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RESPONSIBILITY FOR BRUTAL, PREMEDITATED MURDER

Ioseb Mamestsarashvili, PhD candidate
Grigol Robakidze University, Tbilisi, Georgia

Abstract:

Willful murder, by its nature, is an enormous offence, but brutal murder committed with extreme cruelty exposes a highly dangerous crime. The concept of brutal murder emphasizes not only inflicting suffering on a victim, but committing murder with cruelty and extreme violence. It is necessary to determine the proper qualification, whether an offender planned committing a murder with extreme cruelty. In any case, great attention is paid to the result and aggravating circumstances as well. There are different ways of brutal murder: burning alive; inflicting deadly wounds on a body; inflicting moral damages on a victim's relatives; drowning; committing murder in the presence of a victim's close relatives, etc.

I.

Human life, health, freedom, honour and dignity are the supreme social values. The democratic and human nature of the state can be speculated depending on the way the state cares about the protection of an individual's right, liberty, and legitimate interests. This is one of the defining characteristics of the legitimate state.

Citizens have the judicial right to protect honour, dignity, life, health, personal liberty and property from infringement under the legislation of Georgian.

The legislator considers human life as utmost valuable and therefore, imposes the strict punishment for the most serious crime - murder.

Under the Article 15 of the Constitution of Georgia: "Everyone has the inviolable right to live and this right shall be protected by law".¹ The Article 109 (section 3) of the Criminal Code of Georgia indicates that premeditated murder shall be punished by imprisonment for the term extending from 16 to 20 years or imprisonment for life.²

Thus, human life is the supreme value and is protected not only by the Constitution but other existed legislations of Georgia.

¹ The Constitution of Georgia, Tbilisi, 1995, p.8

² The Criminal Code of Georgia (adopted on 22 July 1999), p. 47

The murder is defined as the intentional destruction of another person's life in the criminal law. There are different ways of murder. The murder may be committed by drowning, poisoning, with cold steel or firearm and others. Defining the way of murder has great importance for its qualification.

Premeditated murder exposes cruelty but brutality emphasizes the act of murder. Brutality can be revealed in the way of committing a murder and other circumstances related to a murder (for instance, a murderer's indifferent attitude towards a victim). It is necessary to determine the proper qualifications, whether an offender planned committing a murder with extreme cruelty. In any case, great attention is paid to an offender's attitude not only to the result, but also to brutality as the aggravating circumstances of a murder. It is difficult to determine brutality, because every premeditated murder exposes the cruelty of an offender. Therefore, for qualifying the action under the Article 109 (part 3) of the Criminal Code, the excessive violence should be exposed. According to this code, a murder is considered to be brutal when it is committed with excessive cruelty; when an offender tortures a victim inflicting him/her wounds or using harmful poisons. For example: a husband tortured his wife because of jealousy: broke her arm, hit the jug over her head and shot the bullet. Fire somebody should be qualified as a brutal murder as well.

Murdering a person in the presence of his/her close relative is considered to be an especially brutal murder, when an offender is aware that he is inflicting great suffering on a victim. Therefore, if mother is murdered in the presence of her newborn baby, this is not considered as a brutal murder. Mother's murder may not inflict moral damage on a baby, because he/she cannot understand the meaning of this act. Presence of a victim's relatives in the moment of a murder does not always mean that the murder should be qualified as brutal. Such qualification is possible when a murderer, realizing the presence of a victim's relatives commits a murder deliberately to inflict suffer on them.

As a rule, brutal murder is committed by premeditated action, but it is also possible to be committed by inactivity. For instance, a nurse did not give the analgesic to a patient deliberately and for the expecting result occurred – the patient died.³ In such a case, a murderer wants to commit a brutal murder and at the same time, realizes the result.

Corpus delicti of premeditated murder is always material; it is completed at the right moment when death occurs.

³ Al. Kvashilava, Crime against persons, Tbilisi, 2008, p. 31

Such cases when a murderer wounds a victim are considered as premeditated brutal murder, but this should not be considered as the only characteristic feature. The above mentioned issue is reasonably defined in the comments of the judicial practice: “Number of wounds does not always prove the existence of the excessive savageness, brutality, but it is the major component. It is of great importance whether an offender wanted to murder a victim brutally. For instance, a husband learned and was convinced in his wife’s betrayal and decided to murder her not suddenly, but with torture. For this reason, he made her undress, pushed her to the floor and inflicted 27 wounds on her body with a knife, then stabbed her in the chest area and inflicted heavy damage, causing the sudden death. The man’s action was properly qualified as a premeditated brutal murder under the Article 109 (part 3) of the Criminal Code of Georgia. As mentioned above, brutal murder cannot be defined only by the number of wounds. To define it correctly lots of things matter – position of wounds, time of crime, presence of relatives among witnesses. For instance, if inflicting wounds on a victim with a knife resulting in his death occurred in the presence of a victim’s mother and wife, such murder should be considered as a premeditated brutal murder of excessive savageness.⁴

For example, A stabbed B in presence of his wife, child and mother. As the result, the victim died immediately. The Criminal Board of the Supreme Court of Georgia considered this action as a premeditated murder and punished him severely under the Article 109 (part 3).

Therefore, brutal murder is considered by the court not only because of multiple wounds inflicted on a victim, but also because of committing it in the presence of the close relatives of the murdered person. For instance, the Supreme Court of Georgia convicted M under the Article 109 of the Criminal Code of Georgia; he was convicted in murder: being drunk, motivated by revenge, premeditatedly shot O (a victim) with a double-barrelled hunting gun from the distance of 10-12 meters. The aggravating circumstances were: fighting before murder and the presence of a victim’s family members. The Court properly considered that M inflicted suffering not only on the victim, but also on the eye-witnesses of the murder – family members of the murdered person.

As mentioned above, in the Court practice, a number of wounds cannot always be considered as a proof of committing a crime of excessive savageness as the number of wounds prove that a murderer intended to commit a crime of excessive savageness and deliberately inflicted suffering on a victim. The fact that the wounds caused a victim’s long

⁴ Sh. Papiashvili, The mythology problems of investigation and detection of murder and rape. , Tbilisi, 2004, p. 65.

suffering can be considered as the evidence of excessive savageness only in case if it is proved that a murderer premeditatedly inflicted such wounds on a victim which would not kill him/her immediately but after suffering for a long time.

Some scientists believe that the dismemberment of a body occurred after death can also be considered as a brutal murder. This opinion is wrong as the crime object - human life does not exist any longer. Therefore, it is impossible this crime to be aggravated. Unless other brutality is identified before or during the murder, this action should be qualified under the Articles 108 and 258 of the Criminal Code of Georgia (disrespect to deceased).⁵

Lawful, reasonable, fair adjudication of a criminal case is the important prerequisite for formation of legal culture. Unfortunately, there are cases, when the court's qualification implicates disputes, diversities of opinions and the sense of injustice.

For example, by the verdict of Kutaisi Regional Court of Criminal Appeals Chamber, July 18, 2000 P. Ts. was found guilty under the Article 108 of the Criminal Code of Georgia and was sentenced to 10 years imprisonment in a strict regime in prison.

P. Ts. was accused that on May 9, 1998, he was arguing with his neighbour E. Ts. on the posture, 47 meter away his tent. He was blaming E. Ts. for the horse stealing. The argument turned into a physical assault. Ph. Ts. took a knife out of his pocket and stabbed him 9 times on various places of the body. He was stabbing E. Ts. until he stopped to resist him and fell on his knees. He died immediately.

Cassation Appeal required to cancel the verdict and terminate the proceedings. The motivation of this was the fact that the Court of Appeal gave inaccurate and biased estimation to the pre-trial investigation and the evidences gathered by the Court of First Instance conducted incomplete investigation and adjudicated inappropriate verdict.

The Criminal Chamber of the Supreme Court investigated the case, listened to the explanations of the sides, the prosecutor's motion, and came to the conclusion that E. Ts. did not attack to Ph. Ts. with a knife and this latter was not expected to be dead or injured heavily. E.Ts. had 9 wounds on the body and 3 - on the back. It is not proved that E. Ts. had a knife and threatened Ph. Ts. The Court of Appeal indicates that E. Ts was physically stronger than Ph. Ts. and even if he had a knife, nothing could stop him from stabbing Ph. Ts. The offender Ph. Ts. states that he was stabbing the victim until E. Ts. fell on his knees and stopped resisting him. The Chamber came to the conclusion that the verdict adjudged by Kutaisi District Court Appeal is reasonable and must not be changed.

⁵ The Author Team, Criminal Law, the private part, Tbilisi, 2008, P.48.

As the contrary opinion, I think, that we are facing the situation when repulsion is beyond the scope. As it seems from the case, E. Ts. was physically stronger than Ph. Ts. It is well-known that in repulsion the weapons of attack and defence should not necessarily be identical. In this case, the accurate analysis of this specific matter is necessary. The circumstances which may affect the ratio of real forces directly or indirectly should be taken into consideration: crime location, time, age, gender, health, strength, type of weapon, etc. The fact that Ph. Ts. had a knife does not change the correlation of the forces because E. Ts. was physically stronger. After E. Ts. fell down on his knees, the necessary repelling act became excessive, so the ratio of the time was violated. In this situation, the offender is not able to notice that the attack was over. If the mentioned standpoint is not shared, I have to admit that this crime must not be qualified even under the Article 108. It meets the requirement considered by the Article 109 (part 3) of the Criminal Code of Georgia, because inflicting 9 wounds on a fallen person must be qualified as brutal murder. This crime can be cancelled by excessive necessary repulsion, otherwise brutality is required to be qualified under the Article 109 9part 3) of the Criminal Code of Georgia.⁶

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⁶ The criminal trial practice, comments, (a crime against a person), Tbilisi, 2002, p. 29.