

Liability for Religiously Motivated Murder in Muslim Countries

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Abstract--- *There are many cases in today's world when terrorist acts are committed against persons who have 'offended the religious feelings' of Muslims. In this regard, of particular significance is the question of determining in which cases the murder for religious reasons constitutes a criminal act under Islamic law and in which cases it is quite permissible under the current legislation of a particular country. The presented article is devoted to the problems of distinguishing murder for religious reasons from other types of homicide, as well as to establishing the very concept of 'religious reason' and defining possible punishment for expressions of religious violence. The study considers the problem of liability for religious violence on the background of the provisions of the main religious sources of Islamic law; the Quran and the Sunnah; and the current criminal legislation of particular countries.*

Purpose: *to form the perception of the role of religious sources in the formation of modern conditional norms on liability for religious violence on the basis of Russian and foreign legal literature, as well as on the analysis of the legislative framework.*

Methods: *the methodological basis of the scientific article consists of a set of methods and techniques of scientific knowledge inherent in the science of law. In particular, the study used comparative legal, dialectical, structural-functional, formal and logical methods.*

Results: *a distinctive feature of Islamic law is the priority of religious norms, which regulate all spheres of Muslim life. The question of the distinction between religiously motivated murder and crime against life committed for other reasons is addressed in Islamic law not with a view of adequate qualification of the criminal act committed, but with a view of establishing the legitimacy of the murder committed.*

Conclusions: *the murder for religious reasons does not entail criminal punishment in many Muslim countries. The main religious source of Islamic law – the Quran - explicitly prescribes religious violence and killings as a punishment for such acts like apostasy; the Sharia allows for religiously motivated murder for which the perpetrator can avoid criminal liability since the Sharia law considering it as a punishment from Allah. However, it is necessary to distinguish the motive of defection from the motive of religious hatred; the latter is not justified by religious dogma since Islam claims to highly value human life and no single source of criminal law in the modern Muslim countries contains a call to murder people of another religion. The intentions of religious hatred are often combined*

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with other motives, such as vandalism, etc.; crimes committed on such grounds are subjected to severe punishment. The religious motives that justify committing murder include the riot control and punishments for the rebellion; the latter is due to the perception that the person who raises the revolt is, in fact, rebelling against acceptable and legitimate state power, which is supported by Allah. Apart from apostasy and rebellion, the religious motives justifying the murder also include punishment for 'blasphemy' against Allah and Muhammad the Prophet. The legislation of many Muslim states provides for the death penalty for apostasy, whereby a person who has committed a murder, for this reason, may be either released from punishment or to be ordered to pay corresponding compensation.

Keywords--- *Islamic Law, Countries of the Muslim World, Quran, Sunnah, Religion.*

I. INTRODUCTION

The traditional religious jurisprudence is significantly different from the Romano-Germanic and Anglo-Saxon legal systems. The traditional religious legal system puts first the common responsibilities, but not human rights.¹ Such legal system is featured by the following inherent patterns: God (but not the society) is the main creator of the law, and therefore legal provisions are given once and for all, they must be trusted and followed accordingly; the source of law is religious-traditional texts and values; legal provisions are closely intertwined with religious dogma, philosophical and moral tenets, as well as with local customs that form the general rules of conduct²; a special place in the system of sources of rights is assigned to the works of jurists who concretize and interpret the original sources, which represent the basis of their particular decisions; there is no division of law into private and public; legal regulations have a secondary meaning; and judicial practice acts as a source of law.

II. OPERATIVE PROVISIONS

The traditional religious jurisprudence is formed by several legal systems, such as, for example, Muslim, Hindu, and Jewish.³

Islamic law (Sharia) is a system of legal provisions that are expressed in religious form and are based on the foundations of the Muslim religion – Islam.⁴

Islamic law covers not only matters subjected to legal regulation but pretty much all areas of social life; and first of all, theology, which provides for dogma and clarifies that every Muslim should exercise faith. Secondly, Sharia represents some certain manual to believers: what they are obliged to, what principles to obey and what they cannot do.⁵

Muslims in Russia is currently the second largest religious group,⁶ which is characterized by particularly radical religious views, not peculiar to ordinary secular society.

¹ Melekhin, A.V. Theory of State and Law: Textbook, 2nd Ed. // M: Consultant Plus, 2009

² Berlyavsky L.G., Shmatova E.S. The formal legal method in legal research: modern approaches // Jurist publishing group, 2012: № 6:51-54

³ Legal Systems of the Countries of the World: Encyclopedic Reference Book / Ed. by A.Ya. Sukharev, 3rd ed., revised. M: 2003, 976 p., P. 446

⁴ Matuzov, N.I., Malko A.V. Theory of State and Law: Textbook // Moscow: Publishing Group 'Lawyer', 2004:152

⁵ Conflict resolution in different law systems / Yu.A. Artemyeva, E.A. Borisova, E.P. Ermakova et al (In Russ.) // Moscow: Infotropic Media, 2017:2

⁶ Muslims in Russia: Numbers & Facts (In Russ.) // <https://dedadi.ru/obshhestvo/skolko-v-rossii-musulman.html>

Muslims are well-known around the world for the ardent adherence to their religion and to their specific religious traditions. In addition, Muslims have committed various terrorist attacks in different countries due to the revenge of the 'offended feelings of the believers'. For example, on January 7, 2015/16, Rabbi Al-Avval - 1436, an armed attack was committed on the editorial board of the satirical magazine Charlie Hebdo; the terrorist act claimed 12 lives of these media employees. Later it became known that the attack was triggered by the fact that the magazine reprinted the publication of a caricature of Mohammed the Prophet from the Danish edition, where this publication generated many protests and caused a negative reaction from representatives of Muslim communities.⁷

In reference to this fact (and many other similar manifestations), questions arise as to what responsibility Muslims have for the religiously motivated murders.⁸ In addition, given that the committed terrorist attacks as, for example, the one mentioned above, were performed with 'Allahu Akbar' exclamations, it seems that the religion of Muslims is not just calm towards such murders, but also encourages them, which gives pause to the entire global community.

Considering the liability for religiously motivated murders in Muslim countries, it is necessary, firstly, to distinguish this type of homicide from other crimes against life. The second issue that requires clarification is what kind of the motives for the murder in Muslim countries are considered religious; the third one constitutes the determination of possible punishment that can be imposed for the commission of this type of crime.⁹

The last question is also quite significant due to the necessity of classification of cases when killing for religious reasons will be a crime, and the ones posing an action permitted by the legislation of a particular country when the murderer acts as a judge.

A typical feature of Islamic criminal law is that the legal component is subordinated to the spiritual.¹⁰ The issue of the delimitation of religiously motivated murder from other types of homicide is considered in Muslim countries not with the aim of qualifying the perpetrated crime, but with the aim of establishing the legitimacy of the committed murder.

Thus, Pakistani citizen A. Bahaya turned himself to the law enforcement agency and reported that he had killed his own sister. As for the motive for the murder, Bahaya claimed that he did it 'for the sake of the honor of his family', as his sister inflicted shame on the family with her immoral behavior. Also, the murderer stated that he did not repent of his deed, and the whole family supported his decision to kill. In addition, Bahaya expected to be released after some time.¹¹

Noteworthy is that honor killings are generally not supported by Islam. At the same time, the guilty of their actions are justified precisely by the fact that women who were killed for these reasons violated Islamic dogmas of honor, which brought shame upon their family.¹²

⁷ Why the terrorists chose Charlie Hebdo? (In Russ.) // <http://www.profi-forex.org/novosti-mira/novosti-evropy/france/entry1008241033.html>

⁸ Kanashevsky, V.A. Issues of public order and qualifications in the regulation of family relations, complicated by a foreign element (In Russ.) // *Journal of Russian Law*, 2018; № 5:56 - 62

⁹ Islamic Penal Code of the Islamic Republic of Iran / Ed. by A.I. Ahani; Tr. from Persian by M.S. Pelevin // St. Petersburg, 2008:102 - 107

¹⁰ Ammar A.K. Manna. Quran and Sunnah as the main sources of Islamic law and their role in the formation of the criminal law of modern Muslim countries // *Eurasian Law Journal*, 2017; № 10:191-194

¹¹ Teachings of Islam and honor killings // <http://maxpark.com/community/3788/content/946619>

¹² Zlobin, A.V. The Concept of Principles of Law in a Modern Russian Civil Law Doctrine // *Lex Russica*, 2018; № 4:23 - 36

In this case, the perpetrator was released from punishment. So, it turns out that murders committed for religious reasons are different from other types of homicide since they do not entail any punishment.

In fact, the Quran¹³ provides for the necessity of committing murder on such a religious motive as punishment for apostasy, indicating that if someone changed his religion, then this person is subjected to the death penalty. Thus, Hadith also indicates that the one who changes his religion should be killed; the apostate is actually considered legally dead, and the most severe criminal punishment for this person is based on the understanding that renouncing Islam is treason. In another case, the prophet points out that the killing of a Muslim is allowed for the committed adultery, intentional homicide and apostasy.¹⁴

This refers to the actions belonging to the category of ‘qisas’, punishment for which is allowed by retribution: ‘...and the retribution for an evil act is an evil one like it’ (Quran, 42:40). In this regard, the conclusion suggests itself that the Sharia allows the commission of religiously motivated murder, considering it a just punishment from Allah.

When considering the second question, which concerns defining whether the motives had a religious background, it should be noted that the punishment for apostasy also represents quite a religious motive.¹⁵

It is also essential to account the difference between the religious motive for committing a crime (in this case, the killer acts as a judge and executioner at the same time) and religious hatred, which can also act as a motive for the particular crime. In the latter case, the murder committed because of religious hatred cannot be justified by religious dogmas, since the sources of the criminal law of Muslim countries do not contain appeals for the murder of adherents of another religion.¹⁶ On the contrary, the Quran highly values human life and clearly expresses the impermissibility of taking the life of someone.

Considering the motive of religious hatred or enmity, it is necessary to note the presence of motivation that is permeated with hatred or another aggressive attitude towards members of the society belonging to another religion.¹⁷

In this case, the enmity is understood as ideological hatred and hostility towards other persons who are clearly strangers to the subject's ideas and views, as well as to their bearers. This feeling and attitude appear in the subject because of the discrepancy between certain ideas and views, as well as established concepts that express the interests of different social groups, social classes, certain societies, the subject, and the very victim.

The studied group of motives is combined with other motivating forces, such as hooligan motives or revenge for committing illegal actions by the victim. In this situation, the responsibility for taking someone's life is determined by the particular motive that was considered the dominant and recognized as the main cause to commit a murder.

¹³ Quran // <https://quran-online.ru/>

¹⁴ Khachak, B.N. International legal foundations for the differentiation of criminal responsibility (particular aspects of the problem) // Publishing Group ‘Jurist’, 2018. № 3:56 - 57

¹⁵ Criminal Law of Russia: textbook in 2 volumes; Vol. 1 General Part / Zhalinsky, Ignatov et al. // Moscow: INFRA-M, 1998:269

¹⁶ Criminal Law of the Russian Federation, General Part: textbook by A.S. Mikhlin // Moscow: Jurist publishing group, 2004; Criminal Law of the Russian Federation: textbook / Prokhorov, Lopashenko et al.; Ed. by R.R. Galiakhbarov // Saratov: University of the Ministry of Internal Affairs publishers, 1997:121

¹⁷ Medov, M.U. The main causes of the spread of terrorism // Publishing Group ‘Jurist’, 2015. № 8:38 - 42

The religious motive also includes punishment for rebellion, since the commission of this action indicates disobedience of the legal authority, which was established, allowed and supported by Allah. In this regard, the person exciting the riot, in fact, rebels against Allah and his establishments.

Therefore, the religious motivation to commit murder may pose the punishment for apostasy or rebellion, as well as the punishment for ‘blasphemy’ against Allah and Muhammad the Prophet.¹⁸

Here is an attempt to determine what measure of responsibility is applied for religiously motivated murder:

Sunni legal schools allow the exclusion of criminal liability for apostasy in reference to the repentance (excluding blasphemy against Mohammed the Prophet). For this crime, the perpetrator is given a time limit to repent and return to Islam and therefore to become exempted from liability.

Diya is the financial compensation for the murder, which is granted to the victim or heirs of a victim or the person who has the right to *qisas*. Diya, actually being a relic of tribal relations, exists in countries where Sharia norms are considered both sources of law and social norms (such as Iran or Sudan).¹⁹

In accordance with the provisions of Sharia law, it is allowed to commit a criminal act intentionally or by mistake. However, Islamic jurists also distinguish such a form of guilt as carelessness (*shibh-al-amd*). This discrepancy in the comprehension of religious dogma comes from the denotation of two forms of guilt by the Quran. Thus, Al-Quran Surah 4 An-Nisaa provides: ‘It is not for a believer to slay another believer unless by mistake’ (verse 92); ‘And whoever kills a believer intentionally, their reward will be Hell—where they will stay indefinitely’ (verse 93).

In this regard, representatives of the Maliki and Hanbali schools of jurisprudence indicate that, by bringing a person to criminal responsibility, it is necessary to limit the latter only to the forms of guilt stipulated by the Quran.²⁰

III. CONCLUSION

In terms of legislatively established types and procedures for imposing criminal punishment, the criminal laws of modern Muslim countries do not differ much from the laws of other states of our times. At the same time, in some states, the types of criminal punishment haven’t undergone any particular changes for ages; they still include the doctrinal norms of medieval law schools. Islamic (Sharia) law is a system of legal provisions that are expressed in religious form and are based on the foundations of the Muslim religion. Sharia permits the commission of religiously motivated murder, considering it a punishment from Allah; the perpetrator may avoid criminal liability for the commission of such an act. The religious motives that justify committing murder include the punishment for apostasy and rebellion, as well as for ‘blasphemy’ against Allah and Muhammad the Prophet. The legislation of many Muslim countries provides for apostasy punishment in the form of the death penalty; in this reference the

¹⁸ Peters R. Crime and Punishment in Islamic law. Theory and Practice from the Sixteen to the Twenty-first Century. New York, 2005. P. 39.

¹⁹ Petrovsky, A.V. Islamic criminal law and features of the criminal law of Muslim states: monograph (In Russ.) // Krasnodar: Kuban State University, 2013:91

²⁰ Abdel-Kader Auda. Islamic Criminal Law // Beirut, 1983; Vol. 1: 406

person who committed such religiously motivated crime may be either exempted from punishment or he may be ordered to pay compensation.

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