



## Criminal Offense Against Life Theoretical and Practical Aspects

Saimir Fekolli<sup>1</sup>

Francesk Ganaj<sup>2</sup>

Ernald Belishta<sup>1</sup>

<sup>1</sup>Lecturer Department of Law,  
Faculty of Political and Legal Sciences,  
Aleksandër Moisiu" University of Durrës,  
Durrës, Albania

<sup>2</sup>Prosecutor

Received: 05 May 2022 / Accepted: 16 May 2023 / Published: 20 May 2023

© 2023 Fekolli et al

Doi: 10.56345/ijrdv10n1s136

### 1. Introduction

Criminal offenses against life represent the archetype of criminal offenses which have historically been characterized by the most highest punishment measures. The existence of legal norms which aim to protect life, in another view, oppose the "homo homini lupus" postulate. The reason why legislators, including the Albanians one, give special legal protection to life, focus in the fact that all other rights are its derivatives, in the absence of which they lose to act. However, despite the principle that "it is forbidden to kill" except in cases where there are justifying reasons (necessary protection, extreme need, exercising of a legal duty), the Albanian legislator, through the incriminating norms, has provided specific figures of criminal offenses which the group object of have the same, but due to the special relationship they aim to protect, they are categorized into special forms or special figures of criminal offenses.

The identification and treatment of these types of criminal offenses is important not only in theory but in particular in practical terms, aiming to make the correct legal qualification of a criminal fact through the interpretative methodologies of the criminal law. Judicial practice, mainly of the Penal college of the Supreme Court, has tried to identify the characteristics of each criminal offense in function of respecting the principle of legality and more specifically in function of the correct legal qualification of criminal facts. In this point of direction, legal problems have been encountered in distinguishing, for example, the criminal offense of intentional murder from premeditated murder. The difference between attempted murder and heavy injure, or aggravated manslaughter versus heavy injure resulting in death. It has also been problematic to give the correct meaning of murder committed under conditions of strong mental shock and its difference with intentional murder or with the mitigating circumstance "act committed under conditions of mental shock". It is evident that in judicial practice "facts committed under conditions of influence or shock" are more excessive than those qualified as such in court. Such shortcomings are the result of the lack of a precise methodology in the "testability of the specific circumstance "psychic shock". It is still unclear whether this criterion is medical, legal or combined with other sciences, and for these reasons, detailed reflections will attempt to clarify the issue raised in the discussion. These problems and issues raised, as well as others in the future, will be the subject of an analysis with the aim of defining the issues towards a final argument.

Murder represents the archetype of criminal offenses which have historically been characterized by the most severe punishment measures. The existence of legal norms which aim to protect life in another view are opposed to the

"homo homini lupus" postulate. The reason why the legislator, including the Albanian one, gives special legal protection to life lies in the fact that all other rights are derivatives of the right to life, in the absence of which they cease to act. However, despite the principle that "it is forbidden to kill" except in cases where there are justifying reasons (necessary protection, extreme need, exercise of a legal duty), our legislator through the incriminating norms has provided specific figures of criminal offenses which have the group object the same, but because of the special relationship that they aim to protect, they are categorized into special forms or special figures of criminal offenses.

The identification of these types of criminal offenses is important not only in the theoretical level but especially in the practical level, aiming to make the correct legal qualification of a criminal fact through the interpretive methodologies of the criminal law. The judicial practice, mainly of the criminal panel of the Supreme Court, has tried to identify the characteristics of each criminal offense in function of respecting the principle of legality and more specifically in function of the correct legal qualification of criminal facts. In this line, legal problems have been encountered in distinguishing, for example, the criminal offense of intentional murder from premeditated murder. The difference between attempted murder and heavy injure, or aggravated manslaughter versus heavy injure resulting in death. It has also been problematic to give the correct meaning of murder committed under conditions of strong mental shock and its difference with intentional murder or with the mitigating circumstance "act committed under conditions of mental shock". These problems and others will continue to be the subject of structural analyzes of criminal offenses of murder, accompanied by the practice of the Penal college of the Supreme Court.

## 2. The Meaning of Life and Its Relationship with the 'Right to Die with Dignity

The Penal code of the Republic of Albania has summarized in its Chapter II the criminal offenses against the person, the crimes against life, which have as their object the legal relationship specially protected by the criminal law that has to do with life as a natural and fundamental right from from which all the rights of the individual derive. In the first section, crimes against life committed with intent are included, where the group definition of different figures of criminal offenses is determined based on the element of the subjective side and, specifically, intent. The definition of intent as a necessary element of the criminal offense is provided in the general part and specifically in Article 15 of the Penal code<sup>1</sup>. While the criminal acts intentionally committed against health are included in the third section and have as their object the legal relationship specially protected by the criminal law that are related to biological health and its infringement by illegal actions or omissions.

In article 76 of the Penal Code, titled "murder" it is provided as follows... "Deliberate murder is punishable by imprisonment from ten to twenty years. In Albanian criminal law, the object of this type of criminal offense is legal relations sanctioned with the aim of protecting life<sup>2</sup>. The foreign doctrine makes a broader conception of the object of this criminal offense, including the state interest, which interest consists in the preservation and continuity of the demographics of the population. The right to life does not mean the right to choose to die, a position confirmed by the Jurisprudence of the ECtHR. On this issue, the ECtHR had to deal with the relationship of the individual with the state in the context of euthanasia, where according to the Court, in the context of euthanasia (for which states have the discretion to choose its application or not) the individual does not enjoy the right to die. In the event that we are faced with assisted murder (euthanasia), the subject who assists in the death of the passive subject cannot claim exemption from criminal responsibility, except for the application to him of mitigating circumstances that must be taken into consideration within the individualization of punishment.

In the Sanles Sanles case, the plaintiff sought on behalf of her brother-in-law, a tetraplegic who wished to end his life with the assistance of others and who had died before the filing of the claim, to protect the right to a dignified death, referred to Articles 2, 3, 5, 6, 8, 9 and 14 of the Convention. The Court rejected the request as incompatible *ratione personae* with the provisions of the Convention.

In the Pretty case the applicant suffered from an incurable terminal neurodegenerative disease and complained, with reference to Articles 2, 3, 8, 9 and 14 of the Convention, that her husband could not assist her in killing himself without being prosecuted criminal by the British authorities. The court came to the conclusion that there was no violation of these articles. The Haas and Koch cases cited above concerned assisted suicide and the applicants referred to Article 8 of the Convention. In Haas, where the plaintiff, a long-time sufferer of severe bipolar affective disorder, wished to end his life and complained that he could not obtain the lethal substance needed for that purpose over the counter, the Court

<sup>1</sup> Article 15 Criminal Code - Willingness "The criminal offense is committed intentionally, when the person foresees the consequences of the criminal offense and wants their arrival or, although he foresees and does not want them, he consciously allows their arrival.

<sup>2</sup> See Ismet Elezi, *Criminal Law, Special Part*

held came to the conclusion that there was no violation of Article 8 cited above. In the Koch case, the plaintiff claimed that not allowing his wife (paralyzed and on artificial respiration) to receive a lethal dose of drugs that would have given her the opportunity to end her life had violated her right to lastly, as well as his right to respect their private and family life. He also complained about the non-acceptance of national jurisdictions to consider his complaints on the merits and the Court concluded that there was a violation of Article 8 only on this point. The object of the criminal offense is the legal relations that protect "living life" excluding the fetus. A similar case is under judicial review in the Lezhë Court of First Instance, where the defendant medical personnel has been charged with the criminal offense of "negligence in medical treatment" resulting in death, provided for by Article 96/2 of the Penal code. In this case, the "child" has "died" in the mother's womb and was not born alive, but despite this fact, the charge was raised according to the second paragraph, "negligence resulting in the death of the child". In the Trial, the Prosecutor who represented the charge in the trial changed the qualification on the grounds that "the defendant does not enjoy judicial legal protection as he does not have the status of being born alive".

### 3. Attempted Murder vs Wounding. Qualifying Criteria

In relation to Article 76 of the Penal code, judicial practice has often been led to wrong verdicts, and that required intervention of the Penal college of the Supreme Court<sup>3</sup>. In this regard, we bring to your attention the jurisprudence of the Penal college of the Supreme Court. With its verdict, the panel stated that the legal qualification of the criminal offense has to do first of all with the application of the criminal law by the court to give a fair verdict based on the law. In this sense, the interpretation of an element of the conscience of the individual who commits a criminal offense is both difficult and important for the determination of guilt through legal qualification. Of course, this perception of the court should not be made on a subjective basis, but on the basis of "reading" the concrete actions and the harmonious evaluation of all the evidence and the conclusion that emerges from it. ***In the theoretical and practical aspect, since the intention is an internal volitional element, it is difficult to determine the existence of the criminal intention to kill when this has not been accepted by the subject, and in these cases it will be evidenced through the interpretation of this will through external objective elements of its appearance, such as: the type of vehicle used, distance, direction, the area of the body where the blows are concentrated and where the injuries were caused.***

In order to legally define the criminal offense as wounding or attempted murder, we must take into consideration the psychological element of the actions of the defendant (the active subject) as well as the intensity of the actions of the attack. If in the first criminal offense (of wounding) the attack ends (ends) with the production of the consequence (causing damage), in the second criminal offense there are more actions which aim and are capable (such) of causing an event more serious than just harming the person (passive subject of actions), actions which are carried out with the will of the defendant (active subject) and not for reasons beyond his will.

Keeping in mind the above objective criteria, the Criminal Board has assessed that the Court of Appeal was wrong when it came to the conclusion that the criminal intent of the judge was to harm the health and not to take the life of the injured party. in the attempt, which has led to the wrong legal qualification.

According to the panel, this wrong conclusion came as a result of the mechanical application of the law starting from the resulting consequence, without referring to and analyzing the fact whether the defendant intended to harm the health or take the life of the victim. The appeals court has reached to the wrong conclusion when it reasons that there is no way to have attempted murder since the meaning of the attempt means that the criminal action fails to end not because of the author's will but for things independent of him. . ***All the evidence proves that the criminal intent of the accused was not to harm health but to take life. The defendant started with the intention to kill the victim and performed all the actions for the consequence of taking life, which is proven by several circumstances such as: the tool used, the intensity of the blow and the area where the blows were concentrated and, by considered sufficient the attack for causing injuries incompatible with life has stopped creating the wrong impression that the consequence had occurred.*** This fact is also confirmed by the act of medical-legal expertise, according to which the injuries were life-threatening at the time of infliction. *The victim, as it appears from his statements, explains that "As soon as citizen A.B came in front of me, he shot me with a knife first on the right side and several more times with a knife in different parts of the body, without stopping at all. I tried to catch Arben but he ran away in the dark."*

Within the framework of the distinction between the criminal offense of attempted murder and serious injury, the Criminal Board, making a detailed analysis of the object of this criminal offense, also highlights the essential elements

<sup>3</sup>Decision of the Criminal Board No. 286 dated 06.11.2013

that should be part of the evaluation process by the Court. According to the Penal College, for the configuration of the criminal offense of "intentional murder" the offense must take place during a quarrel, in a moment of heat and which ends immediately. **Whereas, as far as the subjective side is concerned, this criminal offense is carried out, without motive, without interest, without revenge, without jealousy; therefore, the criminal offense of intentional murder is the murder that is not accompanied by the presence of specific circumstances that transform it into qualified murder.** The Penal College appreciates that, in order to distinguish between the intention to take life and the intention to injure, **the ability of direct actions is important, which must be examined in relation to the facts and evidence of the specific case.** Since the court **cannot enter into the psychological element** of the defendant, in order to analyze the type and object of intent that accompanied his psychological attitude; that is, to assess whether the intention to take life and the consequence of death was absentminded, or maybe it was foreseen or the real risk of the consequence of death was accepted by the defendant. Thus, **the investigation of the subjective side** of the criminal offense must be based on indicative criteria, which must be based on verifiable and controllable factual data that shed light and show about the volitive element created in the mind by the active subject of the criminal offense. The evidence of the subjective side, in the absence of an express statement by the active subject of the criminal offense, must be based on indirect, proven data, which carry a weight of evidence about the true will of the defendant and especially, based on those elements of the objective side, which, due to their ability and degree of vulnerability, show unequivocally the intention created by the active subject of the criminal offense according to the circumstances that usually occur (*iq quod plerumque accidit*).

**In relation to the difference of the legal elements between attempted murder and serious injury, the Penal college of the Supreme Court notes that in order to determine intent, if it is about the acts of serious injury on purpose, or that of murder on purpose remaining in the attempt; the basic court must take into account criteria such as: the type and type of weapon used, the ability of the illegal action to realize the consequence, the area of the body where the consequence occurred, the distance of the passive subject of the criminal offense in relation to the active person of the criminal offense, the depth of the wound caused, the circumstances of the time and place that favor or not the criminal action, in order to reach the right legal conclusion regarding the criminal offense effectively committed by the active subject of the criminal offense. The College notes that in the case of the criminal offense of wounding, the degree of violation of the criminal action is exhausted with the arrival of the consequence; that is, that of wounding. While in the case of attempted murder, there is an addition of the vulnerability of the criminal action, which in itself, has a greater ability and is potentially able to realize a more serious consequence than against the relationship with the object of the whole of health, affected or placed in real danger, the next higher protected legal relationship, which has as its object the life relationship of the passive subject of the criminal offense.**

In these conditions, in order to reach a correct conclusion regarding the correct legal setting, the court of first instance must be guided by more detailed analysis of the dynamics of the facts in order to assess whether or not the victim's life was effectively put at risk. concrete risk, i.e. if the criminal actions of the active subject of the criminal offense were capable of, with a high probability, infringing the life of the passive subject of the criminal offense, if at the head of the active subject of the criminal offense, the intention was created on the psychological level to take life, (*animus necandi*), which means if objectively there was the will of this subject to have aimed to kill the victim by direct means, referring to the aforementioned legal criteria and legal logic<sup>4</sup>. This attitude is also confirmed in the other verdict of the Penal College, which reasons in this way.....*The difference between the criminal offense provided by article 88/2 of the Penal code and the criminal offense of murder provided for in the figure of crime in article 76 of the Penal code, is the criminal goal that the author wanted to achieve. The purpose has to do with the result that seeks to achieve by committing the criminal offense, which in the case of wounding is damage to the health of the person when it is done with direct intent and in the case where the consequence is death, while the second consequence comes from carelessness. In evaluating the subjective side, i.e. the author's intention to draw the right conclusion, it should be evaluated in close connection with the objective side of the work and specifically the concrete actions performed by the author, who in this way manifests the inner thought in the outside world reasoned. In the assessment to distinguish whether the perpetrator intended to cause serious health damage, but as a result caused the other consequence of the victim's death, with that of murder, the elements of the commission of the criminal offense must be analyzed such as: the area where they are concentrated the injuries, the intensity of the blows, the tool used. The correct legal qualification of the criminal offense has to do first of all with the application of the criminal law by the court to give a fair verdict based on the law. In this*

<sup>4</sup> Decision of the Criminal Board no. 142 dated 21.05.2014

sense, the interpretation of an element of the conscience of the individual who commits a criminal offense is both difficult and important for the determination of guilt through legal qualification.

Of course, this perception of the court should not be made on a subjective basis, but on the basis of "reading" the concrete actions and the harmonious evaluation of all the evidence and the conclusion that emerges from it. In terms of form and practical, since the intention is an internal volitional element, it is difficult to determine the existence of the criminal intent to kill when this has not been accepted by the subject, and in these cases it will be evidenced through the interpretation of this will through external objective elements of the appearance of such as: the type of vehicle used, distance, direction, the area of the body where the blows are concentrated and where the injuries are caused.

#### 4. Premeditated Murder Vs Premeditated Murder

Judicial practice, in addition to the difficulties associated with determining the identity of the criminal fact, whether we are dealing with attempted murder or intentional serious injury, has encountered difficulties in distinguishing between the criminal offense of intentional murder and premeditated murder. **With its verdict, the Court of the Shkodër**<sup>5</sup> Judicial District would analyze the following: Returning to the subject matter of the trial, the Court considers that the defendant B.T has objectively consumed the figure of the criminal offense "Premeditated murder remaining in the attempt" provided by article 78 and 22 of the Penal code. **Thus, during the trial from the testimony of citizens K.M, K.R and K.RU, the fact was proven that the defendant B.T, without having any momentary argument with the citizen K.M, after seeing the latter in the bar drinking coffee, because and of a conflict they had before, he left the bar where he was drinking coffee with a friend and returned with a pistol-type combat weapon after 10-15 minutes and shot twice in the direction of citizen K.M.** At these moments he intervened the owner of the bar, who grabbed the defendant's gun in order to avoid other consequences. The criminal consequence did not arise due to the provision of medical assistance. So, the criminal offense has remained in the attempt phase.

Based on these circumstances, the Court of Fact has assessed that the criminal offense committed is "Murder with premeditation". According to her, the defendant B.T has not fully committed the criminal offense for which he is accused, due to the intervention of the owner of the bar and the provision of immediate assistance to the injured K.Mg by the medical staff.

Therefore, in the concrete case, the fact will be analyzed whether the offense committed by the defendant remains in the attempt phase. In the present case, the court reasoned that the conditions for the criminal offense committed by the defendant B.T to be considered as pending are cumulatively met. **First, the defendant committed direct actions for the realization of the criminal intent, shooting twice in the direction of the citizen Klodjan Mgurra, once in the abdomen, which is considered a vital place for life, where the main organs are located, and once in the leg right** **Secondly, the defendant has committed the criminal offense with direct intent, since the latter has foreseen the consequences of the criminal offense and wants their arrival, thus trying to commit the criminal offense for which he is accused, and has taken actions directly to accomplish what he had envisioned. Thirdly, the criminal offense "Premeditated murder" was not committed for reasons independent of the will of the defendant B.T. Thus, during the trial, it was proven that the death of the citizen K.M did not occur due to the intervention of the owner of the bar where the incident took place and due to the provision of medical aid. Fourthly, the figure of the criminal offense "Premeditated murder" for which the defendant is accused is considered a crime as it is punished by 15 to 20 years of imprisonment. According to the court of fact, the verdict to kill the citizen K.M was taken by the defendant B.T calmly and coolly, since due to a dispute that the defendant had with the injured party before, without making any argument on the day of the incident, the defendant left from the bar where he was drinking coffee and returned after about 10-15 minutes with a pistol and shot twice at citizen Klodian Mgurra.**

This verdict of the Court of First Instance Shkodër has been overturned by the Penal College<sup>6</sup>. The Penal College assesses that... we are not before the premeditated murder provided by article 78 of the Penal Code, but before the intentional murder, provided for by article 76 of the Penal Code. In reaching this conclusion, the Board relies first on the fact that premeditation as an essential element of guilt (the subjective side) of the criminal offense of "Premeditated murder" is not presumed, but must be proven beyond any reasonable doubt. Meanwhile, the courts of fact, in violation of Article 4 of the Penal Code (which stipulates that any doubt about the charge is evaluated in favor of the defendant) were satisfied only with the theoretical mention of the characteristic elements of "premeditation", not arguing their examination in the case under consideration. The difference between the subjective side of "Murder with premeditation" and

<sup>5</sup> Decision No. 232 dated 11.03.2015

<sup>6</sup> Decision of the Criminal Board No. 230 dated 15.12.2016

"Deliberate murder" is both in the intellectual moment and in the volitional moment.

The intellectual moment (which is the most important difference) in premeditated murder is created in cold blood, time before committing the act and the author thinks and chooses lives, the time, the place and the most suitable circumstances to carry it out, while in the second (intentional murder) the author does not coolly think about the details of the execution, but tries quickly to use those means, that place and those circumstances in it where he is, in order to execute the verdict taken to commit murder. The volitional moment (the will and verdict to commit murder) in premeditated murder arises long before its execution due to some internal motives that drive the author, while in intentional murder the motives are banal and immediate, and the murder mainly occurs as the result of the degeneration and escalation of a previous verbal conflict.

The court assesses that from the evidence obtained and cited above, it does not result that the defendant B.T cold-bloodedly made the criminal plan to kill the victim K.M. From the evidence cited above, there is no typical element that characterizes premeditated murder, on the contrary, all the data are characteristic of simple premeditated murder. The injured party himself stated before the court that he had a verbal conflict with the judge and after this conflict the judge shot to kill him. Based on the mechanism of the event, the victim's own statements before the court, the Penal college of the Supreme Court comes to the conclusion that in this particular case we are facing the criminal offense of intentional murder and not premeditated murder, and this will also be reflected in the punishment that will be imposed. to be assigned to the defendant for this criminal offense. With another verdict, the Penal college of the Supreme Court explains in detail the difference between the two figures of the criminal offense<sup>7</sup>, that of intentional murder from premeditated murder.... ". The Criminal Panel of the Supreme Court wishes to reiterate its position that what separates intentional murder from premeditated murder is mainly the analysis of the subjective elements of the criminal offense, related to the objective elements of the commission of the crime. **The subjective element in premeditated murder is characterized by cold-bloodedness and determination to commit the crime, this element is in unity with the objective element, i.e. in unity with taking measures to commit the crime, preparing the circumstances for committing the criminal offense, finding suitable place, tools, etc.**

According to her, in premeditated murder, a momentary quarrel is excluded, and what is important for the subjective side of the crime of premeditated murder, is the existence of a clear motive. This means that the person who commits the crime has processed the thought for a relatively long time between the provoking cause (motive) and the moment of committing the criminal offense, and it is even required that the provoking cause has arisen between the defendant and the victim, that is to say clear motive for the murder. **On the other hand, intentional murder is characterized by illegal actions or omissions, carried out in special circumstances of hot-bloodedness, occupation, beating or quarrel between the perpetrator of the murder and the victim, these have a serious character and are mutual. In this criminal offense, there is a lack of premeditation and determination to commit the crime, the thought is momentary, prompted by the concrete situation, the author uses the means at his disposal that may be circumstantial or that are held by him even before committing the crime.** In the case at trial, it has been fully proven that between the defendant Albano and the victim Mikel there was a momentary quarrel, started by the unintentional actions of the victim, but perceived as intentional and with the intention of insulting the judge, this quarrel has aggravated until the physical conflict between them, after the victim shot the defendant in the face, meanwhile, in the crime of premeditated murder provided by N.78/1 of the Penal Code, the legislator has provided that the person kills with direct intent, premeditated and cold-blooded, which means the passage of a relatively long time interval between the provocative cause and the moment of undertaking direct actions, in which the objective element, the time interval, finding the means are required to be in unity. The temporal separation of the judged and his return to the bar cannot be considered premeditation.

In the above verdict, the object of legal analysis was also the difference between intentional murder (Article 76) and murder committed under conditions of strong mental shock and chastity (Article 82), since the defendant claimed that the crime was committed under the conditions of a physiological affect, a constituent element of Article 82 of the Penal Code. **On this claim, the Criminal Board reasons that "Regarding the claims presented in the defendant's appeal, "Murder with intent", provided by article 76 of the Penal code, and "Murder committed in a state of severe mental shock", provided by article 82 of the Penal Code, have in common the fact that both are committed intentionally. Article 48/b of the Penal Code provides that it is a mitigating circumstance when the criminal offense was committed under the influence of mental shock escape caused by provocation or wrongful actions of the victim or any other person.**

---

<sup>7</sup> Decision No. 17 dated 08.02.2017

In order to be before the criminal offense provided by Article 82 of the Penal Code, we must have a state of strong mental shock, which results in the total loss of control and for this reason the commission of the criminal offense in this state, which is not has been proven in this case. In both of the above cases, as a rule, the victim unjustly causes, by means of serious insult or violence, (as claimed by the defendant, that his dignity and the honor of the family were insulted by the victim), the situation of the psychic shock of the defendant, who, at that moment, commits his criminal act. The difference between the above figures of crime lies in the level of physiological affect and, consequently, the level of consciousness and the ability to understand, think and to control the action.

In the case of intentional murder, in the sense of Article 76 of the Penal code, the unjust provocation of the victim creates a mental shock to the defendant, which in any case does not reach the physiological affect, or the strong mental shock of the moment, of the perpetrator of the criminal offense "Murder of committed in a state of strong mental shock", provided by Article 82 of the Penal code. Intention does not exclude the existence of a provoking cause, nor shock at the moment of facing this cause, but what differentiates this criminal offense from "murder committed under conditions of psychic shock" is precisely the person's ability to control the shock and take a verdict unaffected by the latter. The time it takes to stabilize the psychological state and make a premeditated verdict varies depending on the person's temperament and is judged by their behavior. Psychic shock, as a qualifying circumstance of Murder, according to N.82 of the Penal Code, has a number of features: psychic shock - a very strong physiological affect that arises in an immediate, lightning-like manner, as a result of the provoking cause, lasts a few moments and then passes, during which the individual is not in full control of his actions as his consciousness is clouded by the prevailing affect. It must be: i) strong - which obscures the person's awareness and ability to control his actions to such a degree that it dictates his behavior, that is, the actions are carried out as a result of this affect. ii) instantaneous: right away, it arises there and the person commits the act at the moment. iii) provocative cause: Violence or serious insult by the victim. Not every kind of violence or insult, but case by case as well as considering what is considered a serious insult by an average person. From the evidence administered in the trial, the courts of fact have rightly concluded that premeditation is not proven, much less the mental shock of the defendant.

## 5. Conclusions

i. The provisions of the Penal code, its special part, guarantee special criminal legal protection for life and health. The legislator does not offer interpretation spaces to include in the concept of the right to live the right to decide freely about life (the right to a dignified death). With the current legal regime, assisted death can affect the individualization of the punishment for the subject of the criminal offense who, in carrying out the action, was guided by the 'goal to help reduce pain for the patient who expresses the will to leave life' '.

ii. Between the criminal offense of attempted murder and wounding, the courts must be oriented towards identifying the correct interpretive elements. The consequence is not enough to discover the true intention of the author, but the causes, motives of committing the crime must be verified as an element of the subjective side as well as the means, the place, the time, the intensity of the blows, the place of concentration of the blows, the presence of hindering factors such as the intervention of law enforcement, certain persons who are at the scene, etc.

iii. Between the criminal offense of intentional murder and premeditated murder there are essential differences that consist of objective and subjective elements. In the case of intentional murder, the crime occurs on the spot due to a physical or verbal dispute between the cast, where the perpetrator under the influence of the circumstances acts by violating the physical integrity of the victim of the criminal offense. In the case of 'premeditation', the author acts with composure, determining the time, for example: (darkness) the place (no witnesses) the tool that guarantees the success of the criminal intent (firearm). The time interval between the conflict and the return to the scene to complete the criminal act will not be considered a 'commitment in cold blood' but an act committed under the influence and therefore premeditation is excluded. The time interval is not determinable but will be determined case by case based on the dynamics of the development of the event. For example, returning the next day to the bar where they had a conflict will not be considered 'hot blood' but as an act with an element of premeditation iv. The offense committed under conditions of strong mental and emotional shock is excluded in the application when the offense was committed with premeditation. It will apply when the crime is committed on the spot. Vector is the role of the victim in the commission of the criminal offense. Here the victim acts actively by violating or insulting the honor and dignity of the perpetrator. The Court and the Prosecutor must carefully assess the circumstances in order not to go to the mechanical application of the substantive criminal law. It is necessary to assess the intensity of the violence used (for example, slapping does not have the appropriate intensity to create a state of affect, but sexual violence is capable of creating a state of psychological affect,

or violence exercised in the presence of the wife and child accompanied by insulting vocabulary for the honor and dignity of the family is able to create psychological affect). Medical expertise is not necessarily needed to determine the condition of the affect. The test that should be used is that of the average person who should answer the question "how would you act in those circumstances".

## References

- Elezi, I., Kacupi,S.,&Haxhia ,M.2007. Commentary of the Criminal Law of the Republic of Albania: Botimet Kumi  
Muci,S. 2012, Criminal Law, General part Tirane , Albania : Botimet Dudaj  
Elezi, I. 2018 Criminal Law, Special Part Tirana.Albania , Botimet Kumi  
Hoxha, D.,Kapuci,.S ., &Haxhia,M (2018) Criminal Law, General Part, Durres Albania, Botimet Josef.  
Decision of the Criminal Board No. 286 dated 06.11.2013  
Decision of the Criminal Board no. 142 dated 21.05.2014  
Decision No. 232 dated 11.03.2015  
Decision of the Criminal Board No. 230 dated 15.12.2016  
Decision No. 17 dated 08.02.2017