

RESPONSIBILITY FOR PREMEDITATED MERCENARY MURDER OR CONTRACT KILLING

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Abstract

Mercenary is very old, at the same time dangerous stimulus of anti-social action. It originated and evolved along origin and development of the property as negative moral quality of public life. The mercenary motive of a killer is to get some material benefit or release from material expenses. However, murder cannot be considered as a mercenary crime if the aim of an offender is not getting property but maintaining it, even though an offender's special instinct, greed, etc. is revealed in murder. The variety of mercenary crime is contract killing. Self-interest is clearly expressed in it. Rarely, but it is possible contract killing and mercenary murder not to have any relation. If a killer got the order of murder and committed it with appropriate reward, the action should be qualified under the paragraph "G" of the Part 3 of the Article 109 of the Criminal Code, but order and self-interest should be indicated in the accusation. In this case, the qualification of a crime is not changed, but the double aggravating circumstances may be taken into account in the final sentence. As for an organizer of the murder, if he/she ordered killing without material compensation, depending on the specific situation, his/her action should be qualified as an organizer of contract killing or instigator of the murder.

Keywords: Mercenary, mercenary crime, contract killing

Introduction

Mercenary is a human's most negative quality, moral decomposition. Therefore, our legislation considers mercenary as an aggravating circumstance which indicates an increased public danger of a crime and its perpetrator. While committing a mercenary murder, an offender, in most cases, predetermines all circumstances, details and methods to achieve self-interest goals [3, 39].

Homicide for mercenary motives occur when an offender intends to get some material benefit, release from material expenses, such as debt payment, the payment of alimony, etc.

According to the verdicts of the Appeal Court Criminal Trial Chamber of July 27, 2006, G. Lomtadze and K. Nadibaidze were found guilty for purchasing, keeping and carrying firearms illegally. They also committed premeditated murder in aggravating circumstances, in groups, what was expressed in the following: G. Lomtadze sold his apartment a year ago and temporarily lived with his friends – in Vazisubani settlement, III district. He was in close friendly relations with the people living in the same settlement: K. Nadibaidze, M. Gogoshvili and D. Kasoev. G. Lomtadze and D. Kasoev often bought and used drugs. Due to this fact, they often came into conflict with each other. Later, their relationship extremely strained. In December of 2003, M. Gogoshvili lent 1500 U.S. dollars to K. Nadibaidze and G. Lomtadze but they did not return him this money. On this basis, they had a great conflict. As a result G. Lomtadze and K. Nadibaidze considered M. Gogoshvili and R. Kasoev as enemies. In case of possibility they could even kill them. At the end of December of 2003, M. Gogoshvili insisted K. Nadibaidze and G. Lomtadze to return the money; R. Kasoev supported him. As the debt was not returned, he threatened not to forgive them. On December 31, 2003, in the evening,

G. Lomtadze met R. Kasoev and M. Gogoshvili in Vazisubani settlement. They used obscene language and threatened to kill somebody. G. Lomtadze believed that the threat was directed to him. On this basis they argued. Afterwards, G. Lomtadze came K. Nadibaidze's home and told about the incident. G. Lomtadze and K. Nadibaidze decided to kill R. Kasoev and M. Gogoshvili; the motive was revenge and mercenary. For this, K. Nadibaidze took his illegally purchased and kept automatic firearm of "AKM" system. G. Lomtadze also had "Makarov" pistol which was also illegally kept. Both of them went to find and kill M. Gogoshvili and R. Kasoev.

The same day, at about 19 o'clock, K. Nadibaidze and G. Lomtadze noticed R. Kasoev and M. Gogoshvili in front of the 15th building of the 2nd quarter of the 3rd district of Vazisubani and approached them. G. Lomtadze called D. Kasoev who came to him. At this time, on the basis of quarrel, G. Lomtadze took "Makarov" system firearm and, with the motive of revenge and self-interest, shot towards R. Kasoev who immediately fell down. Afterwards, G. Lomtadze shot again. The bullet hit R. Karasov in the area of head and died instantly. At the same time, K. Nadibaidze approached M. Gogoshvili and, with the motive of revenge and self-interest, shot to his direction several times. K. Nadibaidze inflicted multiple dangerous wounds on various areas of M. Gogoshvili's body who fell down at once. G. Lomtadze came close to fatally wounded M. Gogoshvili and shot in the head with "Makarov" pistol what caused the death of the victim. G. Lomtadze and K. Nadibaidze disappeared.

For committing the crime G. Lomtadze and K. Nadibaidze were found guilty under the subparagraphs "A" and "I" of the Article 109, I and II parts of the Article 236 of the Criminal Code acting until May 31, 2006, paragraph "E" of II part of the Article 109 of the current Criminal Code. They were sentenced: G. Lomtadze - imprisonment for 19 years, and K. Nadibaidze - 18 years. Their penalty started from 23rd of January, 2004.

The court did not consider the murder as mercenary when A killed B who entered the apple orchard for picking apples. Self-interest motive for killing a person means an individual's aspirations to illegally acquire property or any other values owned by a victim or any other person who wanted to make tangible benefit from the crime. In this case, A neither got any material profit nor could receive it. Therefore, mercenary crime did not occur.

In order to qualify the act as a mercenary crime, it does not matter if an offender takes the benefit in his/her favor or for another one.

No matter, an offender gets the benefit at the time of mercenary crime, or after a long time. The main point is that murder could be committed for the purpose of self-interest. If the murder was committed not for the purpose of self-interest, but for any other motive and the murderer decided to rob the victim after the murder, we deal not with mercenary crime, but with unity of two crimes.

In order to consider the homicide for mercenary motive complete, it is not necessary for an offender to achieve his/her aim - to obtain property or economic benefit. For example, someone killed a person for inheritance, but actually the inheritance was not received. This is not the attempt of a mercenary murder, but a completed mercenary murder. In such cases as well as in cases of all deliberate murders, subjective composition of the action predominates over the objective composition. Thus, the purpose applies to such kinds of circumstances that are not included in the objective composition of Article's disposition.

It is interesting how the problem of homicide committed during a brigandage is solved. In such a case, a murder consists of two different kinds of crimes and must be qualified by unity of crimes [1,49].

Therefore, mercenary murder and brigandage should be qualified as a unity of crimes, when the aim of a murder is to take into possession the property of others by attacking a victim.

Mercenary murder and brigandage should be separated according to the following features:

1) Brigandage always implies attack, while mercenary murder can be committed differently. But this does not mean that homicide cannot be accomplished by attack. Consequently, it becomes impossible to separate these two crimes only by the mentioned criterion;

2) While attacking, the method of transferring property is important. In most cases, the property is transferred at the time of attack. It must be related to the place and time of the attack. And during the mercenary murder, an offender gets material profit later, has only causal relation with a victim's;

3) The intention of murder is indirect, but in the case of mercenary murder, murder is a necessary precondition for material profit and stands apart from the time and place of the crime;

4) while differentiating mercenary murder and brigandage, the main thing is to determine the aim and legal good. Brigandage encroaches two types of legal good: property and human life or his /her health. It is characterizing for mercenary murder that the desire to acquire material benefit or release from material expenses should precede a murder and be its motive.

The term of “contract killing” is innovation. It did not exist in the old codes. The regulation is generally recognized that contract killing is a variety of homicide and in many cases self-interest motive is clearly expressed. Rarely, contract killing cannot be associated with homicide. A criminal can commit a murder by the command of a respectable and influential person. A criminal authority can also order a member of an organized group to kill an unfavorable person [1,50].

On April 14, 2010, Tbilisi City Court Criminal Panel adjudged the members of criminal gang for the organized crime: Inga Ts.; Zviad S.; Elene T.; Zurab S. and Giorgi R.

As it was found out, the members of the criminal gang killed Inga's husband by her order.

According to the case materials, Inga Ts. contacted her tenant Zviad S. and her servant Elene T. and asked them for help to kill her husband - Gia Ts. As the motive she named the fact that her husband often drank and systematically abused her. According to Inga's suggestion, such behavior endangered their children's lives. Inga promised 5 000 USD for performing her order.

Inga Ts., Zviad S. and Elene T. started realizing the plan and selected the killer: the acquaintance of Zviad S. - Zurab S. who was provided with the detailed information about Gia Ts.

According to the preliminary information, Zurab S. ambushed Gia Ts. near his house, Tskhemi Street. He chose a suitable moment, quickly approached Gia Ts. and shot him. The victim died from fatal wounds. Zurab S. disappeared from the place. The next day Inga Ts. gave the promised money to Elene T.

According to the investigation materials, Zurab S. committed the second crime after the contract killing. On June 27, 2010, Zurab S. decided to attack someone, named R. in Zestaphoni by illegally acquired "Kalashnikov" weapon. Based on the operative information, as a result of the measures implemented by the employees of Imereti Regional Police, Zurab S. was arrested near the village Dzirula. After the search, the police removed a large quantity of drugs "Heroin", and during the search of the car - automatic rifles, and 26 cartridges, as well as the metal clips with 30 cartridges, rubber gloves, adhesive tape, woven black mask and a black bag.

Inga Ts., Zviad S. and Elene T. were charged with contract killing organized by the group in aggravated circumstances.

Zurab S. was accused of the premeditated contract killing in aggravating circumstances, ordered group murder – the crime under the paragraph “E” of the second part of the Article 194 and the paragraph “C” of the third part of the same Article of the Criminal Code of

Georgia; illegal purchase, possession, carrying and manufacturing of firearms (two episodes) - the crime under I, II and III parts of the Article 236 of the Criminal Code of Georgia; also, preparing brigandage, i.e. preparing the attack for acquiring movable property of other people by unlawful intrusion into the apartment - the crime qualified by the paragraph "B" of the third part of the Articles 18, 179 of the Criminal Code of Georgia; illegal purchase and keeping of the large amount of drugs - the crime qualified by the paragraph "A" of II part of the Article 260 of the Criminal Code of Georgia.

George R. was accused of non-disclosure of a particularly serious crime - the crime under the Article 376 of the Criminal Code of Georgia, also illegal purchase and keeping of firearms - the crime under I part of the Article 236 of the Criminal Code of Georgia.

After the preliminary investigation, the case was handed over to the Criminal Chamber of the Tbilisi City Court.

At the trial, the defendant Zviad S. fully found guilty himself and disclosed other members of the criminal gang in committing the crime. Besides Zviad's confession, the accusation against the defendants was confirmed by testimonies of the witnesses, search and seizure protocols, scene examination, forensic ballistic reports and other testimonies.

Tbilisi City Court sentenced Inga Ts. to 20 years and Elene T. - 16 years and 6 months imprisonment.

The court took into consideration the fact that Zviad S.'s confession and the fact that he collaborated with the investigation. Due to this, prosecution bodies and offenders approved the plea bargaining. On this basis, instead of imprisonment for 7 years, the Court sentenced him to conditional discharge with 8 year trial period.

The trial investigation could not confirm Giorgi R.'s offense under the Article 376 of the Criminal Code of Georgia and therefore, he was acquitted of this sentence. However, he was found guilty under I part of the Article 236 of the Criminal Code of Georgia and was sentenced to 2 years and 6 months imprisonment.

As for the murder committer Zurab S., Tbilisi City Court sentenced him to life imprisonment.

There are cases in juridical practice, when an instigator gives the order to kill an enemy and pays some money for it. This is the combination of mercenary crime and contract killing under the paragraph "C" of III part of the Article 109 of the Criminal Code of Georgia. The instigator is not responsible for participation in the murder [4,34].

In this case the killer will be punished under the paragraph "C" of III part of the Article 109 (mercenary), while the instigator of the murder will be punished under the same paragraph for participating in the contract killing. Through the killer acts for self-interest, at the same time, he/she performs the order.

If a murderer committed the contract killing after receiving the appropriate compensation, the action must be qualified by the paragraph "C" of III part of the Article 109 of the Criminal Code of Georgia, but order and self-interest should be indicated in the accusation. In this case, the crime qualification is not changed, but the court may take into account double aggravating circumstances while sentencing him.

As for an organizer of the murder, if he/she ordered killing without material compensation, his/her action will be qualified as the organizer of contract killing or instigator of the murder.

If this order was performed by appropriate compensation, qualification will not change. The action will be qualified under the appropriate part of the Article 25 and the paragraph "C" of III part of the Article 109 of the Criminal Code of Georgia. But it will be necessary to indicate in the accusation about organizing mercenary murder and contract killing [2,3].

References:

Author Staff. The private part of Criminal Law. Tbilisi: Meridian, 2006.

Kvashilava Al. Crimes against humans. Tbilisi: Bona kauza, 2008.

Lekveishvili M. Criminal law, special part. Tbilisi: Norma, 1996.

Mzhavanadze G. The private part of Criminal Law. Kutaisi: University Press, 2000.