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ISSUES OF RESPONSIBILITY FOR INTENTIONAL MURDER IN CASES OF MITIGATING LIABILITY IN CRIMINAL CODES OF CERTAIN FOREIGN COUNTRIES

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ABSTRACT

The article analyzes the norms of criminal laws defining responsibility for intentional murder in circumstances mitigating liability in some European countries such as Germany, Italy, Spain, the Netherlands and others. Conclusions were drawn based on the analysis of the CC of the countries studied.

KEYWORDS

Intentional murder, circumstances mitigating liability, “affect”, manslaughter in the event of an affect.

INTRODUCTION

Dutch criminal law, which has an Institute for prescribing adequate non-repressive punishment, does not classify mitigating circumstances into an independent criminal justice norm.

The Dutch legislature differentiates criminal punishment in its various articles reflecting the rationale for the relief of punishment. In doing so, it does not form a single list of them, thus providing the entitlement holder with a sufficiently large freedom (e.g., mitigation of punishment by age of majority section 77A-77g).

Dutch criminal law is characterized by the fact that section XIX of Book 2 contains several contents of crimes that imply criminal liability for infanticide: (1) Section 290 contains the content of "common manslaughter", where the motive for fear of revealing the fact of the birth of a newborn has a significant effect on alleviating liability; 2) Section 291 contains the composition of killing a newborn in aggravating circumstances, where the aggravating circumstance is the time of the appearance of the oath - the oath must appear long before the crime is committed. Thus, the

Dutch legislator emphasizes that the premeditated murder of a newborn child has a high level of social danger, since the culprit in this will have the opportunity to prepare for the commission of a crime[1].

In addition, Section 292 defines the specifics of criminalizing participants and imposing punishment: their actions qualify as common manslaughter on general grounds or as manslaughter in aggravating circumstances depending on the specific circumstances of the case (sections 287-289)[2].

The Netherlands is the first country to legalize euthanasia and all forms of it in 2000. So, in articles 293-294 of the Dutch Criminal Code establishes the conditions of a relaxed criminal punishment for persons who deprived another person of his life at his sincere request, since only medical personnel are exempt from criminal liability for this act. The punishment for these criminal acts consists of imprisonment for 12 years.

Of interest are the provisions of the German Criminal Law doctrine concerning cases of mitigating punishment. Its essence lies in the fact that all circumstances that allow the differentiation of criminal punishment should be reflected in the corresponding norm of criminal law. At the same time, the Criminal Code of the FRG does not contain a single list of these cases, which are determined in a special part and are determined by the analysis of the criminal content or norms of the General part of the Criminal Code.

The Criminal Code of the FRG does not contain a special norm that provides for criminal liability for the murder of a newborn (and a child), such crimes are considered simple (§212) or severe (§211) manslaughter, depending on specific circumstances[3].

In the FRG, manslaughter in the event of intense mental arousal is listed as "less severe manslaughter" in §213 of the Criminal Code. The German legislature stipulated that a person commits manslaughter in a state of no fault, as he would be angered by cruel treatment or heavy abuse of him or his relative. The disposition of the substance emphasizes not only the time, but also the place of commission of the crime: the crime must be committed at the place where the culprit was incited. Only in the event of compliance with these conditions is it considered that a less severe manslaughter was committed[4].

The cited clause provides two groups of grounds that allow the court to reduce punishment: 1) circumstances leading to an affect state; 2) less severe cases, similar to those cited in § 213 of the Criminal Code of the FRG. In our opinion, it is necessary to understand that the innocence of a criminal subject indicated by the disposition of §213 of the Criminal Code of the FRG is not the absence of guilt on the subjective side of this content (in which the gar about the crime would not go away), but the absence of illegal reasons in the actions of the.

The first processes of the emergence of the concept of affect in the criminal law of foreign countries are associated with the Bavarian Criminal Code of 1813, which, according to Article 93, enshrines the relaxation of punishment if the criminal does not understand that his actions are dangerous and illegal. As a later mitigating case of punishment, in particular, in the form of a case of "suspicion and violation of the mental state" of the Oldenburg Criminal Code

Included in Article 109, Article 60 of the Criminal Code of Württemberg, Article 121 of the Criminal Code of Hesse of 1841, Article 152 of the Criminal Code of Baden, Article 44 of the Criminal Code of Thuringia[5].

But, looking at the analysis of norms in the criminal laws of some foreign countries, they do not define a single approach to the issue of the state of strong mental excitement (affect).

Of particular note in this regard are the criminal codes of the Federal Republic of Germany and Spain. Paragraph 213 of the Criminal Code of the FRG, known as "manslaughter in mitigating circumstances", States: "a person who commits a crime shall be sentenced to a period of one to ten years if he or his or her relative is brutally treated by the victim, in the absence of guilt, or killed in serious situations of another form, as a result of anger[6].

From the content of the norm of the law, it became known that CC of FRG, instead of the concept of "affect" in psychology, refers to the concept of domestic "anger", which means the content of "physiological affect". In addition, the law establishes the crime as a necessary sign that it takes place exactly where "anger" is provoked by the victim. At the same time, paragraph 213 of the CC of FRG establishes that in mitigating circumstances, cases of manslaughter are taken into account, even in severe situations of another form as manslaughter. But, there is no clarifying norm about what circumstances the concept of "in other forms of severe situations" represents in itself.

It should also be noted that the provisions of §213 I of the Criminal Code of the FRG apply differently than Article 98 of the Criminal Code of Uzbekistan, since according to the German doctrine of criminal law they do not create the composition of a criminal offense. They are defined as the rules for the relief of punishment that apply in the presence of the conditions recorded in this norm[7]. According to the Y. Wesselsa and M. Hettingers, §213 of the Criminal Code of the FRG does not make up the composition of

the act, but forms the rule for determining punishment[8].

The Criminal Code of the FRG provides for the basis of criminal liability for deprivation in life at the request of the victim in §216 I.

A constructive sign of the content of the specified crime is the firm and restrained request of the victim, which can be expressed both directly before and slightly earlier than the commission of a socially dangerous act. The Criminal Code of the FRG establishes a separate rule under which qualification under the prescribed mitigating content is excluded: if the victim has expressed his request under the influence of false, mistaken or other similar circumstances, then §216 of the Criminal Code of the FRG cannot be applied.

In French criminal law, the following types of compositions of the crime of manslaughter are distinguished: common manslaughter - article 221-1[9]; manslaughter in aggravating circumstances (articles 221-2-221-4); poisoning-article 221-5

It is important to note that the French penal code, unlike the Criminal Code of the FRG, strengthens the list of grounds for the relief of criminal punishment. However, in addition, the courts also have the right to significantly alleviate it, since the sanctions of the articles determine the level of punishment that is sufficient, except for the upper limit of the possible punishment with reference to the applicant. Thus, for the murder of a newborn child, the guilty mother must be sentenced to life imprisonment. However, French judicial practice is following the path of imposing a softer punishment on mothers[10].

If the intentional deprivation of the life of another person is committed in an affective state and there are no aggravating circumstances, then the French

legislature has ruled that this type of manslaughter is a violation of the French Criminal Code defines as regular (“ordinary”) provided for by section 221-1.

In the same way, the question of qualifying a killing by deviating from the limits of the necessary defense is solved. According to the French criminal code, there is only a clear discrepancy between the severity of aggression and the means of protection applied to the grounds for criminal liability and its relief (Part 1 of Article 122-5)[11].

The Swiss legislature divides mitigating circumstances into two groups: those describing the identity of the offender and those describing the crime. These groups are enshrined in Article 64 of the Swiss Criminal Code, among which the following can be distinguished: the commission of a crime with excruciating motives, the presence of an individual in a disadvantageous position, the presence of an individual in anger or the reason for this unworthy insult, etc[12]. The mitigating compositions of manslaughter according to the Swiss Criminal Code are: manslaughter in the case of an affect (article 113), killing the victim at his request (Article 114), as well as killing the child (Article 116).

Article 113 of the Swiss penal code, “manslaughter in the event of an affect”, provides several alternative grounds for significantly alleviating criminal liability. They are excuses, a state of intense mental excitement, as well as the presence of a situation that causes injury to the psyche[13]. In order for criminal liability under this article to arise, firstly, an affect must exist; secondly, it must be excused. In this case, the Swiss criminal law does not explain what is meant by excuses, nor does it say anything about the provocative role of the victim. The norm indicates only a special emotional state of the culprit, which can manifest itself in a situation of intense mental excitement or serious injury to the psyche.

In Swiss criminal law, the concept of affect has the same meaning as in the criminal law of most countries, including Uzbekistan. However, in the case of affect, there is a sign of excuses in the composition of the crime, which implies criminal liability for manslaughter, which makes it possible to include the specified crime in the content that alleviates the killing of a person. In Swiss judicial practice, it has been argued that the excuse of an affect must be determined both for subjective reasons and by the presence of inflammatory (calling) external conditions. That is, the court indicates that the occurrence of an affect state should be caused by external triggers, which, in addition to internal causes, are also caused by the victim.

As a basis for alleviating criminal liability for the murder of a child, the Swiss legislature defines the special psychophysical condition of a woman associated with childbirth and specifies it directly in the disposition of Article 116. However, the criminal law does not specify how long the specified time frame will last. There are no such explanations in judicial practice either, but it evaluates it taking into account the specific circumstances of the case[14].

The Swiss Legislature did not provide for a separate criminal justice norm governing the fundamentals of criminal liability for manslaughter, deviating from the necessary defense limits or the measures necessary to apprehend the perpetrator of the crime. Nevertheless, according to Article 66 of the Swiss Criminal Code, the court will ease the punishment for such crimes at its discretion. If the deviation from the permissible limits is associated with “excruciating excitement or confusion”, and the reason is this, the culprit will not be punished at all.

The Italian Criminal Code provides an approximate list of mitigating circumstances and sets out relatively

formalized “arithmetic” rules for the phased reduction of criminal punishment. As a rule, when the court is easing the sentence, it is able to appoint a person below the lower limit of the sanction of the article only if several mitigating circumstances are in majud.

According to Article 578 of the Italian penal code, the death of a fetus at the moment of delivery and of a newborn baby still at birth is recognized as a manslaughter committed under extenuating circumstances. The specified criminal justice norm contains a mitigating condition, that is, the material or spiritual state of the mother, which must be recognized as not inherent in the Criminal Code of the countries we study. It can be assumed that the Italian legislator wanted to show similar circumstances in the disposition of the article and show the specific circumstances of the commission of the crime, as well as its effect on the spiritual state of the culprit. The Italian legislature allocates the measure of criminal liability of the mother who committed this crime: from 4 to 12 years, as well as for its participants (no less than 21 years that can be reduced), the penalty of imprisonment is established[15]. The Italian criminal code, as well as some other foreign countries, does not contain any other specific composition of murder known to the Criminal Law of Uzbekistan. In our opinion, this testifies to the lack of systematic differentiation of responsibility for killing.

The Spanish Criminal Code also places the affect case in the category of cases that alleviate liability. Section 22 (3) of the Spanish CC defines:”on the basis of mitigating circumstances will serve an affect created if the culprit has lost consciousness or due to other serious reasons, but this situation arises in a situation where all conditions are not sufficient for full release from criminal liability provided for in this chapter”[16].

From this norm of the Spanish Criminal Code, it is known that any short-or long-term emotional state that arises as a response to an inappropriate behavior or any other serious cause committed by the victim is considered an affective state[17]. But, the Spanish Criminal Code does not specifically mention any socially dangerous act committed in an affective state as an independent criminal entity. It can be seen from this that all crimes committed under the above conditions are recognized as a mitigating condition[18].

The following conclusions were drawn based on the analysis of the CC of the countries studied:

- 1) it is necessary to take into account in proportion both the characteristics of the guilty person and the circumstances that characterize a socially dangerous act at the level of differentiation of criminal liability (Switzerland).
- 2) establish a direct connection between the specific psychophysiological situation of the culprit in the disposition of the criminal legal norm directly in relation to the murder of a newborn child by the mother and, accordingly, a significant relief of criminal liability.
- 3) the use of special (softer) provisions of the validity of criminal justice norms on liability for manslaughter only when there are a number of conditions.
- 4) analysis of foreign country criminal law shows that harm in the seizure of a person who committed a crime is not always considered as an independent state that excludes the criminality of an act. Regulation of this issue in the Netherlands, the FRG and other countries is considered within the framework of the necessary defense.

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