



Phenomenology of Murders

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Abstract

The increasing number of murders is creating an unsafe environment for citizens, and this uncertainty increases when the perpetrators of the murders were not held responsible for the committed murders or their punishment takes years until final epilogue. Not dealing with these cases within an optimal period is causing negative consequences not only for the families of the victims but also for all citizens, which situation is negatively affecting their confidence in the justice system, but also living in a peaceful environment. The phenomenon of murders is a great concern for humanity, it is also the main concern for the prosecution, therefore detecting, preventing and fighting against this phenomenon, we can successfully oppose it only with adequate mechanisms. One of the most important parts is the investigating method of criminal offenses of murders and applying contemporary practices in the investigation of negative phenomenon of the most serious criminal offenses of murder. In general, we always require a greater effort from the investigation than from any other part of serious criminal offense. Considering the way of acting of different groups that intensify the efforts and formation of active state organisations for prevention and creation of new norms for fighting and stopping these negative phenomena in contemporary society. The main purpose of this work has to do with the identification of many crimogenic factors that affect in different ways the increase in criminal offenses of murder and other offenses against life and body based on several objectives. First, this research aims to study the phenomenon of murders from a criminological point of view, where special attention was given to the identification of the political factors, the volume and dynamic of murders. In this framework, it has recently become more frequent, where in many cases, the purpose, motive and causes of these murders that are happening are not even known. As a consequence of this phenomenon, the state with its mechanisms can act to prevent and fight this negative phenomenon.

Keywords: *Murders; Phenomenology of Murders; Murder Victim; Criminogenic Actors; Causes of Death*

1. Introduction

In this paper is investigated the phenomenon of murders, which is more actual recently. This phenomenon of criminal murders, in the criminal legal literature, in Kosovo Criminal Code, article 178 and it is treated as a type of criminal offense, where it says that murder is taking of human's life. Historically, murder has been presented as one of the most serious and the most dangerous social crimes and there are many studies of this negative phenomenon. During this research, this type of murder is done by low motives, as a result of revenge, blood feud, competition and all kinds of motives. By committing the crime, the perpetrator of the crime opposes the prohibitive norm (Maloku & Maloku 2019:22), every murder is a very serious penal act, because a person is deprived of life. Well, in terms of criminal law three types of murder are recognized and they are: Regular murders or basic forms of murder, qualified murders and privileged murders. The action of this criminal offense consists in depriving another person from life. Murder is usually committed by an act, by committing acts of some action. But, this murder can also be committed by inaction. According to research data and studies analyzed by various groups, national and international organisations, it appears that this phenomenon is widespread and it is a challenge for all contemporary societies. To understand this negative phenomenon of the criminal act of murders, no-one from both genders are not excluded, and they are exposed to be victims of murder. Although murders, as certain types of criminal offenses, are characterized by the so-called criminality of violence, victims in the most cases are supposed to be people with weaker physical predispositions. e.g children, women and old people, in judicial practice, both national and international, there are not more women than men, neither children than grown ups and nor old people more than young people, as murder victims, according to professor Azem Hajdari in his book "Murders in Albania", emphasizes that from 87.7 % are masculine gender which is almost equal to the participation of men as perpetrators. Authors Jasarevic and Maloku (2021) in their book *Criminology (Etiology and Phenomenology of criminality)* they elaborate extremely well the etiological and phenomenological factors of criminality. Also the authors Jasarevic and Maloku (2021) in their book "The law of Criminal Procedure I and II" analyze the paracriminal and criminal procedural steps in connection with criminal offenses. In the Criminal Code of Republic of Kosova in article 178, at the place where was the crime committed, or perpetrator acted or was obliged to act, as well as the place where he caused consequences. Usually the place where the crime was committed, or where the act was caused differs from the place where the crime started, but there are also cases where the place of committing the crime and the place where it started are physically far away from each other. In such situation, it is mainly determined by the means of the execution e.g when the perpetrator uses explosives, poison, bomb package or possibly weapon with the large barrel, it may happen that the killer and the victim are not in the same space or territory at the time when the action is taken, but they may be miles away from each other. So by the location or the place where criminal act was committed, it is understood that it is the place where the act was caused or specifically where the person is victimized. Murders and suicides in sociological aspect are analyzed from professor Shabani and Maloku (2019 in their book *sociology*, whereas in terms of social pathology are analyzed from the same authors Shabani and Maloku (2019) in their book *Selected topics from social pathology*. The objectives of the project are to evaluate (Maloku 216: 285) the phenomenology of murders from legal aspect. The paper gives a brief summary of the criminal law aspect, respectively the material of law aspect. (Maloku 2020: 21).

2. Methodology

The significance of this paper lies in the importance of the problem it deals with, that is, the importance of the very nature of the topic (Maloku et al., 2022:141). This study is based on using of the many research studies. Special scientific methods, used in this paper are mainly methods of analysis and synthesis, which will be specially useful during the research of theoretical views of local and foreign

authors,(Maloku, 2021:53) who studied and analysed the issue of murders. As well for explaining the phenomenology of murders is used the inductive, deductive and research method.

3. Results and Discussion

3.1. The Tools and Methods Used in Committing Murders

There are variety of tools that are used to commit a penal act, murders e.g firearms, strong objects, which cause fatal injuries. The most frequent ways of murder are the infliction of injuries with penetrating or explosive means, with sharp tools, with various poisons, by suffocation, by drowning etc.

Until the critical case of murder, when the person decides to do such a gesture, the motive depends on many factors according to the perpetrators state, that undertakes objective and subjective actions. From objective factors, perpetrator decides to choose the tool to commit the crime, an important role is professional training of the murderer, the intensity and duration of the conflict that precedes the murder, as well as the safe way of committing the crime and other similar factors. From subjective factors that affect choosing the tool for committing the crime are: gender of the murderer, interpersonal relations among the murderer and the victim etc.

3.1.1. Tools for Committing the Crimes

As frequent tools for committing the crimes are used:

- Firearms (gun,rifle,combat rifle etc.);
- Cold weapons and sharp tools (kinfes ,axe,scissors,etc.);
- Hand granates, explosive devices or combustibles;
- Different tools (Pickaxe,shovels,etc.);
- Toxic chemicals (Different acids);
- Medications containing drugs;
- Means of transport (Cars,motocycles,etc.);
- Tools for tying (Rope,different tapes,etc.);
- Other tools (stick, stone,thin wire,bottle,chair etc.);
- Electric energy, different radiations;
- High and low temperature,etc.

From criminal legal practice, we can conclude that tools which are used for committing the crime mostly are firearms and then are other tools as: sharp tools, hard tools, poisons etc.

3.2. Notion or the Victims of Crime

With victim we understand taking persons life violently, with violent methods and tools. Murder victims, from notion itself we can understand that victim is caused by murder. Murder is one of the cause of death that is caused in violent manner. Violent death (mors violent) is suppression of life violently.

3.2.1. Causes of Violent Death

Causes of violent death can be:

- Mechanical;
- Asphyxiate- due to blockage of breath;
- Nutrition- due to lack of food;

- Physical – because of heat and cold, the influence of sun and wind, X-ray and radium;
- Chemical -mainly the influence of poisons;
- Bacterial;
- Psychic.

There are many ways and methods for killing, studying those tools and methods are done to prevent illegal crimes. Today in contemporary world we have different murders and ways and methods of killing are increasing. Finally we can conclude that victims of crime are ‘‘product’’ of murders that happen in contemporary world.

3.2.2. Subjects Participating in the Criminal act of Murder

At criminal acts of murder we have two kinds of subjects, one is passive subject that illegally acts in taking other persons life, whereas other subject is called passive that is the main topic of this study. Passive subject is victim of crime. From murder is caused a murder victim. From penal legislation of all states the murders are forbidden. Every illegal murder is serious criminal offense.

From murder except of the subject, we have and murder object. Murder object is taking the persons life itself illegally.

Except that the person can be presented both as a victim and as a murderer, in criminal literature we have many cases where more than one person can be a victim and a murderer, but for the murderer responsibility is individual.

3.3. Victims of Homicide Crimes and Their Study

Victims of homicide crimes , dominate at some criminal- juridical sciences, but there mainly, especially and exclusively is spoken for the homicide victims which we mention:Forensics, criminalistics,criminology and victimology. Generally those sciences devote victims studies.

Forensics-studies the homicide victims, removing doubts that a special case caused victimisation or has to do with natural death.Also defines the time of victims death and if the victim is carbonised,it helps identifying the victim.

Criminalistics – main reason why criminalistics deals with studying victims, is to do as soon as possible the identification of the murderers. Generally criminalistics deals with studying and examining the crime scene defining initially e.g used tools, collecting traces at the crime scene etc.

Criminology- as a criminal- juridical science , criminology deals with studies of the homicide victims, but study is more general than other sciences.

This mainly deals with killed victims as a social negative phenomenon and the causes of the this phenomenon’s appearance.

Victimology- is criminal- juridical science, which studies the victims in general, but especially the victims of murder. Generally victimology studies the characteristics of victims as:age,gender,the relation between the victim and the murderer,motive of victimisation,victimology has its characteristics as:place of victimisation, tools used during the crime, marital status of the victims, and many other characteristics as: criminal background of the victims,economical status,profession,time etc.

Except general sciences dealing with studying victims of homicide, we have some scientific papers which exclusively dealt with this topic are: R.Halili ”Murder for revenge” 1969; Criminal act of

murder from article 178 of penal code in the region of the Primary Court in Prishtina “1969”, Purpose and reason of every state and treating them according to different legislations.

3.4. Types of Criminal Offenses that Qualify as Aggravated Murders According to the Criminal Code of Kosovo

Criminal offenses are considered as aggravated murders if they are committed when:

- Deprives the child from life;
- Deprives pregnant woman from life ;
- Deprives a family member from life ;
- Deprives another person from life cruelly or cunningly;
- Deprives another person from life and in that case intentionally endangers the life of one or more persons;
- Deprives another person from life aiming to benefit from wealth;
- Deprives another person from life aiming to commit or to hide another criminal act, or to stop the person to testimony or to stop the person from providing informations to the police in any other way or in criminal procedure;
- Deprives another person from life from unscrupulous revenge or from other low motives, including revenge for testimony or ensuring the informations in any other way for police or in criminal procedure;
- Deprives another official person from life during official duty or in connection with official duty;
- Deprives another person from life for racial, national or religious motives;
- Intentionally committs two or more murders, except acts which are foreseen in article 178 and 179 of this code.

3.4.1. Kinds of murders according to Penal Code of Kosovo

Murder

In article 172, of Penal Code of Kosova, is defined a primarily murder by definition “Anyone who deprives another person from life shall be punished by not less than five (5) years of imprisonment”. No special features are mentioned, therefore even in the absence of circumstances, special way or motive, ordinary murder differs from aggravated murders and privileged murders. The penalty for the criminal offense of murder, in article 173 is foreseen to be not less than five (5) years of prison. Since in this provision no special maximum is foreseen, the general maximum of the sentence – is twenty(20) years of imprisonment as applied.

Aggravated Murder

Aggravated murders are considered murders that are committed especially in difficult circumstances. In the case of serious murders is expressed a higher degree of illegality and murderers

guilt. For this reason Penal Code of Kosovo for aggravated murders foresees severe punishments, at least ten (10) years of imprisonment, but also foresees sentence to life imprisonment.

Murder Committed at a State of Strong Mental Shock

Murder committed in a state of severe mental shock, which in literature is so called "provoked murder", is the deprivation of a person from life from another person, who without fault of his own, felt into a strong mental shock due to assault, maltreatment or serious insult by the victim. The Criminal Code of Kosovo correctly defines this offense and sanctions provided by the perpetrator where: Anyone who deprives another person from life in a state of severe mental shock, caused without his fault, maltreatment or serious insult by the murdered person, shall be punished with imprisonment from one (1) to ten (10) years.

Menslaughter

Menslaughter is foreseen in article 175, of Penal Code of Kosova, where in general says: Anybody who takes the life of another person through negligence, is sentenced from six (6) months of imprisonment to five (5) years. As you can see from this definition, manslaughter is considered an easy form of murder, only because of the form of the crime with which it was committed.

The basis of criminal responsibility for this type of murder is negligence, consciously or unconsciously. Menslaughter, deprivation of someones life, is manifested in a specific way, usually in a different way compared to the intentional deprivation from life. Here usually the case is about deprivation from life with any intention or without intention from depriving of any person from life.

Killing the Baby During Birth

By killing the baby during the birth we understand the act when a mother deprives from life her baby during the birth or immediately after birth, while the disorder caused from the birth of the baby continues (Maloku, 2019:3950). Killing of the baby during birth, as killing by negligence and killing in strong mental shock, enters the group of privileged mudrers due to the particularly extenuating circumstances in which this part of murder was committed. According to article 176,of Criminal Code of Kosova, this criminal offense of infanticide during childbirth, especially when the mother takes her own baby's life during childbirth or immediately after birth, while the disorder caused by childbirth continues, will be sentenced to imprisonment from three (3) months to three (3) years.

As you can see, the subject of this criminal offense is only the mother who deprives from life her own child, who was born alive and it is important that the baby had the ability to live. Therefore, other persons who present themselves as accomplices either committ the murder of the child themselves, or for aggravated murder. (Article 176).

Inducing Suicide and Assisted Suicide

Suicide is not criminal offense, but from the criminalistic point of view it is seen as a problem, especially if the concrete criminalistic- tactical situation is so complex that it can be concluded that it was a criminal event. Although suicide, respectively attempted suicide are not punishable in our criminal legislation.If there is a person who enocourages or helps another person to commit suicide, then his actions are sanctioned by Article 177 of the Criminal Code of Kosova. The basic form of this criminal offense is foreseen in par.1. where: Anyone who pushed or helped another person to committ suicide and committed suicide, is sentenced to imprisonment from one (1) to ten (10) years.

3.5. Comparison of the Criminal Code of Kosova and Albania

Criminal Code of Kosova, Chapter XVI, Article 172 criminal offenses between life and body, anyone who deprives another person of life is punished with no less than five (5) years of imprisonment.

Criminal Code of Albania, Chapter II, Article 76, intentional murder is punishable by imprisonment from ten (10) to twenty (20) years.

According to the comparison of Criminal Code of Kosova and the Criminal Code of Albania parallelly, we find that since the last war in Kosova, the number of murders increased for different reasons. The figure of the criminal offense of murder, article 172 is provided in chapter XVI entitled criminal offenses against life and body. In this chapter take part :Murder .article 172, aggravated murder, article 173, murder committed in a state of severe mental shock, article 174, murder from negligence article 175, murder of a baby during the birth, article 176, incitement to murder and assisted suicide, article 177, unauthorized termination of pregnancy, article 178, murder due to family relations etc. Criminal Code of Albania- The criminal purpose that the author intentionally achieves, according to this intent, the criminal offense''intentional murder'', is committed intentionally, provided in the figure of crime, article 76 of the Criminal Code, where is the best reflected at the court of the highest degree, and it means intentional homicide in connection with the other crime that precedes, hides or follows a crime in another crime and it is sentenced to imprisonment for not less than twenty (20) years.

Conclusion

The police should be as efficient as possible in discovering the perpetrators of the criminal offenses that violate the right to life. The pillar of crime within the police force is responsible for investigating and analyzing serious crimes, such as murders, aggravated murders, rapes, thefts, terrorism, organised crimes, drugs and human trafficking. The capacity of this pillar is insufficient to handle all this, therefore I recommend increasing the number of officers and reorganizing this pillar to create new departments, set standards and develop treatments for these officers, as well as the advancement of the use of contemporary information technology. The basic form of this negative phenomenon, in the fight against this negative phenomenon, are the protective mechanisms or fighting and preventing this illegal phenomenon. Therefore, the authorities and institutions, together with the prosecutor's office and the court, pursue and find out, give the deserved punishment to anyone who commits these types of serious criminal offenses. The Department of Forensic Medicine must take the necessary legal actions without delay, to complete the autopsy for murder cases, within a reasonable legal term. The prosecutors office should conduct full, comprehensive, efficient and without delay investigations, within the deadline provided by the law. The Prosecution and Judicial Institution should continue with holding trainings for judges and prosecutors, in the criminal field, especially in areas dealing with the right to life.

The study's findings might serve as a springboard for more comprehensive scientific research (Maloku, et al,2022:173). The paper contributes to the existing scientific literature, especially in the field of criminology, moreover, it will reflect on the intention to undertake new research (Maloku, 2021:76) through which we would pass to the new indicators on the phenomenology of murders.

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