

PREMEDITATED MURDER BY THE MOTHER OF A NEWBORN CHILD: OBJECTIVE ASPECTS AND APPROACHES TO ITS UNDERSTANDING

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Abstract. In this article, the author analyzes the content of doctrinal views on the objective aspects of the crime of intentional killing of a child by a mother, their understanding. He also expressed the author's point of view on the content of the approaches formed in practice to assess this crime and understand its objective features. The author argues that the most important feature of the objective aspect of Article 99 of the Criminal Code is not only related to the circumstances that led to it, but also the importance of time criteria and issues of understanding it in killing a baby.

Keywords: intentional killing of a baby by a mother, child molestation, crimes against life, objective side.

Introduction

Women in ancient times were assigned the tasks of rocking the family and keeping the household, and men were engaged in hunting or fishing. It can be assumed that such a distribution of social tasks was caused by physical inequality, however, it is known that there were also Amazons who were not inferior to men in terms of physical strength. Therefore, in addition to the physical inequality that is probably held, the spiritual and spiritual differences of the sexes must have also caused the separation of the tasks of men and women.

A woman is created to become a mother, respectively, creative characteristics prevail in her, and a man, as a hunter or fisherman, is distinguished by more aggressive characteristics. This does not mean that women are completely free from aggression, and men are not capable of creativity.

In practice, there are also mothers who kill their newborn babies without tap, and fathers who raise and raise not only their offspring, but also adopted children. In addition, crimes committed by women also differ in the motive of the crime. They are the first. in the queue there will be jealousy, revenge, greed, non-compliance when they try to get rid of the victim.

Materials and methods

The doctrinal views on the objective aspects of the crime of intentional killing of a child by a mother, analysis of the norms of legislation providing for this

situation. For this, methods of scientific cognition were used, such as analysis, historical-comparative method, abstraction and comparison.

Results of research

Starting this article with a practical example of a crime committed in our country in the coming years, it becomes much easier to understand the objective signs of this crime.

When Zarifa became pregnant without getting married, in order not to express her pregnancy to the residents of the neighborhood in which she lived, she came to the House of Komila, born in 1984, a relative who lives in the 202nd house, located in Shomakhmudov Street, Shaykhantakhur district, Tashkent City, in order to enroll in Tashkent and temporarily live in this apartment.

On December 10, 2019, at 10:00 p.m., when she was pregnant, a girl gave birth to a child in the nursery of this apartment, became a mother, took off her pants that were on her own without feeding, caring for her baby, wrapped her rightful baby in pants, and the birth of the baby was still intentionally killed.

In this classification of crimes, the intentional murder of a mother's own baby it is one of the most dangerous crimes currently directed against human life. Deprivation of a newborn from life is characterized by originality within crimes against life. One of the most important issues in practice is the effective fight against this phenomenon, its qualification and the imposition of penalties in relation to this act before the bodies of inquiry, investigation and court. In particular, the identification of objective signs of a crime is also necessary to qualify an act, to distinguish it from similar crimes [1].

Article 83 of the Criminal Code of the Uzbek SSR, adopted in 1959, established special responsibility for this act. 83 of the Criminal Code of the Uzbek SSR, the murder of a mother's own baby is included in the category of crimes of intentional homicide in cases that alleviate the composition of the crime, referring to the special mental difficulties that a woman still experiences during childbirth or the birth of a baby as a necessary sign of a crime. In the absence of these conditions, the act was qualified as a manslaughter or intentional manslaughter in cases of aggravating punishment [2].

Taking into account the wide prevalence of this negative phenomenon and the peculiarities of its commission (physical condition of the culprit and other circumstances), on September 22, 1994, the Supreme Council of the Republic of Uzbekistan established social relations, which were determined as a Special Criminal article and were associated with ensuring the inviolability of the life of a newborn baby as its object.

A newborn baby is the victim of this crime and his right to life is recognized as the object of this act [3]. A comparative analysis between Article 97 and

Article 99 of the criminal code shows that the murder of a baby by his mother at the time of birth or the birth of a baby still has special signs associated with the murder by his mother, without which the act cannot be qualified by Article 99 of the Criminal Code.

It is the signs indicated in the disposition of Article 99 of the Criminal Code that are among the important factors that led to the inclusion of this crime in the category of homicide crimes of a mitigating composition, which we can also see in the comparative analysis of the sanctioning part of the norm.

The criminal law of some foreign countries also provides for special signs, such as the deliberate murder of a mother's own baby in the case of depression and mental shocks, which do not deny sanity, in addition to the above, among mitigating circumstances.

Article 99 of the Criminal Code contains the following mitigating signs and circumstances:

First, killing a newborn at the time of delivery;

Secondly, the birth of a newborn still kill;

Thirdly, the commission of the above actions by a woman who gave birth to a baby.

Hence, proceeding from the general foundations of criminal law, it can be said that the legislator introduces as a necessary sign the individual signs provided for in the above three cases into the appointment of a lighter punishment in relation to the crime provided for by Article 99 of the Criminal Code. The fact that the Act does not contain these signs negates its description by Article 99 of the Criminal Code.

In these cases, the act must be qualified based on the general grounds for bringing to justice [4].

In the scientific literature, the phrase "Mother kills her own baby" is widely used. However, this concept has broad and narrow meanings.

The concept of killing a baby can be understood in a broad sense by literally analyzing it. Under this concept, the mother's murder of her own baby is understood as the deprivation of a baby from life by any person who has reached the age of criminal responsibility.

I.S.Fedotov believes that if in this crime the victim is considered a child under the age of 14, then the subject of the crime is members of the baby's family or his close relatives [5].

It should be noted at this point that according to Article 1 of the Convention "on the rights of the child", any person under the age of 18 is a child [6].

According to the law of the Republic of Uzbekistan 'On guarantees of the rights of the child', a child (children) is understood as a person (persons) before the age of eighteen (until adulthood) [7].

In a narrow sense, the mother's killing of her own baby is understood as the mother's intentional killing of her own baby in mitigating circumstances. In criminal law and Forensic Medicine, these terms are understood in a narrow sense. Even in this research work, the concept of the mother's murder of her own baby was analyzed precisely in a narrow sense.

The component of any act provided for by the criminal law is the object of the crime. Any act is recognized as a crime in accordance with the criminal law only if it has harmed or brought Real risks of causing harm to some value, interests and interests in society [8].

According to Article 13 of the Constitution of the Republic of Uzbekistan, a person, his honor, dignity and other inviolable rights are of high value.

In accordance with this constitutional norm, Article 2 of the Criminal Code also contains among the most important objects under which human life and its other inviolable rights are protected. The norms of the special part of the Criminal Code of the Republic of Uzbekistan are mavofik placed on this rule, according to which the initial section of the special part is devoted to "crimes against the person". Encroachment on human life, that is, intentional homicide, is the initial article of a special part of the Criminal Code.

As you know, according to the doctrine of criminal law, which arose at the beginning of the 90s of the last century, the object of crime is considered to be the social attitude that exists in society [9]. This point of view has not lost its relevance even today. Scientists from many national and foreign countries also support this view.

According to him, as an object of crimes against a person, social relations are manifested, which arise in the process of protecting a person's various personal rights and freedoms. There are also opinions that, in turn, social relations aimed at protecting the life of a citizen are also manifested as the object of manslaughter. However, now there are also scientific views that differ from the traditional assessment of the object of crime. Although these scientific views do not put forward completely new ideas and ideas about the concept of the object of crime, they try to recognize the object of crime as a legal blessing, value. A.V.As Naumov noted, the theory that recognizes the object of crime as a social relationship protected by criminal law does not have a universal character.

This idea is A.V.Also supported in pashkovsky's scientific views, he believes that 'the object of crime is social value, interest, happiness, which is protected by the criminal law of the individual and the issuing criminal law, which carries the risk of causing harm or harm as a result of it'.

Therefore, it is advisable to approach the social attitude towards aggression precisely as a social value at the time of determining the object of the intentional

murder of a mother's own baby, the opinions of a group of scientists who believe also have scientific grounds. In crimes against life, human life is interpreted as a biological phenomenon that ensures the existence of an individual [10].

In the theory of National Criminal Law, a vertical type of classification of the object of crime is provided, according to which the object of the crime is divided into general, related, special and direct types.

Social relations provided for by Article 2 of the Criminal Code are the general object of Criminal Law. Sections of the special part of the Criminal Code are organized according to the related object of the crime. A special object is understood as a category of objects covering similar social relations, protected by criminal law, which is manifested in the chapters of a special part of the Criminal Code. As the smallest type of criminal object, a direct object is provided, and it covers social relations, which are protected by the same article of a special part of the Criminal Code.

Hence, the murder of a baby also harms the social relations provided for by Article 2 of the Criminal Code, thereby leading to the emergence of criminal legal relations. As a related object of crime, a person is manifested in himself, expressing all rights, interests [11].

Understanding the meaning of the concept of personality is an important issue,

Determining the ratio between the concepts of "person" and "person", which will be applied to Article 99 of the Criminal Code, will help to correctly solve the issue. It should be noted that in the scientific literature there is no unanimous opinion on this issue.

It is said that the concept of " man " is a comprehensive concept, which includes in its composition all living human beings. In such cases, the concept of "personality" does not include young children, a newborn baby, mind informals. A person can be recognized as a person in Fate who consciously participates in social relations in the life of society [12].

A.N.Krasikov believes that we cannot recognize all people as individuals, only a person who is able to independently carry out the rights and freedoms provided by the state from the moment of birth and fulfill the obligations established by the state should be recognized as a person [13].

We cannot agree with this opinion, since it is not always advisable to distinguish between the concepts of personality and man in this way. In our opinion, in the criminal legal sense, a person is understood as an individual who participates in any type of social relationship in society. Criminal law protects not only persons who independently exercise their rights and freedoms and fulfill obligations, but also infants, young children, mentally ill people who are not yet able to fulfill such rights and freedoms, as well as obligations.

As Poznyshev rightly noted, " no one has the right to arbitrarily deprive the right to life, which is considered the most sacred. The law should equally protect both a newborn baby and a person suffering from incurable diseases, and a person who is full of strength. A minute of residence permit is as sacred as the right to live 80 years" [14].

Human life and health are considered an indistinguishable and not alienated blessing. A person becomes a part of social life as early as the birth process and acquires legal capacity in accordance with the law. This property is preserved in man throughout his life [15].

Thus, the right to life is considered the initial and fundamental right of each person, which comes from the biological nature of man [16].

The direct object of the crime is the social attitude towards which aggression is directed directly. In the crime of manslaughter, the life of another as a direct object is manifested. What should be considered in the literature on criminal law as a direct object of the intentional murder of a mother's own baby ? there is no answer to the question: "what?"

Some authors recognize the right to life as a direct object of the crime provided for by Article 99 of the Criminal Code, while others recognize the life of a newborn [17].

When explaining in legal terms life it is a phenomenon that ends with the physical existence and death of a person. The beginning and completion of human life as a biological phenomenon has its own clear boundaries. Scientific research work aimed at criminal - legal assessment of the crime of killing a baby, in addition to clarifying the essence of the concept of "human life", also puts forward various points of view on the issue of its onset. The question of the beginning of life provides an opportunity to distinguish between the crimes of killing a baby and abortion [18].

In the theory of criminal law and judicial practice of foreign countries, there are views on the occurrence of human life at the same time as the beginning of its criminal legal protection. The controversial issue between scientists and practitioners is on the idea of when human life will begin.

Shargorodsky argues that the beginning of human life should be marked by the first breathing of the baby and the separation of his placenta [19]. Sariev believes that while there is no separation of the fetus from the mother's womb, aggression aimed at killing it cannot be assessed as manslaughter [20].

Karaulov argues that the criminal legal protection of human life begins with the first meeting of the baby after birth. In her opinion, with the first cry of the baby, the baby breathes independently and the heartbeat begins [21]. There are also many contradictions in this opinion under consideration.

As medical science confirms, the baby's first breathing occurs after its complete separation from the mother's body [22].

However, it is known from medicine that a certain time interval is required between the exit of the head part of the baby's body from the mother's womb and its separation from the full Mother's organism [23]. At this time, the baby does not breathe. At this time, aggression directed at the life of the baby should not be assessed as harm to the fetus. In this case, it should be assessed as an act aimed at encroaching on the life of the baby.

Scientists also cite the facts that the consciousness of a woman at the time of childbirth will be filled with motives aimed not only at stopping the activity of the fetus earlier than it was born, but also at the death of a living baby.

Thus, modern medical science proposes to study the process of human birth into two stages. The first stage in the development of human life begins with the appearance of a fetus in the mother's body. At this stage, the human fetus cannot be completely independent, although it is distinguished from the mother's organism by its relatively autonomous character. The second stage begins to form a period of full independent life from the moment when a person begins to fully separate from the mother's organism and breathe independently [24].

However, criminal legal protection of human life begins in those periods when the above stages do not correspond to any of them. Article 99 of the Criminal Code of the Republic of Uzbekistan defines the criminal legal protection of human life as "time of childbirth", and this time, in turn, indicates that the medicine is not strengthened in connection with an independent breathing process that confirms it.

Moreover, this rule does not comply with the provisions of the Civil Code of the Republic of Uzbekistan. Article 17 of the Civil Code enshrines that legal capacity begins with the birth of a person, while birth, in turn, is determined on the basis of the medical signs of a living birth, which were analyzed above.

According to the latest results achieved by medicine, the embryo that occurs in a woman's body will have signs as a person from 14 weeks of age. Supporters of this opinion have been promoting the view that it is from this time that human life should be protected by criminal law [25].

In our opinion, the consolidation of such rules in criminal law causes some misunderstandings:

First of all, fetal immunity is assessed as an aggression aimed at the life and health of the mother according to the Criminal Code of Uzbekistan;

Secondly, the strengthening of this rule means the removal of responsibility for the crime of illegal abortion;

Thirdly, the criminal law of the Republic of Uzbekistan cannot equally protect the life and health of the mother and the inviolability of the fetus. First of all, the inviolability of the life and health of the mother is important.

Thus, the designation of the objective side "at the time of childbirth", established in the disposition of Article 99 of the Criminal Code, was determined by the time of the onset of criminal legal protection of human life, and this rule is also applied to intentional homicide provided for by Article 97 of the Criminal Code.

Hence, the criminal and legal protection of human life is determined by the beginning of the process of childbirth. It is from what stage of the time of physical childbirth that the life and health of the baby being born is subject to criminal legal protection, that the issue is causing a discussion among scientists.

Some scientists try to correlate the criminal legal protection of human life with the period of fetal formation. Popov believes that the encroachment on her life during the period when the fetus is older than 22 weeks should also be qualified as a deliberate murder of the baby [26]. Plaksina's opinion also has a similar character to the above, according to which the border between the crimes of abortion and the murder of a baby should be established from 28 weeks of pregnancy. If, as a result of the termination of the fetus under 28 weeks of age by abortion, the baby comes to life with signs of vitality and deprives him of life through movement or inaction, these actions should be assessed as homicide [27].

Rustamboev put forward the following points in this matter: "the murder of an premature baby is also considered to be the murder of a newborn by a mother. The main thing is that while the baby is being killed, he must be alive. In this case, it is necessary to establish the fact that a living baby was born, and not a dead baby from the mother's womb" [28].

In our opinion, a woman whose fetus, which occurred naturally or artificially prematurely, is older than 22 weeks, must be qualified in the process of childbirth, as well as in cases of surgical birth of a baby from the moment of the appearance of each member of the baby in cases of rape committed in relation to him in cases where there are Damage to the fetus, which is within the mother's organism and cannot be encroached upon by direct physical impact on one member of it, cannot be recognized as manslaughter.

Conclusion

Taking into account the above, we can conclude that the direct object of the deliberate murder of a mother's own baby is the life of the baby at the time of delivery or when it was born, which still occurred.

Taking into account the above, it is advisable to clearly establish in the disposition of Article 99 of the Criminal Code a period that determines the period of time of childbirth and the period of birth that still covers the concepts.

In today's Criminal Code of the Republic of Uzbekistan, the wording of the established norm for the crime of intentional murder of a mother's own baby is not developed perfectly enough, which in turn creates some difficulties in understanding the criteria that underlie the differentiation of this crime from similar crimes, its recognition as a crime of a mitigating nature.

All these circumstances can be manifested in the investigation and inquiry proceedings carried out as a result of the commission of this crime, as well as in the adoption of a court decision.

It is required that the time criterion for causal attachment corresponds to this particular period, and that the socially dangerous act is committed precisely during this period. The crime committed at a time other than this period should be characterized by Article 97 of the Criminal Code.

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