

Abstract in English

Title: Murder of a Newborn Child by Its Mother under Section 142 of the Criminal Code

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This thesis addresses the issue of further need for a special legal regulation of the criminal offence of murder of a newborn by its mother. The first chapter is dedicated to the origin and the development of this legal provision and explains the circumstances within which this criminal offence has become part of the current Criminal Code. By describing the organization of the Criminal Code and main provisions of the Constitutional Law, the following chapter demonstrates the values on which the Criminal Law is built. These have to be taken into account when assessing the need for a change or a repeal of the discussed legal provision. The third chapter is an overview of primary information on constituent elements of this criminal offence. However, it does not neglect certain disputable aspects including the issue of pinpointing precisely when human life begins.

From a theoretical point of view, the offence in question is considered to be a “privileged factum”. In such cases, a certain additional factor lowers the harmful effect the offence has on society. The last part of the third chapter is thus dedicated to the issue of privileged factum in general and its place within the current Criminal Code. The subsequent chapter deals with the possible penalties that can be imposed on such criminals. The fifth chapter recounts the number of cases in which this provision has been applied in recent years and further describes possible preventive measures. The sixth chapter provides a critical analysis of similar legal provisions in three European countries (Romania, the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany where this legal provision has been recently repealed). As far as the organization of the Criminal Code is concerned, the Czech Criminal Law proves to be superior. Similarly, Czech provision shows a clear purpose and the time specifications are not as rigidly defined as it tends to be abroad. However, the seventh chapter examines the possible ways of further improvement. In this chapter I expressly address the issue of the term for this criminal offence which I consider inadequate, especially in comparison to the offence of manslaughter under section 141 of the Criminal Code. In addition, the issues of time specifications and their possible solutions are further discussed. At the very end of the thesis, I concur that this criminal offence cannot be repealed from the current law as it enables the Court to be more forgiving to mothers who act (though sporadically) in a state of mental disturbance caused by the child’s birth. The existence of this legal provision also helps to smooth the transition to the formal concept of criminal offence of the current Criminal Code.

Keywords: crime of murder of a newborn by its mother, privileged factum, criminal law