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УБИЙСТВО ИЗ РЕВНОСТИ В СРАВНИТЕЛЬНОМ УГОЛОВНОМ ПРАВЕ

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В статье рассматривается сравнительный подход к убийству из ревности. Правовое регулирование данного преступления на протяжении всей истории рассматривалось как справедливое наказание для прелюбодеев, как убийство (с возможностью смягчения наказания или без того), а в последнее время оно может принимать форму убийства при отягчающих обстоятельствах. По этим причинам был проведен анализ законодательства с различными формами решения данного вопроса (Древний Рим, США, Франция и Российская Федерация). Ревность характеризуется сложной психологической структурой, поскольку представляет собой комплекс душевных страданий в случае фактической или кажущейся измены любимой особы.

Ключевые слова: прелюбодеевие, наказание, ревность, уголовное право, мотив

MURDER MOTIVATED BY A JEALOUSY IN COMPARATIVE CRIMINAL LAW

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In the present article is considered the comparative approach to the murder caused by a jealousy. The legal regulation of this crime throughout history has been interpreted as a righteous punishment for adulterers, murder (with or without the possibility to mitigate a penalty) and in recent times it can take the form of aggravated murder. For these reasons legislations with various forms of this issue resolving are analyzed (ancient Rome, USA, France and Russian Federation). Jealousy is characterized by a complex psychological structure, because it is a set of mental suffering during the real or illusory adultery of loving person.

Keywords: adultery, punishment, jealousy, criminal law, motive

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*In the blindness of love – one becomes a criminal without remorse
Sigmund Freud [1, p. 75]*

1. Introduction

Jealousy exists in its various forms, it is a feature of man's nature, but if it is only a sense of concern that has not endangered or harmed any legal good, then it cannot be studied by criminal law. Only if we determine a motive of behaviour, jealousy falls within the scope of a lawyer's point of view, when it makes sufficiently versatile feeling that can lead to different consequences in the system of human opinion.

Determining and analyzing the motivational sphere of criminal activity are important for the social-psychological characteristics of the perpetrator of criminal offence. The motive gives a notion of the depth and

degree of perseverance of his antisocial views. The base motives are characterized not only by insensitivity, but also by amorality, and assessment of the motivation of human behaviour is decisive. The motives are considered as base when they are associated with public disregard of society and recognized moral norms, which results in devaluation of human life [2, p. 48].

Motive can appear as a source of activity of a person, a factor that encourages on execution of an action and the circumstance with which awareness of the perpetrated act is associated. First of all, it has a dynamic role, because it stimulates behaviour, initiates a willing process and it is the driving force for the perpetrating of an action. The etymological meaning of this term is directly related to the specified function of the motive. The Latin term “*motus*”, “*moveo*” (“to encourage”), on the best possible way expresses the given distinctive of the motive¹.

Motive is a moral category. It is the criterion of our judgments about people, their intentions and actions, in other words, it has an important moral-ethical function. The reasons for arising a jealousy are usually adultery or unrequited love. Quite often the favourable environment for jealousy is doubt in fidelity, love, friendship, etc. Exactly in this suspicion grows malice, resentment, hate, that gives jealousy a special dynamism and timidity. In all cases of jealousy it is expressed insult, displeasure regarding the victim's actions, his behaviour and relation, as well as a feeling of exclusive right to attention, affection and love.

At the base of jealousy lies irritated hubris, sometimes driven by malice and anger to a state or mental disorder. Therefore, jealousy always acts as a hostile feeling, personifies the egoism in relations between people and essentially represents expression of proprietary relationships transferred to people close to them. It is not coincidence when K. Marks says that a jealous man is primarily a private owner [3, p. 22]. In this regard T. More notes that the law cannot be vague, dark, suspicious, ambiguous, elastic, predictable or almighty. By mastering the power to create good, the law will be powerless to do evil. The greatest injustice would be to shackle a man with iron laws, too extensive to read and sometimes too vague to understand them [4, p. 21].

Sometimes it is not dangerous jealousy in itself, but negative forms in which it manifests itself. It is not the jealousy terrible, but the ultimate and unbridled forms of its expression. If a jealousy is manifested, it is always accompanied by some pretensions towards the object of jealousy, limiting the freedoms and rights of another person. If the feeling of unrequited love is not expressed externally, it will not be the subject neither of moral, nor a legal appraisal. Criminal law deals only with jealousy, which is associated with unbridled forms of its expression [5, pp. 63–64].

The characteristics and evaluation of the motives of jealousy are of great importance for the qualification of homicide. Murder motivated by a jealousy is perpetrated in order to satisfy base motives, which are characterized by amoral nature. In some legislations it can be qualified as aggravated murder, which is committed in such a way, under such circumstances or with consequences, that gives it a greater degree of severity and danger and causes more serious punishment [6, p. 729]. In each particular case will be estimated what will be considered as base motive, with regard to its relation to the ruling socio-ethical norms. These motives are contrary to such rules and they are condemned by majority of society. Base motives reflect weak character of the personality, its amorality, unscrupulousness, etc. As base motives are considered all those motives that are not worthy of man and which disagree with adopted moral principles of society [7, pp. 443–444].

On the other hand, “murder committed in a state of temporary insanity” occurs when perpetrator causes death of victim because he was brought into a sudden strong mental agitation through no fault of his own by assault, abuse or gross insult of the killed person. The act was done outright, shortly after the cause was created, and the decision to commit the act was made suddenly, without thinking. Strong mental agitation is an excitement that leads to an affective state of high degree, so there is a limitation and even reduction of ability to manage actions. The perpetrator's behaviour is conscious, but not controlled, directed. Whether there is this state of strong mental agitation will be a factual issue that the court resolves in each particular case. Between the act of assault, abuse or gross insult and a state of strong mental agitation there must be a causal link. In terms of guilt the perpetrator acts with a special form of premeditation (sudden premeditation or *dolus repentinus*) [6, p. 744]. In criminal legislation of France and Russian Federation adultery could not be considered as gross insult, which would cause responsibility for “murder committed in a state of temporary insanity”, instead of liability for murder. Regarding USA, extreme mental or emotional disturbance (“heat of passion”) provoked by

¹ Glare P. Oxford Latin dictionary. – Oxford: Oxford University Press, 2016. – P. 1251.

discovered adultery, could be a partial defense that reduces an offense that would otherwise constitute murder to the lesser offense of manslaughter.

2. History

Book of Leviticus 20:10

If any man commit adultery with the wife of another,
let them be put to death, both the adulterer and the adulteress
*5.

Mos. 22, 22 Jer. 29, 23

[8, p. 114]

Roman law is not a set of legal rules like modern laws, because Roman lawyers resolve cases from practical life and thus created law. They achieved high results in the field of legal technique: accuracy and clarity, strict logic and consistency of legal opinion, combined with the life force of conclusions. Prominent French Romanist P.F. Girard distinguishes that the importance of studying of Roman law lies in the fact that it is an excellent tool of legal culture [Quoted by: 9, p. 42].

As a part of moral legislation of Octavian Augustus, in 18 or 17 B.C. the *Lex Iulia de adulteriis coercendis* was adopted. This statute had as its principal aim the repression of those forms of non-marital sexual relations considered unacceptable by Roman society, particularly adultery. Such acts were now punished for the first time by trial in a standing criminal court (the *quaestio perpetua de adulteriis*) throughout the classical period of Roman law, until as late as the early third century. Afterwards, offenses were addressed exclusively through the *cognitio extra ordinem*. Criminal penalties were ordained for the adulterous female spouse and her lover. These were chiefly patrimonial in nature, dictating the confiscation of one-half of the adulterer's property, one-third of the woman's, as well as one-half her dowry [10, pp. 340–341].

So called *ius occidendi* granted the offended husband and father the right to kill the guilty party or parties on the spot. Father might kill both daughter and lover, but under no circumstances might the husband kill his wife. Failure to observe this rule resulted in liability for murder under the *Lex Cornelia*, although the penalty might be mitigated upon appeal to the emperor. The husband was permitted to exercise his right upon the lover only if the man fell within a special category of persons defined by the law: slaves, freedman of family members or certain disreputable types². The *Lex Iulia* lowered the status of the wife found guilty of adultery to that of the prostitute and correspondingly defined the actions of complaisant husband as *lenocinium* (pimping). At the same time it exempted true prostitutes and procuresses from its sanctions, because they could not be liable for adultery, *stuprum*³ or *lenocinium* [12, pp. 146–147].

Propagating the power of the father, the extremity of the sanction seems to have led to its reasonable application, since the cases in which the father's sentence was carried out are almost unnoticed – the most notorious example concerns Augustus himself and his daughter. He banished his own daughter Julia (and later his granddaughter, also Julia) for alleged violations of the adultery law. Even though he threatened the death penalty, he sent her into exile [13, p. 243]. Before the passage of the *Lex Iulia*, the repression of sexual misbehaviour was generally conceded to the private sphere. If an adulterous pair was caught in the act, the husband might kill with impunity both parties on the spot [10, p. 340].

Unlike other criminal laws, this statute created a special right of accusation, the *ius mariti vel patris*, accorded to the husband and father of the woman accused of adultery. The right of the father is correctly described as accessory to that of the husband, in sense that it is depended on an act of the latter (divorce) to be legitimized and that where both raised an accusation the husband was to be preferred. The privileged accusation had exclusive rights of prosecution for 60 days after divorce and five years after adultery. If a woman convinced of adultery decides to remarry, her husband will be liable for *lenocinium*, and if the adulterers decide to marry, their marriage will be unlawful [12, pp. 143–145].

² Примечание. Infamis is a person who may be formally free, but does not fall under the legal provisions which protect Roman citizens. These include convicted criminals, entertainers, such as actors, players, prostitutes, pimps and gladiators [11, p. 67].

³ Примечание. The legislation laid down penalties for *stuprum*, sexual intercourse between a man and women other than his wife, though he remained free to pursue extramarital relations with slaves, barmaids and prostitutes [13, p. 243].

3. Murder motivated by a jealousy in comparative criminal legislation

Interest in jealousy in law is boundless, so in judicial practice, because it is necessary for resolving the issues of responsibility for crimes committed on the basis of these motives and its prevention, for individualizing of a criminal responsibility and punishment, as well as for determining the circumstances that enable the commission of a crime. The form of expression of jealousy as well as the reasons for its creation may vary, and therefore varies the level of the malicious content of jealousy [5, p. 64].

Modern legal thought is based also on criticism, which besides historical implies comparative review. On the base of different value judgments, one more correct altitude has to be taken, which is not only a theoretical framework, but a comparative analysis of the important characteristics of the laws of a number of states. It could be a valuable landmark for national legal regulation of these types of crimes.

3.1. France

In the Criminal Code of France⁴ the criminal offence of murder is regulated in Title II (“Offences against the human person”), Chapter I (“Offences against the life of persons”). In Section I entitled “Wilful injury against life”, Article 221-1, murder (*meurtre*) is defined as the willful causing of the death of another person. It is punished with thirty years criminal imprisonment. Qualified form of this offence (Article 221-4) is punished by criminal imprisonment for life where it is committed: 1) against a minor under fifteen years of age; a natural or legitimate ascendant or the adoptive father or mother; 2) against a natural or legitimate ascendant or the adoptive father or mother; 3) against a person whose particular vulnerability, due to age, sickness or infirmity, or to any physical or psychological disability or to pregnancy, is apparent or known to the perpetrator; 4) against a judge or prosecutor, a juror, an advocate, a legal professional officer or a public officer, a member of the gendarmerie, a civil servant of the national police, customs, the penitentiary administration or against any other person holding public authority or discharging a public service mission, when the capacity of the victim is known or apparent to the perpetrator; 5) against a witness, a victim or civil party, either to prevent him from denouncing the action, filing a complaint or making a statement before a court, or because of his report, complaint or statement; 6) by several people acting as an organized gang⁵.

A legal definition of a murder motivated by jealousy existed in an earlier French criminal law. According to Article 324 of the 1810 Code Penal, “murder, committed by the husband, upon his wife, or by the wife, upon her husband, is not excusable, if the life of the husband or wife, who has committed such murder, has not been put in peril, at the very moment when the murder has taken place”. However, in the case of adultery, normed in the Article 336 of the Code, the murder committed by a husband against his wife or her lover, at the time he finds them in his house, can be justified⁶. The Napoleonic Code was influenced by the Roman legislation, which glorified the patriarchal system and considered paternal and maternal authority as absolute [14, p. 115]. In 1832 Code Penal has been amended, so that an acquittal can no longer be imposed for a murder of passion, but only a mitigation of sentence [15, p. 84]. French law relativized these crimes until 1975, when Article 324 was removed from the Criminal Code⁷.

Current Criminal Code of France was created on the basis of several laws published on July 22, 1992. One of them is the Law no 92-684, which provides the next: “When a criminal offence is committed by a spouse or partner in an informal relationship, that element is an aggravating circumstance, if violence was committed within that community”⁸. On April 4, 2006, Law no 2006-399 on the prevention and suppression of violence committed among partners and against children was adopted, which enters Article 132-80 into the Criminal Code. After this change the Criminal Code gets a general definition of aggravating circumstances regarding criminal offences committed between partners: “In cases provided by law, the penalty for a felony or

⁴ Примечание. Criminal Code of France is adopted on July 22, 1992 and it took effect on March 1, 1994.

⁵ Code Penal [Электронный ресурс]. – Режим доступа: http://www.legislationline.org/download/id/8546/file/France_CC_am012020_fr.pdf (дата обращения: 17.04.2021).

⁶ Penal Code of 1810 [Электронный ресурс]. – Режим доступа: http://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3b.html (дата обращения: 14.05.2021).

⁷ Article 17. LOI no. 617/75 du 7/11/75.

⁸ LOI no 92-684 du 22 juillet 1992 portant réforme des dispositions du code pénal relatives à la répression des crimes et délits contre les personnes [Электронный ресурс]. – Режим доступа: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000540288&categorieLien=id> (дата обращения: 05.04.2021).

misdemeanor will be increased if it was committed by a spouse, partner in an informal relationship (*concubin*) or partners on the basis of PACS⁹.

This article extended the scope of aggravating circumstances to executors who concluded PACS with the victim, but also to former spouses, partners (*concubin*) and partners on the basis of PACS¹⁰. In the following criminal offences, being a spouse or a partner in the informal community, but not a partner on the base of PACS, was an aggravating circumstance even before the changes of the Criminal Code adopted in 2006: acts of violence causing an unintended death (Article 222-8, Section 6), torture and acts of barbarity (Article 222-3, Section 6), acts of violence causing mutilation or permanent disability (Article 222-10, Section 6), acts of violence causing a total incapacity to work for more than eight days (Article 222-12, Section 6), acts of violence causing an incapacity to work of eight days or less, or causing no incapacity to work (Article 222-13, Section 6).

With regard to criminal offence of murder (Article 221-1), after changes adopted in 2006, for the first time, being a spouse is an aggravating circumstance. Instead of a punishment with 30 years of incarceration, the perpetrator can be sentenced by criminal imprisonment for life (Article 221-4, Section 9). The same new rule also applies to rape (Article 222-23) and sexual aggressions other than rape (Article 222-27)¹¹. In the first case, instead of fifteen years, the perpetrator can be sentenced with twenty years criminal imprisonment (Article 222-24, Section 11), in the second case (Article 222-28, Section 7), instead of five, he can be punished by seven years of incarceration. Regarding mentioned three crimes, in addition to marriage, among the aggravating circumstances is included a partnership on the basis of an informal relationship or PACS¹².

3.2. United States of America

According to 18 U.S. Code, in accordance with many current statutes, murder is unlawful causing death of another human being with malice aforethought [17, p. 135]. Article 1111 of the Code states that “every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree”¹³.

On the other hand, authors of the *Model Penal code and commentaries*¹⁴ cited respectable English expert E. Coke, who wrote that “murder is when a man of sound memory, and of the age of discretion, unlawfully kills within any country of the realm any reasonable creature *in rerum natura* under the King’s peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt, etc. die within a year and a day after the same” [18, p. 47].

According to W. Blackstone, malice aforethought is a very important criterion that separates murder from other forms of causing death [19, p. 199].

Modern American and English theorists note that malice aforethought is an artificial concept, which involves four psychological states or forms:

⁹ Примечание. A civil solidarity pact (French: pacte civil de solidarité), commonly known as a PACS, is a contractual form of civil union between two adults for organizing their joint life. It brings rights and responsibilities, but less so than marriage. Actuality of PACS is diminished after the legalization of same-sex marriage in 2013.

¹⁰ LOI no 2006-399 du 4 avril 2006 renforçant la prévention et la répression des violences au sein du couple ou commises contre les mineurs [Электронный ресурс]. – Режим доступа: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000422042&categorieLien=id> (дата обращения: 16.05.2021).

¹¹ Примечание. In France there have been a number of court decisions that have altered the country’s approach to marital rape. In a case before the French Cour de Cassation on September 5, 1990, in which a man had allegedly tortured and raped his wife, the court held that a husband can be convicted under Article 332 of the Criminal code for the crime of raping his wife. In 1992, the Cour de Cassation reversed the decision of a lower court to dismiss the charges against a man accused of marital rape. While the lower court decided that the sexual acts had been “carried out within the framework of marriage as it is traditionally understood, the Court of cassation ruled that the presumption that spouses have consented to sexual acts carried out within marital relationship is only valid until the contrary is proven” [16, p. 20].

¹² Code Penal [Электронный ресурс]. – Режим доступа: http://www.legislationline.org/download/id/8546/file/France_CC_am012020_fr.pdf (дата обращения: 12.04.2021).

¹³ 18 U.S. Code [Электронный ресурс]. – Режим доступа: <http://www.law.cornell.edu/uscode/text/18/1111> (дата обращения: 21.09.2021).

¹⁴ Model Penal code and commentaries. – Philadelphia: The American law institute, 1980. – Part II. – P. 14.

- 1) intention to kill;
- 2) intention to cause grievous bodily harm;
- 3) ultimate indifference that is manifested towards the value of human life (*depraved heart*);
- 4) intention to commit any felony, when during the criminal attempt or committing a crime some person dies.

In the first case there is a so-called publicly expressed malice aforethought, and in other – constructive or malice aforethought which is implied [20, pp. 364–366].

According to American criminal law, manslaughter is another form of homicide, which involves a significant number of attacks against life. 18 U.S. Code (§ 1112) states that manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

- 1) voluntary – upon a sudden quarrel or heat of passion;
- 2) involuntary – in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death¹⁵.

The main difference between murder and manslaughter is that the perpetrator of a murder has a malice aforethought [22, pp. 315–316].

In American criminal law the crime of murder may be reduced to manslaughter if the defendant acted in response to provocation. Situation that typically constitutes adequate provocation is adultery. A spouse who discovers their partner having sexual intercourse with another is provoked, so that if, in the heat of passion, the spouse intentionally kills his partner or the partner's lover, the homicide will be held to be voluntary manslaughter rather than murder¹⁶.

“The provocation doctrine” is a partial defense that reduces an offense that would otherwise constitute murder to the lesser offense of manslaughter. This partial defense requires the defendant to show the following: 1) the actor must have killed while in the “heat of passion”; 2) the heat of passion must have been brought about by adequate provocation. The “heat of passion” element is subjective – the defendant must show that at the time of the killing, he was in fact in a state of passion or extreme anger [23, p. 410].

The *common law* defense is only applicable if the provocation “would render any ordinarily prudent person for the time being incapable of that cool reflection that otherwise makes it murder”. He is provoked by a serious battery and the sight of adultery. He is not provoked by words or the sight of only impending adultery or upon finding one's girlfriend with another man [24, c. 430].

On the other hand, the *Model Penal Code (MPC)* treats as manslaughter any intentional killing under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be (Article 210.3, Section 1, Clause b.). According to Section 2 of this Article, manslaughter is a felony of the second degree¹⁷.

A fairly significant minority of states have enacted manslaughter statutes similar to that proposed by the American Law Institute in its *Model Penal Code*. As a result, these states have effectuated a significant departure from *common law*. Nevertheless, statutory drafting of the heat of passion defense has not generally affected the law of the states of the USA. A number of states do not define the crime of manslaughter, relying instead on *common law* interpretation. Other jurisdictions define manslaughter as “heat of passion”, but do not substantially define it further. Still other states have been more specific, but only by expressly codifying *common law* principles, or only slightly expanding upon them. Even in the latter states, however, there is no evidence that legislators carefully scrutinized the underlying rationale of their legislation [24, pp. 430–431].

The *Model Penal Code* represents the height of the liberal reform movement and the culmination of the law's move away from categorical rules. Inspired by the theory, that the provocation defense exists to protect

¹⁵ Примечание. If manslaughter was committed recklessly, but under aggravated circumstances, it will be considered as murder. In this case the US general law doctrine “department and malignant heart” was applied, which, according to American authors, does not contain clear criteria for such an increase of accountability. This doctrine is also called “abandoned and malignant heart” – a syntagm used by the Penal code of California (Article 188). A certain accuracy was brought by the Model penal code: criminal homicide constitutes murder when it is committed recklessly under circumstances manifesting extreme indifference to the value of human life (Article 210.2, Clause b.) [21, p. 323].

¹⁶ Legal Information Institute [Электронный ресурс]. – Режим доступа: <http://www.law.cornell.edu/wex/provocation> (дата обращения: 21.09.2021).

¹⁷ Model Penal Code. Official draft and explanatory notes. – Philadelphia: The American law institute, 1985. – P. 120.

free choice, the *Model Penal Code* drafters created a defense remarkably sensitive to context and the defendant's peculiar perspective. They rejected a "reasonable man" standard as too objective, precluding any attention to the special situation of the actor. Even something as basic as the idea of a "sudden passion" found little support in the *Model Penal Code's* draft. Refusing to limit the defense to instantaneous explosions of violence, drafters embraced a rule that allowed the defendant's "passion" to arise slowly.

The classic claim of infidelity not only assumes a continuing relationship, it assumes a particular kind of conduct: discovery of one's lover in an act of "passion". At *common law* courts required "ocular evidence of actual adultery". In recent times a minority of jurisdictions still apply that rule, rejecting claims based on a confession or knowledge of adultery. By jettisoning the adultery limitation, the *Model Penal Code* has done more than broaden the range of possible relationships that might give rise to a provocation claim. It has also broadened the type of conduct that might be classified as "infidelity". Claims of "discovered adultery" appear quite rarely in *Model Penal Code* data set, whether the claim arises in the context of a former or a current relationship. Far more frequent are claims based on confessions of infidelity [25, pp. 1339–1340, 1365–1364].

In unreformed criminal legislations (e.g. in *Penal Code of California* (Article 192)) and also in the works of some theorists manslaughter is generally defined as "the unlawful killing of a human being without malice forethought"¹⁸. In more modern criminal codes (e.g. in *Alabama Code*)¹⁹ manslaughter would be murder (with malice forethought), if there were no certain mitigating circumstances. In other words, these circumstances lessen murder to the level of manslaughter. The most common mitigating circumstance which allows qualification of the act as manslaughter is a state of intense mental disturbance caused by provocation²⁰.

In general law of the USA four basic conditions related to this circumstance are distinguished, which in this or other level have found expression in many criminal codes.

1. The provocation must have been such as to cause reasonable person to lose his self-control.
2. The provocation must have been real.
3. There must not have been a sufficient time between the provocation and the killing for the passions of a reasonable person to "cool off".
4. The defendant has not been "cooled off" during that period.

There is also a supplementary condition that has been repeatedly distinguished during the consideration of specified criminal offences in the courts: intense mental disturbance can be expressed through a sudden appearance of irritability, anger or fear, but not in order to avenge him on the victim [21, pp. 341–342].

3.3. Russian Federation

In the Criminal Code of Russian Federation²¹ criminal offence of murder is provided in Section VII ("Crimes against the person), Chapter 16 ("Crimes against human life and health"). According to Article 105, Section 1 "murder is the intentional causing of death of another person and shall be punishable with deprivation of liberty for a term of six to 15 years with restriction of liberty for a term up to two years or without such". In Section 2 of the Code, qualifying circumstances that cause a more serious form of this criminal offence are listed, and it is punishable with deprivation of liberty for a term of from eight to 20 years with restriction of liberty for a term from one year to two years, or by deprivation of liberty for life, or by the death penalty. It is the murder: a) of two or more persons; b) of a person or his relatives in connection with the official activity of this person or the discharge of his public duty; c) a minor or another person who is, knowingly for the guilty person, in a helpless state, as well as attended by abduction of a human being; d) of a woman who is known by the killer to be in a state of pregnancy; e) committed with heightened cruelty; f) committed by a generally dangerous method; f.1) by reason of blood feud; g) committed by a group of persons, a group of persons by previous concert, or an organized group; h) committed out of mercenary motives by hire, or attended by robbery with violence, racketeering, or banditry; i) committed maliciously; j) committed with the purpose of con-

¹⁸ Penal Code of California [Электронный ресурс]. – Режим доступа: http://www.leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=8.&part=1.&chapter=1.&article (дата обращения: 21.09.2021).

¹⁹ Примечание. A person commits the crime of manslaughter if he causes the death of another person under circumstances that would constitute murder, except, that he causes the death due to a sudden heat of passion caused by provocation recognized by law, and before a reasonable time for the passion to cool and for reason to reassert itself (Article 13A-6-3, Section 2, Clause a).

²⁰ Alabama Code [Электронный ресурс]. – Режим доступа: <http://www.codes.findlaw.com/al/title-13a-criminal-code/al-code-sect-13a-6-3.html> (дата обращения: 21.09.2021).

²¹ Criminal Code of Russian Federation. – No. 63-ФЗ.

cealing another crime or facilitating its commission, and also murder accompanied by rape or violent sexual actions; k) committed by reason of political, ideological, racial, national or religious hatred or enmity, or by reason of hatred or enmity with respect to some social group; l) committed for the purpose of obtaining the organs or tissues of the victim [26, pp. 226–227].

According to Article 105, Section 1 murder implies the absence of both aggravating and mitigating circumstances. In criminal offences punishable under Section 1, theory and practice involve murder motivated by a jealousy. The victim could be a spouse, real or apparent adversary [27, p. 275].

According to the Opinion of the Plenum of the Supreme Court of the Russian Federation, “Section 1 of Article 105 of the Criminal Code of the Russian Federation defines a murder committed without the qualifying hallmarks specified in Section 2 of Article 105 and without mitigating circumstances prescribed in Articles 106, 107 and 108 (for example, in a quarrel or fight in the absence of hooligan motives, by a jealousy, on the grounds of revenge, envy, hostility, hatred, that arose on the basis of personal relationships)”²².

Law is a living organism and its interpretation takes place in a way that corresponds to the spirit of time and changes in society and the legal system [28, pp. 479–480]. Throughout history, in literature, jealousy has been interpreted as a base motive, which is a result of the criminal legislation (e.g. Article 136 of the 1926 RSFSR Criminal Code)²³. Causing of the death of another person committed for these motives is qualified as murder with aggravating circumstances, until the adoption of the 1960 RSFSR Criminal Code²⁴. Afterwards, in the theory have been discussed the question of whether jealousy should be recognized as a mitigating circumstance and this act qualify as murder committed in a state of sudden strong mental agitation, if a state of intense mental disturbance was caused by provocation. The interpretation of a criminal doctrine categorically dismisses such a possibility.

Э.Ф. Побегайло came out first against this in his work «Умышленные убийства и борьба с ними». А.С. Волков did not support such a position and joined the traditional point of view: “Jealousy is an expression of egoism in relations among people and regardless of whether this motive is caused by a false or actual cause, it is in all cases a base motive”. Over time, moral is changed, and accordingly with that the judicial practice. In his work «Детерминистическая природа преступного поведения» А.С. Волков discusses, at that time, the most complex and theoretically most interesting issues: the moral-ethical appraisal of a man’s motives and socially dangerous behaviours perpetrated under their influence; relation between guilt and causality; correlation of other features of the objective and subjective side of the criminal offence [Quoted by: 29, p. 162].

Jealousy as the motive for an intentional murder is differently appraised in literature. Therefore, Э.Ф. Побегайло stresses that «jealousy, in itself, does not represent a base motive». According to М.К. Аниязц, jealousy is an ugly remnant of the past and regardless from what reason it was arose, murders on that basis must be severely punished. In the theory such attitude prevails according to that jealousy, as a motive for murder due to the given circumstance, deserves a negative appraisal. Nevertheless, that doesn’t exclude a differentiated approach. The degree of social danger of murder motivated by a jealousy, as well as other murder, should be determined by taking into account the concrete circumstances associated with the commission of criminal offence. Therefore, the reason for the arising of a jealousy should not be ignored. During the committing a murder for a motive of jealousy, it would be wrong not to include the role and behaviour of the victim before the murder or at the time of its committing. The cause for arising of a jealousy can affect not only the measure of punishment of the defendant, but also the qualification of his actions [Quoted by: 30, p. 102].

According to Article 107 of the current Russian Criminal Code²⁵, “murder committed in a state of sudden strong mental agitation (temporary insanity), caused by violence, mockery or gross insult on the part of the victim, or by other unlawful or amoral actions (inaction) of the victim, or by a protracted mentally traumatizing situation caused in connection with the systematic unlawful or amoral behaviour of the victim – shall be

²² Постановление Пленума Верховного суда РФ от 27.01.1999 г. № 1 (ред. от 03.03.2015 г.) «О судебной практике по делам об убийстве (ст. 105 УК РФ)» [Электронный ресурс]. – Режим доступа: <http://www.zakonbase.ru/content/base/104534> (дата обращения: 21.09.2021).

²³ Уголовный кодекс РСФСР 1926 г. [Электронный ресурс]. – Режим доступа: <http://www.docs.cntd.ru/document/901757374> (дата обращения: 21.04.2021).

²⁴ Уголовный кодекс РСФСР 1960 г. [Электронный ресурс]. – Режим доступа: <http://www.kremlin.ru/acts/bank/2/page/1> (дата обращения: 14.04.2021).

²⁵ Murder committed in a state of temporary insanity (Article 104 of the Criminal Code of Russian Federation).

punishable by corrective labour for a term of up to two years, or by restraint of liberty for a term of up to three years, or by compulsory labour for a term of up to three years, or by deprivation of liberty for the same term»²⁶.

An amoral action means an action that is contrary to morality, immoral. This basis first appeared in the 1996 Criminal Code of Russian Federation. However, even before that, the amoral actions of the victim were actually recognized as a basis that can cause a state of affect. Some cases of murder, the judicial practice of the RSFSR qualified under Article 104 of the 1960 RSFSR Criminal Code²⁷ “when there arose an affect at the moment when the perpetrator became an eyewitness of the intimate relations of his wife with another man. The basis of affect was recognized on the way that is not in accordance with law. In the case of adultery, the victim has no premeditation to humiliate the honor and dignity of the other spouse, i.e. there is no insult. Infidelity cannot be regarded as violence, because it cannot be attributed to other illegal actions. Adultery was recognized as the cause of affect, on the grounds that it was considered as gross insult, although formally neither it, nor other immoral actions of the victim were not even mentioned in the disposition of Article 104 of 1960 RSFSR Criminal Code” [31, с. 58].

According to Б.С. Волков, whether such infidelity can be considered as a gross insult provided in Article 104 of Criminal Code of the RSFSR depends on the concrete conditions in which it is committed. This question cannot be answered uniquely. If this adultery is committed in a form that humiliates the honor and dignity of another person or it is accompanied by circumstances humiliating his honor and dignity, then it has to be considered as a gross insult and the crime committed on that basis has to be qualified under Article 104 of the 1960 RSFSR Criminal Code, if there is the presence of the features specified in the law [5, с. 66]²⁸.

4. Conclusion

Motive is a moral category. It is the criterion of our judgments about people, their intentions and actions, in other words, it has an important moral-ethical function. The reasons for a rising a jealousy are usually adultery or unrequited love. Quite often the favourable environment for jealousy is doubt in fidelity, love, friendship, etc. Exactly in this suspicion grows malice, resentment, hate, that gives jealousy a special dynamism and timidity. In all cases of jealousy, it is expressed insult, displeasure regarding the victim's actions, his behaviour and relation, as well as a feeling of exclusive right to attention, affection and love.

Punishment for murder motivated by a jealousy has a long history. Book of Leviticus provides the death penalty for adulterers, while in Roman law that possibility was initially permitted to the husband, but later this right was limited to homicide of a lover, but not a wife. Also the capital punishment was accompanied by confiscation of property. In modern legislation the prosecution for the murder of an adulterer is not questionable, but it remains arguable whether the perpetrator will be held accountable for murder or aggravated murder. The earlier French law was influenced by Roman legislation, because the murder of both adulterers was considered justified, and later it became the basis for mitigating of sentence. After the quashing of this provision in 1975, in the late 20th and early 21th century, being a spouse became aggravating circumstance in a number of crimes that are accompanied by physical violence or coercion on acts of sexual character, while the murder of a spouse or unmarried partner became aggravated murder.

²⁶ Legislationline [Электронный ресурс]. – Режим доступа: http://www.legislationline.org/download/id/4247/file/RF_CC_1996_am03.2012_en.pdf (дата обращения: 21.09.2021).

²⁷ Murder committed in a state of sudden strong mental agitation (Article 104 of the 1960 RSFSR Criminal Code).

²⁸ Person Y. was convicted of murder of his wife У-вой and attempted murder of person Ч., committed on the base of a jealousy under the following circumstances. У. caught his wife and Ч. in the banya (Russian: баня) at the time of their being in an intimate relationship. Ч. ran away, and У-ва refused to go home because she was tipsy. У. several times came to the banya, called wife to come back home, but she refused to go. Around midnight, У. again came, and, seeing that Ч. was at the same place with wife, he stabbed her lover with a table knife twice in the chest, and then with the same knife struck three blows to the chest of wife, who died from injuries, and life of Ч was saved thanks to timely medical help. The Judicial collegium for criminal cases of the Supreme Court of the RSFSR has reclassified actions of У. in accordance with Articles 104 and 15 of the Criminal Code of the RSFSR. Collegium noted that the conclusion of the lower court that У. during the committing of a crime was not in a state of sudden strong mental agitation was made without a proper appraisal of the circumstances preceding the crime. У. testified at the trial that he was indignant when he found his wife with Ч. During the evening he repeatedly came for wife, but she refused to go home. When he caught wife a second time with Ч., he does not remember how he drew knife and hit Ч. and then wife. Under these conditions, the Collegium notes, it should be admitted that У. committed the murder of wife and attempted murder of Ч. “in a state of sudden strong mental agitation caused by the behaviour of the victims, who grossly offended the dignity of the perpetrator” (Бюллетень Верховного суда РСФСР, 1981, кн. 3, с. 6–7).

In the 1926 RSFSR Criminal Code, jealousy was interpreted as a base motive, which causes responsibility for aggravated murder until the 1960 Criminal Code, which the given form of causing of the death regulate as murder, as well as the current Criminal Code of Russia. The law of the United States allows the possibility of defending if the homicide of an adulterer is committed “in the heat of passion” and the Common law and the Model Penal Code provide conditions that must be fulfilled in order to perpetrator be held accountable for manslaughter, instead of murder. It is the so-called “provocation doctrine”, which requires presence of intense mental disturbance, expressed through a sudden appearance of irritability, anger or fear.

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