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The Crimes Committed Under the Provoked Temporary Insanity or Femicide

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Abstract

A crime committed under the provoked temporary insanity is one of the most complicated issues of criminal law, as it does not refer only to the sphere of law. A lot of sciences are involved in the process of studying the provoked temporary insanity crime, such as: law, psychology, psychiatry, social ethics, politics, etc. Hence, it requires interdisciplinary and dimensional understanding, i.e. consideration in the context of the Dimension Theory.

The work discusses the Criminal Law approaches to the provoked temporary insanity crimes used by the Georgian criminal law as well as the German and the Common law countries and interrelations among these approaches are analyzed using comparative methods.

Keywords: Provoked Temporary Insanity; Femicide, Provocative Action.

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Introduction

Article 111 of the Criminal Code of Georgia considers "grave insult" as a prerequisite for the Crime committed under the provoked temporary insanity. Whether an insult was serious, is a matter of assessment. Usually, in this case, the assessment is made by Court. During the assessment, we must take into account the personal characteristics of the offender. For example, their sensitivity to the inner feeling of honor[1]. Such an approach also considers the offender's upbringing and the social environment in whic they live in. What is acceptable and relatively easy to tolerate in one social environment, is offensive to representatives of another social stratum. The values that a victim touched is also important, for example: cursing a mother, wife, sister insulting words is perceived as a serious insult in Georgia and many other cultures.[2] Insult can be expressed: by word, action and image. Considering all the above-mentioned features, dimensional understanding is needed to determine the degree of irritation: grave insult, other grave immoral act, as well as the severity of unlawful abuse. Only then can it be assessed how proportionate and adequate the provoked temporary insanity and the offender's actions were.

The research topic is significant in many respect. Since it is directly relaated to such adjacent fields as law, psychology, psychiatry, social ethics, etc.a many aspects have accumulated that require a new understanding. The study of emotional feelings is more or less necessary in all branches of legal science, although criminal law requires it the most, as, in this case, we need to consider the emotional sphere in relation to a much wider range of theoretical and practical issues.

1.0. The Crime committed under the provoked temporary insanity in the Context of Social Ethics

It is very important to determine the public views on the Crime committed under the provoked temporary insanity; how ethical or unethical the majority considers it to be. To determine this, I implemented the so-called " simple random survey", and, according to various personal characteristics, I conducted division of population, which helped me to research the issue of my interest in framework of social ethics.

95% of the interviewed psychologists think that the Crime committed under the provoked temporary insanity must exclude criminal liability in certain cases, but free sexual life is not included in the mentioned. Moreover, 62% of respondents who have psychological education believe that free sex life, for example marital infidelity, should be excluded from the causes of privileging provoked temporary insanity.

I believe, the above-mentioned approach of psychologists is reasoned by the intention and purpose of the provoking subject. During a free sex life, a person is only concerned with own rights to decide with whom and when to have sex. In case of adultery, a person committing it may not have the intention and goal of provoking the spouse. Professor Mzia Lekveishvili develops a similar opinion, believing that in the case of adultery is not a deliberate humiliation of honor; the action is not illegal, but it is still considered an insult.[3] Moreover, a person in the provoked temporary insanity may kill or seriously injure a third person, who may not be aware that their

[1] Bichia M., The scope of the civil legal concept of honor (analysis of theory and judicial practice) (2014) vol 2., TSU Faculty of Law Law Journal., 5; Izard C. E., Human Emotions (New York Plenum Press 1977) 87.

[2] Tskitishvili T., Punishment and its charging (Publishing House Meridiani 2019) 204.

[3] Lekveishvili M., Murder committed under the provoked temporary insanity (1976) vol 5., Soviet Law Journal., 14.

sexual partner has a spouse, and this action will be considered as a mitigating circumstance for a person committing the crime committed under the provoked temporary insanity.

Professor Tariel Lemonjava develops an opinion contrary to the above mentioned position and considers that a victim may not act with direct intention to harm the honor of the person who was cheated on, but in such a case, there is an eventual intent. The unfaithful party realizes the possibility that the spouse may learn about the fact of infidelity, but is indifferent to the possibility. Professor Lemonjava also discusses the issue of considering adultery as a motive for the crime committed under the provoked temporary insanity and believes that in such a case, essential is the relationship of the spouses prior to adultery fact; what attitude they had to each other's sexual life. Considering this, it will be possible to distinguish three groups of adultery, with varying degrees of insult: first – a cheated person thought that they were not being cheated on, had a strong family and were an exemplary spouse themselves. When such a person witnesses the cheating by their spouse, their state of falling in the provoked temporary insanity is quite acceptable. Second – a cheated person suspected spouse's adultery, but were not sure and suddenly they came across the fact of adultery. Professor Lemonjava claims that murder committed in such situation should also be considered as the Crime committed under the provoked temporary insanity. And thirdly – a cheated person was aware that that the spouse was systematically cheating on them and tried to change spouse's behavior. If, in such a situation, they witness the act of adultery and commit a murder, it should not be considered as committed under the provoked temporary insanity.[4] I believe that in addition to knowing about the fact of adultery, other aspects of relationship of spouses must be considered. If one spouse cheats on the other, he or she no longer has the moral right to feel offended by reciprocal infidelity, and therefore his or her emotional background should not lead to a privileging provoked temporary insanity. Attention must also be paid to the attitude of spouses to each other, whether there were episodes of physical and psychological violence, indifferent or dishonorable actions, etc. Only after an in-depth study of all of this, a decision should be made whether the crime was committed under the provoked temporary insanity or not.

Although, in Georgia, for the majority of society, free sex life is considered as an immoral behavior, which is evidenced by the general statistics on the above question - 58% answering that the temporary insanity caused by someone else's free sex life should remain a mitigating circumstance, but this is not such a big difference not allowing it to be reviewed for details. What can be immoral for whom is a matter of broad judgment and we cannot rely on it, since, as the statistics show, the majority of interviewed psychologists do not consider free sex life to be a serious immoral act. And Democracy, in the modern sense, implies the rule of the majority with the necessary consideration of the protection of the rights of minorities. Therefore, it is necessary to consider the interests of minorities and to follow the path of liberalization that Western countries are taking. At the end of the above-mentioned article, Professor Lemonjava writes - "Until the moral face of the society has changed, the non-recognition as being such, of homicide committed under the provoked temporary insanity and the severity of the punishment will not reduce the number of the named crimes at all."[5]

Obviously, a lot has changed since 1978, which is proven right by the results of the mentioned research. Society is almost evenly divided in view of moral change. Therefore, today's

[4] Lemonjava T., Adultery as the cause of the provoked temporary insanity (1978) vol 3., Soviet Law Journal ., 47-49.
[5] Ibid 49.

toughening of the punishment will definitely give us results in terms of reducing femicide crimes. 44% of respondents living in Tbilisi think that free sexual life should be excluded from the causes of the provoked temporary insanity and this circumstance should not lead to mitigating of responsibility. 35% of respondents living in other cities, 29% of those living in villages and 15% of those living in mountainous regions think the same. Based on the above-mentioned, the interviewed persons living in the mountainous regions consider the free sex life as the most immoral act; and they are followed by those living in villages and then those living in other cities. As for the residents of Tbilisi, the difference between the indicators of negative and positive responses of the interviewees is only 12%, that is, they think almost the same about free sex life. 77% of the interviewed men think that a free sex life is a serious immoral behavior and the provoked temporary insanity caused by it should lead to mitigation of guilt. Of course, according to the statistics available in the country, the only victims of such cases are women. There is no case in Georgia where a wife killed her husband due to the provoked temporary insanity caused by adultery. According to the traditions in the country, in such cases, only husband is expected to be dishonored, to the extent of getting in the provoked temporary insanity, while wives generally consider husband's infidelity to be a normal event and fitting within the norms; not causing the provoked temporary insanity at all. The same can be said about the provoked temporary insanity of a parent, caused by sexual life of a minor child. In one of the cases, which I will discuss in more detail later, a father's temporary insanity was caused by his underage daughter's sexual act with an underage boy.[6] In my opinion, if the father had seen his minor son in the mentioned situation, it would not have caused his temporary insanity. By this I mean that that with such an approach we promote gender-based discriminatory oppression and, since nowadays a lot of attention is paid to the rights of women and children, we should extend this trend to the Criminal Law of Georgia. Back in 2002, the Council of Europe recommended that adultery be excluded from the justifications for domestic violence,[7] which implicitly means the exclusion of marital infidelity from the privileging causes of the temporary insanity, although in some cases it can become a mitigating circumstance and judges takes it into account at the stage of sentencing. In addition, in 2013, the UN General Assembly adopted a Resolution on femicide, which calls on member states to take all possible measures to eliminate gender-based murders of women and girls. On February 15-19, 2016, the UN Special Rapporteur on Violence against Women, the Causes and Consequences of Violence against Women, Dubravka Simonovic, officially visited Georgia and spoke about the prevention of gender-motivated murders of women and for this purpose called on the country to create a monitoring system for the supervision of gender-based killings of women i.e. femicide monitoring. In order to fulfill the recommendation of the UN Special Rapporteur, on November 25, 2016, the Public Defender of Georgia announced readiness to create a femicide monitoring mechanism with the technical support of the UN Women Organization.[8]

Nevertheless, only 42% of the interviewed women think that a free sex life should not lead to a privileged provoked temporary insanity . All this indicates that the majority of women do not want to protect their rights, as, so deep are their moral, sometimes - stereotyped, views and

[6] Cassation complaint [2017] №293Ap-17, Tbilisi, October 4.
[7] Council of Europe, Committee of Ministers, Plenary., "Committee on Ministers- on the protection of women against violence" [2002] 73.
[8] Publish Defender of Georgia., Femicide monitoring report [2018] 5.

traditions. But this does not free the State from its positive obligation to protect the rights of its citizens. The Council of Europe Convention on the Prevention and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention, which was adopted in 2011 and entered into force for Georgia on September 1, 2017, recognized in its preamble that women and girls are often victims of serious forms of violence, such as, crimes committed in the name of restoring honor. This crime is considered an extreme form of violence against women and refers to the killing of women and girls, which is motivated by sexism and characterized by various forms of possessive attitude towards women.[9] Article 42 of the Istanbul Convention directly states:

Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honor” shall not be regarded as justification for such acts. These covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behavior."[10]

Honor is related to the set of moral rules established in the society and the social circle in which this or that person was brought up. Accordingly, every person’s sense of honor is individual and is determined according to the society surrounding him. In this case, the crime of honor is based on strong patriarchal origins and is related to the possessive attitude towards women. A woman who dares to violate the prevailing norms dishonors the man and the family and this may lead to the temporary insanity in the man. However, as I mentioned above, according to the Convention, the crime of femicide committed due to the violation of honor, cannot be considered as a privileging circumstance of the action. Accordingly, free sexual life, which is the cause of femicidal murder, must be excluded from the privileging circumstances causing the provoked temporary insanity.

2.0. Legal differentiation of the Crime committed under the provoked temporary insanity in terms of a Provocative Action

According to the legislation of Georgia, the causes of the provoked temporary insanity vary; they are listed in Article 111 of the Criminal Code, namely: unlawful violence, serious insult or other serious immoral act, as well as mental trauma caused by repeated illegal or immoral behavior of the victim. These categories require necessary differentiation.

Unlawful violence is a criminal offense and responding to it, in order to protect one's own legal good, does not constitute a crime, if the person does not go beyond the scope established by the norm. Insult refers to the deliberate humiliation of a person's honor and dignity, which is expressed through verbal violence (swearing, etc.). Therefore, all of this should be of severe, serious type, in order for it to considered as cause for provoked temporary insanity. As for severe immoral act, I believe it to be a very controversial issue. What can be considered moral or immoral?

During the interpretation of the law, the basis of its legitimacy lies in the present, that is, the law should be interpreted in accordance with the perceptions prevailing today. The clearest expression of this is the interpretation of such an undefined concept as, for example, the definition of "immoral". It is a set of historically changing views that were acceptable among members of a

[9] Meskhi M., Femicide committed in the name of honor (2019) TSU Faculty of Law Reports., 69.
[10] The Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence [2011] Article 42.

legal community, within certain social relationships, and that undergo substantive changes over time.[11]

Morality is a unified system of values and beliefs that is concentrated in an individual. Its basis is the obedience of the individual to the social norms. Every person has their own moral frameworks and the morality of individuals does not have to be determined by the worldview of the majority. Morality and its research remain one of the important challenges in psychology.[12] Different cultures have different standards and criteria for judging what is morally just or immoral.[13] This particular feature allows judges to decide, based on their own moral standards, whether or not a person's degree of responsibility should be mitigated. That is, if a judge considers that a specific "provocation" is a serious immoral act and caused an offender to fall into the state of provoked temporary insanity, the judge will mitigate the punishment. For example, in one one of criminal cases, a person witnessed an underage boy having a sexual relationship with his underage daughter and caused heavy bodily harm to the boy. The judge qualified the said action as serious injury to the body committed in the provoked temporary insanity, considering the sexual relationship of a minor to be a serious immoral act.[14] How logical and fair is all this, if this way the rights of other people are restricted - in this particular case - sexual freedom. Therefore, it is very controversial what can be moral or immoral, so the mentioned factor should be removed from those categories of the provoked temporary insanity, for which it mitigates the degree of responsibility of the offender. Immorality should also be changed in the last sentence - "Mental trauma caused by repeated unlawful or immoral behavior of the victim" and it should be defined as follows - "Mental trauma caused by repeated unlawful or insulting behavior of the victim."[15]

3.0. The Crime committed under the Provoked Temporary Insanity in the Countries of Common Law and Germany

In Common Law Countries, adultery is only considered provocation if one of the spouses directly witnesses the infidelity. With regard to the Part Two of Paragraph 213 of the German Criminal Code, serious insult as a mitigating factor for homicide includes not only insults, but also any kind of immoral and humiliating treatment of a grave nature. At the same time, the act must be assessed as a serious offense based on all relevant circumstances, objectively and not only based on the subjective perception of the offender. Both the personal characteristics of the offender and the victim are important, as well as the social circle where these persons live; as well as the relationship between them before committing the crime. The insult may not be so severe in a particular situation, but due to its continuous, regular nature, it will cause temporary insanity of the offender, because it was the last straw for the psyche of the provoked.[16]

Sexually humiliating treatment and marital infidelity has a big role in view of the category of serious insult. However, serious sexual insult should be unexpected for the partner and this kind of provocation should not be caused by insulting actions carried out by the provoked person during the partnership (for example, the husband constantly cheats on his wife, abuses her... and

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[11] **Tsipelius R**., 2006., Doctrine of Legal Methods., Tenth Revised Edition., Beck Publishing House, Munich., (Levan Totladze., Publishing House gtz 2009) 31.

[12] Gerig R., Zimbardo F., Psychology and Life (Chitashvili M., Mirianishvili M., Tbilisi University Publishing House 2009) 754.

[13] Matsumoto D., The Handbook of Culture and Psychology (Oxford University Press, New York., 2001) 61.

[14] Cassation Complaint [2017] №293ap-17, Tbilisi, October 4.

[15] The Criminal Code of Georgia, 1999., Article - 111.

[16] Schneider., Uberlegungen zur restriktiven Auslegung von 213 StGB (NStZ., 2001) 455.

as a result, cheating on the part of the wife should not be considered as a privileging circumstance for the provoked temporary insanity action). Therefore, whean discussing serious insults, it is important to assess the general attitude between the parties and not directly the cause-and-effect relationship during the commitment of the crime. The act committed by the offender in the past, which led to the encouragement of the provocation, excludes the privileging circumstance of the act if the provocation and its causes are proportionate to each other.[17]

4.0. The Crime committed under the Provoked Temporary Insanity in Georgian Judicial Practice

The study of judicial practice in relation to the Crime committed under the provoked temporary insanity is extremely important to reveal gaps existing in practice, which facilitates the analysis of the research. This is especially important to determine the phenomenology of post-criminal emotional feelings immediately after the crime is committed. This makes the psychological nature of the provoked temporary insanity and the nature of the committed action clearer. Let us discuss some cases from the judicial practice of Georgia:

According to the judgment of Poti City Court of October 19, 2016, the case of A. G., who had no criminal record at the moment, was reclassified to Article 121 of the Criminal Code of Georgia from Article 117, Part 5, Sub-Clause of the Criminal Code of Georgia and he was sentenced to 1 year and 6 months of imprisonment. According to the resolution on the charges against the person A.G. was accused of deliberate serious harm to health, committed against a minor with prior intention, which was expressed in the following:

On June 8, 2016, at around 4 p.m., in P…, in the living room of his house located at #.., …. Str., A.G. witnessed minor J. Kh caressing his minor daughter – G.G. and deliberately inflicted a life-threatening severe injury by using a knife, in the form of a cut through the spine.

The October 19, 2016 verdict of the Poti District Court remained unchanged by the February 27, 2017 verdict of the Kutaisi Court of Appeals Criminal Chamber.

The judgment of the Kutaisi Court of Appeals Criminal Chamber was appealed against by the cassation procedure. With the submitted cassation complaint, the Prosecutor demanded the change of judgment of the Kutaisi Court of Appeals Criminal Chamber, dated February 27, 2017, and found A.G. guilty of committing the crime provided for in Article 117, Part 5, Sub-paragraph "b" of the Criminal Code of Georgia on the following grounds: the evidence in the case undoubtedly proves the fact that J. Kh did not conduct an unlawful violence, grave insult or other serious immoral act against A.G. or his daughter, which may caused G.A. falling into the temporary insanity state, which is a necessary condition for qualifying the action under Article 121 of the Criminal Code of Georgia.

As a result of the cassation complaint and the study of the case, the Cassation Chamber concluded that the case materials clearly established that A. G. caused deliberate severe harm to health of J.Kh. in the provoked temporary insanity. According to the conclusion of the medical examination of the Levan Samkharauli National Bureau of Forensics, of June 10, 2016, J. Kh was diagnosed with: unspecified shock, partial wound through the spinal canal, swelling of the spinal cord at the level of TH7-TH8 vertebrae, myelopathy; the injury is the result of the action of an object with stinging-cutting properties and qualifies as the severe, life-threatening type of bodily injuries. The expert M.M., interrogated as a witness, testified that A. G was in a state of physiological affect during the committed act. According to witness Sh. G.'s testimony, "A.G. was

[17] Fischer T., Strafgesetzbuch., 68. Auflage (2021) 1525.

out of his mind...” Testimonies by witnesses coincide with A.G.’s testimony. He explained at the Court session that when he opened the door, he saw that J. Kh. was standing pants down, holding his penis, while A.G.’s daughter was lying on the couch; seeing this, his mind “switched off” and he does not remember what he did after. Based on the above, the Cassation Chamber fully shares the judgment of the courts of the 1st and appellate instances that A.G. acted in a special mental situation, temporary insanity and that such action was provoked by the behavior of the victim.[18]

In my opinion, the accused was really in the temporary insanity state, but not in the provoked temporary insanity, because it is a matter of assessment - the extent to which the action of the victim corresponds to the list of causes of the provoked temporary insanity provided by the Law. A minor may be 5 years old or 13 years old, so if a 13-year-old minor engaged in sexual activity with a 15-year-old minor, it is a matter of assessment, to what extent it can be considered a serious immoral act.

According to the judgment of Mtskheta District Court, of December 7, 2017, V. Kh., having no previous criminal record, was found guilty under Part 1 of Article 111 of the Criminal Code of Georgia and was sentenced to 2 years of imprisonment.

The Chamber of Criminal Law Cases of the Tbilisi Court of Appeals considered it defined that V. Kh. committed premeditated murder in a state of sudden, strong emotional excitement, which was caused by the victim's serious immoral action towards the offender, as well as mental trauma caused by the victim's repeated immoral behavior, which was manifested in the following:

On August 3, 2017, at night, V.Kh. learned that that his wife - E. Kh. cheated on him multiple times. On August 3, 2017, at approximately 1:10 p.m., in the village of G, District K, in his home, V.Kh. deliberately inflicted multiple knife injuries on his wife’s (E.Kh) throat and other parts of the body - who later died as a result of the mentioned injuries at the K. Regional Health Center LLC, located in S. village.

According to the conclusion of the psychiatric-psychological examination, at the time of committing the said act, V. Kh, was in a psychological temporary insanity state (a state of sudden, strong emotional excitement).

The defense side appealed the verdict of the Criminal Chamber of the Tbilisi Court of Appeals by cassation rule. With the presented cassation appeal, the defense side requested to amend the judgment of the Criminal Chamber of the Tbilisi Court of Appeals of February 5, 2018, and taking into account Article 54 of the Civil Code of Georgia, to determine the minimum sentence for V.Kh. - 1 year of imprisonment or conditional sentence based on the consideration that he committed a crime of a less serious category; V. Kh. pleads guilty and regrets the committed action; is a disabled person of the 2nd group due to an injury received during compulsory military service; has no previous convictions; he has 4 children, 2 of whom are minors; is the sole breadwinner of the family; characterized positively; he himself reported the incident to the police and helped solve the crime; is the victim of an immoral and tragic accident.

Regarding the justice of the sentence, the Cassation Chamber notes that the Court of Appeals fully took into account the aggravating and mitigating circumstances of Kh's responsibility and, in accordance with Article 53 of the Criminal Code of Georgia, within the scope of the sanction provided for by Article 111, Part 1 of the Criminal Code of Georgia, he was given a fair punishment that fully ensures the aims of punishment under Article 39 of the Criminal Code of

[18] Cassation Complaint [2017] №293ap-17, Tbilisi, October 4.

Georgia and does not violate the requirements of Article 54 of the Criminal Code, which the Cassation Chamber also agrees with.[19]

I believe, the said sentence is appropriate and the Cassation Chamber made the right decision not to reduce the sentence. The fact that the deceased wife's goal was to provoke her husband and in general what kind of relationship they had with each other, should be clarified.

According to the judgment of the Mtskheta District Court of December 7, 2017, V---I was found guilty under the Part One of Article 111 of the Criminal Code of Georgia and was sentenced with 2 years of imprisonment. V---I was sentenced to the mentioned term for the following action he committed: premeditated murder in a state of sudden, strong emotional excitement, which was caused by the victim's grave immoral action towards the offender, as well as mental trauma caused by the victim's repeated immoral behavior. The criminal act committed by him was manifested as follows: on August 3, 2017, in the night hours, V----I. became aware of his wife E.'s repeated infidelity. On August 3, 2017, at approximately 1:10 p.m., in V's residence located in K., V inflicted multiple injuries on his wife E. with a knife, in the throat and other parts of the body, with the intention of killing her. Later, as a result of the injuries, E. died at LLC "K--" located in D. According to the conclusion of the psychiatric-psychological examination, at the time of committing the mentioned action, V. was in a affective psychological state (a state of sudden, strong spiritual excitement). Lawyer A-, defending the interests of the convicted V., appealed through the appeal procedure and requested to make changes in the judgment of the Mtskheta District Court, of December 7, 2017, in particular, to determine the sentence of 1 year of imprisonment for the convicted person and to consider the sentence as conditional. The appellant indicated as grounds for reduction of sentence the circumstances that the convicted person does not have any aggravating circumstances, he himself informed the police about the crime committed, helped to solve the crime. After discussing the mentioned criminal case, the Chamber checked the validity of the appeal, evaluated the evidence gathered in the case and decided that the appeal request should not be satisfied due to the following circumstances: the Chamber believes that the court of first instance fully established the factual circumstances of the case and gave a correct legal assessment of the action taken by V. The fact of committing a crime by V., apart from the testimony of the convicted person, is confirmed by the evidence in the case, namely: witness Y-'s testimony established that he lives in K- with mother E-, father V-, brother Y- and with sister N. On August 3, 2017, around 13:00, the mother, E, came home and told Ir and N that she attempted a suicide, but could not do it. Ir and N started cursing at their mother, as that they were surprised by their mother's behavior, who told them the day before that for 2 years she was in a relationship with her husband's relative, K-E, and that they loved each other very much. N called father V to come home. 5 minutes later, V came home and immediately started beating E, took a knife with a red handle and stabbed the mother in the neck, after which he left the kitchen. B took his father out of the room, he brought him water and tried to somehow get him out of the situation, because his father was unruly and he had never seen him so angry. The father picked up the phone and called his friend K, who is a Patrol Police officer, and told him that he had killed his wife and to come to see him. After that, K came to their house together with other police officers and the father was taken out of the house. The bleeding mother, who appeared to have wounds in the throat area, was taken to the hospital by the ambulance.[20]

[19] Cassation Appeal [26.07.2018] 2k-129ap.-18, # 180100117002260397, Tbilisi.
[20] Cassation Appeal [05.02.2018] #1/g-50-18, # 18-100117002260397., Tbilisi.

As it is known, the provoked temporary insanity is a privileging circumstance of a crime, when the response to the provocation is instantaneous. In the mentioned case, more than 12 hours had passed since the perpetrator heard about his wife's adultery. I believe, this particular case is a femicide committed in the name of restoring honor and it should not be considered a privileged crime. A murder was committed on the basis of strong resentment, with the motive of revenge against a family member. Therefore, the crime should be qualified by referring to the relevant articles and not as homicide under the Article 111.

According to the current Criminal Code, in the definition of a crime committed under the provoked temporary insanity its causes include unlawful violence, serious insult or other severe immoral act of a victim, as well as mental trauma caused by repeated unlawful or immoral behavior of a victim. All this cannot be summed up in one wording. Therefore, there should be a fragmented division of this crime into subsections, where retaliation caused by unlawful violence will be a less serious crime than that caused by serious insult or other severe immoral acts. For example, in 2006, Australia abolished the privileged status of provoked crime in order not to stigmatize non-violent sexual development as one of the provoking factors. Wales also followed the same path. If we compare all this with the judicial practice of Georgia in 2016-2017, where the courts of all three levels considered the person accused of seriously harming the health of a minor to be on the provoked temporary insanity and sentenced him to 1 year and 6 months in prison, we will see that this is really irrelevant, since in the above-mentioned case there were no signs of sexual abuse and consensual sex between minors is not a criminal offense. That is why it is necessary to separate the Crime committed under the provoked temporary insanity arising on the grounds of marital infidelity and on the grounds of rape or serious damage to health, since these cases are significantly different in the degree of injustice.

Conclusion

As a conclusion, we can say that several aspects should be considering regarding the Crime committed under the provoked temporary insanity:

- The word "immoral" should be removed from Articles 111 and 121 of the Criminal Code. Since morality is based on ethical norms, which contain rather vague concepts and judgments, which lack "legal certainty". Determining their exact concept, semantic content is often complicated. The cycle of immoral actions is so long that it is practically inexhaustible. If we refer to professor Mindia Ugrekhelidze's statement, this creates a kind of "casual spider web" from which it sometimes becomes impossible to "disentangle" the truth and draw a clear conclusion in order to achieve accurate legal qualifications. Treating the killing of a person for immoral behavior as a privileged crime is contrary to common sense and logic, as well as the idea of a democratic and legal State. Therefore, it would be better to discuss the issue from the scope of subsumption or the qualification of the crime to the principle of individualization of blame and responsibility, as well as punishment and then each individual case will be decided case by case, in accordance with the provocative action and the degree of victimization of the subject.
- Free sex life should be excluded from the causes of privileging the provoked temporary insanity, so as not to promote gender-based domestic violence and abuse. As for the adulterer, in such a case, the previous relationship of the spouses must be taken into account; before the fact of the crime occurred. In adultery, as a provocative act of the

offender, the provocated himself should not be a contributor to the action. That is, if a husband treated his wife offensively, physically or psychologically abused her or was unfaithful himself, in such a case the fact of adultery on the part of the wife should not be considered as a cause of privileging the provoked temporary insanity. At the same time, it is necessary to consider the intention. If a person who establishes a sexual relationship with a married woman does not know anything about it, he cannot be considered a subject of privileging provocation. Accordingly, the action taken against him by the person in the temporary insanity state cannot lead to the mitigation of responsibility. Such provocation can be compared to "illusory provocation", which, I think, should lead to a reduction of responsibility only if we have a fixed attitude towards the provocateur.

- In the criminal legislation, there should be a differentiation of punishments for crimes committed under the provoked temporary insanity caused by unlawful violence and serious insults. so that there is no threat of making decisions based on unlimited views.
- Since, in the light of European integration, the Association Agreement requires Georgia to liberalize the Criminal Law, I think the above-mentioned steps serve to implement this goal.
- Also, it is necessary to change the public consciousness and prepare for the modern, progressive world. Those values and beliefs that were important and valuable years ago change with time and lose their importance. Accordingly, it is necessary and even essential not to encourage them with legal regulations or court precedents. On the contrary, the legislature and the judiciary, as the main branches of government, are required to take care of the progressive development and progress of the country, to observe the standards established by international laws and regulations and to promote their empowerment in the country, not to encourage violent and discriminatory customs and traditions.

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