

**The dissertation of Baygundinov Eldos Nagymbaevich for the degree of Doctor of Philosophy (PhD) in the specialty»6D030100-Jurisprudence» on the topic: «Criminal-legal features of the murder of a newborn child by a mother (criminal-legal and criminological aspects)»**

**Annotation**

**The relevance of the research** topic is due to the economic and political transformations carried out by the Government of the Republic of Kazakhstan, the purpose of which is to improve the welfare of citizens and the standard of living of the population. The subject of the research work, which determines the need for further in-depth study of the problem. The basis for this are issues beyond the scope of legal regulation: issues in the murder of a newborn child of a mother, the concept of a newborn child and a child, the incorrect definition of the objective side and the subjective side after the commission of a crime, upon the occurrence of circumstances not provided for by the Criminal Code of the Republic of Kazakhstan, which directly affects the incorrect qualification of the crime.

Statistics on Article 100 of the Criminal Code of the Republic of Kazakhstan «Murder of a newborn child by a mother» in the Republic of Kazakhstan for 2017-2021:

The name of the indicator	2017	2018	2019	2020	2021
Registered	28	75	85	27	50
Finished	38	7	22	9	22
Sent to court	16	7	22	9	21
Number of offenses terminated on non-rehabilitating grounds	22	0	0	0	1
The number of offenses terminated on rehabilitative grounds	40	117	114	69	73
The number of offenses with interrupted terms of pre-trial investigation	7	29	23	6	14

In the city of Semey, in 2017, 0 were registered; in 2018, 2 were registered; 2 were reduced on rehabilitating grounds; in 2019, 2 were registered, 1 was completed, -1 was discontinued on rehabilitating grounds; in 2020, 0; in 2021, -1 was registered, -1 criminal offenses were discontinued on rehabilitating grounds.

If you look at the indicators presented above, you can see that this crime is increasing every year, and the number of offenses for which the terms of the pre-trial investigation of registered crimes were interrupted is no less than in cases sent to court. This indicates that unresolved issues were legally connected during the investigation of this crime.

Of particular importance is the instability of demographic indicators. The infant mortality rate in the Republic of Kazakhstan remains high.

Taking into account the above-mentioned problem, at the present stage, the protection of individual rights and freedoms, in particular, the life and health of a newborn child, is of particular importance.

The Republic of Kazakhstan has ratified the following normative legal acts, as they are one of the fundamental rights of any person, regardless of age, race, religion, political beliefs, economic or social status:

- The Universal Declaration of Human Rights, adopted on December 10, 1948, detailed human rights and, above all, the right to life;
- The International Covenants on Human Rights of 1966, in particular, in article 6 of the International Covenant on Civil and Political Rights - the right to life, an inalienable right of every person, protected by law, according to which no one can be deprived of life independently;
- Convention on the Rights of the Child, adopted on November 20, 1989, New York, USA, in accordance with article 2 of the Resolution of the Supreme Council of the Republic of Kazakhstan dated June 8, 1994. On ratification of the Convention on the Rights of the Child, the State, without any discrimination, determines whether his parents or guardians belong to race, color, sex, language, religion, political or otherwise respects and ensures all the rights of the child, regardless of his beliefs, national, ethnic or social origin, property status, health status and birth or other circumstances;
- Decree of the President of the Republic of Kazakhstan dated October 15, 2021 No. 674 «On approval of the Concept of Legal Policy of the Republic of Kazakhstan until 2030».

In the Constitution of the Republic of Kazakhstan, Chapter 2 is devoted to this issue, according to which article 15 states: «Everyone has the right to life. No one has the right to take people's lives on their own.» Also, Article 2 «Tasks of the Criminal Code» of the Criminal Code of the Republic of Kazakhstan identifies the priority tasks of the criminal law: «.. protection of the rights, freedoms and legitimate interests of man and citizen, property, rights and legitimate interests of organizations ...». In addition, a special part of the Criminal Code of the Republic of Kazakhstan begins with the chapter «Crimes against the person», which indicates the high importance and protection of human rights and values.

Murder is the most serious crime against a person, he abuses a person's life - one of his most valuable advantages, he causes great harm to society.

In the case of murder, there are consequences that cannot be restored or compensated, the death of a person is irreversible, since this issue is of great concern to society, legislation allows the court to consider cases of the following crimes in a differentiated manner, taking into account a number of circumstances: the identity of the offender, the form of guilt, the method of commission, the presence or absence of mitigating or aggravating circumstances.

One of the crimes that have mitigating circumstances in the legislation is the murder of a newborn child by a mother. In 1998, this composition was introduced for the first time in the Criminal Code of the Republic of Kazakhstan.

The President of the Republic of Kazakhstan, in his Address to the People of Kazakhstan dated September 2, 2019, said: «We have abandoned excessive measures of persecution and strict punitive practice of justice. However, the number of serious crimes in the country is not decreasing. We paid more attention to the humanization of our legislation and ignored the basic rights of citizens.

There is an urgent need to toughen penalties for sexual violence, pedophilia, drug distribution, human trafficking, domestic violence against women and other serious crimes, especially against children. I instruct the Parliament and the government to resolve this issue.»

Currently, due to changes in living conditions, aggravation of socio-economic problems, a decrease in the standard of living, crime is increasing, in particular, the murder of a newborn child by a mother. According to the Criminal Code of the Republic of Kazakhstan, the intentional death of a newborn child can occur both during childbirth and in the case of traumatic situations in the subsequent period or in the case of a mental disorder that does not exclude sanity. In this case, it is necessary to be able to distinguish the murder of a newborn child from the murder of a mother. After all, the murder of a child by crimes applies to any child under the age of 18, regardless of the subject. In this regard, there should be a certain theoretical and practical interest in studying the problems of the murder of a newborn child by a mother. The analysis of the essence of this crime allows, on the other hand, to consider issues aimed at: existing methods and techniques for the prevention of criminal offenses in homicides, to highlight the features of the murders of newborn children by mothers, as well as the legislative solution to the issue of regulating criminal liability for the investigated criminal offense.

The murder of a newborn child by a mother occupies an insignificant place among all criminal offenses, including violent ones. However, with a deep study of the problem, a number of negative phenomena arise. The criminal behavior of women is insufficiently studied. At the same time, antisocial, including criminal characters of women, have a negative impact on society and the family. Female crime is an indicator of healthy behavior of society, its spirit, attitude to the basis of human value.

Of particular note is the increase in the proportion of criminal offenses considered by us in an environment with unstable social conditions. Violent actions against people are perceived by representatives of this environment as everyday universal behavior. Among the murderous mothers, those who suffer from alcoholism, drug addiction and other mental disorders are the most common. In this regard, it is necessary to develop and apply differentiated forms of special prevention in the fight against the criminal offense in question.

To prevent the murder of a newborn child by a mother, it is necessary to determine the range of causes and conditions that contribute to this type of criminal offense. A comparative analysis of statistics and practice shows that the murder of a newborn baby by a mother is a high latency criminal offense. The reason for this is that a woman is trying to hide her pregnancy, relatives and friends do not know about the woman's condition. As a result, if the corpses of newborns are found, it will be difficult to find a woman in labor. And impunity, it contributes to the commission of a new crime. Identifying the causes and conditions that contribute to the murder of newborn children, aimed at strengthening the rule of law and order in the country, improving morality in society, will allow us to develop a number of measures to prevent it. The murder of a newborn child by a mother is a

criminal offense, the existing preventive and preventive measures are insufficient and ineffective.

The effectiveness of the fight against the murder of mothers of newborn children depends not only on the preventive actions of the subjects of prevention and the detention and punishment of those responsible for the murder of a newborn child, but also on the correct legal assessment of his actions.

This necessity arises from the current negative practice of the lack of uniform criteria for assessing what has been done in the qualification of the murder of newborn children by justice and law enforcement officers.

The reason for this is that to date, legal scholars have not been able to come to a consensus on the question of who should consider a newborn child, what period of time the legislator means by using the term «in the subsequent period» in Article 100 of the Criminal Code of the Republic of Kazakhstan. The subjective side of the murder of a newborn baby by a mother causes a lot of controversy.

Based on this, in the course of scientific research of the problems associated with the death of a newborn child by the mother, it is of some importance to improve the work of law enforcement agencies. In this regard, first of all, it is necessary to qualify the corpus delicti (object, objective side, subjective side, subject) of the criminal offense Murder by the mother of a newborn child.

The degree of elaboration of the research topic. On the topic of the dissertation research, it is known that there are many scientific studies, especially regarding the murder of a newborn child by a mother, which is generally recognized. It is widely studied by scholars in the fields of constitutional law, criminal law, criminology, philosophy, political science, economics and history.

A significant contribution to the study of the legal foundations of the murder of a newborn child by a mother, as well as to the criminal law and criminological study of the murder of a newborn child by a mother was made by foreign scientists: Yu.M.Antonyan, M.N.Gernet, A.K.Zvirbul, E.B.Kurguzkina, K.Sh.Kurmanov, O.V.Lukichev, L.I.Timina, T.D.Tsybulenko, G.Fabriz, G. S. Sharipova et al. Prior to that, the dissertations were devoted to the criminal law, criminological and criminal procedural problems of the murder of children (in a narrow sense, the murder of a child should be understood as the murder of newborn children).

In addition, in-depth special studies on the murder of the mother of a newborn child have not been conducted in the Republic of Kazakhstan. In this regard, some aspects of this research work, including the general provisions of criminology and criminal law, were touched upon by scientists of the Republic of Kazakhstan: Akhmetov B. I., Beisenov B. S., Gaitov A. A., Kairzhanov E. I., Korzun I. V., Maulenov G. S., M.S. Narikbayev, R. T. Nurtaev, S. M. Rakhmetov, K. J. Baltabaev, G. R. Rustemova, V. A. Sergievsky, A. B. Skakov, D. S. Chukmaitov, R. M. Zhamieva and others.

**The object of the research** is social relations arising in connection with the murder of a newborn child by a mother in accordance with the complexity of the problem under consideration.

**The subject of the research** is the criminal-legal and criminological aspects of the murder of a newborn child by the mother, the causes, conditions and emotions that contribute to the commission of this criminal offense, their tendencies, the identity of criminals, psychological, physiological characteristics of persons committing these crimes, as well as the criminal-legal norm on responsibility for the murder of a newborn child by the mother, its main characteristics.

**The purpose of the research** work is to identify the causes, conditions and emotions in the criminal law analysis and synthesis of the murder of a newborn child by a mother and to present ways to improve their prevention.

To achieve these goals, the following main tasks are set:

- analysis of the crime of murder by the mother of a newborn child;
- show the history of the development of legislation on the murder of a newborn child;
- to reveal the object and objective side of the crime;
- disclosure of the subject and the subjective side of the crime;
- analysis of the state, structure, dynamics of the mother's murder of a newborn child;
- a comprehensive study of the causes contributing to the death of a newborn child by the mother;
- study of personal behavior inherent in mothers who kill their newborn children (socio-demographic, cultural-educational, emotional-volitional qualities);
- determination of the main directions for improving the effectiveness of preventive activities of bodies and other subjects of internal affairs to eliminate the causes and conditions of the murder of newborn children;
- development of scientifically based rules and recommendations for the interaction of prevention subjects to prevent the killing of newborn babies by mothers.

**The methodological and theoretical basis of the research** is the achievements of various fields of scientific knowledge of criminology, Criminal, Penal, administrative and family law, psychology, pedagogy, medicine, reflected in the relevant scientific works of Kazakhstani and foreign authors.

The specificity of the object of research predetermined the use of methods of social, logical-theoretical, statistical, comparative analysis, substantive analysis of normative documents and other information carriers, control, generalization and analysis of official documentation.

**The scientific novelty of the research** consists in the fact that on the basis of previously developed recommendations on the qualification of the commission of violent acts or inaction on the murder of a newborn child by the mother, an updated program of preventive measures to minimize a socially dangerous act is proposed.

The composition of the crime provided for in Article 100 of the Criminal Code of the Republic of Kazakhstan is analyzed, as well as theoretical and applied issues are considered on the basis of a comprehensive study of scientific literature, regulations, statistical materials, independently obtained empirical data. One of the

results of the research work is the legal definition of the term «newborn», based on medical standards.

The research work comprehensively examines the criminal-legal and criminological aspects of the criminal offense of the murder of a newborn child by a mother.

**The main conclusions to be made for defense:**

1. When qualifying the actions of Article 100 of the Criminal Code, it is necessary to take into account the newborn of the child, determined in accordance with the pediatric criteria of forensic medical examination. The murder of a baby after passing the newborn period is not qualified under Article 100 of the Criminal Code of the Republic of Kazakhstan, responsibility in such cases comes under Article 99 of the Criminal Code. During the investigation, it is proposed at the legislative level to determine the upper age limit of a newborn child for the correct qualification of a crime. In this regard, it is proposed to determine at the legislative level whether to consider a child as a newborn until he reaches the age of 28 days from the moment of birth.

The subject of the considered corpus delicti is a special one. That is, the subject of the crime is the mother who gave birth to the child herself. In the Republic of Kazakhstan, the concept of «mother» is not given by law.

We consider it necessary to introduce the definition of the concepts «newborn child», «child», «mother of the child» into the criminal legislation for the correct qualification of a criminal offense for the murder of a newborn child by the mother.

2. We recommend changing some terms of Article 100 of the Criminal Code of the Republic of Kazakhstan the words «during childbirth» with the words «from the moment of the beginning of physiological childbirth», and the words «from the moment of the beginning of physiological childbirth» with the words «or immediately after childbirth».

A proposal is also being made on the need to supplement article 100 of the Criminal Code of the Republic of Kazakhstan with Part 2, which provides for such qualifying features as repeated Murder by the mother of a newborn child, Murder by the mother of a newborn child with special cruelty, murder by the mother of two or more newborn children.

In order to strengthen responsibility for the criminal offense «murder of a newborn child of a mother», we propose to consider the possibility of imprisonment of the subject of the crime for a period of four to six years for repeated, especially cruel, murder of two or more newborn children.

3. In accordance with the Criminal Code of the Republic of Kazakhstan, persons who have reached the age of fourteen at the time of the commission of the crime are brought to criminal responsibility for a number of crimes. It is known that at the present stage of human development, acceleration has become widespread, and therefore cases of early puberty of adolescents are not uncommon, which, in turn, leads to early sexual intercourse, which leads to negative consequences (premature pregnancy), resulting in a desire to get rid of them.

In this regard, we recommend including criminal liability from the age of 14 in the list of crimes involving the Murder of a newborn child by a mother (Article 15 of the Criminal Code of the Republic of Kazakhstan).

4. The subjective side of the mother's murder of a newborn child is characterized by deliberate intent. Intention can manifest itself both in the form of direct and indirect intention. Particular attention should be paid to whether the mother killed the newborn child - during or after childbirth. It is very important to establish the time period of the occurrence of intent to commit a crime, to determine whether it suddenly arose or was conceived in advance. The definition of the emotional state of the mother is of particular importance in the criminal legal assessment of the act, as it helps to establish the presence of such a mitigating circumstance as a «traumatic situation», expressed in the disposition of Article 100 of the Criminal Code of the Republic of Kazakhstan.

The structure of this article determines whether the subject is in a special psycho-emotional state caused by childbirth, or in a certain traumatic state that occurred during childbirth. As a result, he decides to kill his newborn baby.

5. In order to prevent the crime of killing a newborn child by a mother during a routine inspection by employees of the social security department of the local administration, territorial inspectors of the local police and employees of state institutions related to this issue

it is necessary to identify potential persons prone to criminal offenses and deviant behavior. In our opinion, in order to provide them with timely medical and other social assistance, it is necessary to take measures to register them in women's consultations at the maternity and childhood protection center.

In order to combat crimes of killing a newborn child by a mother, the author defines preventive measures. The following preventive measures are recommended:

- social and legal;
- teen girls;
- educational in relation to parents and teachers;
- medical and preventive.

These measures make it possible to prevent the mother from killing a newborn child.

**The scientific and practical significance of the research** results is determined by the introduction of scientific and theoretical provisions, conclusions and recommendations formulated in the dissertation, which significantly improves the activities of internal affairs bodies and other subjects of prevention to prevent the killing of newborn children.

The main conclusions presented in the dissertation research contribute to the improvement of theoretical problems of criminal law.

The dissertation also defines the nature and scope of unresolved problems in the activities of prevention subjects, provides scientific and practical recommendations for ensuring the effectiveness of prevention of the type of crime under study.

The obtained results, in our opinion, can contribute to faster detection and prevention of crimes related to the murder of newborn children, and can also be used in the course of scientific research aimed at further improving the general theory of criminology and the development of individual methods of crime prevention; studying the course of criminology, Criminal, Penal Enforcement Law and related- special courses in these disciplines in the preparation of methodological manuals; it can be used in the educational process during the training of specialists in the field of law in higher educational institutions and in advanced training courses for law enforcement officers.

**Approbation of the results of the study.** The applied nature of the study made it possible, on the basis of generalization and analysis of empirical material, to formulate specific recommendations aimed at further improving the criminological problems of the murder of a newborn child by a mother.

The dissertation research was prepared, reviewed and discussed at the Department of Criminal Law of Alikhan Bokeikhan University. 7 scientific articles have been published on the dissertation:

1 article in an international scientific publication included in the Scopus database: Medicine and Law Volume 40: 4 issues will appear in 2021, 497 – 518, Newborn child murder by mothers: Criminal and forensic issues;

4 article in the journal of the Committee for Quality Assurance in Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan:

Criminal-legal features of the murder of a newborn child by a mother, International Scientific Journal «Science and Life of Kazakhstan» No. 6 (67) 2018, Astana 2018, pp. 23-24. ;

Features of criminal responsibility for the murder of a new child in Kazakhstan and the Baltic countries, International Scientific Journal «Kazakstannyn Gylym men omiri» No. 7/2 2019, Almaty 2019, pp. 19-21. ;

The murder of the mother of a new child: criminal law and criminological problems, International Scientific Journal «Science and Life of Kazakhstan» No. 12/1 2020, Almaty 2020, pp. 35-39.;

Prevention of the murder of the mother of a new child: criminal law and criminological aspects, International Scientific Journal «Gylym» N1 (68) 2021, Almaty 2021, pp. 60-66. ;

1 Article at international scientific conferences: Modern problems of state and law: collection of materials of the II All-Russian (national) Scientific and practical conference with international participation, December 12, 2019 / [under the general editorship of R. A. Proschalygin]; ANOO IN the Center-rosoyuz of the Russian Federation «SibUPK». – Novosibirsk, 2019, 259-264, Prevention and criminological characteristics of the murder of a newborn child by a mother;

1 the article was published in the International journal «Bulletin of the Kazakh Innovative Humanitarian Law University»: Bulletin of KazGUIU 39tom, No. 3 (2018), pp. 92-94.



**The structure of the research work.** The structure of the research work consists of signs and abbreviations, an introduction, three chapters, 9 subsections, a conclusion and a list of references.