

The Crime of Murder of a Newborn Child by Its Mother as a Privileged Factum of the Crime of Murder

Abstract

This thesis studies the crime of the murder of a newborn child by its mother as a privileged factum of the crime of murder and focuses in particular on the sign of mental disturbance caused by the child's birth. For context, I briefly mention the history of the Czech provision and by describing the factum and with the help of distinguishing the constituent elements I try to differentiate between the crimes of murder and manslaughter. The criminal act of murdering a newborn child by its mother is a serious and sensitive topic that raises questions about social values, the mental state of mother's mind and ethical aspects and moral dilemmas between punishing the perpetrator and at least partially excusing or understanding her act.

The murder of a newborn child by its mother represents a complex problem where, more than in other criminal acts, we observe a significant overlap of psychology, not only in the part of examining the perpetrator's sanity and subsequent criminal liability, but especially mother's mental condition at the time of childbirth and immediately after. Every mother is in certain state of agitation caused by childbirth, but the intensity of this mental disturbance is important to qualify her act as a privileged factum. Key to these conclusions are the expert opinions of an obstetrician (gynaecology and obstetrics branch), who, on the basis of a professional examination, determines the existence of mental disturbance and its extent.

I tried to describe what factors can lead a mother to such a tragic act, including the mother's emotional and psychological states during pregnancy and childbirth. For that I uses quite a lot of case law as well as my own case interpretation compiled from the requested judgments, where I describe the factual circumstances of individual cases. On the sidelines I also point out the possible stigmatization and lack of support for women especially in the time after childbirth, which can affect the mother's mental health. Related to this is the currently increasingly discussed topic of psychological difficulties in mothers after childbirth such as postpartum blues, postpartum depression or postpartum psychosis.

Key Words: murder; mental disturbance; childbirth