



DIFFERENTIAL ASPECTS AND LEGAL ANALYSIS OF PUBLIC ORDER AND PUBLIC PLACE CONCEPTS

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<https://doi.org/10.5281/zenodo.14651713>

ABSTRACT

This article develops author's definitions of the concepts of public place and public order. Cases of insults, petty hooliganism, and hooliganism committed on the Internet, global information networks, and social networks have also been analyzed, and an author's definition of cyber hooliganism has been provided. The social danger of cyber hooliganism and its negative consequences have been analyzed, and proposals have been made for legislative and other regulatory documents.

Keywords: hooliganism, petty hooliganism, public order, public place, cyber hooliganism, insult.

Ensuring public order and safety is one of the most important issues constantly addressed by state bodies and society. Throughout history, crimes and other socially dangerous acts have harmed individuals' free and prosperous lives, rights, and freedoms. Therefore, the Decree of the President of the Republic of Uzbekistan No. UP-27 of November 29, 2021, "On Approving the Concept of Public Safety of the Republic of Uzbekistan and Measures for its Implementation," pays special attention to ensuring a peaceful and orderly life for the population, as well as fostering a culture of law-abidingness and public safety in our society [1].

In addition to our national legislation, the protection of public order is regulated by international documents. In particular, the first part of Article 29 of the Universal Declaration of Human Rights states that "Everyone, in the exercise of their rights and freedoms, shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society" [2]. These same provisions are also enshrined in Article 8 of the International Covenant on Economic, Social and Cultural Rights [3].

In law enforcement practice, the concepts of "public order" and "public place" are interpreted differently, leading to various errors and shortcomings in law enforcement. From this perspective, we aim to examine the concepts of "public order" and "public place."

Firstly, there is no definition of "public order" in regulatory documents. Therefore, there are different opinions among scholars about the concept of "public order."

In particular, M.Kh. Rustambaev noted that "public order should be understood as a system based on moral and legal norms aimed at ensuring the proper functioning of public and state organizations, enterprises, institutions, and organizations, regardless of their form of ownership, ensuring societal relations, security and peace of citizens, and preserving the property of others" [4].

According to I. Ismailov and others, public order is a system of social relations that arises and develops in public places based on legal and socio-moral norms aimed at creating conditions for the normal functioning, work, and recreation of individuals and legal entities, respecting honor, dignity, and universal human values [5].

We agree with the opinions of M.Kh. Rustambaev, I. Ismailov, M.Z. Ziyodullaev, and F.N. Shukurov. Indeed, violation of public order disrupts the normal functioning of individuals and legal entities, the work and rest of members of society, and leads to serious violations of moral and legal norms.

V.I. Zarubin argued that it is not correct to combine the concepts of "public order" and "public security," as they have their own characteristics, while D.A. Korotchenkov argued that "public order and public safety are different social relations between which there is a close relationship: these relations are a condition for the existence of each of the groups." [7]

In our opinion, D.A. Korotchenkov and V.I. Zarubin correctly defined the concepts of "public order" and "public safety" as inseparable from each other.

According to T.S. Azimov, while the content of public order protection activities manifests itself in the control of people's compliance with the requirements of legislation and moral norms in streets and public places, public safety activities include road safety, fire safety, security of protected objects and property, the passport system, and the licensing system.

In our opinion, since these two concepts represent different social relations, the legislator called the sixth section of the Criminal Code of the Republic of Uzbekistan "Crimes against public safety and order" and divided it into chapters "Crimes against public safety" and "Crimes against public order."

secondly, the concept of public places is not defined in regulatory legal acts. It is precisely the finding of the right solution to these problems that serves as the legal basis for the correct assessment of violations of the rules for combating epidemics (Article 54), consumption of tobacco products in public places (Article 561), petty hooliganism (Article 183), presence in public places in a form that does not allow identification (Article 1844), carrying a cold weapon or objects that can be used as a cold weapon (Article 1852), consumption of alcoholic products in public places (Article 187), begging (Article 1883), illegal use

Scientists have expressed different opinions about public places. In particular, according to S. Abdullaev, "In no society is a permanent territory designated as a public place, and this is natural, because the station, which was just empty, will soon turn into a crowd - a public place. At the same time, a number of rules characteristic of this status are formed. It is not introduced by anyone, it arises spontaneously in the course of upbringing received by people. The order of compliance with these procedures, which are not officially implemented, not reflected in any legal act, is also directly implemented - this process is also not controlled by anyone.

In our opinion, a public place is a place where everyone can move freely at any time.

According to Z. Okhunov, "not having a clear, unified definition of the concept of "public place" in our legislation, it is necessary to take into account the presence of a community, that is, people, at the place where the crime was committed, in order to consider that a certain offense was committed in a public place, because the absence of a group of people at the place where the crime was committed means that this place temporarily lost its

"public" function." We agree with this statement. Because, in addition to the offender and the victim, other persons must also be present at the crime scene.

I.D. Bredixin[11] and R.V. Sidortsov propose defining a public place as a specific area that is open to the public and distinguished by accessibility, emphasizing that it should be permanent or temporary.[12] You can agree with these opinions, but these opinions contain only one element of public space that needs to be supplemented with other elements.

According to Matthias Buchecker, "Public places are closed areas in public and private buildings, structures, or complexes." They are open to the general public (used or can be used for them). Their list includes corridors, toilets, staircases, escalators, elevators, lobbies, reception rooms, waiting rooms, interior service lines, cash desks, counters and other payment terminals, classrooms or buildings open to the general public, buses or other enclosed spaces.[13]

Paragraph 5 of Article 1 of the International Convention against Bomb Terrorism defines public places as follows. "Public places" refers to parts of any building, land, street, waterway, or other space that is permanently, temporarily, or periodically accessible to the public or accessible to the public, and thus includes any commercial, business, cultural, historical, educational, religious, state, entertainment, recreational, or similar facilities that are open to the public.[14]

According to O. Nabiev, "A public place refers to territories, rooms, structures in a place where all citizens can enter, be, or are intended to meet the various needs of citizens without obstacles."

O.Zamanov, on the other hand, proposed that "in connection with the lack of a clear definition and a unified approach in the legislation, experts argue about this, therefore, in order to be a reliable point of reference for law enforcement, a public place should be understood as a place open to unhindered access, as well as transport communications."

In our opinion, the definitions given by both authors of public space are the most acceptable among these definitions. However, it is difficult to give a full definition of "public place" with these definitions alone. Because, given the need to define it as permanent, temporary, and disposable public places, and the fact that it encompasses a full-fledged article, it should be noted not as an additional part to these types of articles, but rather in a separate legislative act that equally applies to these types of offenses.

Based on a comparative analysis, the following definition of public places can be given.

Public places are places where individuals can freely move or gather at any time, and in objects where the time of visit is determined by internal regulations, there are two or more persons, except for the person who committed the socially dangerous act and the victim.

Another aspect that we need to pay attention to is the division of public spaces into types. In this regard, A. Khudoyberdiev and I. Y. Iskandarov proposed classifying public spaces into permanent, periodic, disposable, and street.[17]

We do not fully agree with the opinions of these scientists. Because it is advisable to include the street itself in permanent public places. From this perspective, public places are divided into permanent, periodic, and disposable types in regulatory documents.[18]

The legislation identifies the following as public places: In Article 24 of the Law "On Restricting the Distribution and Use of Alcohol and Tobacco Products," public places include workplaces, streets, stadiums, avenues, parks, all types of public transport, healthcare, educational, sports and recreational institutions, fire hazardous areas, including gas stations.

Articles 561 and 187 of the Code of Administrative Offenses list workplaces, streets, stadiums, avenues, parks, all types of public transport listed as public places, while Article 1883 provides for "territories of airports, railway stations, avenues, parks, markets and shopping complexes, as well as adjacent territories, places of temporary storage of motor vehicles, streets, stadiums, stops, road sections, territories where objects of material cultural heritage are located, all types of public transport and other public places."

Article 16 of the Law "On Internal Affairs Bodies" states that "to ensure the safety of citizens in public places, including streets, squares, parks, transport routes, train stations, airports, as well as during the conduct of mass events."

These lists are conditionally included, and their scope may be further expanded. From this perspective, it is difficult to formulate a complete list of "public places."

In our opinion, it is more appropriate to clearly state which places are not public places than which places are considered public places in the legislation. For this purpose, we have developed a list of places that do not belong to public places.

These are:

- basements and attics, inter-storey crossings, roofs, staircases, elevators, apartments of general use and other similar places that are not equipped for use by citizens in the conduct of general events (sports, entertainment and other);

- places where work has been suspended for a certain period of time, i.e. throughout the year, season, week and day (due to the fact that repairs are being carried out) or closed to citizens: hostels, boarding houses, preventive rooms, houses of recreation, hotels and other similar places;

- lands and territories belonging to foreign embassies, representative offices and residences or leased by the state on the basis of a long-term contract;

- private and personal land plots of citizens;

- territory of protected objects (territories where free entry and exit of citizens is prohibited);

- protected areas of private land plots;

- territories of private households;

- apartments and communal apartments;

- rooms and common areas of dormitories;

- private or private apartments and courtyards of citizens;

- seasonal recreation areas that are inactive in certain periods, i.e. clubs, theaters, exhibition halls, museums, libraries, restaurants, cafes, canteens, stadiums, stores and other shops (in idle hours);

- tents and basements not equipped for public use;

- courtyards of organizations and institutions where access and inspection procedures are carried out;

- inoperative tamburs, cupes, toilets and special rooms reserved for members of brigades of passenger trains on the route, platforms of railway stations (not having station status) where passenger trains do not stop;

- periodically used places where mass or other mass events are not held;

- roads passing through the territory of horticultural associations and cooperatives, as well as private households (in the private sector of settlements).

In our view, this list, along with ensuring legality in law enforcement practice, serves as a program for the uniform application of norms in holding a person accountable.

thirdly, social and internet networks, such as websites, Telegram, Instagram, and Facebook, are increasingly developing today. The Internet and social media have become places where there are "no hours off" and "no geographical boundaries." In short, it cannot be contradicted that cyberspace has also become a public place in some sense. In most countries of the world, responsibility for cyberbullying is established. For example, in the United States, criminal liability is established not only for hooliganism, but also for cyberbullying.

Cyberbullying is a deliberate socially dangerous act committed through telecommunications using the Internet, global information networks, and social networks, which encroaches on the rights and legitimate interests of individuals, and harms the interests of society and the state.

Cyberbullying includes sending or sharing negative, harmful, false, or malicious messages about someone else. This also includes sharing personal information about someone else that may lead to humiliation or discrimination.

The analysis revealed that cyberbullying is most commonly committed in the following places:

- Social networks such as "Facebook," "Instagram," "Snapchat," "TikTok";
- Text messaging and messaging apps on mobile or tablet devices;
- Internet instant messaging, direct messaging, and online conversation;
- Online forums and chat rooms;
- Email.

Cyberbullying is committed in the following ways:

- posting negative, offensive, or shameful comments and rumors about someone on the Internet;

- threatening to hurt someone or threatening to kill themselves;

- posting an image or video that offends a person;

- pretending to be another person on the Internet to post personal or false information about someone else;

- posting malicious or hateful names and comments about any race, religion, ethnicity or other personal characteristics on the internet, the global information network, and social networks;

- create a bad website about someone;

- threatening a person's privacy by exposing their personal information, including their addresses, social protection, credit card and phone numbers, and airlines, in an attempt to avenge a person.[19]

According to a study on cyberbullying conducted by the U.S. Department of Justice, one in four children under 12 in the U.S. have been bullied online, with over 50% of them not telling their parents or adults,[20] while in the UK, 84% of bullying is committed through devices such as phones or laptops.[21]

Victoria, the capital of the Seychelles, has an anti-bullying law known as the Brody Act, which was passed in July 2011. This law is a law that makes serious violence a crime punishable by up to 10 years of imprisonment. This name of the law was introduced after the suicide of a young woman who was constantly subjected to violence at her workplace. Currently, 24-hour consultations and assistance are provided to people who have suffered

from hooliganism at the phone number 1800 819 817. This law applies to all forms of societal violence, including physical violence, psychological violence, verbal violence, and cyberbullying. Notably, this law applies to hooliganism that occurs anywhere in society, such as at workplaces, schools, sports clubs, and on the Internet, including social media sites.[22]

Unfortunately, various offenses and crimes are being committed both on the Internet, the global information network and social networks in our country. These cases are committed in such ways as posting cruel, rude or threatening messages, pictures and videos on social networks, sending personal information about other people, insulting and abusive words in an online group without a reason or for no reason. Examples include "A girl who insulted another provincial in Tashkent was imprisoned for 10 days"[23], "Girls who kissed in a video on social networks were punished for petty hooliganism"[24], "A girl who joked that "I have a bomb in my bag" in Tashkent was imprisoned for 5 days"[25] "A criminal case was initiated for insulting citizens through social networks"[26] and "A girl who insulted villagers in Tashkent was fined."[27]

In our opinion, it is advisable to establish liability for cyberbullying in our country in the modern era of social networks.

Based on the above analysis, it is advisable to include the mass media, telecommunications networks, and the global information network Internet in the list of permanent public places established by the joint resolution of the General Prosecutor's Office, the Supreme Court, the State Security Service, the State Customs Committee of the Republic of Uzbekistan, and the National Guard of the Republic of Uzbekistan dated December 30, 2018, "On Approving the Regulation on the Procedure for Maintaining a Unified Information System of Electronic Criminal Law Statistics."

Recognition of these places as public places indicates the need to consider the issue of establishing responsibility for these actions.

In our opinion, it is advisable to supplement Article 183 of the Code of Administrative Offenses with a third part and set it out in the following wording:

The actions specified in part one of this article were committed in the media, telecommunications networks and the global information network Internet.

fourthly, the presence of cases related to the incorrect qualification of actions of persons who insulted citizens on the internet, global information networks or social networks. In this regard, there is no uniformity in the practice of investigations and courts.

In particular, S.R., born in 2004, living in Chirchik, Tashkent region, insulted the residents of the region on July 20, 2024, while communicating with his followers on his Instagram page. According to the decision of the Chirchik city court on criminal proceedings, the girl was found guilty of committing the offense provided for in Article 183 of the Code of Administrative Responsibility (small hooliganism). He was sentenced to 10 days of administrative imprisonment.[29]

A similar situation occurred in the Kashkadarya region. According to him, citizen B.M., a resident of the "Madaniyat" neighborhood of Yakkabog district, S.S., a resident of the "Yangihayot" neighborhood, and M.Sh., a resident of the "Tokboy" neighborhood, applied to the DIA with an application, in which citizen Q.N., a resident of the "Madaniyat" neighborhood of Yakkabog district, asked to take measures by spreading information that belittles their honor and dignity and hinders their work.

During the investigation conducted by the Yakkabog district DIA officers, citizen K.N. insulted citizens B.M., S.S. and M.Sh. on social networks with words that belittled their honor and dignity. Evidence related to the situation was obtained in the appropriate procedural order. A criminal case has been initiated under Article 140, Part 3, Clause "a" of the Criminal Code of the Republic of Uzbekistan by the Investigative Department under the Yakkabog District Internal Affairs Department.

In another case, the actions of the person were qualified under Article 41 of the Code of Administrative Offenses. In particular, a video of a girl insulting villagers was circulated on social networks. He called the villagers "disgusting creatures." "The villagers are not people. They're horrible creatures. They come to Tashkent and take it smartly. I hate it so much. They should cry because they were born rural," he said. On July 15, the case against the violator girl was considered in the Mirabad district court on criminal cases. He expressed regret over what he had done in court and said that the insult was directed at only one person. By a court decision, the girl was found guilty of committing an offense under Article 41 (Insult) of the Administrative Responsibility Code. A fine of 20 BCAs (6.8 million soums) was imposed on him.[31]

From the above, it can be seen that in most cases, the use of insulting words by individuals on social media is considered an administrative offense in most cases as a crime. Therefore, it would not be an exaggeration to say that there is no single solution in this regard. In our opinion, when individuals publicly insult several individuals on social media, when they insult them in personal correspondence, it is advisable to assess it as an administrative offense. To this end, it is advisable to introduce the institution of administrative preclusion into Part 2 of Article 140 of the Criminal Code in the following wording:

"Insult in the form of publication or reproduction in any other way, including by posting in mass media, telecommunications networks or the Internet, committed after the application of an administrative penalty for such actions"

At the same time, it is advisable to set out Article 41 of the Code of Administrative Responsibility in the following wording:

"Insult, that is, intentional humiliation of the honor and dignity of a person - is punishable by a fine of ten to twenty basic calculation units.

Insult in the form of publication or reproduction in any other way, including by posting in mass media, telecommunications networks or the World Wide Web - shall result in the imposition of a fine from twenty to forty times the base calculation amount"

In addition, it is possible to observe the sexual behavior of individuals on social networks. In particular, "The verdict of the court was read against women who prepared semi-naked sumalak in Khorezm" [32], "In Tashkent, a man walked naked carrying a flower." [33] "In Tashkent, a 47-year-old man walked naked on the street." [34], "On the Internet, a video of a man walking naked along the central street of Urgench became a clear example of this." [35] In all these cases, the actions of the persons were qualified under Article 183 of the administrative offense (Small hooliganism). There are many examples of this.

However, the actions of these persons should have been assessed as "excessive indecency, manifested in a demonstrative disregard for generally accepted moral rules," provided for in Article 277, Part 2, Clause "g" of the Criminal Code, and they should have been held criminally liable. The courts grossly violated paragraph 5 of the Resolution of the Plenum

of the Supreme Court of the Republic of Uzbekistan "On Judicial Practice in Cases of hooliganism."

In this regard, paragraph 5 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan on Judicial Practice in Cases of Hooliganism should be set out in the following wording:

"It should be clarified to the courts that when qualifying the actions of a person under paragraph "g" of part 2 of Article 277 of the Criminal Code, the court must indicate in the verdict which actions of the perpetrator are assessed as extreme indecency.

Excessive indecency, expressed in a demonstrative disregard for generally accepted moral rules, should be understood as walking in a public place without clothing (naked, half-naked) to the extent that it affects people's feelings.

When recognizing hooligan acts as committed with extreme obscenity, the court must take into account the totality of specific circumstances of the case (the mental state of the person), as well as the time, place, and conditions of the hooligan act committed.

In conclusion, we hope that the introduction of the above into the legislation will be a solution to the problems encountered in law enforcement practice.

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