

CRIMINAL LIABILITY FOR PREMEDITATED MURDER DURING THE REIGN OF THE RUSSIAN EMPIRE AND DURING THE SOVIET PERIOD

Abzalova Khurshida Mirziyatovna,

Professor of the Department of Criminal Law, Criminology and
Anti-Corruption of TSUL, Doctor of Science

ABSTRACT

In this article, the author analyzed the features of criminal liability for premeditated murder during the reign of the Russian Empire and during the Soviet period. The author notes that the norms of the Code were already quite close to the modern level, both constructively and from the point of view of determining aggravating and mitigating signs, and the Criminal Code in force on the territory of the Soviet republics almost completely ceased to apply Sharia norms. At the end of the article, appropriate conclusions were drawn.

Keywords: murder, regulation of murders in the Code, murder at the insistence of the murdered (euthanasia), preparatory stage of premeditated murder, Criminal Code of the Soviet republics, qualified types of murders, simple type of murder, privileged types of compositions of murder.

INTRODUCTION

An objective and comprehensive study of any phenomenon, including such a type of criminal act as premeditated murder, is possible only through research and analysis of its chronological, or in other words, historical development.

At the same time, historical study is usually carried out by highlighting certain periods, historical milestones, stages of development that had the strongest impact on the formation or development of the analyzed phenomenon. At the same time, in the course of conducting a historical and comparative analysis of premeditated murder, we will consider criminal liability for premeditated murder during the reign of tsarist Russia and during the Soviet period.

The period of tsarist Russia's rule occupies a time period, from about the second half of the XIX century to 1917, when the colonial rule of the Russian Empire was put an end to in Central Asia.

At that time, the Turkestan General Government (1867), the Khanate of Khiva and the Emirate of Bukhara were established in the lands of Central Asia annexed to the Russian Empire¹. The Turkestan general Government consisted of five regions, which included 27 counties. Counties, in turn, were divided into volosts, and volosts – into villages, auls and settlements².

On the territory of Turkestan, as well as in the northern regions of Tajikistan, which were part of it, according to the Regulations on the Administration of the Turkestan Territory³, the laws of the empire were in force, only some minor relations were regulated by customary law and Sharia norms. As for the vassal khanates and the emirate, they were relatively

¹ Тахиров Ф.Т. История государства и права Таджикистана (1917-1929 гг.). - Т.2, ч. 1. - Душанбе, 2001. – С.56.

² Тахиров Ф.Т. История государства и права Таджикистана (1917-1929 гг.). - Т.2, ч. 1. - Душанбе, 2001. – С.56.

³ Тахиров Ф.Т. История государства и права Таджикистана (1917-1929 гг.). - Т.2, ч. 1. - Душанбе, 2001. – С.56.

independent in terms of legislation and judicial system, and Sharia law fully applied on their territory.

Since we have analyzed the norms of Sharia, we are more interested in the norms and institutions of criminal law, which began their application during the colonial period.

So, if Sharia was applied mainly to the indigenous (or native) population, then the Criminal Code approved on March 22, 1903 (hereinafter referred to as the Code) applied to Russian applicants (which, by the way, included the entire population of the Turkestan Governor-General) and foreigners of the Christian faith⁴.

It should be noted, however, that this source of law did not become, for the most part, the current law, but served as the basis for further development of criminal legislation, including crimes against life⁵.

So, according to the Code, crimes against life and health (the type of crimes against a private person (against a person) are placed in Chapter XXII, while the system of crimes against life (Articles 453-466) has become more compact, only encroachments on the life of another person have been attributed to crimes against life⁶.

Great attention is paid to the regulation of murders in the Code. Suffice it to say that the differentiation of responsibility for various types of murders in the Code was built at a modern level, depending on the presence of qualifying signs.

For the first time, the types of murders begin with a simple (basic) composition of the murder (Article 453), previously the beginning was always with the most serious types of murders. After a simple murder, the types of qualified murder were listed, followed by types of murders under mitigating circumstances. The article on causing death by negligence is mentioned separately.

The list of premeditated murder under aggravating circumstances was more than diverse and covered almost all cases of illegal deprivation of life known at that time. For example, article 455 provided for murder:

By Object:

- 1) an ascending or descending relative, husband or wife, brother or sister;
- 2) a clergyman when performing a divine service or spiritual service;
- 3) an official in the performance or in connection with the performance of his official duties;
- 4) someone from the ranks of the guard guarding the Sacred Person of the Reigning Emperor or a member of the Imperial House, or a sentry military guard;
- 5) the boss or the master, or a member of the family of the master who lives with him, or the master with whom the perpetrator is in the service, or the master with whom he is in work or study, or the person to whom the murderer owed his upbringing and maintenance;

By Objective Side:

- 6) in a way that is dangerous to the lives of many people;
- 7) in a way that is particularly painful for the victim;

⁴ www.voi.h1.ru

⁵ www.voi.h1.ru

⁶ www.voi.h1.ru

- 8) by poisoning;
- 9) from an ambush;

By Subject:

- 10) by a gang (group of persons);
- 11) within five years after serving a sentence for murder;

By Subjective Side:

- 12) for a selfish purpose;
- 13) in order to facilitate the commission of another serious crime.

As you can see, some of the listed qualifying signs of premeditated murder with some changes were included in the Criminal Code of the Uzbek SSR and even the first Criminal Code of the Republic of Uzbekistan (of course, they are structurally expressed differently, however, the semantic content remained unchanged – for example, the murder of a close relative, an official in the performance or about the performance of his official duties, generally dangerous in a manner intended to facilitate the commission of another serious crime).

Of course, many other qualifying features of the Code, for objective or ideological reasons, were not included in the codes of the Soviet period (the murder of a boss or chief, as well as a clergyman during service)⁷.

The Code, as mentioned earlier, defined a number of types of murder that were committed under mitigating circumstances, and also for the first time noted separately the stage of preparation for a crime in the form of premeditated murder as a circumstance allowing for a reduction in punishment.

So, the privileged compositions of murders include:

a murder conceived and executed under the influence of emotional excitement;

killing when exceeding the limits of necessary defense;

infanticide;

murder at the insistence of the victim, out of compassion for him⁸.

A brief enumeration of the compositions is enough to see in them the privileged compositions of murders that exist in the modern Criminal Code (Article 98 of the Criminal Code "Premeditated murder in a state of passion", Article 99 of the Criminal Code "Murder by the mother of a newborn child", as well as the composition of causing death when exceeding the limits of necessary defense).

By the way, the high level of elaboration and codification of acts shows that such socially dangerous acts as delivering funds to suicide to the victim, conspiracy or assistance in committing suicide of a minor (under the age of 21) person, as well as "a person who is obviously unable to understand the properties and meaning of them" were attributed to crimes against life to commit or direct their actions"⁹, as well as the presence of so-called euthanasia (murder out of compassion).

⁷ Уголовное уложение Российской империи 1903 года.

⁸ Уголовное уложение Российской империи 1903 года.

⁹ Уголовное уложение Российской империи 1903 года.

Premeditated murder was classified as a serious crime, and such punishments as the death penalty, hard labor, or exile to a settlement were imposed for it.

The death penalty was determined only for the commission of an encroachment on the life, health, freedom or inviolability of the Sacred Person of the Reigning Emperor, Empress or Heir to the Throne¹⁰.

Briefly, the following characteristic features of criminal liability for premeditated murder during the tsarist rule can be distinguished:

Firstly, Sharia law (for the local population) and the norms of the Code (for subjects of the Russian Empire) apply in Central Asia;

Secondly, the norms of the Code were already quite close to the modern level, both structurally and from the point of view of determining aggravating and mitigating signs;

Thirdly, for the first time, an integrated system of types of premeditated murders (from a simple type to qualified, and then to privileged types of homicide compositions) is clearly defined;

Fourth, the preparatory stage of premeditated murder has been highlighted for the first time);

Fifth, qualified types of murders can already be divided according to all criteria, by object, objective side, subject and subjective side;

Sixth, the construction and socially dangerous nature of the types of murders defined in the Code have been worked out to such an extent that many of the norms in one form or another have reached the modern Criminal Code;

Seventh, there is a modern norm in the Code, even taking into account today's time - murder at the insistence of the murdered person, out of compassion for him (euthanasia).

The Soviet period

The October revolution in the Russian Empire and the creation of Soviet republics in Central Asia led to the creation of a fundamentally new Soviet law, including criminal legislation. As it is quite rightly noted by researchers, during this period, characterized by intensified classical struggle and repression by the Soviet government, criminal law acquired a sharp, illogical and politicized character, just as it was required by the peculiarities of martial law and the restoration of the Soviet state in this region¹¹.

Almost all types of punishment applied to all types of crimes have acquired class and political content. A characteristic feature of the development of the institution of punishment in this period was that an understanding of punishment as a means of protecting ideological postulates and the political system was beginning to take shape¹².

As a result, the understanding of the institution of punishment as a protection of individual rights and freedoms was rejected. According to E.N.Zinkov, in the Soviet legal thought of the 20-30s of the twentieth century, a peculiar understanding of punishment as a means of protecting the political system was formed, contradicting the global trend in the interpretation

¹⁰ Уголовное уложение Российской империи 1903 года.

¹¹ www.voi.h1.ru

¹² www.voi.h1.ru

of punishment as a means of protecting individual rights, which had a negative and regressive impact on the development of the Soviet theory of punishment¹³.

The initial stage of the formation of Soviet criminal legislation is divided into two periods:

- 1) from the revolutionary events to the adoption of the first codified criminal laws (1922);
- 2) codification of the criminal law at the all-union and republican levels¹⁴.

In 1919, the NKYU, summarizing the legislation and judicial practice of the general courts and revolutionary tribunals, issued an act on the General part of criminal law: Guidelines on the criminal law of the RSFSR, which also operated in the Turkestan territory¹⁵.

However, this act did not provide for special rules on criminal liability for crimes against life (they appeared only in the Criminal Code of the RSFSR in 1922, which also operated on the territory of the Turkestan Territory).

An analysis of the norms of this Code suggests that one can notice the differentiation of the responsibility of murder depending on the form of guilt, the allocation of the main, qualified and privileged compositions of murders¹⁶. However, the term "murder" has begun to cover both intentional and negligent deprivation of life, and the scope of punishment for assisting or inciting suicide is narrowing.¹⁷

In accordance with this Code, criminal liability began at the age of 14. But, in the resolution of the Central Executive Committee and the Council of People's Commissars of the USSR "On measures to combat juvenile delinquency", criminal liability was established from the age of 12 for such serious crimes as theft, murder, violence and mutilation¹⁸. Moreover, all measures of criminal punishment, including the death penalty, were applied to children.

At the same time, the court, when imposing punishment or other measure of responsibility (as a rule, here we are talking about measures of pedagogical education), should take into account: the social status of the offender, the political or personal nature of the motives of the crime, the degree of awareness of the offender of his act, complicity, professionalism of the offender, the presence of violence, the nature of the object of the crime, such motives as "cruelty, malice, treachery, cunning, impetuosity, frivolity and negligence", as well as other circumstances¹⁹.

Pedagogical measures could be applied to minors (from 14 to 16 years old)²⁰. According to some articles, the death penalty was provided for - shooting. Thus, the death penalty, which had previously been considered as an extraordinary measure of influence, was now introduced into the usual practice of criminal law (the reference to its temporary nature was eliminated in 1923)²¹.

By the resolution of the Central Executive Committee of the Uzbek SSR of January 16, 1926, the Criminal Code of the Uzbek SSR was put into effect on the territory of the Uzbek SSR and the Tajik ASSR on July 1, 1926. It was almost completely constructed on the basis of the "Basic

¹³ См.: Декреты Советской власти: в 4-х т. – М.: Госполитиздат, 1957-1968.

¹⁴ Ақобиршоев Х.Р. Регулирование ответственности за преступления, связанные с проституцией, в истории таджикского уголовного законодательства. Вестник экономики, права и социологии, 2018 № 1. – С. 54-58.

¹⁵ Ақобиршоев Х.Р. Регулирование ответственности за преступления, связанные с проституцией, в истории таджикского уголовного законодательства. Вестник экономики, права и социологии, 2018 № 1. – С. 54-58.

¹⁶ www.pravoznavec.com.ua

¹⁷ Корнеева А.В. Теоретические основы квалификации преступлений: Учебное пособие. - М.: Норма, 2007. - 235 с.

¹⁸ www.pravoznavec.com.ua

¹⁹ Кашанина Т.В. Оценочные понятия в советском праве: Автореф. дисс.... канд. юрид. наук. - Свердловск, 1974. – С.26.

²⁰ www.pravoznavec.com.ua

²¹ www.pravoznavec.com.ua

Rules of the criminal legislation of the USSR and the Union Republics", with the exception of those legal issues, the regulation of which the "Basic Principles" were left to the discretion of the legislative bodies of the republics.

The Criminal Code of the USSR of 1926, in terms of regulating responsibility for various types of murders, practically did not differ from the Criminal Code of the RSFSR. Article 186 of Chapter VI of the Criminal Code provided for liability for premeditated murder²². Nevertheless, although the Criminal Code itself was essentially an innovation, in addition to its norms, there were also provisions regulating qualified compositions of murders that had not previously been found in tsarist Russian criminal law – for example, murder committed using the helpless position of the murdered²³.

Depending on the types of murders, including those with aggravating circumstances, the punishment for them, i.e. the limits of the sanction, were set from one to ten years in prison. The subject of the murder, like most other crimes against life and health, was a sane individual who had reached the age of 12²⁴.

Interestingly, the Criminal Code of 1926 fixed the application of the criminal law by analogy²⁵. The Criminal Code of the Uzbek SSR of 1926, undergoing numerous changes, existed until January 1, 1961, after which the new Criminal Code came into force. In the new Criminal Code, premeditated murders, as one of the types of crimes against life, were placed in chapter III of the Criminal Code, which separately provided for crimes against life, health, freedom and dignity of the individual. Among them, premeditated murder under aggravating circumstances was considered the most dangerous (Article 102 of the Criminal Code of the USSR).

In the Criminal Code of the USSR of 1959, responsibility for premeditated murder was already provided for in two articles (Article 80 of the Criminal Code - "Premeditated murder under aggravating circumstances", and Article 81 – "premeditated murder")²⁶. By the way, in Article 80 of the Code, as circumstances aggravating the responsibility of the act, it was provided for:

By Object:

- 1) in connection with the performance by the victim of his official or public duty;
- 2) when killing two or more persons;
- 3) obviously for the guilty pregnant woman;
- 4) in relation to women, under the influence of ancient prejudices;

By Objective Side:

- 5) with extreme cruelty or in a way that is dangerous to the lives of many;

²² Уголовный кодекс Узбекской ССР. – Самарканд: Туркпечать, 1926. – С.32.

²³ УК УзССР 1926 года.

²⁴ Наумов А.В. Применение уголовно-правовых норм. - Волгоград: Юрист, 1973. – С.112

²⁵ Наумов А.В. Применение уголовно-правовых норм. - Волгоград: Юрист, 1973. – С.112

²⁶ Уголовный кодекс Узбекской ССР. С изменениями и дополнениями до 1 января 1977 года. – Ташкент: Узбекистан, 1977. – С.65-66.

By Subject:

6) a particularly dangerous repeat offender or persons who have previously committed premeditated murder²⁷.

By the Subjective Side:

7) for selfish purposes;

8) out of hooligan motives;

9) in order to facilitate the concealment or commission of another crime, as well as related to rape;

Premeditated murder under circumstances not specified in Article 80 of the Criminal Code entailed criminal prosecution for committing a simple premeditated murder under Article 81 of the Criminal Code²⁸.

So, the following characteristic features of criminal liability for premeditated murder in the Soviet period can be distinguished:

Firstly, the Criminal Code that operated on the territory of the Soviet republics almost completely ceased to apply Sharia law;

Secondly, the norms of the Criminal Code have traditionally been constructed according to the principle - simple murder – qualified types – privileged types of murder, while they were already structurally close to the modern level (in fact, the current norms of the Criminal Code constructively "grew" out of the former Soviet constructions, not accepting the Western standard of rulemaking);

Thirdly, unlike the system in force during the colonial period, the Criminal Code previously specified qualified types of murders, then – a simple type, and in some articles – privileged types of murder compositions).

²⁷ Ведомости Верховного Совета УзССР, 1961 год, №16.

²⁸ Советское уголовное право: Особенная часть. Учебник. Б.А.Ахмедов, Б.А.Блиндер, С.Г.Закутский и др. / Ответ. редактор: Б.А.Ахмедов. – Ташкент: Укитувчи, 1983. – С.60.