THE CRIME OF INFANTICIDE: CONTROVERSIES, SOLUTIONS, PERSPECTIVES

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Întrucât unul dintre elementele constituitive şi esenţiale ale omului o constiuie dreptul la viaţă, apare justificată analiza raporturilor existente între aceste două noţiuni importante în cadrul infracţiunilor contra vieţii. Viaţa omului apare ca valoare primară şi absolută, indispensabilă manifestării în sine şi, ceea ce este mai important, condiţie a continuităţii biologice a grupului social.

Human life appears as a primary and absolute value, and more importantly, a condition of the biological continuity of the social group.

The reality shows us that in society there have been and continue to be acts of guilty suppression of one's life.

As an example we have the crime of infanticide, also known as neonaticide or the murder of the newborn child, considered as a very old criminal phenomenon.

The victims of the crime of infanticide are newborn children, killed by their mother due to hunger, shame, rape or incest, the desire not to complicate the favorable evolution of the professional career of actress, ballerina, childbirth with complicated malformations, as well as the state of physical or mental emotional disorder caused by birth.

Infanticide, being a variety of homicide, is committed by any action or inaction likely to suppress the life of the victim: suffocation, hitting, abandonment in the cold, etc. The deed must be committed during birth or immediately after birth when there are still traces of recent birth on the child's body and according to forensic medicine no later than 24 hours. If the murder took place later, the mother will answer according to letter d) paragraph (3) article 145 CCRM.

A specific approach to the notion of infanticide can be found in the criminal doctrine of other states, in particular those in the Common Law family (USA, Canada, Australia, etc.).

Causing the death of a child intentionally is considered as "infanticide". The term of killing babies has a narrower meaning than the term "infanticide."

Foreign authors distinguish two varieties of infanticide:

Neonaticide – causing the death of a newborn baby within 24 hours after birth by his mother.

Filicide – causing the death of the child after the expiration of this period of 24 hours.

Neonaticide refers to the suppression of the life not of any child, but only to the killing of the newborn child committed by his mother in the first 24 hours after birth due to a mental disorder caused by birth.

According to the author Lilia Gârlă, she considers that the notion of infanticide is not the best one, because it leaves room for many interpretations when we define the notion of infant. According to him, the relationship between a baby and a newborn is one of genus-species: any newborn being a baby, but not every baby is a newborn. Therefore, we are in favor of substituting the name of article 147 of the CCRM "Infanticide" with that of "Neonaticide."

As a result of studying the topic, the following conclusions were identified:

- Infanticide as a social phenomenon has emerged since ancient times.
- Infanticide is the word composed of the nouns "infant" which means child in the first months of life and "murder" which means consisting of lifelessness.
- Causing the death of a child, who was born as a result of artificial triggering at the gestation period exceeding 22 weeks, must be qualified as murder.
- Breathing must be recognized as the most convincing proof of the existence of human life, at the same time there may be cases when, without breathing, the child can prolong his life outside the mother's body, but similar to intrauterine life, that is only through blood circulation.
- The subject is the responsible person who at the time of the crime reached the age of 14 years.

- The state of physical and mental disorder able to explain the deviant behavior of the woman is established by the contribution of doctors, within the forensic expertise.
- According to Article 16 of the CCRM, the crime of infancy is classified as a less serious crime which provides for a maximum penalty of imprisonment up to and including 5 years.
- The legal object is represented by the social relations regarding the right to life.
- The material legal object is the child's body.
- The objective side has the following structure: 1) the deed, 2) the prejudicial consequences, 3) the causal link, 4) the time of the crime.
- The subjective side is manifested through guilt in the form of intention. The intention can be both direct and indirect.
- For the existence of a special emotional state, which provides the basis for mitigating criminal liability under Article 147 of the CCRM, the following conditions must be met cumulatively:

1. This state should be expressed in a physical or mental disorder;
2. The given condition should be caused by birth;
3. That state should have the effect of diminishing the discernment.

Recommendations:

1. The detection of families whose members suffer from mental illness, being prone to aggressive and self-aggressive actions. The supervision of people detained in psychoneurological dispensaries in the Republic of Moldova.

2. Tightening the control over the obstetric-gynecological institutions that perform the abortion, especially in the cases of women with a long gestation period. Thorough control of the child's death in these institutions must be closely monitored.

Recomandat
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