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ВИКТИМОЛОГИЧЕСКОЕ УТОЧНЕНИЕ ДЕЙСТВУЮЩЕЙ РЕДАКЦИИ СТАТЬИ 107 УК РФ

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Аннотация. В статье предлагается дополнить действующую редакцию ст. 107 УК РФ с целью усиления ее виктимологической направленности. Совершающие убийство в состоянии аффекта в связи с виновным поведением потерпевшего в виктимологии традиционно рассматриваются как особые типы жертв. Однако не все из них заслуживают виктимологической защиты. Автор показывает, что основной линией развития уголовного законодательства в Российской империи, Советской и современной России по вопросу уголовной ответственности за аффектированное убийство являлось точное очертывание круга исключительных условий, при которых убийство в состоянии аффекта относилось к привилегированным видам убийства. Действующая редакция ст. 107 УК РФ фактически позволяет оправдывать аморальные и противоправные действия виновного в убийстве в состоянии аффекта, которые осуществлены им сразу после совершения преступления и в связи с ним. К таким действиям относятся сокрытие следов преступления (в том числе путем расчленения трупа и последующего утаивания останков или их уничтожения, кражи личных вещей убитого и др.). Такое поведение характеризует виновного как общественно опасное лицо, не заслуживающее статуса особой жертвы и применения к нему состава привилегированного убийства. Очевидно, что требование справедливости наказания не позволяет применять особое снисхождение со стороны законодателя к таким лицам, и преступники в этих случаях не заслуживают значительного смягчения ответственности, определяемого уголовным законом для аффектированных преступлений. В статье также анализируются проблемы судебно-психологической экспертизы аффекта.

VICTIMOLOGICAL ADJUSTMENT OF THE CURRENT VERSION OF ARTICLE 107 OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

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Abstract. The paper suggests adjustments for the current version of Art. 107 of the Criminal Code of the RF with the purpose of strengthening its victimological orientation. Persons who commit murder in a state of affect connected with the wrongful behavior of the victim are traditionally viewed in victimology as a special type of victims. However, not all of them deserve victimological protection. The author shows that the key trend in the development of criminal legislation in the Russian Empire, in Soviet and contemporary Russia regarding the criminal liability for a murder in affect state was a clear delineation of the range of pardonable circumstances under which a murder in a state of affect would be considered a privileged type of murder. The current version of Art. 107 of the CC of the RF in fact makes it possible to justify those amoral and illegal actions of the person guilty of murder in a state of affect which were committed immediately after and in connection with the crime. These actions include concealing traces of crime (including dismembering a body and the subsequent concealment or destruction of body parts, theft of the victim's personal items, etc.). Such behavior characterizes the guilty person as a publicly dangerous individual who does not deserve the status of a special victim and the application of a privileged murder corpus delicti. It is evident that a demand for just punishment does not allow the lawmakers to use redemption for these persons; in such cases the criminals are not worthy of any considerable leniency application that the law stipulates for crimes in a state of affect. The paper also analyzes the issues of forensic psychological examination of affect.

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