

THE HELPLESSNESS OF THE VICTIM: THEORETICAL VIEWS AND LAW ENFORCEMENT PRACTICE

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The subject of the study is the helplessness of the victim as a criminal legal category.

The purpose of the research is to confirm the hypothesis about the negative impact of the evaluative nature of the sign "helpless state of the victim" on the unity of law practice.

The historical and legal method allows us to consider doctrinal views and case law of applying norms containing the helpless state of the victim in different historic periods; using the comparative legal method, differences in the interpretation of the victim's helpless in different criminal laws are revealed; the formal legal method allows us to explore the technique of legislative recognition of the helpless state of the victim as constructive, qualifying signs and aggravating circumstances; logical methods contribute to the generalization of the results of the analysis of case law.

The main results. It is established that the existing definitions of the helpless state of the victim, as a rule, are based on the objective inability of the person to actively resist. Based on the various reasons that cause the helpless of the victim, the following types are distinguished: physical and mental. Two categories of persons are recognized as physically helpless: those who are unable to resist due to internal factors (state of health) and external (related persons). The list of diseases that form physical helplessness is open. However, the court, as a rule, refers to disability or difficulties in movement. It is important when imputing physical helplessness to establish the fact that the victim was in such a state before the start of the committing of the criminal intent. Otherwise, it forms the objective side of the crime. The court, when determining mental helplessness, mainly focuses on the expert opinion. A controversial issue in the doctrine of criminal law remains the attribution of unconsciousness to helpless state in crimes against life and health. The Court takes the position of not attributing. In this case, it seems illogical to recognize

a bound person as helpless. In order to maintain the unity of practice, a critical analysis of the approaches existing in the theory of criminal law, the grounds for strengthening criminal responsibility for a crime against a helpless person, has been carried out. These include: method, protection of socially poorly protected groups, peculiar ferocity, provoking factor, cynicism. Taking into account the specifics of crimes against sexual freedom and sexual inviolability and against life and health, it seems more logical to formulate different grounds for them: as a way of committing a crime and as protection of socially poorly protected groups, respectively.

Conclusions. The hypothesis about the lack of unity in doctrine and law enforcement practice regarding the content of the "helpless state" sign of the victim was confirmed. It should be noted that the existing discussion is largely due to the ambiguous position of the Russian Supreme Court. In order to resolve the existing contradictions, it is proposed to determine the fundamental point: the basis for strengthening criminal responsibility.

1. Introduction

The study centers on social relations resulting from the application of norms enshrining the helplessness of the victim. Helplessness is stipulated in criminal law as an aggravating circumstance (Clause “h”, Part 1, Article 63 of the Criminal Code of the Russian Federation), a distinctive factor (Article 125 of the Criminal Code of the Russian Federation), and a qualifying factor (for example, Clause “c”, Part 2, Article 105 of the Criminal Code of the Russian Federation). The legislative framework of these definitions differs, which leads to a logical question about the relationship between the above formulations. The lack of the legislative interpretation of a helpless state is also challenging; its scope is determined by the law enforcer in each specific case, which complicates the classification of crimes and sentencing.

The concept of helplessness has repeatedly been studied in the theory of criminal law. In particular, some works considered a helpless state as a qualifying factor of a murder [1–5], while others—as a constructive factor of rape and sexual assault [6–9]. Some studies raised questions about the relationship between unconscious and helpless states [10–14]; the interpretation of other criteria of a helpless state [15–22]; as well as enshrining the helpless state in foreign legislations [23–24]. This topic remains relevant despite existing studies because there is no uniform practice and interpretation of the concept of helplessness among theorists in criminal law.

2. Definition and criteria for a helpless state

The Medical Encyclopedia defines helplessness as a state when a person cannot independently and actively create conditions to ensure their continued existence and protect their life and health from dangerous external factors¹.

At the legislative level, the concept of helplessness is defined in the Law “On Psychiatric Care and Guarantees of the Rights of Citizens in its

Provision”—Article 29 of the same document states that helplessness is the inability to independently satisfy basic life needs².

E.V. Topilskaya pointed out the determining attribute of helplessness, which follows from the question: “Does the victim not resist because they cannot or because they do not want to?” [5, p.12]. In other words, the helpless state is based on the victim’s objective inability to understand the nature of what is happening or to resist.

T.A. Plaksina, applying the same criterion, provides a very deep interpretation of helplessness, defining helpless persons as those who are unable to resist the perpetrator at the time of a crime [13, pp. 157–158]. Whether or not the victim is aware of the encroachment and the reasons for the inability to resist do not matter.

E.B. Kozachenko, defining “a helpless state” as a physical, mental, or psycho-physiological state of a person when they are unable to take measures necessary for self-preservation at the time of a criminal infringement on their life, notes the reasons that give rise to helplessness: severe disease, mental disorder, advanced age, mental underdevelopment, unconsciousness, external factors [11, p.151–152].

Physical helplessness is characterized by the victim’s inability to actively intervene in the outside world. There is no resistance in connection with the development and life of the human body [25, p.81].

Mental helplessness is a person’s inability to understand the nature and significance of actions affecting them caused by reversible or irreversible processes in the cerebral cortex (mental diseases, dementia, etc.) [25, p.81].

Psychophysiological helplessness occurs when the victim is unconscious [11, p.146]. There is still no consensus on this feature. For example, V.B. Khatuev does not recognize the psychophysiological state as helpless [14, p.59].

The Plenum of the Supreme Court of the Russian Federation also specifies only two types of helplessness: physical and mental, without highlighting psychophysiological helplessness but rather considering it as a component of the latter (in

¹URL: https://gufo.me/dict/medical_encyclopedia/%D0%91%D0%B5%D1%81%D0%BF%D0%BE%D0%BC%D0%BE%D1%89%D0%BD%D0%BE%D1%81%D1%82%D1%8C (access date: 01.09.2021).

² RF Law of 02.07.1992 #3185-I “On Psychiatric Care and Guarantees of the Rights of Citizens in its Provision” (as amended). URL: <https://base.garant.ru/10136860/> (access date: 01.09.2021).

Articles 131 and 132 of the Criminal Code of the Russian Federation)³.

Criminal law theorists have repeatedly drawn attention to the lack of an appropriate definition of a helpless state in court verdicts and rulings, since the Court gives only a formal description of helplessness, without an appropriate explanation of its scope.

Indeed, our study revealed that courts cite the applicable explanations of the Plenum and do not generally give additional explanations. For example, the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation, based on the case materials, established that “clause “c”, Part 2, Article 105 of the Criminal Code of the Russian Federation qualifies the murder of a victim who is unable to defend themselves and actively resist the perpetrator due to their physical or mental state. Such persons may include severely ill and elderly people, young children, people suffering from mental disorders that make them unable to perceive the reality in a proper way”⁴.

Notably, the court admits the possibility of recognizing an aggravating circumstance enshrined in clause “h”, Part 1, Article 63 of the Criminal Code of the Russian Federation only in the event of an encroachment on the life, health, or physical integrity of a helpless victim. The Judicial Collegium for Criminal Cases of the Supreme Court found that, in the legal understanding, crimes against a defenseless and helpless person are a considered a personal crime⁵.

3. Physical helplessness

Article 2 of Federal Law # 323-FZ “On Basics of Health Protection of Citizens in the Russian Federation” dated November 21, 2011 defines the concept of health as the physical,

mental, and social well-being of an individual without diseases or disorders of the functions of bodily organs and systems.

Consequently, physical helplessness is a reflection of the victim’s poor health: their inability to resist due to a disease, physical disabilities, etc. The Plenum of the Supreme Court of the Russian Federation refers to severely ill patients when defining physical helplessness in legal clarifications⁶. However, there is no list of these diseases; this issue is left to the discretion of the court.

The court generally recognizes persons with mobility issues as physically helpless. For example, the Judicial Board considered that at the time of the crime against P., the victim was in a helpless state due to testimony that she was weak, could not hold a spoon in her hands, did not go out anywhere, and laid down all the time⁷.

Establishing that the victim was in this state before the assault is important in determining physical helplessness in crimes against life and health. Otherwise, this forms the objective side of the crime and the imputation of the “helpless state” attribute is not needed.

The Presidium of the Supreme Court of the Russian Federation determined that if a perpetrator puts a victim into a helpless state before committing the murder of that same victim, this is not grounds for qualifying his actions under clause “c”, Part 2, Art. 105 of the Criminal Code of the Russian Federation⁸.

The opinion of theorists and courts on this issue as it relates to crimes against sexual freedom and sexual immunity is more ambiguous. In particular, M. Gorbatoва draws attention to the

³ Resolution of the Plenum of the Supreme Court of the Russian Federation dated 04.12.2014 #16 “On judicial practice in cases of crimes against sexual immunity and sexual freedom of the individual”. URL: http://www.consultant.ru/document/cons_doc_LAW_171782/ (access date: 01.09.2021).

⁴ Review of the judicial practice of the Supreme Court of the Russian Federation for the third quarter of 2011. URL: <https://www.vsrfr.ru/documents/practice/15099/> (access date: 01.09.2021).

⁵ Appeal ruling dated 14.09.2018 r. # 4-APU18-28SP. URL: <https://goo.su/7xkG> (access date: 01.09.2021).
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⁶ Resolution of the Plenum of the Supreme Court of the Russian Federation dated 27.01.1999 №1 (edited on 03.03.2015) “On judicial practice in cases of murder (Article 105 of the Criminal Code of the Russian Federation)”. URL: http://www.consultant.ru/document/cons_doc_LAW_21893/ (access date: 01.09.2021).

⁷ Cassation ruling dated 3.12.2020 #77-1285/2020. URL: <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=KSOJ003&n=21429&dst=100019#a0z1thSalQxnTeNp> (access date: 01.09.2021).

⁸ Resolution of the Presidium of the Supreme Court of the Russian Federation #89-P18. URL: <https://vsrfr.ru/files/27821/> (access date: 01.09.2021).

helplessness of a victim of rape, who found herself in a helpless state as a result of an act of violence committed by the perpetrator [8, p. 40]. On the one hand, violence is included in the objective definition of rape. On the other, according to the explanations of the Plenum of the Supreme Court of the Russian Federation, it does not matter whether the victim was made helpless by the perpetrator or was already in this state prior to the rape⁹. We agree with the opinion that “the state of helplessness is absorbed by the factor of using violence, i.e., a helpless state inevitably results from the perpetrator’s actions aimed at overcoming resistance” [26, p.69].

When discussing the helplessness of the victim, we should clarify if a person is considered physically helpless if they find themselves in such this state not due to internal factors (health factors), but due to external circumstances. In particular, T.A. Plaksina insists on a broader interpretation of the concept of “helpless persons” which also includes those who cannot resist because their mobility is hindered for any reason (for example, those who are tied up or otherwise restrained) [13, pp. 158–159]. Judicial practice tends to recognize victims in this state as physically helpless. The Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation established that before T. committed the murder of the victim D., D. had been made helpless by other actors: his hands and feet had been tied. Consequently, he was physically unable to resist the perpetrator¹⁰.

The ruling of the Supreme Court to recognize someone who has been restrained as helpless and not to recognize a sleeping person as helpless seems rather illogical since, if we evaluate the helpless state of the victim as a means for

perpetrators to commit a crime, both circumstances facilitate criminal activity. If the helplessness of the victim is regarded as the protection of the socially vulnerable, then neither situation fits. We can assume that murdering someone who is restrained reflects a certain form of cynicism, since the victim who is restrained realizes what is happening, but cannot resist. Then classifying mentally unhealthy people as helpless appears very contradictory. Moreover, the court recognizes a victim who is restrained and also unconscious as helpless.

The law enforcer either applies different grounds for enhancing criminal liability when considering these circumstances (which is fundamentally wrong as this is permissible in different criminal norms, but not within the framework of the same article) or the logic is deteriorated and a unified approach should be developed.

Otherwise, a very paradoxical situation arises. For example, the perpetrator entered the kitchen and saw D. sleeping, drunk, and restrained by other actors. The court established that D. is helpless based on the latter circumstance and ignored the first two: “The court referred to the conclusions of the forensic medical examination of the corpse on the presence of 2.15 ppm ethyl alcohol in D., which corresponds to an average degree of intoxication. Thus, T’s arguments that the helplessness of the victim was caused by his alcoholic intoxication are refuted¹¹.”

The issue of recognizing the helplessness of the victim, when the perpetrator restrained the victim without intent to kill but does indeed kill them at a later point is no less interesting. Based on the applicable judicial standpoint, such cases should be also decided in favor of the helpless person.

4. Mental helplessness and unconscious state

Mental helplessness is the inability of an individual to understand or correctly assess the nature of actions committed against them and their possible consequences, due to which the individual did protect themselves against the perpetrator [27,

⁹ Resolution of the Plenum of the Supreme Court of the Russian Federation dated 04.12.2014 #16 “On judicial practice in cases of crimes against sexual immunity and sexual freedom of the individual”. URL: http://www.consultant.ru/document/cons_doc_LAW_171782/ (access date: 01.09.2021).

¹⁰ Appeal ruling dated 27.12.2018 #82-APU18-9. URL: <https://legalacts.ru/sud/apelliatsionnoe-opredelenie-verkhovnogo-suda-rf-ot-27122018-n-82-apu18-9/> (access date: 01.09.2021).

¹¹ Appeal ruling dated 27.12.2018 #82-APU18-9 URL: <https://legalacts.ru/sud/apelliatsionnoe-opredelenie-verkhovnogo-suda-rf-ot-27122018-n-82-apu18-9/> (access date: 01.09.2021).

p. 74].

Judicial practice generally has no particular difficulties in establishing the mental helplessness of the victim, since the court is mainly guided by expert opinion. So, “according to the expert conclusion, P. showed signs of acquired mental retardation from dementia caused by a combination of diseases, and therefore she could not understand the nature and significance of the illegal actions committed against her and resist”¹².

One controversial aspect of mental helplessness is the correlation of the unconscious state of the victim with the helpless state. Recognizing an unconscious individual as helpless in rape and sexual assault is not objectionable. The Plenum of the Supreme Court of the Russian Federation clearly stated its position: “only such a degree of intoxication caused by the use of alcohol, narcotic drugs, or other intoxicating (psychoactive) substances, which deprived the person of the opportunity to understand the nature and significance of the actions committed against him or to resist the perpetrator, can be recognized as a helpless state”¹³. This is quite logical, since voluntary sexual intercourse requires the consent of both partners, and an unconscious individual cannot consent to sexual intercourse.

Arguments on recognizing unconscious victims as helpless are common in crimes against life and health. In a broad sense, the unconscious is an area of the psyche not seen by consciousness and not subject to subjective control [28, p.81]. It includes, in particular, sleep, deep intoxication, hypnosis, fainting, some psychopathological conditions, anesthesia, and trauma shock. Some scholars believe that the unconscious state renders victims helpless [11, 25, 29]. Their arguments are based on the victim’s inability to resist the

perpetrator and to show their own will. They believe that finding persons suffering from a mental disorder helpless, but not applying this same classification to those in an unconscious state is extremely illogical [11, p.146].

Opposing opinions have also been expressed. For example, S. Dementiev believes that murdering an individual in an unconscious state (sleeping or fainted) does not increase the social danger of a criminal act, since a sleeping person does not experience additional suffering [30]. Moreover, in his opinion, if an unreasonably broad interpretation of a helpless state is to be adopted, then the sudden murder of a person who is unaware of what is happening should be also classified as a crime against a helpless victim.

T.A. Plaksina was correct when distinguishing between the states of being helpless and being unaware (for example, an attack “from around the corner”, the secret use of poison, etc.).

The Presidium of the Supreme Court of the Russian Federation is also opposed to classifying unconscious victims as helpless. The Judicial Collegium of the Supreme Court of the Russian Federation pointed out that “sleeping is a vital and physiologically determined state of a person and cannot be regarded as a helpless state as disposed in clause “c”, part 2, Article 105 of the Criminal Code of the Russian Federation”¹⁴.

Thus, there is still no consensus in the doctrine of criminal law on whether or not an unconscious victim should be classified as helpless in cases of crimes against life and health. We believe it is preconditioned by three factors.

First, the terminological ambiguity of the clarifications of the Plenum of the Supreme Court of the Russian Federation. In clause 7 of Resolution # 1 dated 27.01.1999, “On Judicial Practice in Cases of Murder (Article 105 of the Criminal Code of the Russian Federation),” the wording “can be attributed, in particular,” is not clearly interpreted—it is not clear if this list is exhaustive, or if other circumstances (for example, when the victim is

¹² Cassation ruling dated 3.12.2020 #77-1285/2020. URL: <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&ase=KSOJ003&n=21429&dst=100019#a0z1thSalQxnTeNp> (access date: 01.09.2021).

¹³ Resolution of the Plenum of the Supreme Court of the Russian Federation dated 04.12.2014 #16 “On judicial practice in cases of crimes against sexual immunity and sexual freedom of the individual”. URL: http://www.consultant.ru/document/cons_doc_LAW_171782/ (access date: 01.09.2021).
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¹⁴ Review of the supervisory practice of the Judicial Collegium for Criminal Cases of the Supreme Court of the Russian Federation for the first half of 2009. URL: <https://www.vsrfr.ru/documents/practice/15082/> (access date: 01.09.2021).

sleeping or intoxicated) are also applicable.

Secondly, the position of the Presidium of the Supreme Court of the Russian Federation changed, while the wording of the law in the studied part remains unchanged. The Supreme Court of the Russian Federation initially held the opinion that a sleeping victim is categorized as helpless.

Thirdly, the Plenum of the Supreme Court of the Russian Federation recognizes unconscious victims as helpless in the crimes outlined in Articles 131 and 132 of the Criminal Code of the Russian Federation¹⁵. Supporters [12] of classifying unconscious victims as helpless believe that explanations by the Plenum assess helplessness similarly and only resolution #16 dated 04.12.2014 indicates unconsciousness. They also believe it is illogical to take into account helplessness when sleeping woman has been raped and subsequently murdered when qualifying the crime under Article 131 of the Criminal Code of the Russian Federation, but not under Article 105 of the Criminal Code of the Russian Federation.

5. Basis for enhancing liability

The key point in determining the scope of the victim's helplessness is to determine the basis for enhancing criminal liability when committing a crime against a victim in a helpless state.

The first standpoint is based on the description of the guilty party, who displays such qualities as exceptional immorality, inhumanity, cynicism, etc. We concur with the opponents of this theory, who rightly point out that the subject of crime does not always have base motives and qualities (mercy killing).

The second standpoint refers to the manifestation of special cruelty. This standpoint is based on the Soviet experience, since the Criminal Code of the RSFSR of 1960 did not include the factor helplessness, and such crimes were qualified with the distinction "with special cruelty". We cannot agree with this standpoint, since there is no

sense in distinguishing two circumstances that are identical in their scope and have an equal degree of inherent public danger.

The third standpoint is unique as it characterizes the perpetrator's intent—helplessness here is treated as a "provocative" factor. This certainly appears to be the case, but the intent to kill could possibly originate long before the person learnt about the victim's helplessness.

According to the fourth standpoint, a helplessness is a characteristic of the victim—a person who is poorly socially protected. According to T.A. Plaksina, this provision does not hold up against criticism, since criminal law is a protective right. In this case, everyone is equal before the law, including the victims. The fundamental principle implying the equality of citizens before the law is violated in cases of increased public danger resulting from the murder of these persons. We are unable to agree with T.A. Plaksina, since criminal liability is differentiated depending on the degree of public danger of a criminal act, which is influenced by many factors. Plaksina maintains that the basis for increasing liability should be the method of the crime—since a helpless victim puts up very little (if any) resistance, helplessness of the victim greatly affects whether or not a crime will be successfully committed [13, p.157].

Recognizing one of the above standpoints as fundamental will resolve several controversial issues. For example, if the protection of persons with poor social protection is recognized as the basis for enhancing criminal liability, it is unacceptable to classify those who are restrained or unconscious as helpless. As for the method of crime, any person who is unable to resist should be classified as helpless.

6. Conclusion

We considered the factor of the helplessness of a victim of a crime in terms of various theoretical provisions and the existing judicial practice. Based on our study, we can highlight several factors:

1. The existing discussion regarding the scope of the category of helplessness is largely attributed to the ambiguous position of the Supreme Court of the Russian Federation.

2. To resolve the existing contradictions, we

¹⁵ Resolution of the Plenum of the Supreme Court of the Russian Federation dated 04.12.2014 #16 "On judicial practice in cases of crimes against sexual immunity and sexual freedom of the individual". URL: http://www.consultant.ru/document/cons_doc_LAW_171782/ (access date: 01.09.2021).

propose to determine a fundamental aspect: the basis for enhancing criminal liability.

3. We believe that, taking into account the specifics of criminal law, protection of weakly-socially secured segments of the population acts as a basis for enhancing criminal liability in crimes against life and health, while helplessness serves as a method of committing a crime in crimes against sexual freedom and sexual immunity.

4. If we consider helplessness as a factor enhancing liability, we should proceed from the specifics of a particular criminal act.

REFERENCES

1. Borodin S.V. *Liability for Murder: Classification and Punishment Under Russian Law*. Moscow, Yurist Publ., 1994. 216 p. (In Russ.).
2. Kondrashova T.V. *Problems of Criminal Liability for Crimes Against Life, Health, Sexual Freedom and Sexual Inviolability*. Yekaterinburg, Humanitarian University Publ., 2000. 348 p. (In Russ.).
3. Lopashenko N.A. Minors and other persons in a vulnerable state as victims of aggravated murder (Art. 105 (2) (c) of the RF Criminal Code). *Biblioteka ugovnogo prava i kriminologii = Library of criminal law and criminology*, 2013, no. 1 (1), pp. 59–73. (In Russ.).
4. Semerнева N.K. *Determining the Nature of Crimes (General and Special Parts)*. Moscow, Prospekt Publ., Yekaterinburg, Ural State Law Academy Publ., 2010. 296 p. (In Russ.).
5. Topil'skaya E.V. *The Helpless State of the Victim of a Crime*, Cand. Diss. Thesis. St. Petersburg, 1992. 25 p. (In Russ.).
6. Bezmaternykh M.A., Kachina N.V. The Joint Use of Peculiarities of Such Elements as the "Use of Violence" and "Abuse of Helpless Condition of the Victim" When Qualifying the Acts Provided for under Articles 131 and 132 of the Criminal Code of the Russian Federation. *Aktual'nye problemy rossiiskogo prava = Actual Problems of Russian Law*, 2018, no. 12 (97), pp. 142–149. DOI: 10.17803/1994-1471.2018.97.12.142-149. (In Russ.).
7. Burkina O.A., Kotelnikova E.A. The signs of the victim in the criminal law (Art. 134 and 135 of the Criminal Code). *Ugovnoe pravo*, 2010, no. 2, pp. 21–23. (In Russ.).
8. Gorbatoва M.A. A helpless victim in criminal law and judicial practice: certain aspects of classification. *Ugovnoe pravo*, 2017, no. 5, pp. 39–42. (In Russ.).
9. Shiyan V.I. The helpless state of a victim as an objective element of violent crimes against a person. *Ugovnoe pravo*, 2014, no. 5, pp. 103–105. (In Russ.).
10. Bulikeeva D.Zh. Problems of application of a qualifying sign "other person, obviously for guilty being down and out". *Vestnik Chelyabinskogo gosudarstvennogo universiteta = Bulletin of Chelyabinsk State University*, 2013, no. 17 (308): Law, iss. 37, pp. 54–57. (In Russ.).
11. Kozachenko E.B. The notion «helpless state» in doctrinal and law enforcement interpretations. *Rossiiskii yuridicheskii zhurnal = Russian Juridical Journal*, 2011, no. 4 (79), pp. 145–153. (In Russ.).
12. Peshkov D.V. On the question of qualifying the murder of intoxicated or sleeping persons. *Simvol nauki = Symbol of Science*, 2017, no. 11, pp. 54–57. (In Russ.).
13. Plaksina T.A. Grounds for strengthening liability for the murder of a person known to be in a helpless state. *Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie*, 2005, no. 1, pp. 151–159. (In Russ.).
14. Khatuev V.B. Criminally-legal value of special qualities of the victim as aggravating circumstances. *Vestnik Moskovskogo universiteta. Seriya 11: Pravo = Moscow University Bulletin. Series 11. Law*, 2017, no. 3, pp. 40–60. (In Russ.).
15. Barysheva K.A. Collisions in Legal Interpreting the Victim Helplessness Signs in Different Crimes. *Pravo. Zhurnal Vysshei shkoly ekonomiki = Law. Journal of the Higher School of Economics*, 2016, no. 4, pp. 118–128. DOI: 10.17323/2072-8166.2016.4.118.128. (In Russ.).
16. Gostkova D.Zh., Shtefan A.V. Physical helplessness of the aggrieved: the position of the court. *Advokatskaya praktika = Advocate's Practice*, 2022, no. 1, pp. 35–39. (In Russ.).
17. Davtyan D.V. Some Questions about the Concept of a Helpless State. *Vestnik Volgogradskogo gosudarstvennogo universiteta. Seriya 5: Yurisprudentsiya = Science Journal of Volgograd State University. Jurisprudence*, 2006, no. 8, pp. 143–145. (In Russ.).
18. Isayev N.A. Victim of a crime in a helpless condition: state of law and issues of law enforcement practice. *Evraziiskii yuridicheskii zhurnal = Eurasian Law Journal*, 2015, no. 2 (81), pp. 162–163. (In Russ.).
19. Kaufman M.A. Age-related features of a victim: disputable aspects of criminal and legal regulation. *Ugovnoe pravo*, 2015, no. 4, pp. 19–26. (In Russ.).
20. Lobanova L.V., Davtyan D.V. The question of notion "juvenile victim" and its criminal and legal meaning. *Ugovnoe pravo*, 2010, no. 6, pp. 31–34. (In Russ.).
21. Repiev A.G. Enforcement of rights and legal interests of people when their applications and reports are handled by a police commissioner: regional aspect. *Vestnik Tomskogo gosudarstvennogo universiteta. Pravo = Tomsk State University Journal of Law*, 2016, no. 2 (20), pp. 54–60. DOI: 10.17223/22253513/20/7. (In Russ.).

22. Sharapov R.D., Smahtin E.V. New Grounds of Criminal Liability for Inducement to Suicide and other Life-Threatening Behavior. *Vserossiiskii kriminologicheskii zhurnal = Russian Journal of Criminology*, 2018, vol. 12, no. 3, pp. 349–357. DOI: 10.17150/2500-4255.2018.12(3).349-357. (In Russian).
23. Kravchuk O.V., Atamanchuk V.M., Turovets Y.M., Volkotrub S.H., Ostapenko O.Ye. The Essence of the Helpless State of Persons as an Important Component in the Investigation of Crimes. *Journal of the National Academy of Legal Sciences of Ukraine*, 2021, vol. 28, no. 2, pp. 269–276. DOI: 10.37635/jnalsu.28(2).2021.269-276.
24. Plaksina T.A. The regulation of liability for murder in legislations of Russia, Kazakhstan, Kyrgyzstan and Mongolia: comparative legal study. *Vestnik Tomskogo gosudarstvennogo universiteta. Pravo = Tomsk State University Journal of Law*, 2015, no. 3 (17), pp. 48–57. DOI: 10.17223/22253513/16/7. (In Russ.).
25. Skikula I.R. Theoretical and practical problems of the definition of «helpless state» in the criminal law of Russia. *Vestnik Kazanskogo yuridicheskogo instituta MVD Rossii = Bulletin of the Kazan Law Institute of MIA of Russia*, 2016, no. 3 (25), pp. 78–81. (In Russ.).
26. Dydo A.V. *Sexual Assault: Problems of Criminal and Legal Assessment*, Cand. Diss. Thesis. Vladivostok, 2006. 214 p. (In Russ.).
27. Doronina E.B. *The Helpless State of the Victim in the Structure of Murder*, Cand. Diss. Thesis. Yekaterinburg, 2004. 177 p. (In Russ.).
28. Byhanova K.V. On the question of consciousness and the unconscious. *Vestnik nauki*, 2019, vol. 3, no. 5 (14), pp. 80–83. (In Russ.).
29. Shaldyaeva E.G., Rozuman I.V. Medical aspects of evaluation of sleep as helpless state of the victim at the moment of murder. *Vestnik sudebnoi meditsiny = Bulletin of forensic medicine*, 2017, vol. 6, no. 2, pp. 27–31. (In Russ.).
30. Dementev S. The Concept of Helpless and Unconscious State. *Rossiiskaya yustitsiya*, 1999, no. 1, p. 43. (In Russ.).

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Gostkova D.Zh. The helplessness of the victim: theoretical views and law enforcement practice. *Pravoprimenenie = Law Enforcement Review*, 2023, vol. 7, no. 2, pp. 125–134. DOI: 10.52468/2542-1514.2023.7(2).125-134. (In Russ.).