

is indemnified irrespective of the pecuniary damage to be recovered, but not related to the amount of this indemnity.

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**MURDER OF THE NEWBORN CHILD BY MOTHER**

Unfortunately, the mental state of a person is an extremely thin and sensitive mechanism that can fail due to such factors as stress, strong emotional anxiety, biological processes in the human body etc. In the case when the human psyche passes into a special condition (state of pathological affection), a person can not fully understand its actions, predict their consequences, its, and vegetative actions that are committing on the instinctive or subconscious level. That is why, criminal law is applied in a less serious form to those who committed acts while in a state of insanity. The example is Article 117 of the Criminal Code of Ukraine entitled «Killing a mother of her newborn child», the problems of which we will consider in this article.

The article's fabula reads as follows: «The deliberate murder of a mother of her newborn child during childbirth or immediately after birth ...». It is appropriate to same part of this article from the Commenting Criminal Code of Ukraine, that is sound like: «Only the mother's newborn child may suffer from this crime.

The objective side of this murder is characterized by:  
1) actions - an encroachment on the life of a newborn child;  
2) consequences in the form of her death; 3) a causal relationship between the indicated actions and the consequence 4) the time and certain conditions - this act can be committed only during the childbirth or immediately after birth.

Childbirth is a physiological process of human birth, which begins with regular contractions of the pregnant woman's uterus

muscles and ends with the expulsion of the fetus from the mother's womb and the placement of the placenta, the mucous membrane and the umbilical cord. The beginning of human life is considered to be the appearance of any part of her body from the mother's womb. As a rule, such a part of a body is the head of a person.

If a child died as a result of premature birth caused by illegal artificial interruption of pregnancy, committed not by the mother, but by another person, the punishment should be qualified by art. 134. Abortion of pregnancy as a result of a woman's strike, beatings forms a willful intentional bodily injury (Article 121). «[2] Therefore, based on this interpretation, it can be understood that the mother, committing the murder of her newborn child, does not fully realize its act, even if it does so with extreme cruelty, and therefore can not be attracted as a premeditated murder.

By studying medical practice, we have understanding that the state of affection comes from the emergence of an extremely powerful stresses that derives the mental state of a person from normal condition, but each person encounters strong stresses during his life, however, the state of affection usually occurs through a combination of instant but powerful stress with factors of long-term existence (systematic or pathological).

Consequently, according to the author mind, the subjective side, as well as the causal link in this article, are much deeper and require detailed investigation, because the subject of the crime, during, or before becoming pregnant, may be negatively affected by other interested persons through manipulation, blackmailing, unintentional and inappropriate intimidation. For a meaningful example, the situation will be kind of the same when, relatives of a pregnant woman begin to exercise moral pressure on her by way of saying that her wealth status in the future will be quite lower, and if the child's father leaves his family then to arrange private life in the future will be more problematic.

The body of a woman that is pregnant gets much more stress and functional overwork caused by forming the embryo, the mental condition is also extremely susceptible to even insignificant stress may generate excessive secretion of hormones. When systematically imposing on a pregnant woman thoughts about negative consequences of the birth of a child, it can fall into long-term (pathological) states of

worry, or even short-term depression. Similar conditions can generate paranoid and depressed thoughts about future maternity, the chance of a successful and independent life, and the upbringing of a future child. It should be noted that the factor of the psychological impact of third parties is not always decisive, the man-made, social, economic and political factors can also lead a pregnant mother to the thought of inappropriate birth of a child, which in turn becomes the cause of the instinctive need of the murder of a newborn child during , or immediately after childbirth in a state of affection as a reflection of the instinct of self-preservation.

According to the author mind, the murder by the mother of her newborn child is a crime that have multi-stage and complex conditions and causes of the, which are usually unknown to the investigation, and in some cases even to the mother. Prevention of this phenomenon is possible by providing by government safe conditions and protection for mothers who do not want or are afraid of the birth of a child. In the developed countries of the European Union as well as the United States of America, they use technology of Baby Boxes, where the mother can leave the newborn baby anonymously, and the ambulance service will be able to provide the child with the necessary help and protection. When, the woman appears the option that will allow her not to deprive the newborn child in case of her unwanted birth. Literally existence of such an option already minimize the risk of the mumble of the idea of the murder of a child, which can find its real and practical expression in the state of labor affection. [3]

As for the investigation of such an offense, in the opinion of the author, it requires the involvement of professional psychologists to carry out a systematic psychological examination of the woman who is the subject of the crime, which will need to find reasons and circumstances that even contributed to the subconscious level the commission of this crime, the search for persons who could commit passively aggressive influence on the psychological state of a woman during pregnancy, which caused the emergence of a possible reflexive self-defense instinct that finds its expression in the murder of a newborn child in a fit of passion. Identifying a psychologist of such negative and dangerous influences, in turn, should prevent their possible re-occurrence in the future, as well as prosecution of persons

whose involvement will be proved during conducting such examinations.

The practice of investigating the underlying cause of such crimes shows that the majority of women who committed such acts themselves are the victims of certain circumstances and conditions that was influenced her during pregnancy. The practice of their protection or the maximum isolation from such stimuli in the future will theoretically help to minimize the possible number of committing that type of crimes, reduce the risks of psychological and mental illness in women who were the subjects of the crime and accelerate their full socialization after serving the sentence.

#### ***List of references***

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#### **RESTRICTIVE MEASURES IN THE CRIMINAL LAW OF FOREIGN COUNTRIES**

In accordance with the Law of Ukraine «On Amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence» of 06.12.2017 the Criminal Code of Ukraine was supplemented Section XIII-1 «Restrictive measures» and the article 91-1, which regulates the application of such measures to persons who have committed domestic violence. In the interests of a victim of a crime involving domestic violence, the court may apply one or more restrictive measures to a person who has committed domestic violence: 1) a prohibition to stay in a place of residence with a person