



## **ROLE OF EXTREME NECESSITY IN EMERGENCIES, ECOLOGY AND ENVIRONMENTAL PROTECTION AND HEALTH CARE SPHERES**

**Jumanazarova Marjona Botir qizi**

An independent researcher of the Tashkent State University of Law, [botirqizi@gmail.com](mailto:botirqizi@gmail.com)

<b>Article history:</b>	<b>Abstract:</b>
<b>Received:</b> November 12 <sup>th</sup> 2022 <b>Accepted:</b> December 8 <sup>th</sup> 2022 <b>Published:</b> January 11 <sup>th</sup> 2023	In this article, a legal analysis of the practical application of the extreme necessity as a condition excluding the criminality of the act was carried out. The legislation in the fields of emergency situations, ecology and environmental protection, and health care were studied as the most common areas of use of the law of extreme necessity. Having studied the practical examples and opinions of legal scholars, the theoretical conclusions set out in the article were made. Important recommendations and proposals for the improvement of the legislation are presented based on the scientific research conducted within the framework of the article.

**Keywords:** extreme necessity, risk, necessary defense, legal conditions, mitigating circumstance, obligation, natural disasters, social utility, proportionality, danger, exemption from responsibility

The extreme necessity is considered to be one of the most important, as well as one of the most ancient norms from the Criminal Code of the Republic of Uzbekistan. Theoretically, studying the cases and areas where the norm of extreme necessity is applied helps to solve the problems related to the application of the law in practice. It can be said that these "theories" are based on certain assumptions about the nature of the law and its foundations. Due to the history of law, each approach is based on the needs of mankind in a certain historical development<sup>1</sup>. Based on this point of view, it can be said that the extreme necessity was formed on the basis of the theoretical views that arose during the historical development.

Despite the fact that the high importance of the last necessity in law is constantly repeated by legal scholars, it cannot be denied that there are a number of problems in the application of this norm today.

For example, when examining court decisions published on the Internet by the courts of the Republic of Uzbekistan on criminal cases (as of October 19, 2022, there were 187,731 criminal cases, of which 149,213 were in the first instance, 28,629 in the appellate instance, 9,057 in the cassation instance, and 832 reviewed in repeated cassation) in none of them was an acquittal based on the application of Article 38 of the Criminal Code of the Republic of Uzbekistan, or it was found that the act was committed beyond the limit of extreme necessity, and this act was not taken into account as a mitigating circumstance.

Considering that the latter necessity can be found in almost all areas of our lives, one can see how pathetic the above figures are.

As Hitchler says, there is no likely deterrence when the punishment threatened is less motivating than the harm which the actor would suffer if he does not commit the crime<sup>2</sup>. In our case, no matter what purpose a person commits to an act, his actions are generally classified as a crime, that is, the threat of punishment exists in any case. It can be said that the existing problems in practice are not only related to the application of the norms of extreme necessity, but also that the necessary defense is not provided. For example, on June 25, 2021, which caused a lot of discussion in the social networks of the Republic of Uzbekistan, it is possible to cite the case of J.A., a citizen who was trying to rape her pregnant neighbor, who lived in the village of "Tulakul" of Chirakchi district, Kashkadarya region, and was stabbed to death by a woman. The deceased used force on his neighbor N.J., who was pregnant, and forced her to have sex. However J.A. died as a result of injuries inflicted by a woman who defended her honor when she hit J.A. with a kitchen knife that was with her. According to the conclusion of the preliminary investigation, N.J. was charged with part 1 of Article 97 of the Criminal Code of the Republic of Uzbekistan, and the criminal case was sent to trial.

By citing this criminal case as an example, we would like to remind that the right of citizens to not only the extreme necessity, but necessary defense is openly violated, and there are obstacles to the realization of

<sup>1</sup> Toshpulatovich, Allayorov Jahongir. "MODELS OF INTERNATIONAL JURISPRUDENCE." *Pindus Journal of Culture, Literature, and ELT* 6 (2021): 63-66.

<sup>2</sup> Edward B. Arnolds, Norman F. Garland, *The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil*, 65 J. Crim. L. & Criminology 289 (1974).



the right to protect themselves, others, the interests of society or the state, not only from real danger, but also from aggression. For this reason, we support the view that the confusion between statutory duty and necessity results in an improper limitation of the necessity defense<sup>3</sup>. Today, with the liberalization of the criminal law and legal sphere in our country, it is a sad situation that there is an obstacle to the realization of the rights and freedoms stipulated by the law.

One of the most common situations in which the norms of extreme necessity are applied are emergency situations. Emergency situations are very common in our life and can be different. Depending on their characteristics, they can be divided into the following two groups:

- a) emergency situations of natural nature;
- b) man-made emergencies.

Natural emergencies include natural disasters (earthquakes, floods, landslides and other dangerous natural phenomena), natural fires, epidemics, epizootics, epiphytotic diseases. Man-made emergency situations include: accidents in industry, transport and other man-made accidents, fires (explosions), accidents related to the spread or risk of spread of powerful toxic, chemical, radioactive and dangerous biological substances, sudden collapse of buildings and structures, dams, destruction of treatment facilities, as well as accidents in communication systems that support people's life. These two groups of emergency situations may or may have led to the death of people, damage to their health or the environment, serious material losses, disruption of people's living conditions.

According to the analysis, as of December 1, 2021, a total of 126 emergency situations (80 man-made, 46 natural) occurred in the territory of the republic. The main part of the emergency situations that occurred were road traffic accidents (31%), gas explosions in people's homes (13.5%), poisoning of people from natural gas and toxic substances (31.7%), collapse of buildings and structures (7.1%), fire incidents in cars (4%)<sup>4</sup>.

Law No. 824-I of the Republic of Uzbekistan "On Protection of Population and Territories from Natural and Man-made Emergency Situations", adopted on August 20, 1999, has lost its force today, and the new

Law No. O'RQ-790, adopted on August 17, 2022, "On Protection of Population and Territories from Natural and Man-made Emergency Situations" entered into force on November 19, 2022. This Law defines the rights and obligations of the Cabinet of Ministers of the Republic of Uzbekistan, the Ministry of Emergency Situations of the Republic of Uzbekistan, local executive authorities, state administration bodies, organizations, self-government bodies of citizens, non-governmental non-profit organizations, mass media and citizens in emergency situations. Moving in emergency situations, taking appropriate measures, is primarily aimed at saving people's lives and health, reducing the amount of damage and material losses to the natural environment, that is, eliminating the possible danger, as well as reducing the amount of damage that may be caused by the danger. That is, it is related to the application of the norms of the last necessity. For example, when it is necessary to extinguish a fire, if there is a real risk of the fire spreading to a large area, to destroy part of the property of other people adjacent to the object where the fire is occurring, to save human life in the event of a flood, or to use the personal property of citizens in order to prevent huge losses or their death etc. In such cases, the damage caused to citizens by an emergency worker does not involve criminal liability (if there are signs of the extreme necessity) and the damage is compensated by the state.

The field of ecology and environmental protection is also considered one of the areas where the extreme necessity occurs<sup>5</sup>. For example, during 9 months of 2022, state inspectors detected a total of 5,994 cases of violations during anti-poaching activities and a total of 8.2 billion soums of fines and 7.9 billion soums of damage to nature were calculated against offenders<sup>6</sup>. Although it is natural that such acts cause liability under Article 202 of the Criminal Code, there are cases where a person kills himself or another person to save himself or herself from the danger of being attacked by a wild animal, even if the animal is included in the curious book, the liability does not arise. However, it is necessary to distinguish between poaching and killing an animal as extreme necessity. Poaching (French: braconnier - one who hunts with a dog) - hunting and killing wild animals in violation of

<sup>3</sup> United States v. Cullen, 454 F.2d 386, 391, n.13 (7th Cir. 1971)

<sup>4</sup> Report on the activities of the Ministry of Emergency Situations of the Republic of Uzbekistan. <https://fvv.uz/uz/report> date of application: 11.11.2022.

<sup>5</sup> Allayorov, J. (2020). SOME QUESTIONS OF APPLICATION OF THE RULES OF INTERNATIONAL JURISDICTION. *Review of law sciences*, 4(2), 113-116

<sup>6</sup> Open information of the State Committee for Ecology and Environmental Protection of the Republic of Uzbekistan. <https://uznature.uz/yz/legislation/ondata?legislationCategoryId=9&page=6&per-page=6> date of application: 11.11.2022.



hunting, fishing regulations and other requirements of the legislation on the protection of the animal world<sup>7</sup>. Even the issue of cases of damage caused by the intentional creation of the danger itself, to protect against it, requires a different approach.

Another issue to be analyzed is the place of last resort in medicine. According to the World Health Organization, the global excess mortality associated with COVID-19 was 14.91 million in the 24 months between 1 January 2020 and 31 December 2021, representing 9.49 million more deaths than those globally reported as directly attributable to COVID-19<sup>8</sup>. It is known that the medical field is considered one of the fields where the rule of extreme necessity is constantly applied. In today's widespread outbreak of COVID-19, more extensive research into this issue becomes necessary.

Currently, despite the high level of development of medical sciences and medical technologies, experts emphasize that it is impossible to exclude the risk of harming the patient's life and health during medical care.

For example, taking into account the opinion of the English neurosurgeon Henry Marsh, "One thing I can say for sure is that the risk associated with surgery was much lower than the risk associated with inaction", it can be said that doctors operate in conditions of constant last necessity. However, this conclusion, in our opinion, is somewhat doubtful. That's exactly what we're talking about below.

If we say without taking into account the specificity of the profession of doctors, every medical action performed by a surgeon violates the physical integrity of a person's body, causes the loss of sensory organs, damage or loss of a certain organ. This means that as a result of providing medical care, the doctor commits a number of crimes against health and against the person of the Criminal Code. However, these actions are considered not only illegal, but also socially beneficial, if they are carried out in accordance with medical guidelines and established medical guidelines to prevent a real threat to the patient's life.

According to N.A. Ognerubov, such medical actions, aimed at preventing a real and actual threat to the right to life protected by law, fully comply with the

conditions of the extreme necessity, which excludes the criminalization of such an act, while actually causing less harm to the patient's health<sup>9</sup>. To justify our disagreement with this scholar, it is enough to mention how strict the conditions of legitimacy of the extreme necessity alone are. For example, in order to assess the act as a extreme necessity, the harm presented must be less than the harm received. Even if the damage is equal, it is a departure from the limit of extreme necessity. So, not to mention the increase in damages.

As a extreme necessity, we can clearly say that the life of one person is equal to the life of another. However, our national criminal law does not consider saving one life at the expense of another as a extreme necessity. There are many cases in which doctors have to choose which of the two patients in need of urgent care to provide first aid during their career. In such a situation, it is natural that the patient's health will be harmed and even his death will occur if the help is provided later. As we can see, in this case, the last necessity norm of the Criminal Code is not able to exclude the criminal responsibility of the doctor.

In our opinion, reasonable risk related to profession or economic activity (Article 41 of the Criminal Code of the Republic of Uzbekistan) can be shown as a case that takes into account the professional characteristics of doctors. However, there are problems with this as well. The norm contained in Article 41 of the Criminal Code of the Republic of Uzbekistan covers actions that are in accordance with modern scientific and technical knowledge and experience, in order to achieve some useful goal in professional or economic activity. Not only doctors, but no other profession operates under constant risk in the course of their daily work. Speaking about doctors, it can be said that taking into account the use of prevention, diagnosis, treatment methods, medical technologies, drugs and disinfectants allowed to be used in the healthcare practice only in accordance with the law (Part 1 of Article 34 of the Law of the Republic of Uzbekistan on Citizens' Health Care), it can be said that doctors are not in a risk situation in the course of their work<sup>10</sup>. Diagnostics, treatment methods and drugs, which are not allowed to be used, but are considered in the prescribed manner, may be used in the interest of the patient's treatment only after

<sup>7</sup> <https://qomus.info/encyclopedia/cat-b/brakonerlik-uz/> date of application: 14.12.2022.

<sup>8</sup> <https://www.who.int/data/stories/global-excess-deaths-associated-with-covid-19-january-2020-december-2021> date of application: 22.12.2022.

<sup>9</sup> Огнерубов Н.А. Профессиональные преступления медицинских работников: дис. ... канд. юрид. наук. – М., 2014. – С. 104-105.

<sup>10</sup> The Law of the Republic of Uzbekistan No. 265-I of August 29, 1996 "On Protection of Citizens' Health" // National database of legislative information, 04/21/2021, No. 03/21/683/0375.



receiving his voluntary written consent, and in the treatment of persons under the age of fourteen only if their life is in immediate danger and only with the written consent of their legal representatives. The procedure for diagnosis, treatment methods and the use of drugs, disinfectants, including those used abroad, is determined by the Ministry of Health of the Republic of Uzbekistan<sup>11</sup>.

It can be said that the last necessity and reasonable risk related to the profession or economic activity can be used in the activities of medical workers, of course. However, in our opinion, they are not able to fully prove the legality of the damage caused by doctors. This is because they are not intended to regulate the activities of doctors.

Harm caused to the patient's health by objective reasons beyond the doctor's subjective control should not be considered a crime. We are of the opinion that this case should be included in the Criminal Code as a separate circumstance that excludes the criminality of the act in the following content:

**"Article 41<sup>2</sup>. Causing harm during the use of medical treatment measures**

*A doctor's improper performance of his professional duties, if he used preventive, diagnostic, treatment methods, medical technologies, drugs and disinfectants permitted to be used in accordance with the law, but the damage to the patient's health was caused by objective reasons beyond the doctor's control, cannot be found as a crime."*

As it can be seen, there are a number of problems that need to be solved in connection with the application of the norm contained in the Criminal Code of the Republic of Uzbekistan related to the extreme necessity.

**Summarizing the topics analyzed in the course of our article, it can be said that** the extreme necessity is the main norm that is the basis for the emergence of circumstances that exclude the criminality of all actions. At the same time, distinguishing them and identifying their similarities is important for the protection of the rights and interests of citizens, the interests of society and the state at the stage of law enforcement.

Although the application of the norm of extreme necessity in the health sector is considered a natural situation, this norm is not able to solve all the problems in the sector. It was proved by analyzing the legal documents above that not only the extreme necessity, but also the situation of reasonable risk

related to the profession or economic activity cannot cover the cases related to the harm caused to the patient's health due to objective reasons that the doctor cannot subjectively control. Therefore, we believe that the special case "Causing harm during the use of medical treatment measures" should be included in the Criminal Code of the Republic of Uzbekistan as a circumstance that excludes the criminality of the act.

## REFERENCES

1. Toshpulatovich, Allayorov Jahongir. "MODELS OF INTERNATIONAL JURISPRUDENCE." *Pindus Journal of Culture, Literature, and ELT* 6 (2021): 63-66.
2. Edward B. Arnolds, Norman F. Garland, The Defense of Necessity in Criminal Law: The Right to Choose the Lesser Evil, 65 J. Crim. L. & Criminology 289 (1974).
3. United States v. Cullen, 454 F.2d 386, 391, n.13 (7th Cir. 1971)
4. Report on the activities of the Ministry of Emergency Situations of the Republic of Uzbekistan. <https://fvv.uz/uz/report> date of application: 11.11.2022.
5. Allayorov, J. (2020). SOME QUESTIONS OF APPLICATION OF THE RULES OF INTERNATIONAL JURISDICTION. *Review of law sciences*, 4(2), 113-116
6. Open information of the State Committee for Ecology and Environmental Protection of the Republic of Uzbekistan. <https://uznature.uz/yz/legislation/ondata?legislationCategoryId=9&page=6&per-page=6> date of application: 11.11.2022.
7. <https://qomus.info/encyclopedia/cat-b/brakonerlik-uz/> date of application: 14.12.2022.
8. <https://www.who.int/data/stories/global-excess-deaths-associated-with-covid-19-january-2020-december-2021> date of application: 22.12.2022.
9. Огнерубов Н.А. Профессиональные преступления медицинских работников: дис. ... канд. юрид. наук. – М., 2014. – С. 104-105.
10. The Law of the Republic of Uzbekistan No. 265-I of August 29, 1996 "On Protection of Citizens' Health" // National database of legislative information, 04/21/2021, No. 03/21/683/0375.
11. The Law of the Republic of Uzbekistan No. 265-I of August 29, 1996 "On Protection of Citizens'

<sup>11</sup> The Law of the Republic of Uzbekistan No. 265-I of August 29, 1996 "On Protection of Citizens' Health" //

National database of legislative information, 04/21/2021, No. 03/21/683/0375.



**World Bulletin of Management and Law (WBML)**  
**Available Online at:** <https://www.scholarexpress.net>  
Volume-18, January-2023  
**ISSN: 2749-3601**

Health" // National database of legislative  
information, 04/21/2021, No. 03/21/683/0375.