

Homicide committed in a state of profound psychiatric distress according to the Albanian Criminal Law

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Abstract

This paper analyzes in a concise manner the main elements and causes that lead to the commission of the criminal offense of "Homicide committed in a state of profound psychiatric distress", according to the Albanian criminal code. The murder that is committed in a state of profound psychiatric distress, must meet certain conditions such as the objective side, the subjective side but also the subject of the criminal offense. In this paper, the elements that cause the commission of the criminal offense will be analyzed, such as profound psychological distress, Instantaneous shock, severe insult, violence, but also chronic. The paper will also focus on the analysis of the mitigating circumstances of the profound psychological distress provided by the Albanian criminal law. Crucial importance in this paper will be given to the comparison of the murder of the profound psychiatric distress seen in relation to the homicide committed in exceeding the limits of necessary defense.

Keywords: criminal code, homicide, profound psychiatric distress, necessary defense

I. Introduction

It is often heard in the Albanian reality about criminal acts such as murders committed "for a word-of-mouth", "for a parking spot" as well as for "domestic crime". This paper will clarify that such events stem from causes, which do not recognize geographical boundaries, but are related to the human nature. The paper mainly focuses on the criminal offense of "Homicide committed in a state of profound psychiatric distress", as the most important because of its object, but without overlooking the psychiatric distress as a mitigating circumstance. In order to give a more complete opinion, we have treated the analysis of the causes that lead to the commission of the criminal offense of "Homicide committed in a state of profound psychiatric distress". Profound psychiatric distress is a very delicate circumstance of intentional homicide, which brings serious irreparable consequences. Recently, such cases have increased in various forms for trivial motives, as well as in close family circles. There are various reasons, where it is worth mentioning the economy, education, mentality, etc.

II. Homicide committed in a state of profound psychiatric distress

In Section I of the Chapter I of the special part of the Criminal Code, which stipulates

the “*Crimes against life committed intentionally*” (Articles 76 - 84 / a), from one point of view, there are two major categories of criminal offenses of murder.

The first category is the category of premeditated murder, while the second category is the category of intentional homicide. As basic criminal offenses for each category, are provided respectively the criminal offense of intentional homicide (Article 76 of the Criminal Code) on one hand and the criminal offense of premeditated murder (Article 78 paragraph 1 of the Criminal Code) on the other.

It is important to note that in each category, intentional homicide or premeditated murder, the legislation has provided for a number of other criminal offenses. For example, the category of intentional homicide includes Homicide committed in a state of profound psychiatric distress (Article 82 CC) or Homicide committed by exceeding the limits of necessary defense (Article 83 CC), etc. On the other hand, the category of premeditated murders includes homicide committed for interest or revenge (Article 78 paragraph 2 of the Criminal Code), murder for blood feud (Article 78 / a of the Criminal Code), etc.

In any case, in order to reach the correct legal qualification, it is necessary to first distinguish between intentional homicide and premeditated murder. In the doctrine (Mëngjesi, 2016), but also in the consolidated case law, the points of reference are precisely defined to notice the difference in the concrete case.

In the intentional homicide, there is a time difference between the decision to commit the murder and the execution of it. In this time difference, a very important element is the composure of the perpetrator, especially in the moment of execution of the criminal offense. Secondly, there is a perpetrator’s plan where the determination of the time and place, the place and circumstances and manner the murder will be committed are important and decisive elements of this plan, in addition to the preparation of conditions and means, etc. It is widely accepted that based on these characteristics, the perpetrator of an intentional homicide aims to maximize the “success” in the execution of the crime, which means on one hand, the sudden capture of the victim, eliminating the possibility of a quick reaction and on the other hand, the intention of the author to avoid being identified and captured.

Therefore, the characteristic of premeditated murder is the execution of the victim by surprise, meaning the commission of the crime in circumstances, conditions, position that the victim generally does not perceive contact with the perpetrator. In contrast and based on this fact, our consolidated case law finds that the homicide committed in completely random circumstances is called an intentional homicide. I.e., intentional homicide can be considered all those cases when there was a hassle of the moment, fight, seizure or insult between the victim and the perpetrator, which become the cause for the perpetrator at that moment to take the decision to commit the murder, executing it immediately without time difference (Zhidro, 2021).

In the simple murder the perpetrator and the victim due to a random conflict arising between them, attack each other committing acts of mutual violence regardless of scale and intensity. It is very important to note that in intentional homicide the difference between motive and cause is extremely important. Therefore, there may be a motive of mutual hatred between the victim and the perpetrator, but the cause

is random and banal.

Meanwhile, it can be said that there are three essential criteria, which characterize the psychiatric distress and consequently the crime of "*Homicide committed in a state of profound psychiatric distress*". These three criteria remain inseparable and must be met simultaneously. Therefore, it is required that the psychological distress be strong, instantaneous and be caused by violence or severe insult to the victim.

We can consider a condition of psychiatric distress when the person, being in a blackout of consciousness, is not able to understand the importance of his illegal actions nor of the consequences that come from them. He is unaware during the commission of the criminal offense. The meaning of psychiatric distress can be explained in two criteria, i.e. *first* in the scientific criterion and *second* in the legal criterion.

The scientific criterion is that applied by psychology in the analysis of lack of self-control, where lack of self-control is related to lack of moral self-control, easy transition to a great anger and the need for irritation.

To control yourself means to control your impulses. Impulse control is related to both a psychological process and the impulse in general or in particular. An action that shows a lack of self-control may simply be the appearance of a strong impulse. An impulse, however, is simply the conclusion of an internal and presumed cause of a behavior.

However, the general definition given to psychiatric distress is the tendency to respond to phenomena with quick decisions or actions and without thinking about the consequences that may come.

Meanwhile, the legal criterion is the one applied by the court in resolving concrete cases. The Albanian (Criminal College of the Supreme Court, Decision no. 822/2005) (Criminal College of the Supreme Court, Decision no. 749/2002) case law has clarified the meaning of the physiological affect, stating that: "*It is precisely this state of physiological affect that affects the reduction of a person's intellectual ability, in his psyche, weakens the person's ability to control the actions he performs, but that does not exclude him from complete control.*"

The physiological affect is defined in the same way in the doctrine (Elezi, 2002), that is, as a disordered mental state, as a darkening of consciousness. According to these definitions, it is accepted that intellectual activity is inhibited, and we have a lack of control over actions. However, what are the goals that limit this lack of self-control? Psychiatric distress has nothing to do with pathology because it occurs in normal people. The meaning given to irresponsibility in profound psychiatric distress is different from the meaning of irresponsibility defined in Article 17 of the Criminal Code. The latter is a pathological irresponsibility. It is associated with diseases such as dementia, imbecility and schizophrenia. It is not the emotional state that completely upset the mental balance but it is the mental or neuropsychic illnesses that disturb the mental balance. Pathological intoxication also serves to exclude the perpetrator from criminal responsibility, as he is unable to understand the importance of the crime he commits, as well as to control his actions.

Only responsible persons suffer profound psychological distress, because only these can understand the unjust actions of another person. People with abnormal psyches

are not able to understand the unjust actions of another nor do they understand the importance of their own actions. Consequently, only the responsible persons are the active subjects of the crime of *"Homicide committed in a state of profound psychiatric distress"*.

III. Instantaneous Shock

The second criterion, which is required to be met by psychiatric distress, is instantaneous shock. In our judicial experience, this criterion has been addressed from an early age. The case law has stated that (Criminal College of the Supreme Court, Decision no. 2222/1952): *"... For the shock to be instantaneous means that the culprit has acted immediately after the cause that provoked the deep psychic disturbance has disappeared. The murder that takes place after some time from the cessation of the cause that caused the profound psychological distress, even if the decision for this murder has been taken in this state, should not be considered as committed in the conditions required by article 145 of the Criminal Code"*

The criterion instantly requires an immediate continuation between the action of the perpetrator and what prompted him to commit the crime, i.e. the action of the victim. According to the above decision, as soon as the actions of the victim are over, those of the defendant should begin. There should be no rest time between them, no interval. Later, the judicial experience acknowledged that (Criminal College of the Supreme Court, Decision no. 38/2001): *"In this sense, the reaction of the person who commits this criminal offense is an immediate reaction to the insult, or violence exercised by the victim that has caused him profound psychological distress. However, the effects of the profound psychiatric distress of the moment may extend even for a short time after the cause that brought about this shock, and which depends on the concrete circumstances in which the event took place. The important thing in this case is that the time between the cause that brought about the profound psychological distress and the murder as a result, is relatively short. On the other hand, this is not the only element.*

In addition, the fact that between cause and effect there is no interruption in time is something important to have this crime figure, in the sense that the actions of the shocked person from the moment of shock to the moment of murder, is in function of the criminal thought of the murder that came as a result of the profound psychological distress."

We conclude from the above that in order to have instant psychiatric distress, the time interval between the actions of the victim and the actions of the defendant must meet three simultaneous and inseparable conditions, which are: to be relatively short, to have no interruption and to be permeated by the unchanging criminal thought of murder.

There is no standard time interval in the criminal legislation. This contingency is fair because the time interval between the actions of the victim and those of the defendant is a matter of fact and varies from case to case. If we had a standard time interval then the importance of the other two conditions would be lost, *so that there would be no interruption and be described by an unchanging criminal thought.* The importance of the role of the judge, who decides based on law and evidence and his internal conviction,

would also be lost.

IV. Victim actions

The third criterion required in the crime of *"Homicide committed in a state of profound psychiatric distress"* is that the psychological distress must come as a result of violence or severe insult by the victim. Thus, there must be a causal link between the actions of the victim and the illegal action of the perpetrator (Criminal College of the Supreme Court, Decision no.532/2003).

By grammatically interpreting the conjunction *"or"* we find that it is enough for the actions of the victim to constitute violence, without the need to have serious insults, and vice versa. Violence and gross insult alternate against each other. It is not necessarily necessary that they be fulfilled simultaneously, cumulatively. However, by making logical interpretation, the legislator does not impose even one obstacle that violence and insult can be present at the same time. Based on the above, the conjunction *"or"*, present in Article 82 of the Criminal Code, should be understood as *"or / and"*. The criminal offense is committed by actions, and it is meaningless for it to be committed by omissions. Even her actions are not mere actions but counteractions because they respond to external harassment.

Serious insults constitute the words or actions of the person, which are against social morality, and deeply affect the sense of dignity of the perpetrator or his relatives. Because of them comes the spiritual turmoil and the person commits the murder. It is the court that determines whether the insults are serious or not. Judicial experience requires that words or actions be considered derogatory. More specifically, in practice, the opinion was supported that: *"It is proven that the reason that the defendant pretended to the victim was the harassment and insults of the latter, harassment to which the defendant tried to avoid but the victim continued to insult the defendant even to the honor of his wife. The insults used by the victim are such that in the sense of the requirements of Article 82 of the Criminal Code should be considered serious as the words used were humiliating because they affected the sense of personal dignity of the defendant"* (Criminal College of the Supreme Court, Decision no. 822/2005).

Serious insults are words or actions that cause profound psychiatric distress. The assessment is made by the court on a case-by-case basis. Insults should always be made when the victim and the defendant are present together. They can be done orally or in writing or by various technical means. Adultery is also accepted as a serious insult. It relates only to feeling and has nothing to do with the formal act of marriage.

Violence, on the other hand, should be understood as physical violence (blows, beatings, injuries, sexual intercourse with violence) or psychological violence (threatening to use physical violence) (Elezi, 2002). It is not necessary for violence to be committed to the perpetrator. It can also be committed to a person other than the perpetrator, but who has a family relationship with the latter.

Frequency is also important in assessing violence. The court assesses case by case, if the violence was such as to cause profound psychological distress. The criterion

applicable to physical violence requires the latter to be severe. In practice, the position has been held that: "...Given the cause of the quarrel and the violence used by the victim, it is estimated that it was not such as to affect the defendant in losing self-control and, consequently, does not even justify committing the murder in a state of strong mental shock and qualification according to article 82 of the Criminal Code... The murder was committed during a quarrel over the agreement created for the money lost in gambling, therefore it is rightly considered under article 76 of the Criminal Code" (Criminal College of the Supreme Court, Decision no. 237/1999).

The court rightly found that the beating by the victim was not so intense that the defendant lost self-control. A single punch does not constitute violence within the meaning of Article 82 of the Criminal Code, although it may constitute violence, such as beatings within the meaning of Article 90 of the Criminal Code.

Violence and mutual insults show a responsible subject, who decides to return the provocations to the victim with the same currency, in order to find revenge. The perpetrator understands his actions best. Here we can speak of hot-bloodedness and not of profound psychiatric distress. The characteristic of hot temperedness is that quarrels and insults are mutual (Elezi, 2002). It is characteristic of a reckless person, of a person who acts quickly and not calmly.

Both physical and psychological violence cause profound psychological distress. But physical violence must have a certain density to cause physiological affect. However, this remains at the court price. Physical violence should not necessarily be committed at the perpetrator. When it is committed to the relatives of the defendant, it is only required that the latter has caused a darkening of conscience. Based on these reasons, we conclude that as an active subject of the crime of "*Homicide committed in a state of profound psychiatric distress*" may be a third person, different from the one who suffers violence, it is enough that between the two have close ties. Physical violence does not only mean a minor injury or serious injury, but also the death of a relative, which was caused by the victim.

V. Chronic maltreatment

The Albanian Criminal Code does not exclude maltreatment as a cause of profound psychological distress. However, this Code does not provide a definition of chronic maltreatment. We derive the meaning of the latter from the literature as well as from other laws. Systematic abuse is more characteristic of domestic violence. The meaning of this violence is given by the Law "*On measures against domestic violence*", where Article 3, paragraph 1 stipulates that "*Violence is any action or inaction of one person against another person, which results in violation of physical integrity, moral, psychological, sexual, social, economic.*"

However, chronic maltreatment should not constitute a criminal offense, because this would greatly limit the circle of shocking causes, as the violation of integrity, except in cases provided by law, can be religious, racial, etc. Chronic maltreatment includes both violence and persistent insults, which degrade the dignity of the person affected by them. He is born at a time much earlier than the crime is committed.

Although the time interval between the origin of chronic maltreatment and the moment of commission of the criminal offense is not defined in the unit of time measurement, we believe that it should be more than one day. It starts with minor incidents, consisting of mild physical violence or tolerable psychological violence. It is repeated more often and more frequently (Mandro, 2006). This does not include constant quarrels. The nature of constant quarrels, though they may be violent or insulting, is mutual. In constant quarrels, we have two subjects who are at the same time active subjects, that is, they are the ones who use violence or insult; but they are also passive subjects, because they are the same ones who suffer violence or insult. Chronic maltreatment causes the person suffering from it a disturbed emotional state. Violence or insult caused at the moment of committing the criminal offense, only adds to this emotional distress, which reaches its peak and the murder is committed. A person who is systematically abused has a large decrease in intellectual ability. They become more and more closed, more "childlike", begin to misunderstand, and blame themselves, are disoriented and devalues themselves.

Although Article 82 of the Criminal Code does not provide that chronic maltreatment causes profound psychological distress, in judicial experience such a fact is accepted. Chronic maltreatment is characterized by an accumulation of anger. This anger erupts powerfully at a certain moment and causes the abuser to kill his abuser. In any case it must be carefully analyzed whether we are dealing with a planned revenge, or we are dealing with a burst of accumulated anger. Loss of self-control must be immediate. The analysis of the means and methods of committing the criminal offense will show us whether the loss of self-control was imminent.

However, the murders of the abuser are mostly committed in the cases of raped women. I advise women cannot be denied the right to benefit from Article 82 of the Criminal Code. Recall that Article 54 of the Constitution provides that: "Children, underage people, pregnant women and young mothers have the right to special protection by the state." This provision should be interpreted broadly. Not only pregnant women and young mothers, but also abused women should receive special protection from the state, where with special protection we should understand the legal privileges in general and criminal privileges

VI. Comparison with "Homicide committed by exceeding the limits of necessary defense".

"Homicide committed in a state of profound psychiatric distress" and "Homicide committed by exceeding the limits of necessary defense" are cases of the criminal offense of murder. What they have in common is the fact that they are envisaged as crimes against life committed intentionally, so they have the same object, the protection of life. Another common feature of these crimes is the presence of a causal link between the actions of the victim and the perpetrator. In addition, the actions of the perpetrator of the criminal offense should be addressed against both the attacker and the bully. Both crimes are committed with direct intent.

However, although "Homicide committed in a state of profound psychiatric distress" with

"Homicide committed by exceeding the limits of necessary defense" have similarities, these criminal figures differ from each other. Thus, the distinction between the two will be made by comparing the other elements of the criminal offense figure, to better notice the differences.

First, *"Homicide committed by exceeding the limits of necessary defense"* always refers to necessary defense. An attack is always required, unfair, real, and instantaneous. The direct object of the attack is life, health, or property. Whereas, in homicide in psychiatric distress, the actions of the victim are committed only against health or personal dignity. It is precisely the object to which the actions of the victim are committed that make the difference.

Second, unjust attack implies direct action, while harassment can also constitute insults. Insult in psychiatric distress is an essential, necessary element, while in attack; insult is neither essential nor necessary. She may be present during the attack, when the victim tries to kill the defendant and addresses him with insulting words at the same time, but these do not matter at all. In the judicial experience, the solutions have been different and contradictory to each other. In some cases, it has been accepted that when discussing between *"Homicide committed in a state of severe mental shock"* and *"Homicide committed by exceeding the limits of necessary defense"* the latter will apply (Criminal College of the Supreme Court, Decision no. 346/2002), and in some other cases it has been accepted that will apply first.

VII. Psychiatric distress as a mitigating circumstance

Psychiatric distress is a circumstance that mitigate the punishment and the judge assesses the mitigating factors. In the classification of circumstances, psychiatric distress is included in the subjective circumstances, as long as it relates to the relationship between the guilty party and the injured party.

Article 48, letter "b" of the Criminal Code, the role of the victim is determining the commission of a criminal offense. We must have an unjust action of the other as well as a state of anger. By the unjust actions of another we mean the behavior of a man (though incapable of understanding and loving), which is contrary to the legal norms or even only contrary to the moral, social, customary ones that govern human coexistence. It is enough for these to be acts of resentment, to be shocking. Regret or contempt is also accepted as a reason for committing a criminal offense.

The state of anger requires an emotional shock, with attacking impulses, which weakens the force to stop the criminal offense and leads to a criminal act and which causes the unjust action of the other. Other states of mind such as hatred, regret, revenge, grief, fear are not included here. Anger can also arise in a person other than the victim of injustice and the counteraction can be carried out against a person other than the bully, because it supports him for reasons such as blood ties, friendship, and in some cases of nationality, religion, and race.

Thus, both the person to whom the criminal offense is committed (the victim) and another person can be subject of the criminal offense. However, the criminal offense can also be committed against a person other than the person who commits the unjust

acts.

In addition, the commission of a criminal offense against a person other than the bully should not be applied in cases of offenses with significant social danger. Therefore, this circumstance should not apply in cases when the perpetrator kills or seriously injures a person other than the bully.

Meanwhile with provocations we will understand those actions that harass someone, become the cause for something to happen. This mitigating circumstance finds its use in practice in criminal offenses against life or health. However, we think that this circumstance can be used in criminal offenses that have as their object property. This mitigating circumstance should apply only to criminal offenses which were committed intentionally and not to criminal offenses committed through negligence actions of the perpetrator occur.

By unjust actions we mean any action that is contrary to legal or moral norms, social, customary, etc., regardless of whether they come from responsible persons or not. The mitigating circumstance of psychological distress provided by Article 48 letter "b" of the Criminal Code does not apply only to criminal offenses against life or health but also to criminal offenses against property, excluding theft for the purpose of profit. Consequently, the term "victim" should be replaced with the term "injured". This mitigating circumstance applies only to criminal offenses committed intentionally and does not make sense to apply to criminal offenses committed by negligence. In order to better highlight the meaning and to be as close as possible to the Albanian language, the term "provocation" should be replaced with the term "incitement". Unfair actions can come from persons other than the injured party and can also be committed against other persons other than the perpetrator. The mitigating circumstance of psychiatric distress should not be applied when the unjust actions were committed by a person other than the injured party, in cases of murder and grievous bodily harm. These two criminal offenses have a high social risk and do not justify the actions of the defendant against a person other than the perpetrator.

If we interpret grammatically the articles 48 letters "b" and 82 of the Criminal Code, we will notice that the psychological distress as a mitigating circumstance does not fulfill the same qualities as those of the mental shock in "Homicide committed in a state of strong mental shock".

Conclusions

Three essential criteria characterize psychiatric distress and consequently the crime of "Homicide committed in a state of profound psychiatric distress." These criteria remain inseparable and must be met simultaneously. The psychiatric distress strikes the intellectual moment and not the volitional one. The perpetrator of the criminal offense acts with direct intent. Psychiatric distress occurs only in mentally healthy people and does not depend on pathological causes. The instantaneous criterion required for psychiatric distress to happen is realized when the time interval between the actions of the victim and the actions performed by the defendant meets three cumulative conditions. The moment should: a) be short, b) not be interrupted and

c) be permeated by the unchanging criminal thought of murder. This time interval can never be measured in units of time, but is assessed by the court on a case-by-case basis. The perpetrator should only wish for the death of the victim and the actions he should take should only be for function of this idea. These actions must also be the same. He must not change either the means or the method.

Given that in the active subject, the desire to kill the victim arises instantly and he immediately acts, we can say that the homicide committed in a state of profound psychiatric distress, it is committed only with instantaneous intent and willfulness and premeditation is categorically excluded. The active subject of the homicide committed in a state of profound psychiatric distress, may be a third person different from the one who suffers violence, it is enough just to have a close relationship between them.

References

- Elezi, I. (2002). *Criminal Law (Special part)*. Tirana: University Book Publishing House.
- Mandro, A. (2006). *Domestic Violence, Family Law*. (F. Edition, Ed.) Tirana: Kristalina KH.
- Mëngjesi, S. (2016). *Principles of criminal law doctrine*. Tirana: University of Tirana.
- Zhidro, A. (2021). *Punishment and proportionality of punishment measures in criminal offenses committed by negligence*. Tirana.
- Criminal College of the Supreme Court. (1952). *Decision no. 2222, dated 29.12.1952*. Tirana.
- Criminal College of the Supreme Court. (1999). *Decision no. 237 dated 16.06.1999*. Tirana.
- Criminal College of the Supreme Court. (2001). *Decision no. 38, dated 25.01.2001*. Tirana.
- Criminal College of the Supreme Court. (2002). *Decision no. 346, dated 23.05.2002*. Tirana.
- Criminal College of the Supreme Court. (2002). *Decision no. 749, dated 18.12.2002*. Tirana.
- Criminal College of the Supreme Court. (2003). *Decision no.532 dated 15.10.2003*. Tirana.
- Criminal College of the Supreme Court. (2005). *Decision no. 822, dated 30.11.2005*. Tirana.
- Criminal College of the Supreme Court. (2005). *Decision no. 822, dated 30.11.2005*. Tirana.