

## Issues of qualification of crimes against life and health

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The subject. The key and, in the author's opinion, the most interesting questions of the qualification of intentional crimes for life and health are determined in a strategic way based on the study of scientific literature and materials of judicial practice, as well as monitoring of contemporary reality.

The purpose of the paper is to investigate the problems of redundancy and the gap in the criminal law in this area, as well as the difficulties in applying the relevant norms, taking into account the recommendations of the Plenum of the Supreme Court of the Russian Federation.

The methodological basis of the work is dialectical-materialistic, logical, historical, system-structural, as well as comparative-legal and concrete sociological methods.

The main results and scope of it's application. It is proposed to decriminalize the beatings provided for in Art. 116 of the Criminal Code of the Russian Federation, with the introduction of appropriate changes to the version of Article 116.1 of the Criminal Code of the Russian Federation. The problem of an absolute gap in the field of criminal and legal protection of the individual from new types of causing death and involving minors in a suicidal behavior pattern, including using the Internet, is being raised. A draft of Federal Law No. 118634-7, submitted by I.A. Yarovaya in March 2017, is overviewed and practical recommendations for improving the criminal legislation of Russia are formulated.

Conclusions. After the analyzing the most difficult cases of competition, the conclusion is based on the decisive significance of the expert's conclusion about the presence or absence of affect for the qualification of these crimes. In order to avoid a superficial approach to law enforcement and, as a consequence, judicial errors, it is proposed to oblige the courts in each case, when establishing relevant facts, to appoint a forensic expert examination to check whether the perpetrator has a sudden violent emotional excitement (affect).

Key words: criminalization, decriminalization, classification of crimes, "death groups", beatings, murder, affect, competition of rules.

### *Информация о статье:*

Дата поступления – 07 июля 2017 г.

Дата принятия в печать – 10 июля 2017 г.

Дата онлайн-размещения – 30 сентября 2017 г.

### *Article info:*

Received – 2017 July 07

Accepted – 2017 July 10

Available online - 2017 September 30

**1. The term of qualification and and relevance of the research.** The official legal qualification is a variety of law enforcement, which is to assess the legal nature of the investigated social phenomenon [1, p. 192, 194].

Qualification as a process involves several stages of law enforcement:

1) extract from the factual basis of legally significant signs; 2) definition of the legal framework (including the nomination of qualifying versions about the legal nature of the facts and the formation of a strictly limited set of rules that can be subject to enforcement, the choice of one or more rules); 3) decision on the case and consolidation of qualifications in the law enforcement act.

Despite the fact that compositions of intentional crimes against life and health are considered in sufficient detail [2; 3 ; 4; 5, p. 608-738; 6; 7, p. 211], there are still problems [8, p. 34-

35; 9, p. 40; 10, p. 134], interesting proposals [11, p. 93; 12, p.184], and difficulties in applying the rules in practice [13, p. 10; 14. 51].

**2. Redundancy of the criminal law. The redundancy of the criminal law** means, first of all, excessive criminalization of beatings in the Art. 116 of the Criminal Code. It seems that the above action does not suffice to establish the criminal liability of the degree of public danger. The direct object of beating (as opposed to other crimes against life and health) is bodily integrity. It would be enough, in our view, to establish administrative responsibility for an act that causes pain, but does not involve an even bodily harm.

Processes of partly decriminalization of beatings [15] confirms lack of sufficient grounds for criminalizing the act. It seems that hooligan or extremist motive, remaining in the wording of Art. 116 of the Criminal Code after all the changes (July 3, 2016 and February 7, 2017), do not increase the actual degree of social danger of beatings, which is determined as a result.

Awe suggest to delete Art. 116 of the Criminal Code, to make appropriate changes in Art. 6.1.1 Code of Administrative Offenses and to present the disposition of Art. 116.1 of the Criminal Code in the new editorial: "Beating or other violent acts that cause physical pain but not entailed the consequences set out in Art. 115 of the present Code by a person subjected administrative punishment for a similar deal".

**3. Gaps in criminal law.** We would like to bring light to the issue of mass inducement of minors to commit suicide, primarily through the use of the Internet, the creation of "groups of death". From the media It is known that team members were given the task, gradually increasing the degree of risk to the life (to climb the crane to sit on the roof of the house, to run to close oncoming traffic), on the basis of taking pictures of their performance. Next it was forbidden to contact anyone but the administrator. The latter became an unquestionable authority, and the victim implicitly carried his indication.

Additionally, the new method of involving into a dangerous game "Truth or action" became a chewing gum under the brand of well-known manufacturer. Just a pack of 12 plates, inserts on each of them contains ambiguous and often dangerous tasks. Employees of the Russian Interior Ministry revealed such facts in the Krasnodar and Stavropol Districts, Smolensk, Tula, Pskov and Astrakhan regions.

There is no criminal responsibility for such acts under the Criminal Code. The draft of the Federal Law № 76354-7 on supplementing the Criminal Code with Art. 110.1 "Declination to suicide and assistance in committing suicide" (the first project № 1092225-6 withdrawn by June 23, 2016) was brought to the Duma. This article provides liability for persuading a person or group of persons to commit suicide by persuasion, bribery, fraud, provision of information, aimed at forming an attractive perception of suicide, including those contained in the media and (or) information and telecommunications networks, as well as facilitating the commission of suicide advice, instructions, providing the means and instruments of suicide, as well as the commission of such acts against unspecified persons. The crime is classified as minor offenses, the maximum penalty is imprisonment for up to two years.

N.E. Krylova considers it necessary to supplement the Criminal Code with two rules - Art. 110.1 "Declination to suicide" and art. 110.2 "Advertising means and methods of committing suicide, the dissemination of such funds or giving advice and guidance on committing suicide" [16, p. 46-48].

Earlier there were proposals to criminalize coercion to suicide (art. 110.1 of the Criminal Code) and inducement to suicide (art. 110.2 of the Criminal Code) [17, p. 97-98; 18 from. 122-123].

More thorough solution of the designated problem is contained in the new draft "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of Russian Federation with regard to establishing additional mechanisms to counter activities aimed at encouraging children to suicidal behavior", tabled on March 9, 2017 by the Member of the State Duma I.A. Yarovaya. The bill proposes to toughen the penalties for incitement to suicide, turn out in the composition of this crime aggravating circumstances, as well as to supplement the Criminal Code with new art. 110.1. "Declination to committing suicide and facilitating the commission of

suicide", 110.2. "Organization of activities associated with inducement of citizens to commit suicide" and 151.2. "Involvement of a minor in committing acts that endanger the life of a minor".

In general, the focus of this legislative initiative seems reasonable. However, there is no need for supplement of the Criminal Code by a new Art. 110.1. Declination to committing suicide can be criminalized in the current version of Art. 110 of the Criminal Code, especially since proposed aggravating circumstances of adjustment to suicide and declination to committing suicide are the same.

**4. The difficulties of law enforcement in case of norms competition.** According to clause 17 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of January 27, 1999 No. 1 "On judicial practice in cases of murder (Article 105 of the Criminal Code of the Russian Federation)", a murder committed with qualifying signs, provided for by two or more paragraphs of Part 2 of Art. 105 of the Criminal Code must be qualified on all these points.

However, this rule has an exception. For example, Sec. 13 of the same regulations stipulate that qualification as a murder to conceal another crime or facilitate its scoring excludes the possibility of simultaneously qualification on other items of the Art. 105 of the Criminal Code, providing for a different motive or purpose of the crime. The same rule is enshrined in paragraph 3 of the Resolution of the Plenum of the Supreme Court on June 28, 2011 № 11 "On judicial practice in criminal extremism": Evaluation of the Crimes against life and health as committed under extremist motives excludes the possibility of simultaneous qualification as committed for hooligan, mercenary or other motives or goals.

For example, the Supreme Court in the definition of one of the criminal cases explained that the presence of an extremist motive is confirmed by the testimony of the perpetrators themselves about their commitment to the movement of "skinheads", as well as the results of the examination of materials seized from the perpetrators to the digital media. Based on this, in the above case, the Supreme Court of the Russian Federation confirmed the correctness of the conclusions that the crimes committed against one of the victims had been committed on grounds of hatred or enmity against a social group, and for other victims - motivated by ethnic hatred and enmity.

In our opinion, the law enforcer is not an expert in the field of psychology, does not have sufficient knowledge and skills to determine the content of the emotional state of the perpetrator and the degree of the impact on behavior. This is all the more true that, as experts note, the content of the term "affect" in the psychological and criminal aspects are not identical to [20, p. 37]. The risk of judicial error in this case is not allowed. Actually a ban on it enshrined in the item 1 Resolution of the Plenum of the Supreme Court of 27 January 1999 number 1, which states that the courts are obliged to strictly comply with the requirement of the law on the comprehensive, full and objective investigation of the case.

Based on the above, it is suggested to complement paragraph 16 of the Resolution of the Plenum of the Supreme Court on January 27, 1999 Number 1 with a new paragraph as follows:

"In every case of murder in establishing the facts of the victims of violence, abuse or serious insult or commit them to other illegal or immoral actions (inaction), as well as long psychological situation that has arisen in connection with regular illegal or immoral behavior of the victim, must appoint a forensic a medical examination to verify the presence of the perpetrator sudden strong emotion (affect) ".

**5. Conclusions.** In view of the existing problems of redundancy and omission criminal law in the field of protection of life and health to ensure it properly qualified crimes against life and health need to be adjusted as the provisions of the Criminal Code of the Russian Federation and decisions of the Plenum of the Supreme Court of the Russian Federation.

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<p><b><i>Библиографическое описание статьи</i></b> Артюшина О.В. Вопросы квалификации умышленных преступлений против жизни и здоровья / О.В. Артюшина // Правоприменение. – 2017. Т. 1, № 3. – С. 135-142. – DOI: 10.24147/2542-1514.2017.1(3).135-142.</p>	<p><b><i>Bibliographic description</i></b> Artyushina O.V. Issues of qualification of crimes against life and health. <i>Pravoprimerenie = Law Enforcement Review</i>, 2017, vol. 1, no. 3, pp. 135-142. – DOI: 10.24147/2542-1514.2017.1(3).135-142. (In Russ.).</p>