

Pázmány Péter Catholic University  
Faculty of Law and Political Sciences  
Doctoral School

dr Orsolya Bolyky

THE LEGAL AND CRIMINOLOGICAL CHARACTERISTICS OF  
HOMICIDE WITH SPECIAL FOCUS ON THE EVALUATION OF MENTAL  
FACTORS IN CRIMINAL LAW

Theses of a doctoral dissertation

Consultant:

Prof Dr Ervin Belovics, head of department university professor

Co-consultant:

Prof Dr Péter Polt, university professor

Budapest, 2018.

## **Background**

*Homicide is one of the simplest but, at the same time, the most serious crimes. It is simple because interpreting its definition does not take a particularly high level of legal reasoning but, at the same time, it is considered one of the offences that represent the highest threat to society. Although the rule of law requires a crime-oriented approach in sentencing, the exploration of the subject's side, i.e. the personality of the offender and the processes taking place in his or her mind, play a more important role in the exploration, classification and assessment of homicides in comparison with other violent crimes. Since homicide is an 'open definition crime', the Hungarian term meaning that any conduct leading to certain result can be considered a crime, the decision about the form of culpability and the motives plays a crucial role in defining legal consequences. Apart from discussing legal and social characteristics, in my paper I will concentrate primarily on the motives of homicide and the subjective side of this crime as well as the presence and evaluation of psychological and psychopathological factors in the legal field, namely in the judgments made in criminal cases.*

## **The structure and summary of the dissertation**

**The introduction of my dissertation is strange:** after discussing the crime- and offender-oriented approaches, I attempt to prove that understanding the personality and circumstances of an offender plays a more important role in the sentencing practice of homicide cases than in other crimes.

Chapter I also contains a *dogmatic analysis of culpability*. In the case of homicide – since it is an open definition crime – the subjective side of the crime, i.e. establishing and assessing culpability, is particularly important in the decision-making of judges. It is a proof of acknowledging the complexity of the human mind and psyche, and the diversity of motives, that the Hungarian law allows for a wide variety of sentences to be used in the case of the crime of homicide ranging between the strictest possible sentences and the lightest possible measures, giving a high level of freedom to judges in making decisions.

The first part of **Chapter II** *outlines of the history of the regulation of homicide in Hungary* from the foundation of the state to the present day. The changes in the history of the regulation of homicide clearly reflect the attitude of different periods to the value of human life.

*The second part of Chapter II presents the dilemmas and the history of the regulation of debated issues of homicide.* Throughout history, the legislators have always provided a more or less detailed regulation of homicide primarily based on the motives and the way of implementation. By today, the range of qualifying circumstances have been broadened but, at the same time, certain crimes – that used to be regulated in separate sections earlier – have been abolished or incorporated into the crime of homicide.

The *crime of infanticide as a privileged case of homicide* could be considered an example of such cases. The crime of infanticide was abolished in 1999 and, since that time, these cases are classified as homicide against a person under the age of fourteen years, and qualified cases can be sentenced with life imprisonment. From our surveys, however, it is clear that, in the current judicial practice, judges still give light sentences for conducts that meet the conditions set forth previously in the definitions of privileged crimes.

The legislators decided to classify homicide against *disabled or older persons who are more vulnerable and defenceless* as other qualified cases in connection with a special state of a passive subject. The number of these cases have been increasing in the last few decades.

Since July 2013, even offenders who have turned twelve years of age can be punished for the most serious violent crimes against humans including, naturally, murders. My paper briefly discusses the arguments raised in connection with the definition of the age of criminal liability.

*Aiding and abetting the suicide of a minor or an insane person* has become a special form of homicide. My paper describes the development of the definition of the crime of aiding and abetting suicide, as well as the dilemmas of the current regulation.

The final part of the chapter discusses *the history of the regulation of voluntary manslaughter.* One can safely say that homicide committed in the heat of passion, provided that the reasons for such passion were acceptable by the moral standards of the given age, has always been considered a less serious type of crime.

**Chapter III** of my paper *gives a statistical analysis of the changes of homicides.* Besides the quantitative indicators, qualitative changes are also important when you examine the historical changes of homicide cases. Therefore, the proportion of qualified cases also play a significant role in the analyses. The Hungarian and non-Hungarian data presented in this chapter prove the ‘diversity’ of offenders, methods and motives of homicides. It is also clear that the culture of any given country, the penetration of violence, and the status public security in general, largely define the types of homicides and the proportion of certain motives. One of

the most important findings of our research is that the *offenders of homicide often show some kind of mental disease or disorder, so these conditions can be considered risk factors of becoming a murderer.*

The proportion of completed and attempted homicides in Hungary has been equal in the recent years, both showing a decreasing trend. The earlier dominance of completed homicides disappeared. If you look at the changes of the quality of murderous acts, however, the picture becomes less promising: the number of qualified cases has significantly increased lately probably due to the ever-greater number of brutal and unscrupulous actions against persons who are vulnerable due to their state and/or age. At the same time, you must not ignore the possibility of changes in the sentencing practice of courts. It is possible that, due to these changes, courts establish a qualified form of homicide on the basis of the same facts where, in the past, they would have sentenced the offender only for the basic form of the same crime.

*Chapter IV discusses the findings of my empirical research project carried out in 2016 (hereinafter: homicide research<sup>1</sup>). This research project was aimed at exploring the legal and criminological background of homicides with an emphasis on issues related to the mental status of offenders.*

#### Research questions and hypotheses:

1. Based on the findings of earlier homicide research, I assumed that most of the cases under analysis were the escalation of long-standing conflicts between family members – primarily those in partnership – and the ‘culminating points’ of domestic violence.
2. My presupposition was that acting under the influence of alcohol, a low level of education, unemployment, substandard financial conditions, i.e. bad social circumstances in general, are frequent among the offenders.
3. In terms of female offenders, I expected that homicides against their partner and – particularly in the cases of suicide-homicides – their children or new-born babies were the typical murderous act in their cases.
4. As for the mental status of the offenders, it was presumable that they had mental diseases or disorders before committing the crime, even though these conditions probably did not affect their criminal liability.
5. I assumed that a high proportion of homicide offenders have a clear criminal record, which

---

<sup>1</sup> Bolyky Orsolya: Az emberölések jogalkalmazási problémái és kriminológiai jellemzői. Kutatási jelentés, OKRI, 2016

shows that a typical criminal career is not a characteristic attribute of most of the murderers, and it is the risk factors of the personality that play a crucial role instead.

6. The criminal evaluation of the antisocial personality disorder violent offenders are often diagnosed with has long been debated by both legal professionals and psychiatrists. With the analysis of the related parts of court judgments, I was trying to understand the current sentencing practice connected to this personality disorder.

7. Despite the lower number of voluntary manslaughter cases, I still assumed that, while a reference to the heat of passion that caused the person to lose control often appears in the sample but, due to lack of other conditions of voluntary manslaughter, this privileged case of homicide can only be established in a few cases.

8. It was raised as a research question whether the personality and, in particular, the intellect and education of the offender has any 'latent' impact on the extent of the punishment. My assumption was that more serious punishments were given to offenders of higher intellect.

#### Research methodology:

I analysed the criminal documents of homicide cases – including court, prosecution and police documents – with questionnaires and I processed the data with the SPSS statistics software. The structured questionnaires contained predefined optional answers and I used the Chi test to explore the correlations between different variables.

The sample contained the cases of offenders who were given enforceable sentences for murder in 2013 and 2014, so a total of 133 cases were analysed. The composition of the sample was defined by qualifying circumstances and the incidence rate of murder cases per counties as published in the official criminal statistics (ENyüBS – Uniform Police and Prosecution Criminal Statistics). Besides, the files of all female offenders, and the offenders acquitted on the grounds of insanity, in these 2 years were also added to the sample.

Important findings: In general, we can say that the childhood and adult life of typical homicide offenders is characterised by an underprivileged socio-economic status often combined with a criminal environment where aggression is an established method of solving conflicts. It is primarily about socialisation and individual physical, nervous and psychological conditions that give way to solving tense situations or conflicts with aggressive or physically violent behaviours that may be harmful for others. Bad school performance

results in lower levels of education and lower levels of intellectual performance which are clearly among the most important risk factors of homicide.

It is important to point out that half of the homicide offenders come to court with a clear criminal record. That doesn't necessarily mean that these persons have never committed any crimes that were not reported or that they have never behaved aggressively with others. But it's interesting from the legal and criminological point of view why we cannot draw a typical 'offender's curve' leading from lesser crimes to more serious ones. From the findings of the research, we can conclude that mental status, psychiatric diseases and personality disorders are extremely important factors among people committing extreme violence.

I complement, and compare, my research findings with the information taken from our earlier surveys focused on special aspects of homicide.<sup>2</sup> These surveys also use the methodology of analysing the files and documents of court cases and discuss similar issues.

*Chapter V of my paper gives a detailed analysis of the mental state of offenders.* The general criminological survey indicated that persons committing extreme violence often show some kind of mental dysfunction which, however, does not influence their criminal liability in most cases.

The next part of this chapter deals with the *legal and criminological issues of pathological states of mind*. After a historical introduction, I discuss the dogmatics of criminal liability and examine the relation of liability and mental status. I found it necessary to briefly discuss the mental disorders that appear most often in court judgments, including disturbance, psychosis and two types of personality disorders: antisocial personality disorder and psychopathy.

Then I introduce the most important findings of my empirical research. Besides giving a *statistical analysis of the mental disorders present in the homicide sample, I also summarised the procedural difficulties and potential issues on the basis of the data recorded in the expert*

---

<sup>2</sup> 1. Tamási Erzsébet (szerk.): Különös kegyetlenséggel... Fiatalkorú és fiatal felnőtt emberölést elkövetők kriminológiai vizsgálata. OKRI, Budapest, 2015

2. Nagy László Tibor – Bolyky Orsolya: A több ember sérelmére elkövetett emberölések jogi és kriminológiai vizsgálata. 2013-2014, OKRI. Ezzel kapcsolatos publikáció: Nagy László Tibor: Több ember sérelmére elkövetett emberölések kutatása. In: Vókó György (szerk.): Kriminológiai Tanulmányok 52., OKRI, Budapest, 2015, 41-58. o.

3. Nagy László Tibor – Bolyky Orsolya – Solt Ágnes – Szabó Judit: Az életfogytig tartó szabadságvesztés és a feltételes szabadságra bocsátás jogalkalmazási gyakorlata. Kutatási jelentés, 2016, OKRI

*opinions of forensic psychiatrists and psychologists.*

*Chapter VI* of my dissertation is about the central issue of my research: how the criminal sentencing practice evaluates psychological factors and whether judges pay attention to such factors in their sentencing and in phrasing their judgments. I was trying to find answers to these questions with a textual analysis of court judgments.

The judgments analysed in my research showed that the judicial practice is largely consistent in considering restricted criminal liability a mitigating circumstance.

The judicial practice is not so clear, however, about when mental disorders or diseases themselves can be considered mitigating circumstances. The importance of psychological disturbances usually diminishes greatly in cases of extremely brutal actions.

It can be stated that psychological factors are taken into consideration as mitigating factors more often in the cases of women than in the cases of men. It must be added, however, that the motives of, and the events (family crisis, abuse of women, major depression) preceding and leading up to, homicides committed by women were truly of a psychological origin in each case.

There is also a correlation between considering motives and considering psychological factors in sentencing. It is clear that personality disorders and personality distortion were hardly ever considered a mitigating circumstance in the case of 'cold-blooded' murders (e.g. concealing crime, contract killing). At the same time, judges take into account mental background as a mitigating factor in an average of 20-22% of the cases with emotional motives (e.g. jealousy, a long-lasting conflict, fear). This proportion cannot be considered high, however, so we can conclude that the Hungarian judicial practice pays relatively little attention to the legal evaluation of psychological problems in homicide cases.

The evaluation of personality disorders in criminal law triggers the most debate and controversy among both legal professionals and forensic psychiatrists. Based on our research, there is no uniform practice even in whether judges should consider personality disorders that do not influence criminal liability aggravating or mitigating factors.

Among the analysed homicide cases, each case where the offender suffered from schizophrenia ended up with acquittal and – except one case – with ordering involuntary medical treatment. Although in the sentencing practice of homicide cases, judges almost automatically exempt offenders suffering from schizophrenia from criminal liability, clinical psychiatrists call the attention to the fact that mental diseases should not always exclude criminal liability because the mere fact that the offender is mentally ill doesn't necessarily

mean that the crime was a consequence of his or her psychosis.

The operative construction of law of *heat of passion* deserves special attention. On the one hand, the notion of acceptable reason out of the control of the offender, set forth in the Hungarian Civil Code as a precondition for voluntary manslaughter, must be defined and, on the other hand, the limitations of heat of passion in influencing the conscious and emotional state of the offender must be identified.

The legislator entrusts legal practitioners with the evaluation of morally verifiable external reasons and this category implies a possibility of inconsistent judgements due to cultural differences and individual subjectivity. Most often, it is the provocative behaviour of, or an unexpected event caused by, the victim can be evaluated as the basis for privileged cases.

In heat of passion cases, the evaluation of the impact of the influence of alcohol is particularly difficult. The fact that the offender was under the influence does not exclude the possibility of establishing a privileged case of homicide per se but, in practice, it is really difficult to separate the possible impacts of different external factors.

Exceeding the duration of justifiable defence in case of a physical attack by the victim – in case it ends up with the death of the attacking person or it is aimed at taking the life of the attacking person – is considered a typical case of voluntary manslaughter. Judging the length of time between the rise of the intent to kill and the accomplishment of the action again depends on the interpretation of the circumstances; and neither legal regulations nor legal interpretation provides an accurate, quantifiable definition.

Since the competence of making a decision about the presence of heat of passion lies with the legal practitioner, it is – theoretically – not necessary to use a forensic psychiatrist expert. By contrast, in case the possibility of a pathological psychological status emerges, judges almost invariably entrust experts with passing decisions on mental sanity (health).

**Chapter VII** discusses a special case of homicide I called *suicide-homicide*. Based on our research, I classified as suicide-homicide all the actions where the offender commits murderous actions against people who are emotionally close to him or her and then commits suicide in an uninterrupted ‘flow of actions’ based on one single resolution of will. The most important question with regard to suicide-homicide is whether it should be classified as homicide or suicide or it constitutes a category of its own.

Based on the findings of international research and the Hungarian survey we can conclude that, from the legal point of view, suicide-homicide should definitely be classified as



homicide. From the psychiatric point of view, however, we must differentiate between cases on the basis of motive. The altruistic version is closer to suicide, since the offender is usually represented in his or her own mind in a unity with the victims. This type of suicide-homicide is characteristic of female offenders. Suicide-homicide in revenge, on the contrary, is aimed at causing emotional pain through killing the other one and, therefore, it is closer to homicides. This type of suicide-homicide is typical of male offenders. Men primarily kill their partners, or their partners and their children, whereas women almost invariably kill their children before committing suicide. The presence of depression that was diagnosed earlier but has not been treated is a typical feature in both sexes.

*Chapter VIII* of my paper deals with the *practice of sentencing* in homicide cases. The open definition of the crime and the wide range of possible punishments applicable in homicide cases allows judicial discretion to prevail. Our research has proven that courts use the wide range of available options in sentencing, a fact that is reflected in the diverse nature of punishment applied. The length of the sentences of imprisonment varies greatly so we can conclude that the practice of sentencing is individualised.

In my survey, I primarily wanted to find out what the factors play a role in defining a sentence apart from the aspects that are specified in statutory provisions and that are compulsory to consider; whether the judicial practice is uniform in terms of sentencing homicide cases; and what the reasons behind extreme differences are, if any.

Although the Hungarian Civil Code does not differentiate between qualifying circumstances, there is a trend in the judicial practice of imposing more severe sentences in case of certain qualifying circumstances: legal practitioners usually sanction homicide committed in order to obtain certain valuables and homicide against persons who are vulnerable due to their age or state more strictly. At the same time, they seem to sanction particular cruelty in the method of conduct with more lenient sentences. An explanation of this trend might be that in these cases often there are psychological factors and the young age of the offenders (this is a method of conduct often associated with young offenders) in the background as mitigating circumstances.

As a principal rule, there is a significant correlation between the length of imprisonment and the number of qualifying circumstances: with the increase of the number of qualifying circumstances, the length of the imposed imprisonment also increases.

In general, the Hungarian judicial practice does not differentiate in the severity of sentences

on the basis of intellect alone. An existentially sound family background, better school performance or an outstanding talent in the case of juvenile or young adult offenders, however, can result in the reduction of sentences.

The objective importance of homicide against more than one person is proven by the fact that actual life imprisonment, the strictest possible punishment under the current Hungarian legal regulations, is most frequently used with offenders who have killed more than one person. At the same time, we also found in our survey that there are many petty cases in our sample. These cases remained in the attempt phase and did not take casualties and there were even cases where no one was hurt at all.

This chapter outlines in detail the *specific features of the defence of defendants*. Since homicide is a crime of high objective importance and great public interest, the role of defence and the development of a defence strategy can be crucial. But the cases I analysed show that it is not the type of the defence lawyer (public defender or private attorney) or the quality of the defence lawyer's work that defines the adjudication of an offender but much rather the way he or she committed the crime and the person of the victim, as well as, often inexplicitly, the personal circumstances and the personality of the offender. The way offenders behave and express themselves during the procedure also play an important role in shaping the sentences. Therefore, the efficiency of the defence work can be best improved if you can generate sympathy towards a defendant.

**Chapter IX** of my paper is aimed at exploring the *anomalies and difficulties legal practitioners face* in connection with homicide cases. *The uncertainties of the classification of homicides* might be traced back to the subjective side of this crime. *Premeditation and heat of passion* are legal categories the verification of which requires the reconstruction of procedures that took place in the mind of the offender. To decide these questions, legal practitioners mostly seek the help of forensic psychiatrists and psychologists. The representatives of these professions must not forget that the issue at stake is a legal issue, so you cannot expect exact answers from forensic experts. In the case of heat of passion, experts, by excluding the possibility of pathological anger, can give judges an important point of reference and the relation of the action to the personality of the offender (e.g. and action that is alien to the personality) can also make decisions easier to make. In connection with premeditation, it is the exploration of the level of intellect and the relation of the offender to the crime that can be

helpful for the decision-maker.

The cases we analyse also revealed a contradictory practice with regard to establishing *particular cruelty*. The forensic medical expert gives information about the suffering of the victim, but the final decision is made by the court. Since the quality of suffering must be judged from the point of view of the victim, this decision also involves the possibility of being subjective.

*The problem of differentiating between attempts of homicide and life-threatening battery* has long been a heavily debated and researched field of criminal dogmatics. To differentiate between these two offences, one needs to understand the intention of the offender, i.e. to reconstruct whether the offender wanted to kill the victim or cause bodily harm.

So, in essence, problems of the operative construction of law occur in the case of qualifying circumstances and problems of differentiation where the subjective value judgment of the decision maker plays an important role in the decision.

## **Summary**

The analysed cases prove that – apart from a few exceptions – murder is definitely a crime of passion. In the background of extreme behaviour, mental factors and the current state of mind play the crucial roles accompanied by extremely difficult situations in life and processes of socialization that can even make extreme brutality more understandable. With all this, I am not suggesting that taking others' lives – except the cases of justifiable defence – is acceptable. I would also avoid saying “anybody might become a murderer” because the surveys have shown certain characteristics and risk factors in the background of homicides. We have seen, however, atypical cases that demonstrated that the most decisive factors of this serious crime are not the current existential and social circumstances and the criminal history of the offender but his or her personality, intellect and mental status in, and before, the time of committing the crime.