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STAN BADAŃ NAUKOWYCH PROBLEMATYKI ZABÓJSTWA NOWONARODZONEGO DZIECKA PRZEZ WŁASNĄ MATKĘ

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Streszczenie. W artykule autor przeprowadza badanie prac naukowych z dziedziny prawa karnego, kryminologii, kryminalistyki, autorzy których skupiają się na problematyce popełnienia przestępstwa, a mianowicie – zabójstwie nowonarodzonego dziecka przez własną matkę. W postanowieniach artykułu naukowego jest również zawarta analiza norm, historycznego już, prawa karnego państw byłego ZSRR, współczesnego prawa karnego Ukrainy, Japonii oraz niektórych krajów Unii Europejskiej. Autor artykułu przeprowadza analizuje orzecznictwa w Ukrainie w sprawach o przestępstwa przeciwko życiu i zdrowiu człowieka, na podstawie której dochodzi do wniosku, iż kwestia metodyczna prowadzenia śledztwa w sprawie zabójstwa nowonarodzonego dziecka przez własną matkę, jak dotąd nie była w Ukrainie rozpatrywana na poziomie monograficznym, jak i nigdy nie była przedmiotem odrębnego badania monograficznego, a tym samym wymaga gruntownych badań na współczesnym etapie kształtowania się nauki kryminalistyki w Ukrainie.

Słowa kluczowe: kryminalistyka, zbrodnia, morderstwo, życie, zdrowie, matka, noworodek, dziecko, śledztwo, metodyka.

STATUS OF SCIENTIFIC STUDY OF THE PROBLEM OF INDEPENDENCE TO THE MOTHER OF ITS NEWBORN CHILD

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Abstract. In the article the author carries out researches of scientific works of scientists of criminal law, criminology, who devoted their work to the problems of studying a crime, namely, the murder of the mother of her newborn child. Also, the provisions of the scientific article contain an analysis of the norms of historical criminal legislation of the former USSR, modern criminal law of Ukraine, Japan and certain countries of the European Union. The author analyzes the judicial practice of Ukraine in cases of crimes against human life and health and concludes that the question of the methodology of investigating the murder of a mother of her newborn child on a monographic level in Ukraine was not considered and was not the subject of an independent monographic study, and requires a thorough research in the modern period of the formation of the science of criminalistics in Ukraine.

Key words: criminalistics, crime, murder, life, health, mother, newborn child, investigation, methodology.

СТАН НАУКОВОГО ДОСЛІДЖЕННЯ ПРОБЛЕМИ ВБИВСТВА МАТЕР'Ю СВОЄЇ НОВОНАРОДЖЕНОЇ ДИТИНИ

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Анотація. В статті автор проводить дослідження наукових праць вчених кримінального права, кримінології, криміналістики які присвятили свої роботи проблемам

вивчення злочину, а саме вбивства матір'ю своєї новонародженої дитини. Також положення наукової статті містять аналіз норм історичного кримінального законодавства країн колишнього СРСР, сучасного кримінального законодавства України, Японії та окремих країн Європейського Союзу. Автор статті аналізує судову практику України в справах про злочини проти життя і здоров'я людини, та робить загальний висновок, що питання методики розслідування вбивства матір'ю своєї новонародженої дитини на монографічному рівні в Україні не розглядалось і не була предметом самостійного монографічного дослідження, та потребує ґрунтовного дослідження на сучасному періоді становлення науки криміналістики в Україні.

Ключові слова: криміналістика, злочин, вбивство, життя, здоров'я, матір, новонароджена дитина, розслідування, методика.

Problem solving in general and its connection with important scientific or practical tasks. In Art. 3 of the Constitution of Ukraine states that the person, his life and health, honor and dignity, inviolability and safety are recognized in Ukraine as the highest social value of the Constitution of Ukraine, 1996). It is worth noting that today one of the most widespread and, most certainly, the most serious crimes is considered a deliberate murder that encroaches on the highest social value - human life. Of particular concern is the growing prevalence of murder cases by the mother of their newborn child. Thus, the analysis of official statistics of the Ministry of Internal Affairs of Ukraine on the number of registered crimes provided for in Art. 117 of the Criminal Code of Ukraine, showed that over the past 20 years, 370 willful murders have been committed by the mother of their newborn child, which in the general structure of intentional killings averaged 0.6%, for the years 2002-2016 found 88 criminal cases (cases) about intentional murders the mother of their newborn child (Gulevich N.P., 2018b p.23).

An analysis of recent research and publications, which began the solution to this problem, the allocation of previously unsettled parts of the general problem. It should be noted that certain issues of criminal-legal and criminological research were the subject of scientific works (M.N. Gernet, N.O. Neklyudov, M.S. Tagantsev, etc.) and Soviet (M.I. Zagorodnikov, V. D. Nabokov, A.A. Piontkovsky, L.I Timina, V.I. Tkachenko, A.N. Trinin, T.G. Shavgilidze, M.D. Shargorodsky, G. Sharipova, etc.). They paid considerable attention to the representatives of modern criminal-law thought-M.I. Bazhanov, A.V. Bayliv, Yu.V. Baulin, V.I. Borisov, S.V. Borodin, V.K. Grishchuk, T.V. Kondrasova M.Ya. Korzhansky, A.M. Krasikov, V.M. Kutsom, M.I. Melnik, V.O. Navrotsky, L.A. Ostapenko, O.M. Popov, O.L. Starko, I.S. Semenyuk, V.V. Stashis, V.Ya. Tacis, V.M. Trubnikov O.V. Shevchenko.

Presenting main material. Considering the question of the state of scientific research into the problem of the murder of a mother of her newborn child, in our view, all the scientific works should be divided into four main periods.

The first period can be defined as the scientific doctrines of infanticide in ancient times, from the I - XV centuries, characterized primarily by the lack of established responsibility for the killing of the mother of their newborn child. In the ancient world, the right of parents to dispose of the lives of their children has become widespread, so the killing of a newborn child is usually not punished. On the contrary, some thinkers at that time, such as Plato, Aristotle, and Cicero, spoke in favor of the admission of childbirth. Plato believed that infanticide was a necessary means to maintain the quality of life of the people, which involved the murder of children from the lower classes, as well as children born with developmental defects. In ancient Greece, elders were given the right to decide on the life of my newborns, the weak and ugly babies were killed. In

Ancient China, cases of murders of newborn girls have become widespread since it was believed that breastfeeding would save a woman from conceiving another child. In ancient Egypt, death penalty was not imposed for the murder of their children, but the guilty parents had to keep the child's body three days and three nights. In keeping with the execution of this punishment, a special guard was followed. The reason for such a punishment was that the Egyptians believed that the one who gave life could not be punished by death for choosing life. In the Indian tribes of North America there was a habit of hiding a newborn child with a deceased mother, as the child was seen as her murderer. Explaining such brutal killings of newborn babies can only be the difficulty in upbringing that the father of a family could face. Newborns with physical disabilities and twins were also subject to murder. The latter considered the proof of the infidelity of his wife. Usually the father had the right to murder, but in some tribes a woman also had this right (*Semeniuk I.S., 2017, p. 32-33*). It is worth confirming that the first scientific works that referred to impunity for the murder of their mother's newborn child. Yes M. N. Gernet, wrote that "The murder of a child is very common among peoples who stood at the lower levels of culture and does not cause them moral or legal condemnation" (*Gernet M.N., 1911, 205p.*), N.M. Karamzin, "The History of the State of Russia," noted that "... any mother had the right to kill a newborn daughter when the family became very large children, but was obliged to preserve the life of a son born to serve in the homeland" (*Karamzin N. M., 1989, 768p.*). It is these scientific studies that allow us to agree with the scientist I.S. Semeniuk said that the emergence of criminal law on responsibility for infanticide preceded the long path of development of religious, moral and legal practices, since in the early stages of the evolution of society, this act was not generally recognized as unlawful, especially when it comes to non-marital children (*Semeniuk I.S., 2017, p.32*).

The second period is appropriate to identify the scientific works of the 16th-18th centuries, characterized by the emergence of responsibility for the murder of the mother of their newborn child. The first regulatory responsibility for this offense documents include the Bamberg Code of 1507, Code 1532 - The Criminal Status of Charles V "Lex Carolina" (*Bulatova S.Ya., 1967, 152 p.*). In France, the legislative solution to the question of the murder of a newborn child was solved in accordance with the King's Henry II's edict of 1556. Its content allows us to conclude that this document was a means of combating not only the killing of non-marital children, but also violating the church precepts of the need for baptism of infants. In Germany, the Bavarian Code of 1756 provided for the use of the death penalty for committing this type of crime, and the methods of its implementation were brutal, which was characteristic of the criminal law of that time. A prerequisite for liability was the motive of the assassination - fear or shame. Moreover, increased responsibility took place in the case when the victim of the crime was an illegitimate child. However, later on, the Criminal Code of Mary Theresa in 1768 provided for mitigating the punishment for the murder of a mother of an illegitimate child in comparison with a child born in a marriage: quartering or casting for the murder of a law-abiding child and a simple chopping of the head for the murder of an illegitimate child, respectively. It is worth agreeing with scientists who believe that in some cranes in Western Europe at that time, a milder punishment for the killing of newborn babies was foreseen when they were not born in legal marriage. Nevertheless, in Austria and Italy, the death penalty for the killing of a newborn child was imminent. At the same time, in Austria, the death penalty was enforced in a more rigorous way if

the newborn child killed was not baptized (*Semeniuk I.S., 2017, p.35*). Prior to this historical period it is worth mentioning the scientific work of the Italian publicist Cesare Beccaria "On crimes and punishment" which in the second half of the XVIII century. who wrote in his treatise: "Childbirth is also a consequence of a hopeless situation in which a woman is subjected to weakness or violence. A woman who is torn between her own shame and the death of a being who is incapable of suffering suffering, will she not prevail over this last inevitable suffering that awaits her and her unhappy fruit? The best way to prevent this crime is, it seems to me, to be effective laws that protect the weak from tyranny "(*Beccaria Ch., 1995, 304 pp.*).

Later, during the time of Peter I, the Military Product of 1715, the murder of a child who was born in marriage was classified as a criminal offense. At the same time, during this period, they took measures to prevent infanticide. As it is noted: "Peter I understood the most important reason that pushed extramarital mothers to murder their children - it was their shame and fears of public opinion" (*Gernet M. N., 1911, 205 p.*). Thus, in 1714 and 1715, the king issued decrees for the creation of special homes for the maintenance of non-marital children in them. Women could bring newborns into such homes anonymously, hiding their faces and their names (*Romashkin P. S., 1947, 96 p.*).

From the eighteenth century. the attitude to the murder of an illegitimate child as a qualified form of murder is criticized, and certain motives contradicting church doctrines that push a mother to a crime (*Gluhareva L. I., 1984, 57 p.*). We consider the correct point of view of A.O. Antoshchuka, that the development and improvement of legislation until the twentieth century. testifies to the recognition of the less public danger of infanticide compared to other types of murders, which made it possible in some countries to identify it as an independent crime, with less severe punishment for it (*Antonov A. O., 2014, 15 p.*).

The third period of scientific studies in which the question of murdering the mother of his newborn child can be identified in the XIX century. the beginning of the 20th century. The first period of that period was devoted to the question of the murder of the mother of his newborn child. It was worth mentioning the publication of the scientist Gernet M.N. Infanticide: a sociological and comparative legal study: with the addition of 12 diagrams (1911) (*Guernet M. N., 1911, 318 p.*)

It is advisable to conduct an analysis of the legislation of this period, so in England before the adoption of the Kidnapping Act of 1922, the killing of a newborn child was considered intentional and punishable by death. However, judicial practice has made adjustments. In many cases, the case law system allowed the courts to accept sometimes different and directly opposing convictions. According to official statistics from 1905 to 1921, up to 59 women of the 60 accused of committing this crime were sentenced to death by imprisonment in accordance with the judgment of the jury (*Kenny K., 1949, 134p.*). It is worth mentioning that German law developed in a similar way. For the commission of this crime, the mother was punished in the form of hard labor for a term from 2 to 20 years. Punishments for infanticide were also mitigated by the legislation of the Netherlands, Spain, Switzerland, etc. Thus, the Criminal Code of Spain in 1870 provided for liability for this crime in Art. 416, according to which infanticide is the murder of the mother of their newborn child to conceal their dishonor. The offense was convicted of imprisonment. From the point of view of legal technology, the novelty of Spanish law was that accomplices of the crime could be relatives on the ascending line. The French Criminal Code of 1810 recognized the murder of a mother of her

newborn child by a qualified form of intentional murder, which was also punishable by death. At the same time, the aggravating circumstance was the fact that the mother "liquidates" the civil status of the infant. The law of 1824 introduced changes to the law, providing for the possibility of replacing the death penalty with hard labor for an indefinite period, if the subject of the crime was a woman who deserved leniency. It should be noted that the criminal law of Norway and Sweden in the XIX century. developed like a German. In particular, infanticide was recognized as a privileged crime, the subject of which could only be a mother who killed her illegitimate child during or after childbirth (according to Norwegian law at that time - within 24 hours after delivery) (*Semeniuk I.S., 2017, p.38-39*). It is also advisable to analyze the first "Soviet-style" criminal law that considered infanticide as a crime with aggravating circumstances. So adopted in 1926, the Criminal Code of the RSFSR, as well as the legislation on criminal responsibility of other Union republics, maintained an existing assessment of the social danger of childbirth. In addition, the responsibility for the murder of a mother of her newborn child was differentiated. In the Criminal Code of the Ukrainian SSR in 1927, the composition of childbirth was distinguished from the general provisions on willful killing in an independent legal provision (Article 142), which stated: "The murder of a mother of her newborn child during or immediately after childbirth is punishable by imprisonment for a term up to three years " (*A.A. Piotkovsky, 1955*). In the 1960 Criminal Code of the Ukrainian UkrSSR, the same provision was maintained in Article 96, which also provided for the qualification of the intentionally murder of a mother of her newborn child during childbirth or immediately after childbirth, a punishment of imprisonment for a term up to three years.

It is worthwhile in our opinion to separate the scientific works of criminal-law and criminological research of infanticide T. D. Tsybulenko "Childbirth and measures for their eradication" (1975), Timina L.I. Responsibility For infanticide under the Soviet criminal law (1980), Lukichev O. V. Criminally Legal and Criminological Characteristics of Infanticide (1997), Karguzkina EB, Prevention of Killing the Mother of a Newborn Child (Criminological and Criminal-Legal Aspects) (1999).

It is worthwhile to note that the implementation of the third period of scientific studies in which the question of murdering the mother of his newborn child, was adopted by the UN General Assembly on November 20, 1989, the Convention on the Rights of the Child. In conducting an analysis of foreign law regulating the issue of responsibility for the murder of a mother of her newborn child, it should be noted that the legislation on criminal liability of Germany underlying mitigating liability determines the fact of the murder of an extra-married child during or immediately after childbirth (*Serebrennikova A.V., 1997, 57-63 pp.*). In Japan, the mandatory condition for naming infanticide to privileged squads of murders is "concealing shame for the whole family" and "fears that it will not be possible to raise a child" (*Japan's Criminal Code, 2002*). In the Criminal Code of Denmark, this is a "fear of shame" and a "bad state of the mother" (*S. S. Belyaev, A. N. Rycheva, 2001*). Analyzing the judicial practice of the third period, it should be noted that in the Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of crimes against human life and health" of April 1, 1994 number 1 grounds for mitigating the responsibility for such an attack was considered a special the mental and physical condition of a woman who reduces her ability to manage her actions during labor or immediately after childbirth (paragraph 22) (On judicial practice in cases of crimes against human life and health ... 1994).

The fourth period of scientific studies in which the question of the murder of a mother of his newborn child was investigated can be defined as the second half of the XX century and the beginning of the XXI century.

At the same time, special studies of childbirth problems were conducted by Soviet scientists in criminal law and criminology. Questions of criminal liability for committing this crime were considered in the works of L. I. Glukharyova, L. I. Timina, G. Sharipova. It is worth pointing out that most scientific issues have been considered through the prism of the criminal-law aspects of this crime, including the work of L. A. Ostapenko "Criminal-Legal Characteristics of Intentional Murders under Mitigating Circumstances (Articles 116, 117, 118 of the Criminal Code of Ukraine)" (2003), Karasova A.L. The assassination of the mother of a newborn child: theoretical and applied aspects of responsibility under Art. 106 of the Criminal Code of the Russian Federation (2003), Makhmudova M.A. Kidney of the mother of a newborn child: criminal-law and criminological problems: on materials of the Republic of Dagestan (2006), O. L. Starko "The deliberate murder of a mother of her newborn child (criminal law and criminological research)" (2007), Grubba EI Issues of responsibility for the murder of a mother of a newborn child in Russian and foreign criminal law (2009), O. Shevchenko "Criminal liability for the murder of a mother " of your newborn baby" (2011), Lunaeva A.V. Criminal liability for infanticide: problems of theory and law enforcement (2013), I.S. Semeniuk "Responsibility for the intentional murder of a mother of her newborn child under the criminal legislation of Ukraine and foreign countries" (2017) O. Oliynyk "About 'Subjective and subjective signs of intentional murder by the mother of his newborn child (Article 117 of the Criminal Code of Ukraine) (2017).

It is also worth analyzing the judicial practice of this period, and in the corresponding Decree "On judicial practice in cases of crimes against life and health of the person" of February 7, 2003 No. 2 it was said that the deliberate murder of the mother of his newborn child should qualify for art. 117 of the Criminal Code of Ukraine, if it is committed during childbirth or immediately after birth (paragraph 21) (On judicial practice in cases of crimes against life and health of a person ... 2003). We agree with A.O. Antoshchuk, that the reference to a special psychophysical state of a woman in the latter case is excluded, that is, this feature of the crime is no longer considered obligatory (*Antoshchuk A.O., 2014, 18p.*).

It is also advisable to include in the fourth period of the scientific forensic research that was devoted to various problems of the methods of investigating murders carried out for a long time, beginning in 1941. It should be noted that the efforts of Ukrainian criminologists to develop problems in the methodology for investigating murders is significant. Among the doctoral dissertations on criminology in this regard, it is necessary to highlight the work of V. P. Kolmakov (1962), which was devoted to methods of investigation and prevention of crimes against life. In addition, in 2004, the dissertation paper Zolotov MA Methodology for investigating the murder of the mother of a newborn child; In 2009, V. Ya. Gorbachevsky in his work highlights the grounds for the disclosure of intentional murders. In 2011, O. S. Sinichin defends his doctoral dissertation on "Investigation of Intentional Murders: Theory and Practice", which pays considerable attention to the investigation of various kinds of murders. Various issues of investigation of murders were also considered in master's theses. This refers to the works of SP Zelenkovsky (1983) and VL Sinchuk (2004), which highlighted the general

issues of investigation of intentional murders; S. F. Zdorovko (2003) and I. V. Kubareva (2007), which are devoted to the investigation of intentional murders committed by a group of persons; V.V. Semenogova (2004), where attention is focused on the investigation of intentional murders masked by staging; M.V. Kostenko (2003) and A.O. Shulga (2003), which reveal the basics of the method of investigating deliberate murders, commissioned; B.N. Kovryzhnyh (1969) and V.V. Poltschikov (2011), which shows the principles of investigation of undiscovered murders; V.P. Kolmakov (1941) and I.V. Borisenko (1999), in which the question of investigation of intentional murders committed with the dismemberment of the corpse was reflected; O. S. Sinchin in which reveals the bases of the investigation of serial murders. In addition, the subject of the dissertation analysis was the investigation of murders in railway transport (*M.I. Tsiganenko, 1987 and Yu.B. Komarinskaya, 2010*); in the absence of a corpse (O. Yu. Bululkov, 1997); sexual assassinations (A.V. Starushkevich, 1998); murders committed in the face of confrontation of criminal groups (V.I. Boyarov, 2000); committed by minors (O. Andreev, 2007); committed with mercenary motives (A.M. Chornyi, 2010); serial killings on sexual grounds (O.V. Lubchinsky, 2018).

Particular attention should be paid to the scientific work and the achievements of scientists in the investigation of the killings made it possible to find out that most of the dissertations are aimed at developing a methodology for investigating crimes against the life of a person, and a few works devoted to the problem of investigation of the murder of a mother of her newborn child. With regard to the achievements of domestic scientists on the investigation of the murder of a mother of her newborn child, it is negligible. In this context, one should mention the monograph by V. P. Kolmakov "Investigation of childbirth". However, this work was written at the time of the Soviet Union and other historical conditions, social and legal realities, and objectively ignored the features of the present. In addition, the monographic work of O. S. Sanhinich "Features of Investigation of Infanticide" is published. Over time, in the legal literature, individual publications about the peculiarities of investigating the murder of a mother of their newborn child begin to appear. In particular, this is a scientific article by R.R. Gerasimova "Forensic modeling of the mechanism of childbirth", which discloses approaches to the creation of a forensic algorithm for modeling an event (crime mechanism) in the disclosure and investigation of infanticide. Also in this context is the AP publication of the scientific publication. Lazareva, "Investigation of infanticide: legal, procedural and organizational problems", which examines the legal, procedural and organizational issues of the investigation of infanticide, which are due to the specifics of the crime and the subject of its proof. However, these works concern infanticide in general, and not newborn babies in particular. It is advisable to distinguish in scientific research the scientific work of A.O. Antoshchuka "Initial stage of the investigation of the murder of a mother of her newborn child", which considers the organizational principles of the initial stage of the investigation of the murder of his newborn child and the organization and tactics of conducting separate investigatory (search) actions at the initial stage of the investigation into the murder of his newborn baby's mother (2014).

As a conclusion, it should be noted that the analysis of the above mentioned scientific works carried out by us allows, first of all, to distinguish the research of various criminal-legal, criminological and criminal forensic issues of the murder of a mother of her newborn child who require further development and the need for scientific

development of measures for the establishment and removal the causes of this type of crime and the conditions conducive to their perpetration among risk groups, since infanticide is a crime with a high level of latency, which greatly complicates its detection, investigation and prevention, and secondly, the need to monographic level forensic investigation tactics and methods of use of expertise and forensic techniques in the investigation of the murder of the mother of a newborn baby.

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