 \approx 1,64$



The presented data tracks statistics of crimes classified as in a state of passion over the past five years (2019-2023) with a distinction between murders and crimes causing serious and moderate bodily harm to another person. Data for each year includes the number of murders and crimes in a state of strong emotional excitement.

According to Table 3, the ratio fluctuates by year, but if you look at the absolute numbers, as well as the ratio coefficient, then there are almost twice as many murders as crimes classified as in a state of passion. Also, in 2020, as in 2023, the number of murders is higher than in other years, and the least in 2022 and the coefficient is 1.4. And here the question may arise, why do these numbers fluctuate every year and what can this depend on? Presumably, it is possible to attribute the biopsychosocial concept, which indicates the integration of these three global factors, which influence all aspects of human activity and from this a whole system of human relations is formed, where the balance and homeostasis of all spheres in the individual's life are of great importance, such as social interaction with the world and the environment, psychological stability and development, as well as factors that determine a person from birth, genetic and biological, which are its basis.

3. Conclusion.

Affects and affective states, as the most important aspects of human emotions, significantly influence behavior and decision-making in a legal context. In the legal field, an understanding of affective states is necessary to assess factors such as the reliability of witness testimony, the guilt of the accused, and jury decision-making. Emotions can influence memories, perceptions, and judgments, potentially affecting the credibility of witness testimony or the evaluation of evidence.

Additionally, recognizing affective states helps assess a person's mental state and ability to stand trial or participate in legal proceedings. Understanding affect theory and affective states is essential to addressing the complex issues of human emotion in the legal system and ensuring fair and just outcomes for all parties involved.

In addition, the recognition of affective states helps in assessing a person's mental state and their ability to stand trial or participate in court proceedings. Understanding the theory of affects and affective states is essential in order to navigate the complexities of human emotions within the legal system, ensuring fair and equitable outcomes for all parties involved.

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WORKS CITED

- Freud Z. Me and It. Publishing house: Eksmo, 2017. - 160 p. <https://megamarket.ru/catalog/details/ya-i-ono-100023087941/>
- Rubinstein L. R. Fundamentals of general psychology (2nd edition, 1946). Publishing house: St. Petersburg, 2002. - p. 341. http://yanko.lib.ru/books/psycho/rubinshteyn=osnovu_obzhey_psc.pdf
- Sidorov B. V. Affect. Its criminal law and criminological significance. Kazan University, 1978. - p.49. https://libweb.kpfu.ru/z3950/full_fond/law/knigi/Sidorov_a/Sidorov_affect.pdf
- Safuanov F. S. Forensic psychological examination in criminal proceedings. — 2nd ed., reprint. and an additional one. — Moscow.: Yurayt Publishing House, 2019. — 309 p. <https://urait.ru/viewer/sudebno-psihologicheskaya-ekspertiza-533671#page/2>
- Kudryavtsev I. A. Examen psychologicum et psychiatrica forense. Publisher: Yurid. lit. 1988. - 224 p. <https://www.academia.edu/6629246>
- Pechernikova T.P., Guldán V.V. Actual issues of judicial complex psychological and psychiatric examination // Psychological journal. — M., 1985. No. 1. pp.96-105. 217 p.
- Criminal Code of the Republic of Kazakhstan No. 226-V dated July 3, 2014. https://kodeksy-kz.com/ka/ugolovnyj_kodeks.htm
- M.I. Zarnitsky. Psychological dictionary - M.: Nauka, 2005. - p. 28., <https://spbbuga.ru/files/03-5-01-005.pdf>
- Sidorov B.V. Affect. Its criminal law and criminological significance. - M.Norm, 2002. - p. 41., https://libweb.kpfu.ru/z3950/full_fond/law/knigi/Sidorov_a/Sidorov_affect.pdf
- Martsev A.I. General questions of the doctrine of crimes. M., 2005. - p. 45., <https://www.google.kz/search?hl=ru&tbo=p&tbm=bks&q=inauthor:%22%D0%90. +%D0%98+ %D0%9C %D0%B0%D1%80%D1%86%D0%B5%D0%B2>
- Krasikov A.N. Crimes against the human right to life. Saratov: Publishing House of the Saratov University, 2002. - p. 150. <http://lawlibrary.ru/article1097466.html>
- Dadaev, I. A. *Crimina privilegiata consociata cum vehementibus perturbationibus motus motus in legislatione criminali exterarum nationum*. Eurasian Scientific Journal, (12), 2017. 41-42.
- Mukhacheva I.M. Jus criminale et notarum psychologiarum affectio. Praesens quaestiones legis Russicae (7 (68)), 2016. 118-126p.
- Moussa A. *Lectio Psychosocialis Phaenomeni violentiae* // AlNaba'a Magazine. 2014. Vol. 34. URL:<https://annabaa.org/nba34/alounf.htm> (accessed 14/07/2024) [arabice]
- Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan. <https://qamqor.gov.kz/crimestat%20/>