

CRIMINAL OFFENCES AGAINST LIFE IN THE CRIMINAL CODE OF THE REPUBLIC OF SLOVENIA

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Abstract Crimes against life are regulated together with crimes against body in Chapter Fifteen of the Criminal Code. The object of criminal law protection is life of a human being. Life of a human being as the most important good protected by criminal law is also protected in cases where the death of an injured party occurs as a result of a crime whose primary object of protection is another good. Fortunately, there are not many criminal offences against life in the Republic of Slovenia. The author finds the regulation of crimes against life to be appropriate. Infanticide is an exception. Infanticide as a privileged form of the crime of manslaughter should, in view of the author, be eliminated, as today circumstances that have guided the legislator in defining a privileged form of manslaughter no longer exist.

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1 Introduction

Crimes against life are regulated together with crimes against the body in Chapter Fifteen of the Criminal Code (hereinafter: KZ-1). The object of criminal law protection is the life of a human being. The life of a human being, as the most important good protected by criminal law, is also protected in cases where the death of an injured party occurs as a result of a crime whose primary object of protection is another good (such as causing of public danger entailing the death of one or more persons - paragraph five of Article 314 of the KZ-1).

The right to life is an absolute, natural human right that is restricted only in those legal systems that use the death penalty. The right to life is absolute until the moment when it is relativised by a killer.

Criminal law protects life from the beginning to the end. Man, however, is protected from birth to death - the definition of both terms can be disputable (Cvitanović et al., 2018: 62-63; Deisinger, 2017: 123-124; Korošec, 2019: 275). A distinction should be made between the terms "foetus" and "man" because, unlike the life of a human being, the life of the foetus is not absolutely protected, nor is the damage or destruction of the foetus through negligence.

One can speak about different types of death:

- a) biological death - a state when no part of a human being is still alive;
- b) clinical death - when there are still living parts of the human body;
- c) a state of apparent death (*vita minima*) with the possibility of resuscitation, and;
- d) brain death, which means the cessation of all possibilities for the life of the individual and such a state is considered the death of a person in the legal sense (Deisinger, 2017: 124).

Crimes against life can be divided into two subgroups:

- a) crimes against existing life: manslaughter (Article 115), murder (Article 116), voluntary manslaughter (Article 117), negligent homicide (Article 118), infanticide (Article 119) and solicitation to and assistance in suicide (Article 120), and

b) crimes against nascent life - illegal abortion (Article 121).

Crimes against life are general criminal offences, with the exception of infanticide, which is a special criminal offence. According to the Criminal Code of the Republic of Slovenia, all criminal offences against life are physically injurious offences.

All crimes against life are intentional, except for causing death by negligence, because conceptually only negligence comes into consideration. Some offences require direct intent, and in some offences, eventual intent suffices. Voluntary manslaughter requires instantaneous intent (*dolus repentinus*). Solicitation to and assistance to suicide is sanctioned separately.

In the period 2000-2016, as many as 930 violent deaths¹ were recorded in Slovenia. In 2016, there were 26 violent deaths in Slovenia (Statistical Office of the Republic of Slovenia, 2020). This number is not large at first glance, but, unfortunately, the situation is not as ideal as some would like to present it when considered in relative terms. For example, statistics for 2017 show that in that year the number of murders per 100,000 inhabitants in Maribor and Ljubljana was higher than in New York City. In 2017, there were 5.5 murders per 100,000 inhabitants in Maribor, 3.46 in Ljubljana and 3.35 in New York City (Kamenarič, 2018).

2 Crimes against life

2.1 Manslaughter (Article 115 of the KZ-1)²

The crime of manslaughter constitutes a fundamental crime against life. It is founded on Article 17 of the Constitution of the Republic of Slovenia which guarantees the inviolability of human life. Paragraph one thereof defines the fundamental form of this crime, while paragraph two defines qualified form of the offence.

¹ The term “violent death” refers to manslaughter, murder, voluntary manslaughter and infanticide.

² “(1) Whoever takes the life of another human being shall be sentenced to imprisonment between five and fifteen years. (2) If two or more persons, who joined in order to commit manslaughter, commit the offence referred to in the preceding paragraph, the perpetrator shall be sentenced to imprisonment between ten and fifteen years.”

Anyone can be the perpetrator of this crime, which may be committed with direct or eventual intent. The perpetrator's intent is determined according to his or her attitude towards the consequences, towards the victim, his or her motives, goals, and other subjective circumstances. The objective circumstances of the act also indicate intentional conduct - e.g., the location of the blows, stab wounds or gunshot wounds, their number, the method of commission, the instruments employed, etc.

The object of this crime can only be the man as a living being from birth to death.

The crime may be carried out by commission or omission. The crime may be committed by employing any instruments or actions that can inflict death on a person. A crime may also be committed through omission, but only when the perpetrator is bound by the duty to prevent the occurrence of illicit consequences through active action (Deisinger, 2017: 123-124).

2.2 Murder (Article 116 of the KZ-1)³

This Article defines qualified forms of manslaughter (unlawful taking of life). The circumstance that qualifies the act may be the method of committing the crime, the motive of the perpetrator (self-serving interest, revenge), the circumstances surrounding the commission of the act or a special characteristic of the victim.

Anyone can be the perpetrator of this crime, which may be committed with intent only. In some forms of crime, the act can be committed with direct or eventual intent. However, in other forms of commission only direct intent can be considered due to the specific purpose driving the actions of the perpetrator (self-serving interest, revenge, and out of other vile motives).

In a murder committed in a gruesome manner, the perpetrator tortures the victim by causing severe physical pain or mental suffering, which in intensity and duration exceeds the usual suffering that accompanies any murder. This particular crime requires that the victim feel this torment. This form of crime is not committed if this

³ "Whoever murders another human being by taking his life 1) in a cruel or perfidious manner; 2) due to taking action in official acts to protect public security, or in a pre-trial criminal procedure, or due to decisions of state prosecutors, or due to the proceeding and decisions of judges, or due to criminal complaint, or testimony in a court proceeding; 3) because of violation of equality; 4) out of desire to murder, out of greed, in order to commit or to conceal another criminal offence, out of unscrupulous vengeance, or from other base motives; 5) with the act committed within a criminal organisation to commit such offences, shall be sentenced to imprisonment for not less than fifteen years."

element is missing. This type of murder can be committed with both direct and eventual intent.

A murder is committed in a perfidious manner when the perpetrator abuses the victim's trust and commits the act in such a way that the victim cannot perceive the perpetrator's actions or methods (murder committed while the victim is asleep, poisoning, rape drugs).

The acts referred to in point 2 of Article 116 of the KZ-1 are examples of murders committed due to official proceedings. The reason for qualifying an act as such is because the victim has the special characteristic of being an official performing specific duties.

In the case of a criminal offence set out in point 3 of Article 116 of the KZ-1, the reason for murder is a violation of equality. This criminal offence is committed because of the victim's nationality, race, gender, language, religion, political or other belief, financial status, birth, education, social status, or any other personal circumstance.

In the case of a criminal offence set out in point four of Article 116 of the KZ-1, the perpetrator commits the offence out of murderous lust or a self-serving interest in order to commit or conceal some other criminal offence, out of ruthless revenge or out of some other vile motive. The perpetrator of a criminal act performed out of murderous lust kills exclusively for his own pleasure or satisfaction. The perpetrator finds pleasure in taking a person's life.

The crime of murder committed out of self-serving interest occurs when the perpetrator pursues a material benefit. This type of murder can be committed only with direct intent.

The same applies to murder committed for the purpose of committing or concealing another crime.

Ruthless revenge constitutes a special form of revenge. Ruthless revenge, contrary to ordinary revenge, is fuelled by vile motives. Blood feuds, for example, were typical in some parts of the former Yugoslavia. Other vile motives may include hatred, envy, sexual initiatives, jealousy, ambition for advancement, etc. Due to the perpetrator's specific motive, only direct intent is possible in this type of crime.

An act constitutes a criminal offence under point 5 of Article 116 of the KZ-1 when it is committed as a consequence of a criminal association defined by Article 41 of the KZ-1 (Deisinger, 2017: 128-131).

The Criminal Act of the Republic of Slovenia, which was in force from 1 July 1977 until the entry into force of the Criminal Code of the Republic of Slovenia (hereinafter: the CC of the Republic of Slovenia) on 1 January 1995, distinguished several types of the crime of murder. In addition to the categories of murder already discussed, the CC also categorizes the following situations as constituting murder: if the perpetrator deliberately endangers the life of another person in the commission of a crime; if the perpetrator commits an act of ruthless violent conduct; if the perpetrator has committed a number of murders for which he or she has been tried at the same time after having been previously convicted of the crime of murder. Among these types of murder, the last two were the most controversial, as they were in conflict with the regulation in the general part of the Criminal Act of the Socialist Federal Republic of Yugoslavia (hereinafter: the SFRY CC). The Criminal Act of the Republic of Slovenia provided for the possibility of imposing a prison sentence of twenty years on the perpetrator of several murders for which the accused was tried at the same time, while under Article 48 of the SFRY CC the perpetrator of such crime could be sentenced to not more than fifteen years in prison. The provision setting a prison sentence of twenty years for a person convicted of a criminal offence of murder, which person had also previously been convicted of the criminal offence of murder, was in conflict with Article 46 of the SFRY CC. Article 46 established the imposition of a more severe sentence on recidivist offender, but called for a maximum of fifteen years in prison, and not twenty. These provisions of the Criminal Act of the Republic of Slovenia were also in conflict with Article 7 of the SFRY CC, which provided that the provisions of the general part of the SFRY CC should apply to all criminal offences defined by the laws of the Federation, the federal republics and autonomous provinces. These contradictions not only raised the question of the proper relationship between the federal criminal act and the criminal acts of the federal units, but also the question of the proper relationship

between the general and the special part of the Criminal Act. With the independence of the Republic of Slovenia in 1991, the first issue became irrelevant, while the second issue may still be relevant despite the provision of Article 9 of the KZ-1. These are interesting questions about the relationship between the KZ-1 and other acts, the relationship *lex posterior-lex priori* and some other, which will not be dealt with in this survey due to their scope and complexity.

2.3 Voluntary Manslaughter (Article 117 of the KZ-1)⁴

Voluntary manslaughter is a privileged form of murder, characterized by a sudden intent - *dolus repentinus*. Anyone can be the perpetrator of this crime. This crime may be committed with direct or eventual intent. The overt act is the same as that of the crime of murder, but only commission, not omission is considered.

The condition for a legal definition under this Article is the perpetrator's severe state of provocation or heat of passion, such as fury, wrath, fear, shame, or grief. In these cases, it is not the perpetrator's usual emotional condition, but an extreme state of provocation when the perpetrator's control over his or her behaviour is greatly impaired. Such state of provocation should be distinguished from pathological affective states as symptoms of mental illnesses. Affective states may be of a relatively short duration by nature.

Victims typically greatly contribute to the commission of crimes through their provocation of the perpetrator (Deisinger, 2017: 133).

2.4 Negligent homicide (Article 118 of the KZ-1)⁵

Anyone can be the perpetrator of negligent homicide. The crime can only be committed through acts of negligence, conscious or unconscious. This act may be carried out by commission or omission.

⁴ »Whoever kills another person through no fault of his or her own under provocation of assault or serious personal insult from that person shall be sentenced to imprisonment for not less than one and not more than ten years.«

⁵ »Whoever causes the death of another by negligence shall be sentenced to imprisonment for not less than six months and not more than five years.«

Attention should be drawn to the difference or distinction between negligent homicide, on the one hand, and the offences of causing a particularly serious bodily injury and a serious bodily injury resulting in death and of causing public danger resulting in the death of one or more persons, on the other hand. Although the perpetrator's negligence is evident in relation to death in these cases, there are significant differences between these crimes. In the cases both of an aggravated bodily injury that leads to a fatal outcome (paragraph two of Article 123 of the KZ-1), and a particularly grievous bodily injury with a fatal outcome (paragraph two of Article 124 of the KZ-1), there is liability for a graver consequence. The perpetrator acts intentionally in relation to the underlying consequence (severe or particularly serious bodily injury), and negligently in relation to a serious consequence, i.e., death. However, there is no intentional conduct in causing death by negligence and the result is solely negligence on the part of the perpetrator.

The criminal offence of causing public danger which results in the death of one or more persons (paragraph five of Article 314 of the KZ-1) also involves the liability for a graver consequence. The perpetrator acts intentionally or through negligence in relation to the underlying consequence, i.e., the danger to human life or property of great value, while in relation to a graver consequence (death) he or she can only be accused of negligence. The difference thus lies in the fact that, in causing public danger, the perpetrator intentionally or negligently endangers the lives of an indefinite number of people, one or more of whom lose their lives due to the perpetrator's negligence. When causing death by negligence, the perpetrator causes the death of a person or endangers a small, individually determined number of persons, one of whom loses his or her life due to the perpetrator's negligence (Deisinger, 2017: 135-136).

2.5 Infanticide (Article 119 of the KZ-1)⁶

Infanticide is a privileged form of manslaughter. This is a special form of crime that can only be committed by the mother of the child victim of the crime, during or immediately after childbirth. The woman must be under the influence of childbirth, which affects her entire psychophysical condition as perpetrator. Any other participants in the crime would be held accountable as participants in the crime of

⁶ »A mother who takes her child's life during or immediately after giving birth by reason of mental disturbance provoked by giving birth shall be sentenced to imprisonment for not more than three years.«

manslaughter. This crime can only be committed with intent (either direct or eventual). This act may be accomplished by commission or omission.

If the death of a child occurs at birth or after birth through negligence, the act should be defined as negligent homicide, which is quite illogical, as causing death by negligence is punishable more severely than infanticide (Deisinger, 2017: 137-138).

In recent literature, there are many concerns against treating infanticide as a privileged form of homicide (Korošec & Škrubej, 2017: 77-117).

2.6 Solicitation to and assistance in suicide (Article 120 of the KZ-1)⁷

Anyone can be the perpetrator of the crime of solicitation to and assistance in suicide. A crime other than that referred to in paragraph four may only be committed with intent, either direct or eventual. The crime referred to in paragraph four is committed with intent, given the cruel and inhumane treatment, while the perpetrator's liability for the committed or attempted suicide is based on negligence. If a perpetrator intentionally attempts, through cruel or inhumane treatment, to induce another person that is subordinate to or dependent on him to commit suicide, the perpetrator would be liable for a crime under paragraphs one, two or three of this Article (Deisinger, 2017: 140-141).

Aiding and abetting are specifically criminalised in this type of crime. This is because Slovenian law accepts the theory of accessoriness (dependence) in participation, according to which the possibility to punish participants in the narrower sense (aiders and abettors) depends on whether a perpetrator commits a crime or at least tries to commit it. Without a specific incrimination of aiding and abetting in suicide,

⁷ »(1) Whoever intentionally solicits another person to kill himself or herself or assists him or her in doing so, resulting in that person indeed committing suicide, shall be sentenced to imprisonment for not less than six months and not more than five years. (2) Whoever commits the offence referred to in the preceding paragraph against a minor above fourteen years of age or against a person whose ability to understand the meaning of his or her act or to control his conduct was substantially diminished shall be sentenced to imprisonment for not less than one and not more than ten years. (3) In the event of the offence referred to in paragraph one of this Article being committed against a minor under fourteen years of age or against a person who was not capable of understanding the meaning of his or her act or of controlling his or her conduct shall be punished according to the prescription for manslaughter or murder. (4) Whoever treats his or her subordinate or a person depending on him or her in a cruel or inhumane manner, resulting in this person's suicide, shall be sentenced to imprisonment for not less than six months and not more than five years. (5) Whoever, under particularly mitigating circumstances, assists another person to commit suicide, and if that person indeed commits suicide, shall be sentenced to imprisonment for not more than three years. (6) If, relating to a criminal offence referred to in the above paragraphs, the suicide has only been attempted, the Court may reduce the punishment of the perpetrator.«

it would not be punishable since it is not the criminal conduct of the perpetrator him or herself.

3 Crime against nascent life

3.1 Illegal abortion (Article 121 of the KZ-1)⁸

Among the forms of commission of this crime, only the crimes set out in paragraphs one and two of this Article may be considered as crimes against life. Other forms of commission are not directed against life

The perpetrator of the crime referred to in paragraph one may be anyone except a pregnant woman who is terminating her pregnancy or whose pregnancy is being terminated. A legal person may also be held liable for committing a criminal offence. A pregnant woman cannot be the perpetrator of this crime, nor can she be an aider or abettor in this crime.

This crime can only be committed with intent. The woman's consent does not preclude unlawfulness. Attempt and assistance equal the accomplished crime.

A crime is qualified if it is committed without the consent of the pregnant woman.

4 Conclusion

Fortunately, there are not many criminal offenses against life in the Republic of Slovenia. Nevertheless, these are important crimes, as they protect life of a human being as the most important good protected by criminal law. I find the regulation of crimes against life by the Criminal Code of the Republic of Slovenia to be appropriate. Infanticide is an exception. Infanticide as a privileged form of the crime

⁸ »(1) Whoever performs or commences to perform an abortion upon a pregnant woman with her consent or assists her in inducing the abortion in a manner not congruous with medical practice and methods of termination of pregnancy, specified by law, shall be sentenced to imprisonment between six months and five years. (2) Whoever performs or commences to perform an abortion upon a pregnant woman without her consent shall be sentenced to imprisonment for not less than one and not more than eight years. (3) Whoever affects the selection of gender of the future child by using fertilisation method with medical assistance, unless in order to avoid severe hereditary disease connected to gender, shall be sentenced to imprisonment of not more than three years. (4) Whoever illegally performs the procedure of fertilisation with biomedical assistance due to surrogate motherhood shall be punished in the same manner as in the preceding paragraph of this Article. (5) Whoever trades in sperm cells, unfertilised egg cells and early human embryos shall be punished in the same manner as in paragraph three of this Article. (6) If the act under preceding paragraphs results in severe bodily harm of the woman, the perpetrator shall be sentenced to imprisonment between one and ten years. (7) If the act under preceding paragraphs results in severe bodily harm of the woman, the perpetrator shall be sentenced to imprisonment between one and ten years.«

of manslaughter should, in my view, be eliminated, as today circumstances that have guided the legislator in defining a privileged form of manslaughter no longer exist.

Legal Source

Criminal Code/Kazenski zakonik RS - KZ-1, Official Gazette of RS, No. 55/08 w/amendments.

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