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CRIMINAL LIABILITY FOR KILLING IN THE HEAT OF PASSION

SUMMARY

Specialty 554.01 – Criminal Law and Criminal Enforcement Law

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RESEARCH CONCEPTUAL MILESTONES

Topicality. According to Article 146 of the Moldovan Criminal Code (MCC), “a murder committed in the heat of passion that occurred suddenly, caused by acts of violence or by gross insults or by other unlawful or immoral acts of the victim, shall be punished by imprisonment for up to five years”. For this crime, the mitigation of criminal liability is driven by such factors like: a) the crime is committed when the perpetrator is in the heat of passion; b) such status is caused by acts of violence, by gross insults or by other unlawful or immoral acts of the victim; c) the heat of passion of the perpetrator occurs suddenly; d) killing in the heat of passion is preceded by provocative unlawful or immoral acts of the victim.

Only for crimes covered by Articles 146 and 156 of the MCC, the mitigation of criminal liability is driven by these four factors. For other crimes, the respective factors may condition, eventually, the mitigation of criminal sentence pursuant to Article 76 (2) of the MCC. The difference between a circumstance that mitigates the criminal liability, and a circumstance that mitigates the criminal sentence is as follows: the first is taken into account upon building up the crime constituents as a condition for the existence thereof, while the presence of such circumstance is reflected in the incriminating sentence; the second is taken into account only upon applying the sentence/charge/punishment, and has no impact on the crime qualification.

There is a series of unresolved and controversial issues requiring resolution concerning the qualification of an event such as killing in the heat of passion and distinguishing it from related crimes. The provision of Article 146 of the MCC is applied relatively seldom in practice. Although it has no frequent application, this Article finds itself amongst the most difficult to construe. The influence of passion on human behaviour is one of the most difficult issues of Criminal Law. From this perspective, there is no doubt in terms of the importance of construing the provision of Article 146 of the MCC as accurate as possible, applying it as per the principle of lawfulness, and improving it pursuant to the needs of Criminal Law theory and practice.

Some word combinations used by the Legislature in Article 146 of the MCC (“heat of passion”, “that occurred suddenly”, “gross insults”, “other immoral acts of the victim”), allow for too much discretion in their construing. Such word combinations bear an estimated nature and, in this way, their content shall be defined separately on a case-by-case basis, depending on specific circumstances of the committed crimes. In this way, the application or non-application of Article 146 of the MCC depends on the biased attitude of those empowered to apply Criminal Law. Besides, it is not always so easy to determine the presence of the perpetrator’s physiological heat of passion and/or distinguish it from pathological heat of passion. Due to

these reasons, some murders committed in the heat of passion cannot be qualified as per the principle of lawfulness. The likelihood that, in some cases, killing in the heat of passion is qualified pursuant to Article 145 of the MCC is high; or vice-versa – murder not committed in the heat of passion to be qualified pursuant to Article 146 of the MCC. By comparing the charges set in those two Articles, one may reveal that confusion can have serious legal and social impact, having undermined the state authority.

In this manner, the Thesis topicality has got a twofold nature: increased significance of such social value like in individual's life, which finds itself on the top of social values protected by Criminal Law; imperfection of provisions covered by Article 146 of the MCC and of the process of construing and applying such provisions, implying the need to improve them and make the respective process more efficient.

Describing the Situation in the Research Area and Identifying the Research Issue.

Amongst the local and foreign scientists who brought their significant inputs in developing the theoretical concept to address the issue of charging for killing in the heat of passion, one can mention: A. Ailoaiei, I. Arhiliuc, A. Barbaneagra, A. Borodac, I. Botezatu, S. Brinza, V. Bujor, D. Buliga, R. Cojocaru, S. Crudu, L. Gîrla, Gh. Gladchi, V. Guțuleac, V. Holban, C. Josanu, V. Nour, I. Odagiu, A. Pareniuc, D. Popescu, V. Stati, Iu. Tabarcea, Gh. Ulianovschi etc. (Republic of Moldova), Gh. Alecu, G. Antoniu, B.N. Bulai, C. Bulai, V. Cioclei, Gh. Diaconescu, V. Dobrinioiu, L.-D. Hărățău, M.A. Hotca, C. Mitrache, A.T. Moldovan, I. Molnar, R. Moroșanu, V. Păvăleanu, R.M. Stănoiu, F. Streteanu, I. Tanoviceanu, T. Toader, A. Ungureanu, etc. (Romania), F.M. Abubakirov, A.S. Amiraslanov, I.R. Atalikova, I.H. Babadjanov, A.G. Babicev, G.R. Bagomedov, S.V. Borodin, V.A. Cerepahin, A.A. Ciugunov, A.G. Djafarov, P.I. Ivahov, A.A. Jijilenko, E.A. Koreakina, A.N. Krasikov, V.I. Kuznețov, I.M. Muhaceva, O.S. Parnițâna, N.P. Pecinikov, I.A. Petin, T.A. Plaksina, V.A. Poleanskaia, A.N. Popov, V.O. Potapova, S.V. Poznășev, E.V. Puleaeva, S.V. Rastoropov, L.S. Reznik, E.A. Rudko, K.A. Sapojnikova, T.V. Sâsoeva, D.A. Semenova, E.L. Sidorenko, B.V. Sidorov, D.V. Sirojidinov, A.V. Starodubțeva, S.F. Starostina, E.A. Suvorova, S.V. Tasakov, V.I. Tkacenko, L.A. Zimireva, etc. (Russian Federation); O.V. Avramenko, A.V. Bailov, K.S. Berejnâi, S.D. Berejnâi, V.M. Burdin, R.S. Iujeka, A.I. Kuntii, N.E. Makovețka, L.A. Ostapenko, M.V. Senatorov, O.S. Sotula, V.A. Tuleakov, etc. (Ukraine); I.O. Gruntov, D.Iu. Lukiancik, A.M. Markova, E.A. Sarkisova, I.V. Sâs, etc. (Republic of Belarus), etc.

These authors' works serve as theoretical foundation for this research, which aims to supplement the relevant studies conducted previously, having highlighted some new trends and matters specific for the current stage of societal development.

These determine us to formulate as a *research issue* the scientific substantiation of the concept of interpretation of the Article 145 of the MCC, which can contribute both to the clarification for theorists and practitioners in the field of criminal law of the conditions under which this article is to be applied, and to the submission of legislative proposals, in order to direct the legislator to improve the regulatory framework.

Work Goal and Objectives. The Thesis *Goal* is to carry out a deep and comprehensive research of criminal liability for killing in the heat of passion, identify the vulnerabilities linked with construing and applying Article 146 of the MCC, and develop and suggest specific measures to improve the relevant regulatory framework.

In order to attain the proposed goal, the following *objectives* have been defined:

- to establish the constituents of murder;
- to study the foreign legal elevation models in order to identify the similarities and dissimilarities relative to the model of regulating the liability for killing in the heat of passion within the local Criminal Law;
- to conduct a historical review of regulations on killing in the heat of passion;
- to bring substantiated, clear and convincing grounds regarding the opportunity to mitigate the liability when such crime has been committed;
- to reveal the content of the special legal subject-matter of the crime covered by Article 146 of the MCC;
- to identify the features of the crime victim covered by Article 146 of the MCC;
- to determine the content of harmful event within the crime subject to review;
- to describe the harmful consequences and causal link for crimes covered by Article 146 of the MCC;
- to determine the content of guilt the perpetrator exercises when committing the crime subject to review;
- to identify the typical features of secondary signs of the crime biased dimension covered by Article 146 of the MCC;
- to describe the individual's heat of passion state committing the crime subject to review;
- to consider the technical and legal gaps the provision of Article 146 of the MCC suffers from;
- to formulate recommendations aimed to improve this provision.

Research Methodology. To accomplish the aforementioned goals and objectives, it has been resorted to the logical method, comparative method, historical method, etc.

Hence, the logical method involved such logical judgements like “*per a contrario*”, “*a pari*”, “*a fortiori*”, “*ad absurdum*”, etc. Defensive points/rationale, demonstration, struggle, and rhetoric are frequently used as well.

The historical method is used to make a comparison between Article 146 of the MCC and previous legislative content of this Article in: the Rules of Vasile Lupu; the Code of Criminal and Corrective Punishments of the Russian Empire of 1845; the Criminal Register of Moldova; the Code of Punishment of the Russian Empire of 1905; the Criminal Code “Alexandru Ioan Cuza”; the Criminal Code of the Ukrainian SSR of 1927; the Criminal Code “Carol the Second”; the Criminal Code of the Moldavian SSR of 1961; the Criminal Code of the Republic of Moldova in force.

The comparative method implies identifying the similarities and dissimilarities between Article 146 of the MCC and the correspondent rules of the Criminal Law of: Canada; Confederation of Switzerland; Federation of Malaysia; Russian Federation; Mongolia; Grand Duchy of Luxembourg; Montenegro; the Republic of Armenia; the Republic of Albania; the Republic of Argentina; the Republic of Austria; the Republic of Azerbaijan; the Republic of Belarus; the of Republic Bulgaria; the Czech Republic; the Republic of Costa Rica; the Republic of Croatia; the Republic of Estonia; the Republic of Finland; the Federative Republic of Brazil; the Federative Republic of Germany; the Federative Republic of Nigeria; the Republic of France; the Republic of Georgia; the Republic of Ghana; the Republic of India; the Islamic Republic of Pakistan; the Republic of Italy; the Republic of Kazakhstan; the Republic of Kyrgyzstan; the Republic of Latvia; the Republic of Lithuania; the Republic of North Macedonia; the Republic of Poland; the People’s Republic of Bangladesh; the Republic of Serbia; the Republic of Singapore; the Republic of Slovenia; Romania; the United States of America; Israel; Ukraine; Hungary, etc.

The conducted researches rely on the doctrine, legislation and a practice of Moldovan courts (circa 40 judgements and sentences), which have been studied to this end. Relevant case-laws of the Moldovan Constitutional Court and of the European Court of Human Rights (hereinafter referred to as ECtHR) were taken into consideration as well.

Scientific Novelty and Originality. The novelty of research outcomes is established by the fact that this Thesis finds itself amongst the first attempts to thoroughly consider the issues of criminal liability for the crime covered by Article 146 of the MCC. Stemming from this foundation were the conclusions and theoretical recommendations aimed to continuously improve the legislation. Our input in raising the research level of the most controversial matters of criminal law science and practice in terms of crimes covered by in Article 146 of the MCC, lies in: defining in details the special quality of the victim of crime covered by Article 146 of the

MCC; determining the differences and similarities between the hypothesis referred to in Article 75 (1) a) of 2009 of the RCC and the hypothesis referred to in Article 146 of the MCC; considering the circumstances under which inaction appears as a harmful event covered by Article 146 of the MCC; analysing the ratio between the mitigated liability and the emotional status of the subject of crime covered by Article 146 of the MCC; distinguishing murder committed in the heat of passion from related crimes (deliberate murder, infanticide, euthanasia, serious or medium injury in limb or in health in the heat of passion, leaving in threat, failure to provide aid to a sick person, etc.); determining the consequences of factual errors when killing in the heat of passion, etc.

In order to ensure quality improvements of the current legislation, the following recommendations *de lege ferenda* have been devised : 1) amend the provisions of Article 146 of the MCC as follows: “Murder committed in the heat of passion that occurred suddenly, caused by unlawful actions/inactions of the victim”; 2) supplement the provision of Article 23¹ (1) of the MCC as follows: insert the words “or in the heat of passion or physical/psychical disturbance, with limited discernment, caused by birth” after the words “mental disorder”; 3) supplement the Criminal Code with Article 23² “Liability for the crime committed in the heat of passion” to include the following provision: “(1) By “heat of passion” it is understood the short-term emotional status that occurred suddenly, caused by unlawful actions/inactions of the victim, which determine partial impairment of perpetrator’s consciousness and will. (2) Article 146 of this Code shall apply if murder is committed in the heat of passion. Article 156 of this Code shall apply if serious/medium-level injury to limb or to health is caused in the heat of passion. For other crimes, the heat of passion state of the perpetrator shall be taken into account upon individualising the sentence. (3) Upon setting the sentence for the crimes covered by Articles 146 and 156 of this Code, the court shall take into consideration the level of impairment of perpetrator’s consciousness and will”; 4) supplement Article 76 (1) of the MCC with g¹), having the following provision: “the perpetrator’s heat of passion status, which meets the terms and conditions foreseen by Article 23² (1) of this Code”; 5) supplement Article 143 (1) of MCCP with Paragraph 3²), having the following provision: “heat of passion status of the suspected, impeached, accused person – in the cases in which his (her) conduct during the commission of the crime corresponds to the conditions established in Article 23² (1) of the Criminal Code”.

Work Theoretical Significance lies in the following: a) define the conceptual foundation of the Criminal Law study of liability for the crime foreseen in Article 146 of the MCC; b) systematise the theoretical approaches in identifying crime constituents covered by Article 146 of the MCC; c) accumulate extensive theoretical and practical materials to develop some current

and comprehensive ways of crime investigation covered by Article 146 of the MCC; d) draw new perspectives for the theoretical and methodological framework of criminal liability real and legal grounds for the crime referred to in Article 146 of the MCC.

Work Applicable Value can be described as follows: a) construing the notions/terms comprised by Article 146 of the MCC is important for accurate and uniform use of this Article in judicial practice, as well as for subsequent development of scientific concepts; b) construing the most controversial matters, describing the crime referred to in Article 146 of the MCC shall bring certain inputs to develop scientific polemic; c) the conclusions and recommendations devised in the Thesis are likely to be applied in the practical activity of criminal proceedings bodies, prosecutor's offices and courts, as well as in the process of training within the education institutions with legal profile; d) the critical review of gaps and discontinuities revealed in Article 146 of the MCC may be taken into account by the Legislature to improve the wording quality of these articles.

Core Research Results submitted for Defence can be summarized as follows: 1) establish correlation between the provisions of Article 76 (1) g) of the MCC and of Article 146 of the MCC; 2) identify *ratio legis* and *mens legis* of incriminating texts with respect to killing in the heat of passion, applied over the years on the current territory of the Republic of Moldova; 3) review the receivability of legal elevation models of foreign criminal laws aimed to improve the provision of Article 146 of the MCC; 4) establish the components of social relationships defended by Article 146 of the MCC; 5) determine the cases when the crime referred to in Article 146 of the MCC has got material subject-matter; 6) identify the impact of intention occurrence in crimes covered by Article 146 of the MCC; 7) prove the impossibility for a preparatory stage and the possibility for an attempt stage in crimes covered by Article 146 of the MCC; 8) establish the qualification solution in the event hypothesis, which leads to halting the breath, heart rate and metabolism in an individual whose brain died; 9) reveal the circumstances that must be met in causal link so that harmful inaction could represent the cause of victim's death; 10) determine the peculiarities describing the causal link in the hypothesis of committing shared murder in the heat of passion; 11) identify the constituent of crime covered by Article 146 of the MCC, to which the provocative acts of the victim must be reported; 12) determine the perpetrator's awareness level in terms of reason and purpose of crime covered by Article 146 of the MCC; 13) reveal interdependence between the signs of biased dimension of crime covered by Article 146 of the MCC; 14) establish the effects produced by hypothesis *aberratio ictus* in crimes covered by Article 146 of the MCC; 15) prove that killing in the heat of passion is not a

crime committed *in persona propria*; 16) determine the circumstances where the so-called “lot of perpetrators” is attested in crimes covered by Article 146 of the MCC, etc.

Implementation of Scientific Results. The accomplished scientific results find their application in the training process of Law School students within the higher education institutions, in the practical activity carried out by law enforcement bodies, as well as by the Legislature.

Approving the Results. The results accomplished following the performed study were presented and approved at many scientific fora, including:

- ✓ International Scientific Conference “Contemporary scientific challenges and trends”, the III-rd Edition, held on 20 June 2018 (Warsaw, Poland);
- ✓ International Scientific Conference “Current scientific studies in the contemporary world”, the XXXVIII-th Edition, held on 26-27 June 2018 (Pereiaslav-Hmelnitki, Ukraine);
- ✓ International Scientific Conference “Contemporary scientific challenges and trends”, the V-th Edition held on 20 August 2018 (Warsaw, Poland);
- ✓ National Scientific Conference with international participation “Integration through research and innovation” held on 9-10 November 2018 (Chisinau, Republic of Moldova);
- ✓ International Scientific Conference “Current scientific studies in the contemporary world”, the XLV-th Edition, held on 26-27 January 2019 (Pereiaslav-Hmelnitki, Ukraine);
- ✓ International Scientific Conference “Contemporary scientific challenges and trends”, the XII-nd Edition, held on 20 February 2019 (Warsaw, Poland);
- ✓ National Scientific Conference with international participation “Integration through research and innovation” held on 9-10 November 2019 (Chisinau, Republic of Moldova);
- ✓ International Scientific Conference “Contemporary scientific challenges and trends”, the XXVI-th Edition, held on 30 July 2020 (Warsaw, Poland);
- ✓ National Scientific Conference with international participation “Integration through research and innovation” held on 10-11 November 2020 (Chisinau, Republic of Moldova);
- ✓ International Scientific Conference “Contribution of young researchers to the development of public administration” held on 26 February 2021 (Chisinau, Republic of Moldova);
- ✓ National Scientific Conference with international participation “Offence – Criminal Liability – Punishment. Law and Criminology” held on 25-26 March 2021 (Chisinau, Republic of Moldova).

Likewise, the Thesis outcomes have been published in two scientific journals with impact factor (i.e. *Studia Universitatis Moldaviae* and *National Institute of Justice Journal*).

Thesis coverage: 25 scientific publications.

Thesis volume and structure: Introduction, five chapters, General conclusions and recommendations, Bibliography comprising 628 titles, 307 pages of body text.

Key words: murder; heat of passion; unexpectedly; acts of violence; gross insults; unlawful acts; immoral acts; mitigation of criminal liability.

THESIS CONTENT

The Thesis comprises five chapters. Each chapter ends up with a summary section (conclusions) on the issue discussed and the results achieved.

Chapter I – “Analysis of the situation on criminal liability for killing in the heat of passion in Criminal Law science” – the review of scientific materials focused on the Thesis topic and published in the Republic of Moldova and in other countries as well was conducted in chronological sequence. Hence, the works of the following authors have been reviewed: I. Arhiliuc, A. Barbaneagra, A. Borodac, S. Brinza, L. Gîrla, C. Josanu, V. Holban, V. Stati, Iu. Tabarcea, Gh. Ulianovschi (Republic of Moldova); A.A. Ciugunov, I.M. Muhaceva, O.S. Parnițana, A.N. Popov, B.V. Sidorov, V.I. Tkacenko (Russian Federation); V.M. Burdin, L.A. Ostapenko, O.S. Sotula (Ukraine); B.N. Bulai, C. Bulai, M.A. Hotca (Romania), etc.

For instance, *A.N. Popov* developed a monograph in 2001.¹

This Author outlines an example where murder in the heat of passion is committed due to inaction: “It is easy to imagine a situation when, as a reaction to the victim’s unlawful behaviour the perpetrator is riled up in the heat of passion, and fails to execute the action he/she is supposed to. For example, an electrician, who is in close proximity to the control panel of electrical networks, receives an indication from the brigadier working on the line to disconnect the network from power, specifying that the indication was given in a vexatious form. Instead of doing what he/she was told to do, the electrician is riled up in the heat of passion and abandons the working place without disconnecting the network from power, showing in this way his/her lack of concern towards the possible consequences of his/her deed. Shortly after that the brigadier touches the line and dies”.² This example is convincing and proves that not only action may express the content of a harmful event when killing in the heat of passion. It is possible that the subject of this crime got an obligation towards the victim, but failed to fulfil it, although he/she should and could have done it, and such obligation to be the cause of death of the victim who, by his/her acts, provoked the heat of passion of the subject concerned.

L.A. Ostapenko developed his PhD Thesis in 2003.³

According to his opinion, “life is a condition for a person to exist as a social being and, therefore, the condition of all his/her relationships in place. Depriving a person of life shall mean

¹ Попов А.Н. *Преступления против личности при смягчающих обстоятельствах*. Санкт-Петербург: Юридический центр Пресс, 2001. 465 р.

² Ibidem, pp. 79-80.

³ Остапенко Л.А. *Кримінально-правова характеристика умисних вбивств при пом’якшуючих обставинах (статті 116, 117, 118 КК України)* / Автореферат дисертації на здобуття наукового ступеня кандидата юридичних наук. Київ, 2003. 14 р.

his/her disappearance as a biological being and, at the same time, halting all social relationships he/she was part of”⁴. We endorse this opinion. Any person is a social being and may not be described only biologically. The death of a person results in his/her exclusion from all social relationships he/she could be part of, should he/she not be a victim of crime covered by Article 146 of the MCC. One may talk about human life exclusively from the biological perspective in case of an unborn human being, not in case of a person. On these grounds, the generic legal subject-matter of crimes against a person’s life and health shall be seen as a beam of relationships enabling the person to live in a society, not as a raft of biological features.

A. Borodac developed a handbook published in 2004.⁵

This Author mentions, *inter alia*: “Gross insult implies words and actions of the victim, who, morally speaking, are considered to be gross as they caused the murderer the state of heat of passion, following gross humiliation of his/her honour and dignity or of his/her relatives”.⁶ As one can see, A. Borodac has listed the features enabling to distinguish gross insults from obvious insults: words and actions extremely insulting for the victim / words and actions particularly serious for the victim; gross/obvious debasement of honour and dignity. Certainly, such construing helps establish the legal substance of crime covered by Article 146 of the MCC.

A. Barbaneagra, V. Berliba, C. Gurschi, etc. developed and published a paper in 2005,⁷ where V. Holban presented his comments towards Article 146 of the MCC.

The definition of heat of passion formulated by V. Holban is of interest: “The heat of passion is an emotional status of human psyche that does not go beyond the normal boundaries, described by a sudden occurrence, of high intensity and short duration, and, essentially, represents an emotional reaction that arises in an explosive way, being accompanied by spontaneous changes (not psychotic) of psychical activity, in particular, awareness shrinking being observed”.⁸ This definition covers all features necessary to know about the physiological heat of passion and distinguish it from pathological heat of passion. By formulation such definitions it is possible to shape and develop the doctrinal patrimony, enabling the establishment of grounds for applying Article 146 of the MCC.

V.M. Burdin developed a monograph published in 2006.⁹

⁴ Ibidem, p. 12.

⁵ Borodac A. *Criminal Law Handbook. Special Part*. Chisinau: Central Printing House, 2004. 622 p.

⁶ Ibidem, p. 65.

⁷ Barbaneagra A., Berliba V., Gurschi C. et al. *Criminal Code with comments and annotations*. Chisinau: Cartier, 2005. 656 p.

⁸ Barbaneagra A., Berliba V., Gurschi C. et al. *Criminal Code with comments and annotations*. Chisinau: Cartier, 2005, p. 210. 656 p.

⁹ Бурдин В.М. *Кримінальна відповідальність за злочини, вчинені в стані сильного душевного хвилювання*. Львів: ПАІС, 2006. 200 p.

This Author mentions correctly that the term “violence” used in the Article dedicated to killing in the heat of passion could be replaced by the word combination “unlawful behaviour”, which is expected to designate the whole range of unlawful behaviour of the perpetrator.¹⁰ As a result, we consider that the provision of Article 146 of the MCC should have the mention on victim’s acts, which induce heat of passion on the perpetrator, and have an exclusively unlawful character. At the same time, no illustration of such acts in the provision of Article 146 of the MCC should be allowed.

Concerning the type of intention in crimes covered by Article 146 of the MCC, V.M. Burdin claims: “Distinctive features of heat of passion indicate that the acts committed in such state can be described by impulsive unpredictability for the perpetrator. In relation to the acts committed in the heat of passion, it is very likely to talk about indirect intention. As, acting impulsively, the perpetrator may seek to do malevolent acts to the victim, but may not wish the occurrence of harmful consequences specific for such acts”.¹¹ The likelihood of showing indirect intention in case of killing in the heat of passion, shall not lead to the idea that direct intention is impossible in such crimes. From Article 146 of the MCC it does not follow that the subject of murder committed in the heat of passion cannot wish the victim to die.

A.A. Ciugunov defended his PhD Thesis in 2008.¹²

This Author mentions that murder in the heat of passion may be committed exclusively through action. This can be explained by the specificity of perpetrator’s psychological status, as letting off the steam occurs especially through action”.¹³ We cannot endorse this opinion. We have the whole ground to claim that inaction may express the content of a harmful event covered by Article 146 of the MCC. Sub-chapter 4.1 of this Thesis would provide substantiated judgments confirming our statement.

According to the opinion of A.A. Ciugunov, “as a constructive component of this composition of crimes (it is meant murder committed in the heat of passion – *Author’s Note*), the heat of passion is linked directly with a certain negative behaviour of the victim”.¹⁴ This opinion shall not lead to groundless conclusions. Even if the victim has a provocative behaviour, this is not a reason to fail defending his/her life via criminal protection.

¹⁰ Ibidem, p. 93-94.

¹¹ Ibidem, p. 136.

¹² Чугунов А.А. *Ответственность за убийство, совершенное в состоянии аффекта* / Автореферат диссертации на соискание ученой степени кандидата юридических наук. Москва, 2008. 25 p.

¹³ Ibidem, p. 16.

¹⁴ Ibidem, p. 16.

L. Gîrla and Iu. Tabarcea developed together a Handbook in 2010.¹⁵

The inputs of L. Gîrla and I. Tabarcea in doctrinal construing of the term “gross insult”, used in Article 146 of the MCC, are of special importance: “By gross insult that may cause the heat of passion one shall understand serious, cynic and deep damage brought to person’s honour and dignity, expressed in an indecent way. The issue on considering an insult as serious is based on facts, which must be addressed in each specific situation, taking into account all case specific circumstances. For example, it is considered serious any insult of feelings related to kinship, ethnic group or religion. Upon assessing the seriousness of insult, the perpetrator’s individual features (physical and psychical state, pregnancy, etc.) are also taken into consideration”.¹⁶ In this way it becomes clear that not all insults may induce heat of passion on the subject of crime covered by Article 146 of the MCC. At the same time, out of the term “gross insult” it results that the Legislature should refrain from using that terms, which adversely affect the predictability of Article 146 of the MCC.

In 2014, *S. Brinza* published a scientific article focused on the issue of murder committed in the heat of passion, and on infanticide.¹⁷

S. Brinza finds himself amongst the few authors who describe specifically the factual ways of harmful action for the crime covered by Article 146 of the MCC: “Action has a physical, mechanical, chemical, biological, psychical feature or of other nature (cutting, stabbing, shooting, drowning, crushing, throwing from height, strangulating, hitting (with hands, with legs, with a blunt item, etc.), contacting with electricity, burning, freezing, poisoning, overdosing narcotic drugs or psychotropic substances, causing burns by using acids or alkaline substances, inoculating pathogens, transfusing incompatible blood, psychical coercion of the victim to throw him/herself from height or from a means of transport in motion, etc.)”.¹⁸

At the same time, *S. Brinza* argues that in the hypothesis of the reviewed crime, the harmful event may be expressed not only through action: “Indeed, there is no obstacle in qualifying the crime as murder committed in the heat of passion, even if the harmful event was expressed in inaction. The crime referred to in Article 146 of the MCC is committed through inaction when there is a legal, contractual or natural obligation in place to prevent the victim’s death. Having evaluated the possibility of committing certain actions by the perpetrator, which would prevent or remove the unrolling of some processes that could cause the victim’s death, one should take

¹⁵ Гырла Л.Г., Табарча Ю.М. *Уголовное право Республики Молдова. Часть особенная. Том 1*. Кишинэу: Cartdidact, 2010. 712 p.

¹⁶ Ibidem, p. 110-111.

¹⁷ Brinza S. Crimes covered by Article 146 and Article 147 of the MCC: theoretical and practical matters. In: *Studia Universitatis Moldaviae, “Social Sciences” Series*, 2014, No. 3, p. 86-104.

¹⁸ Ibidem.

account of perpetrator's typical physical and psychical features, the state he/she was at the time of committing the crime, the level of qualification and knowledge, as well as from the series of all external circumstances where his/her behaviour occurred".¹⁹ By breaking the stereotypes, the aforementioned Author succeeds to persuade us that it is possible to kill in the heat of passion through inaction.

S. Brinza and V. Stati published their paper in 2015.²⁰

It is of interest the following opinion of S. Brinza and V. Stati: "When having a conflict between Article 146 and Article 201¹ (3) c) of the MCC, only Article 146 of the MCC shall apply. In such cases, the application of liability pursuant to Article 201¹ (3) c) of the MCC shall be excluded".²¹ In this way, the rule defined by Article 117 a) of the MCC applies: "A conflict between two special norms may have one of the following forms: [...] between a criminal component with mitigating circumstances and a criminal component with aggravating circumstances in which case the crime shall be qualified based on the component with mitigating circumstances; [...]". Nevertheless, the statement of S. Brinza and V. Stati was made before amendments were brought to Article 201¹ of the MCC by Law No. 196 of 28.07.2016 on Amendments of and Addenda to certain Legal Acts²². Taking account of such amendments, the statement in question should be shaped as follows: when having a conflict between Article 146 and Article 145 (2) e¹) of the MCC, only Article 146 of the MCC shall apply. In such cases, any liability pursuant to Article 145 (2) e¹) of the MCC shall be excluded.

We agree with S. Brinza and V. Stati²³, who accept the possibility of attempt when killing in the heat of passion. The possibility of having an attempt in place depends on other factors rather than on the heat of passion presence or absence. Therefore, if the victim's biological death does not occur due to causes independent from the will of the perpetrator, killing in the heat of passion may be halted at the stage of attempt. As an aside, we shall mention that in case of crime attempt referred to in Article 146 of the MCC, non-occurrence of crime effect will not thereby be reduced to non-occurrence of harmful consequences.

These authors' works serve as theoretical foundation for this research, which aims to supplement the relevant studies conducted previously, having highlighted some new trends and matters specific for the current stage of societal development.

¹⁹ Ibidem.

²⁰ Brinza S., Stati V. *Criminal Law Treaty. Special Part. Vol. I.* Chisinau: Central Printing House, 2015. 1328 p.

²¹ Ibidem, p. 390.

²² Law No. 196 of 28.07.2016 on Amendments of and Addenda to certain Legal Acts. In: *Official Gazette of the Republic of Moldova*, 2016, No. 306-313.

²³ Brinza S., Stati V. *Criminal Law Treaty. Special Part. Vol. I.* Chisinau: Central Printing House, 2015, p. 317. 1328 p.

We have defined the issues related to criminal liability for killing in the heat of passion, which is not sufficiently dealt with in the criminal doctrine. We also established the research issue and the directions of its resolution. And last but not least, we outlined the Theses goal and objectives.

Chapter 2 – “Conceptual and regulatory approaches concerning the criminal liability for killing in the heat of passion” – we review: the term of murder; the grounds for the mitigation of criminal liability for crimes covered by Article 146 of the MCC; historical developments of regulations dealing with murders committed in the heat of passion; similarities and dissimilarities between Article 146 of the MCC and the regulations on killing in the heat of passion covered by the legislation of other countries.

Inter alia, it is shown that the definition of murder is common for all crimes of homicide, provided by the Special Part of the Moldovan Criminal Code. Regardless of peculiarities describing the constituents of these crimes, their common ‘ingredient’ – murder – remains unchanged. It is argued that the constituents of murder can be designated through the following word combinations/terms: 1) “depriving of life”; 2) “unlawful”; 3) “deliberate”; 4) “of another person”. It is thoroughly explained that homicide, not murder, is the act that may be committed deliberately or due to imprudence. It is proved that, once murder implies depriving of life, it would be redundant to state the living person or the child born alive as victims of murder. Arguments are put forward in support of the idea that, regardless of the reasons, personal qualities or habits of the murderer acting in the heat of passion, as well as the peculiarities of aggravating circumstance, accompanying the commission of murder in the heat of passion, it is mandatory to apply Article 146 of the MCC. It is ascertained that none of Criminal Law provisions of other countries similar to Article 146 of the MCC subject to review are receivable by the Moldovan Legislature. However, the conducted Study has attained its goal. Based on this Study, the Moldovan Legislature may better grasp what way to avoid should it desire to improve Article 146 of the MCC. Likewise, it is proved that the mitigating circumstance referred to in Article 75 (1) a) of the 2009 of the RCC is not a binding component of qualification; therefore, its presence or absence may not influence the commission of crime. From this perspective, the mitigating circumstance referred to in Article 75 (1) a) of the 2009 of the RCC differs from the crime covered by Article 146 of the MCC.

Chapter 3 – “Subject-matter of murder committed in the heat of passion” – we investigate: the legal subject-matter of crime covered by Article 146 of the MCC; the material subject-matter of this crime; the victim of crime covered by Article 146 of the MCC.

Inter alia, we identified five categories that represent the related social values and relationships, which are protected against the crime covered by Article 146 of the MCC. We also defined: the subjects of social relationships protected by Article 146 of the MCC; the content of these social relationships; and the subject-matter of social relationships protected by Article 146 of the MCC. It is argued that when the victim of crime is a constituent, which absence results in lacking the composition of crime (such as, for instance, the crimes covered by Article 146 of the MCC), it may not be claimed that the victim of crime is an optional constituent of crime subject-matter. It is shown that the victim of crime is a constituent, which describes the crime subject-matter. Such constituent may not have in independent feature, as the victim of crime is just one of constituents of subjects of social relationships protected against that crime. It is explained why the special position of the victim of crime, covered by Article 146 of the MCC, has no stable nature. It is revealed that even in case of multiple victims, the victim of crime covered by Article 146 of the MCC shall be the one who may cause the heat of passion in the perpetrator through acts of violence, gross insults, and other unlawful or immoral acts. It is proved that, if the perpetrator's heat of passion was caused by another person, not by the one deprived of life, the event shall be qualified pursuant to Article 145 of the MCC. By virtue of Article 76 (2) of the MCC, the perpetrator's heat of passion state may be taken into account upon mitigating the sentence covered by Article 145 of the MCC.

Chapter 4 – “Objective dimension of murder committed in the heat of passion” – we reviewed: the harmful event of the crime covered by Article 146 of the MCC; the harmful consequences of this crime; the causal link between the harmful event and the harmful consequences of the crime covered by Article 146 of the MCC; the circumstances under which this crime is committed.

Inter alia, we established a criterion to distinguish between the crime referred to in Article 146 of the MCC and the crime covered by Articles 162 or 163 of the MCC. We identified similarities and dissimilarities between the terms “harmful consequences” and “criminal prejudice” in the context of crimes covered by Article 146 of the MCC. It is shown that in case of artificial maintenance a cardio-respiratory function of someone whose brain is dead, we deal with a corpse, not with a person. It is argued that in crimes covered by Article 146 of the MCC, the harmful event aimed to unlawfully deprive another person of life shall be the necessary cause of cerebral death of the respective person. If the cerebral death of the victim would have occurred even if the corresponding harmful event has not been committed, then this event does not represent the necessary cause of victim's cerebral death. If this is the case, then there is

another necessary cause – an event committed by a person other than the perpetrator or a certain phenomenon – resulting in victim’s cerebral death.

It is revealed that, in order to be considered as a co-author of this crime, the participant shall bring sufficient and necessary inputs, without which the action or inaction of another participant would not cause the victim’s cerebral death. Each of participants’ inputs – creative or combative – make up the common reason necessary to cause the victim’s cerebral death. Where the participant’s input is necessary, but insufficient, he/she would be held liable as an organiser, instigator or accomplice of crime referred to in Article 146 of the MCC. It is thoroughly explained that acts of violence, gross insults, other unlawful or immoral acts of the victim are the circumstances causing the perpetrator’s heat of passion, seen in the context of circumstances of committing the crime covered by Article 146 of the MCC. It is established that in the context of a specific crime, the causes of occurrence of heat of passion in the subject of crime, covered by Article 146 of the MCC, are specific as well. Therefore, it is not admissible to describe them in a generalised manner. Whenever necessary, one must establish exactly what illegal or immoral act of the victim triggered the heat of passion in the person who committed the crime referred to in Article 146 of the MCC. Moreover, it is not acceptable to have no description of causes leading to the occurrence of the perpetrator’s heat of passion in judicial practice cases.

Chapter 5 – “Biased components of murder committed in the heat of passion” – we research: the biased dimension (guilty; incentive and purpose; emotional state of the subject) of crime covered by Article 146 of the MCC; factual error of such crime; the subject of crime covered by Article 146 of the MCC.

Inter alia, it is shown that in crimes covered by 146 of the MCC, the subject, who is in the heat of passion that occurred suddenly, caused by acts of violence, by gross insults or by other unlawful or immoral acts of the victim, understands the harmful features of his/her action or inaction to unlawfully deprive the victim of life, foresees the cerebral death of the victim, and wishes and accepts, fully aware, the occurrence of these consequences. We established: the expression “that occurred suddenly” of Article 146 of the MCC shows that at the time of committing the crime, the perpetrator must exercise not simply an unexpected intention. It is necessary that such intention to be also affected. Arguments are brought to support the idea that attempt to murder committed in the heat of passion, may be committed with direct intention only. If the perpetrator is satisfied with any harmful consequence, he/she exercises indirect intention. In this case, if serious or medium-level injury is brought to limb or health, while the event is committed in the heat of passion, Article 156 of the MCC shall apply. It is argued that in the process of crime qualification committed in the heat of passion, all doubts related to

circumstances, helping establish the form of guilty towards the death of the victim, shall be construed in favour of the perpetrator. In this case it is considered that the perpetrator exercised imprudence towards the death of the victim, while the qualification shall be done in compliance with Article 156 of the MCC.

It is explained why depriving of life from imprudence, committed in the heat of passion, shall be qualified as per Article 149 of the MCC. It is revealed that, in crimes covered by Article 146 of the MCC, the special incentive and purpose are missing, which have an impact on the qualification. However, this does not mean that the special incentive and purpose are missing in general. In case of crimes covered by Article 146 of the MCC, they shall be taken into account upon the individualisation of sentence. It is shown that regardless of the reasons guiding the perpetrator, if the heat of passion is present, it is mandatory to apply Article 146 of the MCC. Even in the presence of certain reasons covered by Article 145 (2) of the MCC (for instance, sadist reasons), if the heat of passion is present, it is mandatory to apply Article 146 of the MCC. It is shown that emotions are an integral part of any intentionally committed crime. Along with guilty, incentive and purpose, emotions shall be included in the structure of biased dimension of such crimes. It has found that emotions influence the intellectual and will factor of perpetrator's psyche. Most frequently, they disrupt the will and make it more difficult to assess the reality. As a result, the perpetrator takes easier the decision to commit a crime. It is argued that the subject of crime covered by Article 146 of the MCC preserves the capacity to grasp the feature of his/her action/inaction and to manage it. Nonetheless, such capacity is to some extent limited due to the impact exercised by the heat of passion over his/her perception, thinking and will. It is revealed that the essential factual error exercised when killing in the heat of passion imposes the application of Articles 27 and 146 of the MCC. It is established that mitigated accountability, just like any accountability and the lack of it is a separate type of measuring the person's capacity to grasp his action/inaction or to manage it. It is explained with arguments that both the heat of passion (Articles 146 and 156 of the MCC) and the state of physical or psychological disorder, with limited discernment, caused by birth (Article 147 of the MCC) are special cases of mitigated liability.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

As a result of carrying out the Study, we have drawn the following *general conclusions*:

1) incrimination *nomen juris* of murder committed in the heat of passion appeared due to the need to distinguish it from simple or aggravated murder and towards depriving of life committed by an irresponsible person. In the Republic of Moldova this differentiation has been made by the Legislature;

2) in case of crimes covered by Article 146 of the MCC, the mitigation of criminal liability is determined by such factors as: a) the crime committed when the perpetrator is in the heat of passion state; b) such state is caused by acts of violence, by gross insults or by other unlawful or immoral acts of the victim; c) the heat of passion of the perpetrator occurs suddenly; d) the commission of murder in the heat of passion is preceded by provocative unlawful or immoral acts of the victim. Naturally, the heat of passion state describes, to a greater or a lesser extent, each of these four factors;

3) the value and social relationship content, protected against the crime covered by Article 146 of the MCC, make the guilt of the victim to mitigate partially the guilt of the perpetrator;

4) in crimes covered by Article 146 of the MCC, the harmful event of unlawful deprivation of life of another person shall in all cases precede the cerebral death of the respective person. If the victim's cerebral death occurs before such events, then the causal link between the harmful event and the harmful consequences is missing. Under such a case the cerebral death of the person has a causal link with the act of a person other than the perpetrator, or by certain phenomena, which precede both the harmful action/inaction of the perpetrator and the harmful consequences;

5) in crimes covered by Article 146 of the MCC, the action/inaction of any of the participants shall represent the condition necessary for committing the action/inaction by another participant. Only in this way the action/inaction of any participants may represent the condition necessary for the victim cerebral death to occur;

6) the cerebral death of the victim has no causal link with the action/inaction of any participants, which do not condition carrying out an action/inaction by another participant. Under such a case one can talk about multiple independent inputs, not about a shared crime referred to in Article 146 of the MCC;

7) under the incidence of "acts of violence" of Article 146 of the MCC fall the following forms of violence: a) deliberate cause of injury to limb (which does not involve injury to health) or violence aimed to cause such consequences; b) deliberate light, medium or serious injury to

limb or to health or violence aimed to cause such consequences; c) deliberate cause of victim's death or violence aimed to cause such consequences;

8) if the acts of violence of one participant in altercation are unlawful, such acts inducing the heat of passion on other participant(s) in altercation, then the latter shall be held liable pursuant to Article 146 of the MCC. Likewise, if the acts of violence of both participants (of all participants) in altercation are unlawful, such acts inducing the heat of passion on that participant in altercation who commit murder, then the latter shall be held liable pursuant to Article 146 of the MCC;

9) if acts of violence of both participants (all participants) in altercation are unlawful, but such do not induce the heat of passion on that participant in altercation who commits murder, then the latter shall be held liable pursuant to Article 145 of the MCC. Likewise, if the acts of violence of one of the participants in altercation are lawful, and such acts induce the heat of passion on other participant(s) in altercation, then the latter shall be held liable pursuant to Article 145 of the MCC;

10) the crime, referred to in Article 146 of the MCC, may not be committed before the occurrence of the heat of passion or after the heat of passion is exhausted. In such cases, the intention would no longer be influenced by the heat of passion; hence, there would be no affected intention. Thus, in crimes covered by Article 146 of the MCC, the intention features are essentially conditioned by the perpetrator's heat of passion state. When lacking such state in the perpetrator, there would be no affected intention, while the crime would not be qualified pursuant to Article 146 of the MCC;

11) emotions exercised by the perpetrator influence inherently the content of the crime incentive and purpose. As the heat of passion is indispensable in crimes covered by Article 146 of the MCC, the incentive and purpose of such crimes are in all cases marked by such state;

12) having as ground a partially understood incentive, the crime referred to in Article 146 of the MCC, is, naturally, committed with a partially understood purpose;

13) in the meaning of Articles 146 and 156 of the MCC, through "heat of passion" shall be understood the short-term emotional status that occurred suddenly, was caused by acts of violence, by gross insults or by other unlawful or immoral acts of the victim, which determined partial impact on the perpetrator awareness and will;

14) applying Article 146 of the MCC may imply referral to Article 42 of the MCC. It is possible to have a shared crime referred to in Article 146 of the MCC, provided that at the time of its commission, the participants are in the heat of passion state.

Based on the statements mentioned *above*, we plead for the implementation of the following **recommendations**:

1) amend the provision of Article 146 of the MCC as follows: *“Murder committed in the heat of passion that occurred suddenly, caused by unlawful actions/inactions of the victim”*;

2) supplement the provision of Article 23¹ (1) of the MCC: insert the words *“or of the heat of passion, or of physical or psychological disturbance, with limited discernment, caused by birth”* after the words *“in a condition of mental disorder”*;

3) supplement the Criminal Code with Article 23², having the following title and provision:
“Article 23². Liability for the crime committed in the heat of passion.

(1) By “heat of passion” one shall understand the short-term emotional state that occurred suddenly, caused by unlawful actions/inactions of the victim, which determine partial impact on the perpetrator awareness and will.

(2) Article 146 of this Code shall apply if murder is committed in the heat of passion. Article 156 of this Code shall apply if serious/medium-level injury to limb or to health is committed in the heat of passion state. For other crimes, the perpetrator’s heat of passion state shall be taken into account upon individualising the sentence.

(3) Upon setting the sentence for the crimes covered by Articles 146 and 156 of this Code, the court shall take into consideration the level of impairment of perpetrator’s consciousness/awareness and will”;

4) supplement Article 76 (1) of the MCC with g¹) having the following provision: *“the perpetrator’s heat of passion state, which meets the conditions provided by Article 23² (1) of this Code”*;

5) supplement Article 143 (1) of MCCP with Paragraph 3²) having the following provision: *“heat of passion status of the suspected, impeached, accused person – in the cases in which his (her) conduct during the commission of the crime corresponds to the conditions established in Article 23² (1) of the Criminal Code”*.

The advantages of these recommendations are highlighted in the following areas:

a) it would ensure to a greater extent compliance with the principle of lawfulness incriminating murder committed in the heat of passion;

b) it would prevent the admission of legal errors conditioned by defective construing of provisions of Article 146 of the MCC;

c) it would contribute to the resolution of some controversial matters in the Criminal Law theory with respect to construing Article 146 of the MCC (for instance, the one on the victim's inaction inducing the heat of passion on the perpetrator);

d) the impact on the national economy would involve reduced costs related to retrial of cases due to requalification from Article 146 to Article 145 of the MCC, or vice-versa.

Future Research Plan includes the following Milestones:

1) establish the link between killing in the heat of passion and some causes that remove the criminal feature of the event (for instance, lawful defence and retaining the perpetrator);

2) evaluate the effectiveness of charges applied for the commission of murder in the heat of passion;

3) clarify criminological, psychological and psycho-physiological connotations of murder committed in the heat of passion;

4) establish the peculiarities of investigating the murder committed in the heat of passion, as well as conducting the expertise to establish the heat of passion state;

5) draft the amendments and addenda of Decision No. 11/2012 of the SCJ Plenary;

6) draft a Guidebook for prosecutors on criminal liability for killing in the heat of passion.

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ADNOTARE

Berdilo Rodica, „Răspunderea penală pentru omorul săvârșit în stare de afect”. Teză de doctorat în drept. Școala Doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2021

Structura tezei: introducere, cinci capitole, concluzii generale și recomandări, bibliografie din 628 titluri, 307 pagini de text de bază. Rezultatele obținute sunt publicate în 25 lucrări științifice.

Cuvintele-cheie: omor; stare de afect; mod subit; acte de violență; insulte grave; acte ilegale; acte imorale; atenuarea răspunderii penale.

Domeniul de studiu. Lucrarea face parte din domeniul dreptului penal, partea specială.

Scopul și obiectivele lucrării. Scopul tezei constă în efectuarea unei cercetări aprofundate a răspunderii penale pentru omorul săvârșit în stare de afect, în identificarea vulnerabilităților legate de interpretarea și aplicarea art. 146 CP RM, urmând a fi elaborate și propuse măsuri concrete privind perfecționarea cadrului normativ în materie. În vederea atingerii scopului propus, au fost formulate următoarele *obiective*: stabilirea semnelor constitutive ale noțiunii de omor; studierea modelelor de elevație juridică străine în vederea identificării similitudinilor și deosebirilor în raport cu modelul de reglementare a răspunderii pentru omorul, săvârșit în stare de afect, din legea penală autohtonă; analiza istorică a reglementărilor privind omorul săvârșit în stare de afect; argumentarea clară, completă și convingătoare a oportunității atenuării răspunderii în cazul acestei infracțiuni; relevarea conținutului obiectului juridic special al infracțiunii prevăzute la art. 146 CP RM; identificarea caracteristicilor victimei infracțiunii prevăzute la art. 146 CP RM; stabilirea conținutului faptei prejudiciabile din cadrul infracțiunii analizate; caracterizarea urmărilor prejudiciabile și a legăturii cauzale în cazul infracțiunii prevăzute la art. 146 CP RM; stabilirea conținutului vinovăției pe care făptuitorul o manifestă la comiterea infracțiunii analizate; caracterizarea stării de afect a subiectului infracțiunii prevăzute la art. 146 CP RM etc.

Noutatea și originalitatea științifică a tezei sunt determinate de faptul că prezenta lucrare se numără printre primele încercări de a examina aprofundat problemele răspunderii penale pentru infracțiunea prevăzută la art. 146 CP RM. Este prima lucrare în care se examinează practica judiciară în materie, în paralel fiind stabilite carențele tehnico-juridice ale art. 146 CP RM. Mai mult, au fost formulate propuneri concrete de perfecționare a cadrului incriminator și a celui adiacent.

Semnificația teoretică a tezei constă în: definirea bazelor conceptuale ale studiului de drept penal al răspunderii pentru infracțiunea prevăzută la art. 146 CP RM; sistematizarea abordărilor teoretice referitoare la stabilirea elementelor constitutive ale infracțiunii prevăzute la art. 146 CP RM; acumularea unui vast material teoretic și practic pentru dezvoltarea unor direcții actuale și complexe de investigare a infracțiunii prevăzute la art. 146 CP RM; trasarea unor noi perspective asupra cadrului teoretico-metodologic al temeiului real și al temeiului juridic ale răspunderii penale pentru infracțiunea prevăzută la art. 146 CP RM.

Valoarea aplicativă a lucrării constă în: interpretarea noțiunilor ce apar în art. 146 CP RM este importantă pentru aplicarea corectă și unitară a acestui articol în practica judiciară și pentru dezvoltarea ulterioară a concepțiilor științifice; interpretarea celor mai controversate aspecte, ce caracterizează infracțiunea prevăzută la art. 146 CP RM, va avea un impact cert asupra dezvoltării polemicii științifice; concluziile și recomandările formulate în teză pot fi aplicate în activitatea practică a organelor de urmărire penală, a procuraturii și a instanțelor judecătorești, precum și în procesul de instruire în cadrul instituțiilor de învățământ cu profil juridic; analiza critică a carențelor și hiaturilor depistate în art. 146 CP RM poate fi luată în considerare de către legislator în vederea îmbunătățirii calitative a textului acestui articol.

АННОТАЦИЯ

Бердило Родика, «Уголовная ответственность за убийство, совершенное в состоянии аффекта». Диссертация на соискание научной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинэу, 2021

Структура диссертации: введение, пять глав, выводы и рекомендации, библиография из 628 названий, 307 страниц составляют основную часть диссертации. Достигнутые результаты опубликованы в 25 научных работах.

Ключевые слова: убийство; состояние аффекта; внезапность; насильственные действия; тяжкое оскорбление; иные противозаконные действия; иные аморальные действия; смягчение уголовной ответственности.

Предмет исследования. Работа относится к сфере особенной части уголовного право.

Цель и задачи диссертации. *Целью* диссертации является проведение тщательного исследования уголовной ответственности за убийство, совершенное в состоянии аффекта, в выявлении уязвимостей, связанных с толкованием и применением ст. 146 УК РМ, в связи с чем намечено разработать и предложить конкретные меры по совершенствованию соответствующей нормативной базы. Для достижения поставленной цели были сформулированы следующие *задачи*: установление конститутивных признаков понятия убийства; изучение моделей правового регулирования, предложенных законодателями других государств, с целью выявления сходств и отличий в отношении модели регулирования молдавским законодателем ответственности за убийство, совершенное в состоянии аффекта; исторический анализ норм об убийстве, совершенном в состоянии аффекта; четкая, полная и убедительная аргументация возможности смягчения ответственности в случае совершения данного преступления; раскрытие содержания непосредственного объекта преступления, предусмотренного ст. 146 УК РМ; характеристика состояния аффекта субъекта данного преступления и др.

Научная новизна и оригинальность диссертации определяется тем, что данная работа является одной из первых попыток углубленного изучения вопросов уголовной ответственности за преступление, предусмотренное ст. 146 УК РМ. Это первая работа, в которой рассматривается судебная практика по такой тематике, и, в то же время, параллельно устанавливаются технико-правовые недостатки ст. 146 УК РМ. Более того, были внесены конкретные предложения по усовершенствованию инкриминирующей и сопутствующей нормативной базы.

Теоретическое значение диссертации состоит в: определении концептуальных основ изучения уголовно-правовых вопросов ответственности за преступление, предусмотренное ст. 146 УК РМ; систематизация теоретических подходов к установлению состава преступления, предусмотренного ст. 146 УК РМ; накопление обширного теоретического и практического материала для разработки некоторых современных и сложных направлений исследования преступления, предусмотренного ст. 146 УК РМ; предложение нового взгляда на теоретико-методологические основы реального основания и юридического основания уголовной ответственности за преступление, предусмотренное ст. 146 УК РМ.

Прикладное значение диссертации заключается в следующем: толкование понятий, используемых в ст. 146 УК РМ, важно для правильного и единообразного применения данной статьи в судебной практике, а также для дальнейшего развития научных представлений; исследование наиболее противоречивых аспектов, характеризующих преступление, предусмотренное ст. 146 УК РМ, внесет определенный вклад в развитие научной полемики; выводы и рекомендации, сформулированные в диссертации, могут быть использованы в деятельности органов уголовного преследования, прокуратуры и судебных инстанций, а также в учебном процессе в высших учебных заведениях юридического профиля; критический анализ выявленных недостатков и пробелов в ст. 146 УК РМ может быть учтен законодателем с целью улучшения качества текста данной статьи.

ANNOTATION

Berdilo Rodica, „Criminal liability for the murder in the heat of passion”. PhD in Law thesis. Doctoral School of Legal Sciences of the State University of Moldova. Chişinău, 2021

The structure of the thesis: introduction, five chapters, general conclusions and recommendations, bibliography of 628 titles, 307 pages of basic text. The obtained results are published in 25 scientific papers.

Key-words: murder; the heat of passion; suddenness; acts of violence; gross insults; other unlawful acts; other immoral acts; mitigation of criminal liability.

Field of the thesis. This research refers to the field of criminal law, special part.

The purpose and the objectives of the thesis. *The purpose* of the thesis is to conduct a thorough investigation of criminal liability for murder committed in the heat of passion, in identifying vulnerabilities related to the interpretation and application of the art. 146 CC RM, concrete measures will be elaborated and proposed regarding the improvement of the normative framework in the matter. In order to achieve the proposed goal, the following *objectives* were formulated: establishing the constitutive signs of the notion of murder; studying the models of foreign legal elevation in order to identify the similarities and differences in relation to the model of regulating the liability for murder, committed in the heat of passion, from the criminal law of the Republic of Moldova; historical analysis of regulations on murder committed in the heat of passion; clear, complete and convincing argumentation of the opportunity to mitigate liability in the case of this crime; revealing the content of the special juridical object of the crime provided by the art. 146 CC RM; identification of the characteristics of the victim of the crime provided by the art. 146 CC RM; establishing the content of the prejudicial act within the analyzed crime; characterization of the prejudicial consequences and of the causal link in the case of the crime provided by the art. 146 CC RM; characterization of the heat of passion of the subject of the analyzed crime etc.

The novelty and the scientific originality of the thesis is determined by the fact that this work is one of the first attempts to in-depth study of the issues of criminal liability for the crime provided by the art. 146 CC RM. This is the first work in which judicial practice on such a subject is examined, and, at the same time, the technical and legal shortcomings of the art. 146 CC RM. Moreover, specific proposals were made to improve the incriminating and related regulatory framework.

The theoretical significance of the thesis consists in: defining the conceptual bases of the study of criminal law issues of liability for a crime provided by the art. 146 CC RM; systematization of the theoretical approaches regarding the establishment of the constitutive elements of the crime provided by the art. 146 CC RM; the accumulation of a vast theoretical and practical material for the development of some current and complex directions of investigation of the crime provided by the art. 146 CC RM; drawing new perspectives on the theoretical-methodological framework of the real basis and the legal basis of criminal liability for the offense provided by the art. 146 CC RM.

The applicative value of the thesis can be summarized as follows: the interpretation of the concepts used in the art. 146 CC RM is important for the correct and uniform application of this article in judicial practice, as well as for the further development of scientific ideas; study of the most controversial aspects characterizing the crime provided by the art. 146 CC RM will make a certain contribution to the development of scientific polemics; the conclusions and recommendations formulated in the dissertation can be used in the activities of the criminal prosecution authorities, prosecutors and courts and in the educational process in higher educational institutions of the legal profile; a critical analysis of the identified shortcomings and gaps in the art. 146 CC RM can be taken into account by the legislator in order to improve the quality of the text of this article.

BERDILO Rodica

CRIMINAL LIABILITY FOR KILLING IN THE HEAT OF PASSION

Specialty 554.01 – Criminal Law and Criminal Enforcement Law

Summary of the doctoral thesis in law

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