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Serebrennikova A.V.

Doctor of law, Professor of criminal law and criminology
Moscow state University. M. V. Lomonosov
Russia, Moscow

DOI: [10.24411/2520-6990-2019-10136](https://doi.org/10.24411/2520-6990-2019-10136)**MURDER BY INACTION: AN ACTUAL EXAMPLE FROM THE RUSSIAN PRACTICE.****Abstract:**

The article provides an example of murder committed by inaction. The case occurred in February 2019 in the city of Kirov, when the mother left her three-year-old daughter alone in a locked apartment without water and food for a week. The author analyzes the qualification of this crime under part 2 of article 105 of the Criminal code as the murder of a minor with special cruelty.

Keywords: Russian Federation, the criminal code, qualifications, characteristics, murder, inaction.

According to Russian media reports [1], in recent months the number of criminal cases of leaving young children unsupervised in closed apartments, without food and water, with the water supply disconnected has increased, which resulted in harm to their health or even death. So, for example, "a resident of Kirov has closed the baby in the apartment, having previously shut off

the water valves to avoid flooding of neighbors. The girl was left alone for more than a week, without access to food or life-giving water. The result of the ruthless deed of the mother was the painful death of the child" [2]. Her grandmother discovered the girl's dead body when she came to congratulate her granddaughter on her birthday.

It is known that a person can live without food for more than 40 days. However, the human body consists of water by more than 70%, and it needs this life-giving component every day. A person can live without water 5-6 days - and this is the maximum. If a person has not consumed water for more than 6 days, a critical point occurs. Further, a person who is unable to consume water simply dies.

How to define these criminal acts of a girl's mother? At the moment, she is taken into custody of committing murder under the pp. "c" and "d" of Part 2 of Article 105 of the Criminal Code of the Russian Federation (murder of a minor with extreme atrocity). Recall that Part 1 of Article 105 of the Criminal Code contains the concept of manslaughter: murder, i.e. the intentional manslaughter of another person. On the objective side, murder can be committed in the form of both action and inaction. The case we're commenting on was about inaction: the child of tender years was left alone in the closed apartment without food or water.

In order to qualify the actions of a girl's mother under this rule, it is required from the subjective side that her act presupposes the existence of direct intent or eventual recklessness causing manslaughter. Murder is committed with direct intent not only when the manslaughter is an end in itself for the guilty. Wish as a willful element of intent exists in those cases as well, although the emotional attitude to the manslaughter may be negative. In the case of eventual recklessness, the guilty does not direct his or her will to manslaughter, but by his or her actions deliberately allows it to occur. This is directly relevant to the case under consideration, believing that the girl's mother did not want, but knowingly tolerated the possibility of her death, or was indifferent to this. The Criminal Code (art. 25) does not contrast eventual recklessness to direct intent, but unites them. The distinction between these types of intent becomes crucial in the event of a fatal outcome. In the commented case, the girl's death occurred.

The Plenum of the Supreme Court of the Russian Federation indicated in its Resolution No. 1 of January 27, 1999 (p. 7) that "according to p. "c" part 2 of Art. 105 of the Criminal Code of the Russian Federation (murder of a minor or other person known to the guilty to be in a helpless state) should qualify the intentional manslaughter of the victim, who is unable to defend himself due to his physical or mental state, to provide active resistance to the guilty person, when the latter, while committing murder, is aware of this circumstance. Other persons in a helpless state may include, in particular, the seriously ill, the elderly, persons suffering from mental disorders that deprive them of the ability to perceive what is happening" [3]. Obviously, a girl of three years old is a child of tender years. What does the relevant Resolution of the Plenum of the Supreme Court of the Russian Federation mean by extreme atrocity? P. 8 interprets this element as follows: "When qualifying a murder under p. "e" of Part 2 of Art. 105 of the Criminal Code of the Russian Federation, it should be assumed that the concept of extreme atrocity is associated with both the method of murder and with other

circumstances indicating that the guilty person manifested the peculiar ferocity. However, in order for a murder to be found to have been committed with extreme atrocity it must be established that the guilty person's intent was to commit the murder with peculiar ferocity. A sign of extreme atrocity is present, in particular, in cases where the victim was subject to torture or mockery before or during the murder, or when the murder was committed in a way that is known by the guilty person to cause the victim special suffering (inflicting large amounts of bodily harm, the use of excruciating poison, burning alive, prolonged deprivation of food, water, etc.). Extreme atrocity may be manifested in the committing a murder in the presence of persons close to the victim, when the guilty person was aware that he or she was causing them particular suffering through his or her actions [4].

The circumstances of the case tell us that the girl's mother deliberately left her without food and water, and the girl starved to eat washing powder.

Now, a mother, a Kirov resident, whose three-year-old daughter died without water and food, having remained locked in an apartment for three days, a version arose that she did not try to kill her child and the reason for the tragedy could be that the mother did not agree on the schedule of looking after the girl with her grandmother, which is why she was alone [5]. This may lead to a recharacterization of the actions of the guilty person under Article 125 of the Criminal Code of the Russian Federation (failure to give assistance to persons in mortal danger).

In addition, according to the investigation, with the connivance of the Head of the polyclinic, doctors did not see the girl for more than two years. Contrary to the law, her health has not been monitored, which is qualified as a dangerous situation for the child. Yesterday the Head of the polyclinic was detained. The criminal case was initiated under Article 293 of the Criminal Code of the Russian Federation "Negligence" [6].

The case we have considered from modern Russian law enforcement practice is a textbook case of manslaughter committed by inaction. What decision will make the court in this case in the future, time will tell.

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