

## NEWBORN MURDER AND ITS LEGAL PREVENTION

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### **Abstract**

*A newborn's murder committed by his/her mother always causes an exceptional emotional response in the society. The fact of neonaticide evokes emotions not only because a new life is the most vulnerable part of the society unable to defend itself, but also the mother's aggression directed to her own "flesh and blood" contradicts the laws of existence, denies the power of mother instincts, unconditional love for her children. The aim of the work is to study the legal regulation in Lithuania, prevalence, dynamics of this crime, its murder locations, social characteristics of offenders, possibilities of applying preventive, rehabilitative measures and the new prospects to enlarge the efficiency of the legal persecution of the neonaticide in Lithuania. The retrospective investigation was conducted in a period from 1990 to 2012 by examining depersonalised statistical cards provided by The Information Technology and Communications Department under the Ministry of the*

*Interior of the Republic of Lithuania. In this study, a comprehensive analysis of neonaticide was carried out in terms of a holistic generalisation of the issue, i.e., the infanticide situation in Lithuania has been investigated in depth, practical recommendations have been provided to introduce new concepts to the scientific doctrine, to adjust the existing legal acts on neonaticide and to develop new legal acts, as well as introduce preventive and rehabilitative measures. Results have shown that women, who murdered their first-day newborn at the time of delivery or shortly thereafter, were relatively young, with low education, without any profession or occupation at the time of the crime. The most common crime location is village, inside the residential place of a woman. Lithuania has not yet adopted a legal neonaticide prevention system. In Lithuania, the legal provisions relating to the murder of newborn should be improved.*

**Keywords:** neonaticide, newborn murder, anonymous delivery, baby boxes, diminished capacity, infanticide, prevention.

## Introduction

### 1. Problem

Neonaticide is not a new phenomenon. Historical sources indicate that newborn murders were found among Aztecs, Australian Aborigines<sup>1</sup>, some African cultures<sup>2</sup>, Canadian Eskimos<sup>3</sup>, Irish Celtic, Gaelic, Phoenicians as well as Vikings. Neonaticide occurred in Mesopotamia<sup>4</sup>, Ancient Greece, Rome<sup>5</sup>, China<sup>6</sup> and India. Neonaticide in Medieval Europe was a fairly common phenomenon<sup>7</sup>, apparently because of public skepticism. The shift in the approach to neonatal murders was influenced significantly by the laws introduced in the 16th and 17th centuries in many western European countries that recognized infant homicide as a criminal offense punishable by death penalty<sup>8</sup>. Since the 19th century, the attitude to both the women who murdered their newborns and the punishment for this crime has become less severe. Death penalty was changed to imprison-

<sup>1</sup> Hughes, J. *The Fatal Shore: A History of Transportation of Convicts to Australia, 1787-1868*. London: Harvill Press, 1987.

<sup>2</sup> Laughlin, C.D. Pre- and Perinatal Anthropology III: Birth Control, Abortion and Infanticide in Cross Cultural Perspective. *Pre- Perinatal Psychiatry J.* 1994, 9: 85-101.

<sup>3</sup> Freeman, M.M.R. A Social and Ecologic Analysis of Systematic Female Infanticide among the Netsilik Eskimo. *Am Anthropologist.* 1971, 73: 1011-1018.

<sup>4</sup> Meyer, C.L., and Oberman, M. (with White, K., Rone, M., Batra, P., and Proano, T.C.). *Mothers who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the "Prom Mom"*. New York: New York University Press, 2001.

<sup>5</sup> Kellelt, R.J. Infanticide and Child Destruction – The Historical, Legal and Pathological Aspects. *Forensic Sci Int.* 1992, 53(1): 1-28.

<sup>6</sup> Light, S. Female Infanticide in China: Response to the Victimization of Women and Children. *J Center Women and Policy Stud.* 1985, 8: 5-6.

<sup>7</sup> Kellum, B.A. Infanticide in England in the Later Middle Ages. *History of Childhood Quarterly. The Journal of Psychohistory.* 1974, 1(3): 367-388.

<sup>8</sup> Wrightson, K. Infanticide in Earlier Seventeenth Century England. *Local Popul Stud.* 1971, 15: 10-22.

ment. The criminal codes of a number of states distinguished newborn murders as a separate privileged offense. Since the 20th century, mitigating conditions have been defined as a particular delivery state, physical and mental suffering<sup>9</sup>. A privileged composition of the criminal law is provided for in Austria, Belarus, Estonia, Greece, Kazakhstan, Latvia, Lithuania, Moldova, Russia, Switzerland, Ukraine and other countries<sup>10</sup>.

## 2. Definition

The term of neonaticide has no legal basis, but it is often used in literature. The term was first used by Resnick, who described neonaticide as a murder of a newborn within the first 24 hours after birth<sup>11</sup>. Bonnet distinguished active and passive neonaticide. Active neonaticide is a murder of a newborn as a result of a direct use of violence. Passive neonaticide is a result of negligence occurring immediately after delivery (e.g., an unfed newborn)<sup>12</sup>.

In the authors' opinion, the term neonaticide is not accurate, because the child, older than one day, is also considered to be a newborn up to the age of 28 days. It would be more accurate to distinguish early neonaticide, i.e., murder of a first-day-newborn, and late neonaticide, i.e., murder of a newborn from its second day of age until 28 days after birth.

## 3. Aim

The aim of the study is to determine the peculiarities of neonaticide in Lithuania from social and legal viewpoints.

## 4. Objectives

The objectives of the study are the following ones:

- 4.1. To analyse the Lithuanian legal framework in relation to the neonaticide in Lithuania;
- 4.2. To analyse the crime prevalence and dynamics, location of the neonaticide committed at the time of delivery or shortly thereafter;
- 4.3. To investigate social characteristics of mothers suspected of murdering their newborn(s) at the time of delivery or shortly thereafter;

<sup>9</sup> West, S. G. An Overview of Filicide. *Psychiatry (Edgmont)*. 2007, 4(2): 48-57.

<sup>10</sup> Лопашенко, Н.А. *Современные разновидности российской и мировой преступности: состояние, тенденции, возможности и перспективы противодействия*. Саратов, Саратовский Центр по исследованию проблем организованной преступности и коррупции: Сателлит, 2005, p. 414-419.

<sup>11</sup> Resnick, P.J. Murder of the Newborn: A Psychiatric Review. *Am J Psychiatry*. 1970, 126(10): 1414-1420.

<sup>12</sup> Bonnet, C. Adoption at Birth: Prevention against Abandonment or Neonaticide. *Child Abuse & Neglect*. 1993, 17: 501-513.

- 4.4. To analyse the prospects of legal regulation and its prevention in Lithuania;
  - 4.5. To compare the results with the data presented in accessible statistical data in Estonia, Latvia and Poland.
  - 4.6. To provide practical recommendations for dealing with the neonaticide situation in Lithuania.
5. Novelty

In Lithuania, the situation of neonaticide has not been analysed so far as a comprehensive study by taking into account the historical development of this crime, its prevalence, dynamics, murder locations, social characteristics of mothers who murdered their newborns at the time of delivery or shortly thereafter, possibilities of applying preventive and rehabilitative measures.

## 6. The composition of the report

The report consists of three parts.

The first part reviews the history and the current state of criminal liability for the crime under consideration. The perspectives for the further development of the related legislation and enhancing of its efficiency are shown.

Therefore, in the second part, the prevalence and the structure of neonaticide in Lithuania are outlined. The highly restricted impact of the current law on neonaticide is demonstrated. Comparative data on neonaticide in Lithuania are shown.

In the third part, the perspectives for neonaticide prevention are shown.

## Research Methodology

The legal framework for neonaticide in Lithuania has been analysed on the basis of legal acts, databases of public court rulings, scientific literature. The period of investigation of individual objects depended not only on the possibilities of state institutions to provide the requested data, but also on free access to certain statistical data made public by state institutions on their websites.

Retrospective investigation was conducted in a period from 1990 to 2012 by examining depersonalised statistical cards provided by The Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania (ICD), filled out while registering a criminal act, **“Intentional murder of a newborn by mother”**, specified by Article No. 106 of the Criminal Code of the Republic of Lithuania (previous version), valid up to 1 May 2003, and **“Infanticide”**, provided by Article No. 131 of the Criminal Code of the Republic of Lithuania, valid from 1 May 2003.

The information was systematised in accordance with the following criteria:

1. Criminal cases: the year when the crime was committed; the location of the crime scene (city, village); the real crime scene.
2. Women suspected of a crime: age; age group; education at the time of the crime; occupation at the time of the crime.

Seeking to compare neonaticide prevalence in the counties of Lithuania with the neighbouring Baltic countries, the authors used statistical data and reports made public on web pages of ICD, LDS, European Commission Eurostat, Statistical Bureau of Estonia, Central Statistical Bureau of Latvia and Polish National Police.

116 neonaticide cases were identified and 36 women were suspected of committing the crime.

The statistical analysis of the data was carried out by software package SPSS 16.0, Microsoft Office™ (Excel™) software. Statistically significant differences were searched by  $\chi^2$  criterion with a confidence interval of 95%. The differences were considered statistically significant if the p-value of the criterion was less than 0.05. The correlation between the two sets of data was calculated using the Pearson correlation coefficient  $\rho$ .

## Results and Findings

1. Neonaticide in the Lithuanian criminal law. The new prospects to enlarge the efficiency of the legal persecution of the neonaticide in Lithuania

### 1.1. The history of neonaticide regulations in Lithuania

Child homicide, as a separate offense, distinguished by the legal acts of Lithuania, dates back to the 16th century, when the Grand Duke of Lithuania (GDL) adopted the Statutes of Lithuania (I – 1529, II – 1566; III – 1588). The Statutes of the GDL provided that homicide of one's own child or homicide of an illegitimate child was considered a murder, but with mitigating circumstances<sup>13</sup>. A child's life was started to be defended legally, yet it was considered of less value rather than an adult's life. An act of a newborn murder, as a separate crime, was not specified. After the third partition of the Polish-Lithuanian Commonwealth (1795), the land on the right side of the Nemunas belonged to the Russian Empire, whereas on the left one – to Prussia. Therefore, at that time different legal regulations came into force in Lithuania. In 1840, Russian Czar Nicholas I issued a

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<sup>13</sup> Vancevičius, S. *Lietuvos Didžiosios Kunigaikštystės valstybiniai-teisiniai institutai (pagal 1529, 1566, 1588 m. Lietuvos Statutus)*. Vilnius: Mintis, 1981, p. 96.

decree which abolished the validity of Statute III of the GDL<sup>14</sup>. The new laws of the Russian Empire entered into force, with the provisions regulating newborn murder. In 1845, the Statute of the Russian Empire foresaw a lighter sentence for committing a homicide of an illegitimate newborn under mitigating circumstances (“preservation of honour”, “concealment of shame”, “shame and fear”). In 1918, after the independence of Lithuania’s state was restored on the basis of fundamental laws defined by the Interim Constitution, later in accordance with the Resolution of the State Council Presidium of 16 January 1919, the Criminal Statute of the Russian Empire, issued in 1903, remained in force in Lithuania<sup>15</sup>. The latter Statute foresaw homicide of a child (the age was not regulated) as a crime under aggravating circumstances. The sentence for committing such a crime was punitive prison labor imprisonment from 10 years to life imprisonment. The Criminal Statute also foresaw that a mother who had murdered her illegitimate child at the time of delivery was sentenced for life imprisonment (later – for punitive labour imprisonment)<sup>16</sup>. The latter Statute also foresaw a fine in the amount of 250 LTL (litas) for not notifying of the newborn’s birth or death<sup>17</sup>. The laws of the state of Lithuania were effective up to 1 December 1940, when Russian laws (The Criminal Code of the Russian Soviet Federative Socialist Republic, issued in 1926) were introduced as a result of Lithuania’s occupation<sup>18</sup>. The Criminal Code of the Russian Soviet Federative Socialist Republic, issued in 1926, remained in force until 30 August 1961 (excluding the years of war). The Code assigned neonaticide to a qualified crime category, as a mother is a person whose duty is to take particular care of a helpless child. The Criminal Code of the Soviet Socialist Republic of Lithuania, adopted by the Supreme Council of the Soviet Socialist Republic of Lithuania on 26 June 1961, entered into force on 1 September 1961, imposed criminal responsibility, i.e., imprisonment of up to five years or correctional labour sentence for up to one year, for a mother who intentionally murdered her baby at the time of delivery or shortly after it<sup>19</sup>. The crime was attributed to the privileged, i.e., the crime of mitigating liability. After Lithuania had restored its independence in 1990, the legislator understood the legal regulatory failure on legal regulation of a newborn murder and tried to improve it. A new Criminal Code of the Republic of Lithuania, effective to date, was adopted by the Seimas of the Republic of Lithuania and entered into force on 1 May 2003. The current Code foresees criminal liability, i.e., the arrest or imprisonment for up to five years, for a mother who murders her newborn in

<sup>14</sup> Maksimaitis, M., and Vancevičius, S. *Lietuvos valstybės ir teisės istorija*. Vilnius: Justitia, 1997, p. 108.

<sup>15</sup> *Ibid.*, p. 191.

<sup>16</sup> Criminal Statute 1903. *Official Gazette*. 1919, No. 2-3.

<sup>17</sup> *Baudžiamasis Statutas*. Kaunas: Menas, 1930.

<sup>18</sup> Maksimaitis, M., and Vancevičius, S. *Lietuvos valstybės ir teisės istorija*. Vilnius: Justitia, 1997, p. 227.

<sup>19</sup> The Criminal Code of the Soviet Socialist Republic of Lithuania. *Official Gazette*. 1961, No. 18-147.

a mental state triggered by labour<sup>20</sup>. This category of crime is attributed to the privileged crimes.

## 1.2. The features of corpus delicti (“infanticide”)

During the study period (1990–2012), two different Codes were valid with different features of corpus delicti of a criminal offense, i.e., neonaticide: **“Intentional murder of a newborn by mother”**, specified by Article No. 106 of the Criminal Code of the Republic of Lithuania (previous version), valid up to 1 May 2003, and **“Infanticide”**, provided by Article No. 131 of the Criminal Code of the Republic (LT CC) of Lithuania, valid from 1 May 2003.

In accordance with the criminal law<sup>21</sup>, only a person who committed a crime that complies with the corpus delicti of the crime or a misdemeanor specified by the criminal law is liable for a crime committed by him. The features of corpus delicti are as follows: the object, the objective side (offense, consequences, causation, circumstances, method), the subject (age, diminished capacity), the subjective side (guilt, motive, purpose).

### The object

The object of the crime specified in Art. 131 of the LT CC (Art. 106 of the previous version of the LT CC) is a newborn. The subject is the newborn’s body. The Lithuanian Medical Standard MN 112: 2008 “Physician Neonatologist. The Rights, Duties, Competence and Responsibility”, approved by the Minister of Health of the Republic of Lithuania, Resolution No. V-1237 of 8 December 2008, provides that a newborn is a child from the moment of birth to 28 days of life<sup>22</sup>. A similar provision is provided in the Child Resuscitation Standard approved by Resolution No. V-822 of the Minister of Health of the Republic of Lithuania on 31 August 2011: a newborn is a child from the moment of birth up to 28 days (in case of premature birth – up to 28 days of adjusted age)<sup>23</sup>. During the time of the crime, the newborn must be alive. In medical doctrine, a live-born newborn is considered to be with signs of life: heart function, respiratory movements, umbilical cord pulsation or vivid spontaneous muscle movements. There is an inconsistency in regulations of the moment of birth in legal acts of the Republic of Lithuania. The Law of the Republic of Lithuania on determining the moment of child’s birth provides that birth of a child is forcing out or extraction of a living fetus from the woman’s body, while the moment of child’s birth is

<sup>20</sup> The Criminal Code of the Republic of Lithuania. *Official Gazette*. 2000, No. 89-2741.

<sup>21</sup> Pavilionis, V., et al. *Baudžiamoji teisė*. Specialioji dalis, 1 knyga. Vilnius: Eugrimas. 2001, p. 21-27.

<sup>22</sup> The Lithuanian Medical Standard MN 112: 2008 “Physician Neonatologist. The Rights, Duties, Competence and Responsibility”, approved by the Minister of Health of the Republic of Lithuania, Resolution No. V-1237 of 8 December 2008. *Official Gazette*. 2009, No. 3-74.

<sup>23</sup> The Child Resuscitation Standard approved by Resolution No. V-822 of the Minister of Health of the Republic of Lithuania on 31 August 2011. *Official Gazette*. 2011, No. 110-5214.

the appearance of the entire viable fetus from the woman's body<sup>24</sup>. The child's vital signs are determined by independent breathing movements or heartbeat. Another law specified by the Civil Code of the Republic of Lithuania provides that a natural person's birth moment is recognized as the first independent inspiration of a newborn<sup>25</sup>. In accordance with medical practice, an independent inspiration act of the fetus during the birth process is already possible when part of the fetal body appears from the woman's body. Also, a newborn may not breathe after birth, but the heart function is detected, and breathing is reset by resuscitation, which takes a certain amount of time, or the newborn's respiratory and cardiac activity may not be detected but could be restored by resuscitation. In the authors' opinion, the legal acts should take into account the advanced medical practice and regulate the adjustment of concepts defining the moment of birth and the newborn's vital signs. In terms of the beginning and the end of the human life, different authors demonstrate different viewpoints. Suggestions on when the human life begins vary as follows: the moment of conception<sup>26</sup>; the 14th day of the conception because the embryo already has all the human features<sup>27</sup>; fetal brain mass formation (approximately the twenty second week of pregnancy)<sup>28</sup>; the onset of physiological labour even though the newborn is still in the womb, but he is already a human<sup>29</sup>; the moment of the emergence of at least one part of the fetus from the mother's body<sup>30</sup>; the emergence of the entire body of a viable fetus from the mother's body<sup>31</sup>; the start of the first inspiration<sup>32</sup>, etc. In terms of the protection of an unborn embryo or fetus' right to life, the European Court of Human Rights claims that the right to life of an unborn newborn is not defended, as specified in Article 2 of the European Convention on Human Rights, although he/she has the potential and the possibility to become a person. The main argument is that in case the unborn newborn's rights protection was recognised, it would violate the mother's private right to have an abortion per-

<sup>24</sup> The Law of the Republic of Lithuania on Determining the Moment of Child's Birth. *Official Gazette*. 2002, No. 43-1602.

<sup>25</sup> The Civil Code of the Republic of Lithuania. *Official Gazette*. 2000, No. 74-2262.

<sup>26</sup> Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November [interactive]. [accessed on 2014-09-06]. <[http://www.cartercenter.org/resources/pdfs/peace/democracy/des/amer\\_conv\\_human\\_rights.pdf](http://www.cartercenter.org/resources/pdfs/peace/democracy/des/amer_conv_human_rights.pdf)>.

<sup>27</sup> Попов, А. Н. *Преступления против личности при смягчающих обстоятельствах*. Санкт-Петербург: СПб, 2001, p. 12.

<sup>28</sup> Попов, А. Н. О начале уголовно-правовой охраны жизни в новом тысячелетии. *Уголовное право в XXI веке*. Москва: 2002, p. 200-203.

<sup>29</sup> Nocius, J. *Nusikaltimai žmogui*. Vilnius: Vilniaus universiteto leidykla, 1998, p. 6.

<sup>30</sup> Лукичев, О. В. *Детоубийство: уголовно-правовая и криминологическая характеристика*. Санкт-Петербург: СПб, 2000, p. 32.

<sup>31</sup> The Law of the Republic of Lithuania on Determining the Moment of Child's Birth. *Official Gazette*. 2002, No. 43-1602.

<sup>32</sup> The Civil Code of the Republic of Lithuania. *Official Gazette*. 2000, No. 74-2262.



formed<sup>33</sup>. If we consistently relied on such arguments, the question arises why it is not possible to get rid of a born child if it seriously hampered the private life of the mother. In the authors' opinion, the right to life should not be narrowed at the moment of birth. It would be appropriate to address the materialisation of the right to be born. Life already exists from the moment of conception. The question is whether this life will be given a possibility to materialise itself. It is crucial to identify the moment from which the state assumes the responsibility to defend the right to life. Furthermore, there is a range of distinct categories, which are closely related: the beginning of life, the moment of birth and the moment of when the legal protection of the state commences. According to the authors, the moment of human conception should be considered the beginning of human life because it accelerates a rapid development of a new human body with its own unique genetic code. A human fetus is not a part of the mother's body, despite the fact that by the time a maternal organism is required for the development of the human body. The development of the human body goes through various stages of development: both in mother's body (embryo, fetus) and at birth (neonatal, infancy, childhood, including adolescence, maturity). Could the human in all its stages of development be considered a human being? Of course, because this is a human being, only in different stages of its development. The embryo or fetus is called the human's embryo or human's fetus. A human cannot occur from a non-human. Could the human in all its stages of development be considered a living? From the initial development stage of the human body, it goes through intensive vital processes. Alive could not arise from not alive. Medical achievements provide an opportunity to learn that in 14 days embryo has all the human characteristics, 18 days – begins to whip a sweetheart, 21 days – starts using own circulatory system, blood group can be completely different from the mother's blood group, 6 weeks – self-sufficient movements, 8 weeks – can hold an object, place it in the palm, feel pain, 10 weeks – it is possible to take the fingerprints, etc.<sup>34</sup>.

#### The victim

Under the doctrine of criminal law, in the case of neonaticide, a victim is a born infant or an infant in the process of birth. As specified in Art. 106 of the previous version of the Criminal Code of the Republic of Lithuania, the period of committing the offence was defined as “during or shortly after delivery”, so the victim's status was made clear by the above mentioned document, i.e., a newborn who has already been born or a fetus in process of birth (a newborn, a pre-newborn). Article 131 of the current Criminal Code of the Republic of Lithuania does not provide an accurate definition of the time of the crime. Abstract categories

<sup>33</sup> *Eur. Court. H.R. Vo v France*. Judgment of 8 July 2004, No. 53924/00 [interactive]. [accessed on 2015-02-13]. <[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61887#{"item id":\["001-61887"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61887#{)>.

<sup>34</sup> Попов, А. Н. *Преступления против личности при смягчающих обстоятельствах*. Санкт-Петербург: СПб, 2001, p. 12.

always raise further discussions. The time of birth is not an instantaneous act but a process that lasts for more than one hour. There have been cases where the mother kills her newborn in the process of birth before it takes the first breath (for instance, commits a deadly hit on the appearing head). In accordance with the concepts defining the moment of birth, a human has not been born yet, but the infant had no chance to be born alive after his mother's actions taken during delivery. In terms of the moment of birth, in such case, the mother is not liable for her actions, as only a human who was born and is alive can be killed. If criminal law is in force only from the moment of the birth of a human, there would be space for impunity where criminal liability is not foreseen for actions radically contradicting common morality principles. Although Art. 131 of the LT CC does not specify the period of committing a crime but indicates the object, i.e., a newborn, the criminal law doctrine specifies that a victim of the mentioned offense is not only a newborn, but also a pre-newborn who is in the process of birth.

The Senate of the Supreme Court of the Republic of Lithuania provides an even more ambiguous explanation on the judicial practice in neonaticide cases. The Resolution of the Senate of the Supreme Court of the Republic of Lithuania No. 46 of 18 June 2004 "For Judicial Practice of Crimes against Life" paragraph 25 foresees that Art. 131 of the LT CC does not regulate the duration of the period between birth and murder, thus, in qualifying the offense, the medical criteria of a newborn concept are irrelevant. On the one hand, such an interpretation is beneficial as it extends the limits of the protection of life of a pre-newborn in the process of birth. On the other hand, it denies the significance of the legalized concept of a newborn and potentially extends the limits of duration of committing the offense which distorts the content of the offense and the unity of concepts.

#### The objective side

One of the objective features of crime is the offender. The crime provided for in Art. 131 of the Criminal Code (Art. 106, previous version of LT CC) can be committed by active actions, e.g., by suffocating, strangling as well by negligence, passive attitude, failing to perform actions the mother must and is able to perform, for example, does not feed or neglects her newborn. The crime committed by the offender should have consequences, i.e., the newborn's death. From the legal perspective, a causative association between committing an offence and its consequences is significant. The newborn's death occurs as a result of mother's illegal actions or negligence. The Law of the Republic of Lithuania on identification of human death and critical conditions provides that the moment of death is considered to be the time of the irreversible cessation of the circulation and respiration of a human being or upon the irreversible loss of function of all the structures of the human brain<sup>35</sup>. A similar concept is provided in the Civil Code

<sup>35</sup> The Law of the Republic of Lithuania on Identification of Human Death and Critical Conditions. *Official Gazette*. 1997, No. 30-712; 2002, No. 43-1601.

of the Republic of Lithuania. The factor of irreversibility presupposes the awareness of the immeasurable, irreparable damage caused to the human, the family, the society and the state.

Classifying the offense, it is important to determine the cause of death of a newborn, or even if the newborn was born alive. There are cases when a forensic doctor is unable to answer to the questions submitted for objective reasons, for instance, a burned newborn's corpse residues are found, or a corpse stayed in a warm environment for 3-4 days, or the newborn was buried or thrown into latrines. In such cases, it is virtually impossible to determine whether the newborn was born alive. For example, according to the Court of Appeal of Lithuania on April 13, 2005, the order in a criminal case No. 1A-268: "The corpse forensic medical specialist conclusion No. 533 (p. c. 22-24) established the mere fact that the newborn could be born about 10 days before the corpse examination on August 16, 2003. It specifies a complete disintegration of the internal organs, decomposition and mummification of a corpse. In the absence of internal organs, it cannot determine whether the newborn was born alive. For the complete disintegration of the internal organs, decomposition and mummification of a corpse it cannot determine the cause of death". It appears a space to impunity. Already mentioned in the Criminal Statute in force in Lithuania, after the Independence regained of Lithuania in 1918, it provides for liability for non-notification of birth or death. It means that the birth of a newborn, even a dead one, had to be reported to the relevant authorities to determine the fact of the birth or death and a fact of death. It is debatable whether or not to restore a similar provision in Lithuania.

#### The subject

A newborn may be killed by his mother, father, relative or a stranger. As for the privileged elements of offense (*corpus delictus*) provided for in Article 131 of the LT CC, (Art. 106, the previous version of the LT CC), a special subject of the crime is considered to be only the newborn's mother of subjective age, i.e., until the crime was committed, she had reached the age of 16 (14 years of age by the LT CC). Both the previous version of the LT CC and the current LT CC foresee that the general age of the person liable for the crime provided for in the Criminal Code of the Republic of Lithuania is 16 years of age. A person of this age category can be fully responsible for all crimes under the LT CC, except for crimes provided for in the Criminal Law, such as murder, severe health impairment, rape, etc. (finite list), for which the person is liable since the age of 14. We have been aware from the medical practice that newborns are being born and killed by even younger women (girls). What is the evaluation of the crime in such cases? In fact, the crime committed by a woman (girl) of the age of up to 16 who killed her newborn under the impact of her psychophysical state caused by delivery cannot be classified in accordance with the privileged status provided for in Article 131

of the Criminal Code of the Republic of Lithuania due to the fact that there is no subject. The actual *corpus delictus* of the offense, in fact, is consistent with qualified crimes provided for in Article 129 (part 2) of the LT CC, i.e., murder of a juvenile, a person in a helpless state, or one's own child. Criminal liability for the above mentioned categories of crime applies from the age of 14, but the Criminal punishment to be imposed is significantly higher, i.e., imprisonment for up to 5 years or life imprisonment, compared with the privileged neonaticide with the arrest or imprisonment for up to 5 years. The criminal law doctrine encompasses a concept of competing legal norms. In cases when a privileged norm competes with a qualified norm, a privileged norm is applied. On the one hand, in terms of legislature, a person reaching the age of 14 is already able to realise the danger of severe and serious crime (murder, severe health impairment, rape, theft, robbery, etc.). On the other hand, there is an emergence of a few years' interval for the impunity of potentially dangerous performance, i.e., neonaticide. Is theft or robbery a more protected goodness rather than the life of a newborn, the least protected social subject? Life is an absolute value, which creates all the remaining values. So, could the principle of "primacy versus absolute" exist? The author claims that the subject liable for committing a crime, as provided for in Article 131 of the LT CC, should be of the age of 14, as provided for in the previous version of the LT CC. Article 106 of the previous version of the LT CC was applied in evaluating the crime committed by a woman killing her newborn at the time of delivery or shortly thereafter, presumably due to her psychophysical state triggered by painful labour process when the offender was deprived of the ability to realise and control her actions even though this fact may not have been true. In contrast, Article 131 of the current LT CC applies in cases where it is determined that the offence committed by a woman killing her newborn was a result of her mental state caused by labour when she was unable to realise or manage the actions she had undertaken (diminished liability) and it was labour that caused that mental state. The referred legal standard does not specify the time of committing a criminal offense, but the legal doctrine defines it as occurring at the time of delivery or shortly thereafter. After a new LT CC entered into force, the diminished capacity institute was established. The concept of the diminished capacity is defined by Article 18 of the LT CC. A person is considered to be of diminished capacity if, at the time of committing an action specified as a crime by the LT CC, he/she was unable to completely realise the dangerous nature of the criminal action or to control actions due to mental impairment that is insufficient to accuse him/her of committing the offense. Criminal law distinguishes two components of diminished capacity: a medical criterion, i.e., mental impairment that is considered to be an insufficient basis to recognise the individual as legally incapacitated, and a legal criterion comprising two aspects – a cognitive aspect which enables to evaluate the offender's perception of the punitive na-

ture of the offense committed (“was not able to completely understand”), i.e., was only partially aware of his/her actions, and a volitional aspect which enables to evaluate the defendant’s ability to control his/her actions (“was completely unable to control”), i.e., was able to have only a partial control over his/her actions. An individual is recognized by the court as possessing diminished capacity only in cases where both criteria are present. The medical criterion serves as the basis, from which a legal criterion is derived. Diminished capacity is determined on the basis of a conclusion of a specialist, and, if necessary, psychiatric, psychological-psychiatric or other expertise can be ordered by the court. Court psychologists and psychiatrists have encountered new challenges because there is no legal diagnostic regulation that may determine the degree of mental impairment, enabling to identify why a person is unable to solely perceive or control his/her actions. In the absence of regular guidelines, recommendations or criteria, a conclusion, even though provided by a competent specialist or an expert, still remains a subjective opinion. Uncertainty or the absence of specific criteria or subjective opinions provided by specialists or highly qualified experts are unable to ensure the right to equality of all persons before the law.

Article 131 of the LT CC distinguishes mother’s mental condition caused by delivery. A wide range of mental conditions, such as postpartum sadness, postpartum depression, postpartum psychosis, anxiety disorders, post-traumatic stress disorder, etc., are likely to occur soon after delivery or later, as a result of mental state triggered by delivery (and (or) pregnancy) that can last for a period of time of more than a month and may have no association with the mother’s psycho-physical state during delivery in terms of time or character of mental impairment. Article 106 of the previous version of the LT CC regulated the time of crime, i.e., at the time of delivery or shortly thereafter, which allowed to avoid interpretations of mother’s mental condition caused by delivery that occurred later and were unrelated with the mother’s aggression during delivery. In the authors’ opinion, the provision which regulated the time of crime, i.e., at the time of delivery of shortly thereafter that was eliminated in Article 131 of the LT CC, causes unnecessary debate and distorts the content of the offense in terms of the time of crime and psycho-physical state of the mother during delivery.

In Lithuania, the contents of Article 131 of the LT CC are in line with diminished capacity, although long-term professional experience and research show that a majority of mothers who murdered their 24 hour-old newborns did not have any mental illnesses or disorders.

#### The subjective perspective

Article 131 of the LT CC (Art. 106 of the previous version of the LT CC) provides that the offense of “Infanticide” is committed only intentionally, directly or indirectly. In criminal law (Art. 15 of the LT CC provides the concept), intentional offense is considered to be direct if the person at the time of crime was aware

of the dangerous nature of the criminal offense and desired to engage therein, or the person at the time of crime was aware of the dangerous nature of the criminal action, anticipated that his actions or failure to take actions can cause the consequences provided for in the LT CC and desired that they arise. A crime is considered to be committed intentionally indirectly if the person, at the time of crime, was aware of the dangerous nature of the criminal action, anticipated that his actions or failure to take actions can cause the consequences provided for by the LT CC and, though he did not desire that they arise, but consciously allowed the consequences to arise. Criminal law doctrine defines “intentional action” committed as the crime of passion or a premeditated crime. Taking into account the contents of Article 131 of the LT CC (mother’s psycho-physical state resulting after delivery), it would be illogical to discuss a premeditated intentional crime. If the mother intended to kill her newborn before delivery, a privileged Article 131 of the LT CC could not be applied.

One of the subjective features of criminal offense is the motive, which reflects the subjective reason which prompted a person to commit an offense. Mothers may kill their newborns due to various motives, i.e., hatred, fear, shame, etc. According to scientific literature, an “unwanted child” remains the main motive observed in an absolute majority of the women who killed their 24-hour newborns<sup>36</sup>. The basis of the motive is singleness, low income, social exclusion in natal family, unstable (or non-existing) social relationships with their child’s father, fear and shame on family and others. In Lithuania, the most common motive for committing this crime, provided by women, is fear and (or) shame.

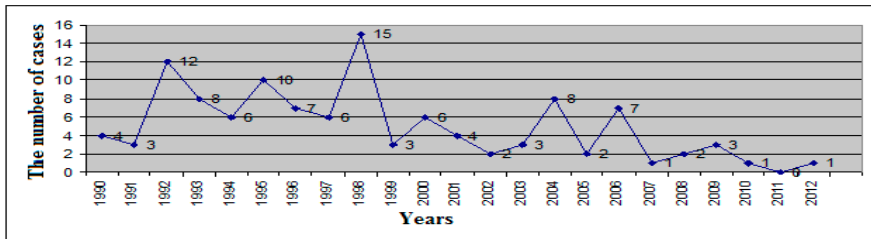
## 2. Comparative data on neonaticide in Lithuania. Prevalence and dynamics

### 2.1. Prevalence, dynamics and the structure of neonaticide in Lithuania

#### Prevalence and dynamics of the crime

In Lithuania, over the period from 1 January 1990 up to 31 December 2012, 116 crimes were registered as provided for in Article 106 of the LT CC (previous version) (“**Mother’s intentional murder of her newborn**”) up to 1 May 2003, and, since 2003 1 May, Article 131 under the current LT CC (“**Infanticide**”). The largest number of crimes was observed in 1998 (15 cases, or 12.9%), the smallest amount of registered crimes was in 2007 and in 2010 (1 case per year), whereas in 2011, not a single crime was registered (Figure 1).

<sup>36</sup> Resnick, P.J. Murder of the Newborn: A Psychiatric Review. *Am J Psychiatry*. 1970, 126(10): 1414-1420.



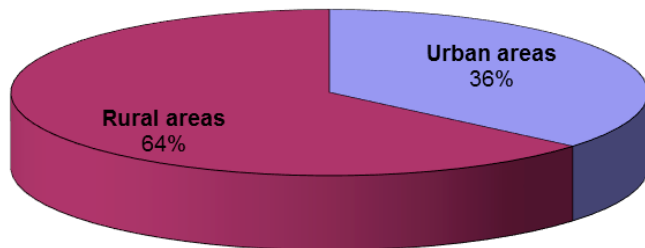
**Figure 1.** Dynamics of the crime

As seen from Figure 1, the dynamics of neonaticide have been fluctuating over years, yet a decreasing trend has been observed over the last 5 years. Since 2007, the number of the crime does not exceed 3 cases per year. In Lithuania, over the period from 1990 up to 2012 each year, on average 337 cases of intentional murder were registered (Art. 129-131 of the LT CC). Registered cases of neonaticide (Art. 131 of the LT CC) comprise approximately 1.5% of all the registered cases of intentional murder. The number of neonaticide cases ranges similarly to all of the intentional murders (the correlation coefficient is 0.432). A decrease in the number of neonaticide cases is observed ( $p < 0.001$ ).

The main aim of the criminal law is the crime prevention. Thus, the national crime level is an indicator showing how much efficient the law is. The dynamics of the crime show that there is no explicit reason to assume that the current criminal law has any tangible impact on infanticide. It can be seen that the dynamics of the crime clearly do not depend on the legal regulation. The number of crimes distinctly rises and falls, which does not reflect the strictness of the criminal law (it remains more or less constant). This suggests that there is a need to look for the ways how to improve the law.

#### The crime scene

Most cases of the crime were recorded in rural areas, i.e., 74 cases, or 63.8%, of all the cases under examination. This indicator is statistically significant ( $p = 0.003$ ). In urban areas, the number of the neonaticide cases registered over the given period revealed 42, or 36.2%, of all the cases examined (Figure 2).



**Figure 2.** Distribution of the crime by the crime scene

The analysis of the distribution of the number of criminal acts by the real crime scene identified 67 cases over the observed period. 49 cases were not marked in the cards. The largest number of the revealed cases (N=67) was detected in the following locations: a flat – 11 cases (16.4%), a residential house and a dump – 9 cases in each (13.4%), a yard (a residential point) – 6 cases (9.0%), a forest (an open space) – 5 cases (7.5%). The crimes are most commonly committed in the residential place and account for about 30% of the total of the crimes ( $p < 0.001$ ) (Table 1).

**Table 1.** Distribution of the crime by the real crime scene

The real crime scene	Number of cases	Percentage
Grange	2	3,0
Yard (residential point)	6	9,0
Forest (open space)	5	7,5
Park (square) (open space)	2	3,0
Beach (open space)	1	1,5
Field (open space)	2	3,0
Street (open space)	2	3,0
Forest zone (open space)	1	1,5
Dump (open space)	9	13,4
Shore (open space)	3	4,5
Flat (residential point)	11	16,4
Residential house (residential point)	9	13,4
Base (non-residential point)	1	1,5
Medical office	1	1,5
Educational institution	1	1,5
Staircase (other in general)	1	1,5

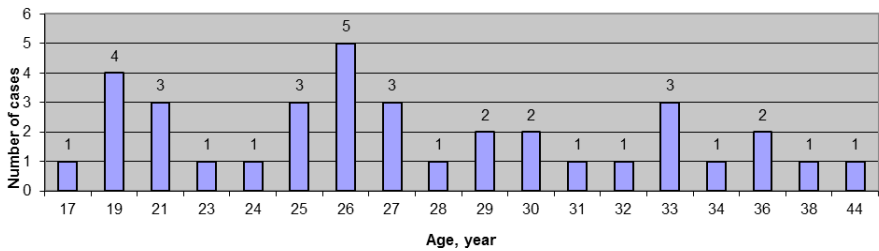


Barn (non-residential point)	1	1,5
Outbuilding (non-residential point)	2	3,0
Cafe (bar)	1	1,5
Other (elevator, hole, etc.)	3	4,5
Other (open space)	3	4,5
Total	67	100,0

The study shows that 24-hour newborns are most commonly killed by women from rural areas, while most criminal acts of neonaticide occur in mother’s residential place or an area close to her residential place.

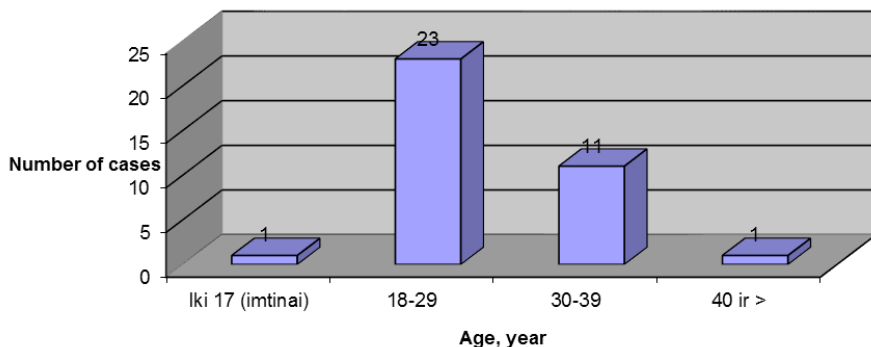
Age of women suspected of neonaticide

The study found 36 women suspected of committing neonaticide. The age of women (N= 36) at the time of committing neonaticide ranged from 17 up to 44 years. The study found that in one case a teenager was 17 years of age at the time of the crime. The average age was  $27.4 \pm 6.1$  years (Figure 3).



**Figure 3.** Distribution of neonaticide-suspected women by age

The predominant age group involved relatively young women (18-29 years of age). This age range was observed in 23 cases (63.9%) ( $p < 0.001$ ). There were 11 women (32.2%) who belonged to the age group ranging from 30 up to 39 years (Figure 4).



**Figure 4.** Distribution of neonaticide-suspected women by age group

The distribution of women's age at the time of the crime is consistent with the age of child-bearing women in Lithuania in general (the correlation coefficient is  $\rho=0.988$ ).

#### Education and occupation of women suspected of committing neonaticide

The examination of the distribution of women suspected of killing a newborn by education (N=36) showed that at the time of the crime, approximately half of these women, i.e., 17 cases (47.2%), were women with secondary education. Basic education was attained by 7 women (19.4%), vocational education – by 5 (13.9%). The least of the women, i.e., 3 (8.3%), were college education degree holders. None of the women had obtained higher education. The information about education of 4 women was missing in the statistical cards (Table 2).

**Table 2.** Distribution of neonaticide-suspected women by education

Education	Number of cases	Percentage
Basic	7	19.4
Secondary	17	47.2
Vocational	5	13.9
College	3	8.3
Unmarked	4	11.1
Total	36	100.0

At the time of the crime, the status of 10 women (27.8%) was housewives. Five (13.7%) women were not involved in any education or employment, 3 (8.3%) of them neither studied nor were employed for more than 6 months prior to committing the crime. Four (11.1%) women were on the dole. There were 27.8% of the women whose social status at the time of the crime was either an employee or a

student. There were 4 cases of unmarked statistical cards with missing statistical data on women's engagement in employment or studies at the time of the crime.

It can be argued that most cases of neonaticide occurring at the time of delivery or shortly thereafter were committed by women with a low level of education, who obtained no vocational education, without any engagement (housewives, unemployed, not involved in employment or education) ( $p < 0.001$ ). At the time of committing the crime, the majority of the women had attained only primary, basic or secondary education (66.6%). None of the women had the status of higher education.

## 2.2. Benchmarking of neonaticide-related indicators in Lithuania, Estonia, Latvia and Poland

The Criminal Code of the Republic of Estonia, as well as that of the Republic of Latvia and the Republic of Poland, attributes maternal neonaticide to a separate privileged crime, the subject of which is the mother of the murdered newborn, while the object of the crime is the newborn. It should be mentioned that the Polish Penal Code specifies that the object of the crime is the child. The Penal Code of Poland does not differentiate concepts of the child or the newborn, instead, the time of committing the crime, i.e., the period of giving birth to a newborn, provides a clue that the newborn is the focus of attention. The Standards of the Criminal Codes of Latvia and Estonia foresee the time of committing a crime and define it as "in the process of delivery or shortly after it". The previous version of the Criminal Code of the Republic of Lithuania specified the analogous period of committing, however, the newly adopted version of the LT CC excludes this provision. All of the above mentioned countries, except for Estonia, provide for the compulsory condition – a special psychiatric state of mothers during delivery, which triggered tragic consequences. In Lithuania, Latvia, Poland and Estonia, the punishment assigned for murder of a newborn, as a crime with privileged features, does not exceed 5 years of imprisonment. In Latvia, penalty without imprisonment and penalty without deprivation of liberty are also possible. Instead, a temporary restriction of liberty or even community service could be assigned for the mother.

In accordance with the statistical data of the period from 2008 to 2012, the largest number of neonaticide cases occurred in Poland, i.e., 48 cases, while the lowest number of cases was registered in Latvia – 3. During the given period, there were 8 cases registered in Lithuania and 4 cases in Estonia. In terms of population, Lithuania, Estonia, Latvia and Poland vary considerably. For example, according to Eurostat data of 1 January 2012, 1 325 217 people lived in Estonia, while in Poland – 38 538 447. In Lithuania, there were 3 003 641 people, respectively, whereas in Latvia – 2 118 913. The authors of this work calculated

the absolute number of neonaticide cases committed per 100,000 inhabitants. The results showed that in Poland and Latvia this number was twice less (0.03 of the crime/100,000 inhabitants) rather than in Lithuania and Estonia (0.06 of the crime/100,000 inhabitants). The absolute number of neonaticide cases per 10,000 births was calculated in this study: Poland had the lowest number of neonaticide cases per 10,000 births (0.24 of the crime/10,000 births), the largest number was observed in Lithuania (0.58 of the crime/10,000 births). The situation was similar in Estonia (0.52 of the crime/10,000 births), while the situation in Latvia (0.29 of the crime/10,000 births) tends to be more similar to Poland. The comparison of Lithuania with Estonia, Latvia and Poland revealed that the number of neonaticide cases (at the time of delivery of shortly thereafter) per 100,000 inhabitants in Lithuania was twice larger than that in Poland or Latvia. The results obtained in Estonia were identical. By the number of neonaticide cases per 100,000 births, Lithuania takes the leading position among other mentioned countries (with the exception of Estonia, where the result was similar) with neonaticide rate twice bigger than in Latvia and two and a half times bigger in Poland. However, due to a small number of murdered newborns, this result is not significant (Table 3).

**Table 3.** Comparative analysis of some statistical indicators in neonaticide trends observed in Lithuania, Estonia, Latvia and Poland

Year/Country	Lithuania	Estonia	Latvia	Poland
2008	3 212 605	1 338 440	2 191 810	38 115 641
2009	3 183 856	1 335 740	2 162 834	38 135 876
2010	3 141 976	1 333 290	2 120 504	38 167 329
2011	3 052 588	1 329 660	2 074 605	38 529 866
2012	3 003 641	1 325 217	2 044 813	38 538 447
Average	3 118 933	1 332 469	2 118 913	38 297 432
The number of births				
2008	31 536	16 028	24 397	414 499
2009	32 165	15 763	22 044	417 589
2010	30 676	15 825	19 781	413 300
2011	30 268	14 679	18 825	388 41
2012	30 459	14 056	19 897	386 257
Average	31 02	15 270	20 989	404 012
The number of neonaticide cases				
2008	2	1	0	9
2009	3	1	1	6

2010	1	1	1	10
2011	0	1	0	10
2012	3	0	1	13
Average	1,8	0,8	0,6	9,6
The number of neonaticide cases per 100,000 inhabitants	0,06	0,06	0,03	0,03
The number of neonaticide cases per 10,000 of births	0,58	0,52	0,29	0,24

The statistical relationship between the mentioned countries is provided in Table 4, where the column “murdered newborns/total number of newborns born” shows the correlation between ratios obtained by dividing the number of murdered newborns by the total number of all newborns born in Lithuania and, accordingly, in Latvia, Estonia or Poland. Similarly, the column “murdered newborns/total population” shows similar correlations between ratios, obtained by dividing the number of murdered newborns by the total number of the population of the relevant year. It is obvious that the correlation “murdered newborns/total number of newborns” and “murdered newborns/total number of population” is analogous. The change in the proportion of murdered newborns in Lithuania and Latvia shows a similar pattern (moderate positive correlation), i.e., the number of murdered newborns is rising with the increasing number of newborns. The opposite situation is observed in Lithuania and Estonia (moderate negative correlation). In Estonia, the regular number of murdered newborns is 1, i.e., it is stable and does not depend on the population. Consequently, in Estonia, the increasing number of the population does not result in a growing rate of neonaticide and vice versa, the reduction in the population does not show any decline in the rate of neonaticide. On the contrary, there is no association of the above mentioned indicators observed in Lithuania or Poland.

**Table 4.** Comparative analysis of the statistical relationship in neonaticide trends observed in Lithuania, Estonia, Latvia and Poland

State	Murdered newborns/total number of newborns, $\rho$	Murdered newborns/total population, $\rho$
Latvia	0.542	0.578
Estonia	-0.597	-0.563
Poland	-0.058	-0.057

### 3. The new prospects to neonaticide prevention measures in Lithuania

Preventative measures targeting neonaticide in a wide range of countries worldwide can be classified as primary and secondary measures. Primary measures are those that help in seeking to escape unwanted pregnancy before a new life is begun, e.g., sexual education<sup>37</sup>.

Secondary measures are taken for preventing unwanted pregnancy after a new life is begun and those used to avoid killing a newborn, for instance, anonymous delivery, “Baby Hatches/Baby Boxes” or their analogues (Safe Haven)<sup>38,39</sup>. The idea for Safe Haven laws in the US began in 1998. Most laws of the US states designate “safe haven” as hospital, police stations, and fire stations. Mothers often may remain anonymous and the risk of prosecution is either eliminated or reduced. In different states, age ranges for the protected drop-off of babies are different: under 72-hours old, under one month old and under one year old. Most states do not require paternal notification. “Baby Hatches”, which are similar to “Safe Haven”, or anonymous birth can be found in many European countries (Austria, Belgium, France, Germany, Italy and other)<sup>40</sup>. Baby hatches are easily accessible incubators situated outside a hospital. Anonymous delivery was implemented in France in 1941, Luxembourg in 1993, Italy in 1997 and Austria in 2001. Anonymous delivery law allows women to give birth in a hospital without their notification. The study in Austria demonstrated a significant decrease in neonaticide cases after the implementation of the anonymous delivery law<sup>41</sup>.

Baby hatches were put into practice in Lithuania in 2009, however, they have not been legalised yet. Anonymous delivery is not legal in Lithuania either, nor there are any preventive measures to arrest neonaticide cases. Taking into account this context case, there are assumptions for the emergence of tertiary prevention (rehabilitation) measures. Therefore, the authors consider that neonaticide prevention measures should be categorised as follows:

1. Primary prevention measures (sexual education, pregnancy planning, etc.);
2. Secondary prevention measures (“Baby hatches”, anonymous delivery);
3. Tertiary prevention measures (rehabilitation, i.e., preventive teamwork of specialists with women sentenced for murder of their newborns).

<sup>37</sup> Schwartz, L.L., and Isser, N.K. *Child Homicide: Parents who Kill*. New York: Taylor & Francis Group, 2007, p. 26–27.

<sup>38</sup> Арчакова, Т.О. Практики анонимного оставления новорожденного ребенка в Европе и США: многообразие подходов. *Социальная психология и общество*. 2012, 4: 103-115.

<sup>39</sup> Bartels, L. Safe Haven Laws, Baby Hatches and Anonymous Hospital Birth: Examining Infant Abandonment, Neonaticide and Infanticide in Australia. *Criminal Law Journal*. 2012, 36: 19-37.

<sup>40</sup> Friedman, S.H., and Resnick, P.J. Neonaticide: Phenomenology and Considerations for Prevention. *Int J Law Psychiatry*. 2009, 32(1): 43-47.

<sup>41</sup> Klier, C.M., et al. Is the Introduction of Anonymous Delivery Associated with a Reduction of High Neonaticide Rates in Austria? A Retrospective Study. *BJOG: An International Journal of Obstetrics & Gynaecology*. 2013, 120(4): 428-434.

All these measures have both supporters and critics. The most common arguments provided by either supporters or critics are as follows: every saved life counts, but a child, when he/she grows up, has the right to know his/her origin. Another supportive argument is that a grown-up child's right to know his origin or parents may not be implemented, as, in case of murder, there will be no one to execute that right.

The authors of this work presume that the possibilities to introduce the above mentioned preventive measures in Lithuania should be considered and explicitly discussed by different specialists. The fundamental aspects should be as follows: the protection of life, because life is an absolute value. In the UN Convention on the Rights of the Child, Article 7, Part 1, it is stated that "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality **and, as far as possible, the right to know and be cared for by his or her parents**". The child's right to know his or her parents is not more fundamental than the right to life. The experience gained in other countries shows that there are measures to implement the child's right to know his/her origin even if the child is rejected anonymously. The increasing number of newborns being left anonymously in "Baby Hatches" may be associated with latency in neonaticide rate.

Taking into account the experience of other legal states, the state's obligation rather than the right to execute the protection of life, it is recommended, at the national institutional level, to classify neonaticide prevention measures, to analyse possibilities of establishing a legal basis for introduction and implementation of neonaticide prevention measures (secondary measures as "Baby Hatches"), and validation of an anonymous childbirth, tertiary measures (rehabilitation), i.e., preventive teamwork of specialists with women sentenced for murder of their newborn, in Lithuania, as well as mechanisms assisting in implementation of these measures and the change, supplement or establishment of relevant legal acts. The projected introduction of sexual education programmes could play an important role in the implementation of primary neonaticide prevention measures in seeking to emphasise not only the family as a value, but also the value of life as a unique and absolute value.

## Conclusions

1. Over the period from 1990 to 2012 in Lithuania, 116 cases of neonaticide were registered. It comprises approximately 1.5% of all the intentional murders committed in Lithuania over the observed period. The largest number of crimes was observed in 1998, the smallest amount of registered crimes was in 2007 and in 2010, whereas in 2011, not a single crime was registered.

2. The most common crime location is village locations (63.8%). The murders are usually executed inside the residential place of a woman (~30%).
3. The average age of women, who murdered their first-day newborns at the time of delivery or shortly thereafter, is 27 ( $27.4 \pm 6.1$ ). The prevailing age group of women, who committed maternal neonaticide, ranges from 18 to 29 (63.9%).
4. Most cases of neonaticide occurring at the time of delivery or shortly thereafter were committed by women with a low level of education, who obtained no vocational education, without any engagement (housewives, unemployed, not involved in employment or education). There were 27.8% of women whose social status at the time of the crime was either an employee or a student. At the time of committing the crime, the majority of the women had attained only primary, basic or secondary education (66.6%). None of the women had the status of higher education.
5. The prevalence of neonaticide in Lithuania does not significantly differ from that in other European states.
6. Lithuania has not yet a legal neonaticide prevention system. It should be at the national institutional level to analyse possibilities of establishing a legal basis for the introduction and implementation of neonaticide prevention measures.
8. In Lithuania, the legal provisions relating to the murder of newborn should be improved.

## Suggestions

Taking into account the background of this article, the authors suggest the following:

### **1. Re: Disposition of Article 131 of the Criminal Code of the Republic of Lithuania “Infanticide”**

Taking into account the research-based specificity of the first-day neonate murder, the historical evolution of the content of the crime, medical terminology, it is essential that the disposition foresees the following features assisting for forensic evaluation:

1. The time of the crime, i.e., “at the time of delivery or shortly thereafter”, seeking to avoid interpretations of states triggered by childbirth that emerges later on and is not related to maternal aggression exposed at the time of delivery.
2. It is essential to determine a subjective age of 14, at which a woman becomes liable under the criminal law.

### **2. Re: Diminished capacity provided for in Article 18 of the Criminal Code of the Republic of Lithuania**

To ensure clarity and transparency of the identification of diminished capacity, it is essential to foresee the most unified and concrete medical diagnostic



criteria, developed on the basis of competencies attained by forensic psychiatrists.

### **3. Re: Criminal liability of a natural person for failing to inform the relevant state institutions on a newborn's birth fact**

Given the fact that mothers who delivered a newborn not under supervision of a health care institution and murdered her newborn (or newborns) may be held criminally not liable in cases when, after a certain period of time, a newborn corpse is detected, due to objective reasons there is no possibility to identify whether the newborn was born alive, it is recommended to establish criminal liability for a natural person who failed to inform relevant state institutions on birth of a newborn or another fact of birth, death or stillbirth.

### **4. Re: Neonaticide prevention measures**

1. Taking into account the experience of other legal states, the state's obligation rather than the right to execute the protection of life, it is recommended, at the national institutional level, to classify neonaticide prevention measures, to analyse possibilities of establishing a legal basis for the introduction and implementation of neonaticide prevention measures (secondary measures as "Baby Hatches"), and validation of an anonymous childbirth, tertiary measures (rehabilitation), i.e., preventive teamwork of specialists with women sentenced for murder of their newborn in Lithuania, as well as mechanisms assisting in the implementation of these measures and the change, supplement or establishment of relevant legal acts.

2. The projected introduction of sexual education programmes could play an important role in the implementation of primary neonaticide prevention measures in seeking to emphasise not only the family as a value, but also the value of life as a unique and absolute value.

### **5. Re: Introduction of concepts in science doctrine**

A pregnant woman, after labour starts, is considered to be a labouring woman, while the fetus remains in the fetus status until it is born. A person's development period during delivery differs from the intrauterine period because of the physiological labour mechanism. Nonetheless, after one part of a person is born, for example, the head, to consider this as the development of the fetus inside a woman's body is inaccurate.

Neonaticide in scientific literature is usually referred to as a murder of a 24-hour newborn. A newborn older than 24-hours of age is also considered to be a newborn until he is 28 days old after birth, thus, this concept needs clarification. It is proposed to introduce the following new concepts in science doctrine:

**1. Pre-newborn** – a human fetus from occurrence of the first labour contractions until the birth moment.

**2. Early neonaticide** – murder of a twenty-four-hour/first day newborn.

**3. Late neonaticide** – murder of a newborn aged from 2 to 28 days.

## References

### Books and articles:

1. Арчакова, Т.О. Практики анонимного оставления новорожденного ребенка в Европе и США: многообразие подходов. *Социальная психология и общество*. 2012, 4: 103-115.
2. Bartels, L. Safe Haven Laws, Baby Hatches and Anonymous Hospital Birth: Examining Infant Abandonment, Neonaticide and Infanticide in Australia. *Criminal Law Journal*. 2012, 36: 19-37.
3. Bonnet, C. Adoption at Birth: Prevention against Abandonment or Neonaticide. *Child Abuse & Neglect*. 1993, 17: 501-513.
4. *Baudžiamasis Statutas*. Kaunas: Menas, 1930.
5. Freeman, M.M.R. A Social and Ecologic Analysis of Systematic Female Infanticide among the Netsilik Eskimo. *Am Anthropologist*. 1971, 73: 1011-1018.
6. Friedman, S.H., and Resnick, P.J. Neonaticide: Phenomenology and Considerations for Prevention. *Int J Law Psychiatry*. 2009, 32(1): 43-47.
7. Hughes, J. *The Fatal Shore: A History of Transportation of Convicts to Australia, 1787-1868*. London: Harvill Press, 1987.
8. Kellett, R.J. Infanticide and Child Destruction – The Historical, Legal and Pathological Aspects. *Forensic Sci Int*. 1992, 53(1): 1-28.
9. Kellum, B.A. Infanticide in England in the Later Middle Ages. *History of Childhood Quarterly*. *The Journal of Psychohistory*. 1974, 1(3): 367-388.
10. Klier, C.M., et al. Is the Introduction of Anonymous Delivery Associated with a Reduction of High Neonaticide Rates in Austria? A Retrospective Study. *BJOG: An International Journal of Obstetrics & Gynaecology*. 2013, 120(4): 428-434.
11. Laughlin, C.D. Pre- and Perinatal Anthropology III: Birth Control, Abortion and Infanticide in Cross Cultural Perspective. *Pre- Perinatal Psychiatry J*. 1994, 9: 85-101.
12. Light, S. Female Infanticide in China: Response to the Victimization of Women and Children. *J Center Women and Policy Stud*. 1985, 8: 5-6.
13. Лукичев, О. В. *Детоубийство: уголовно-правовая и криминологическая характеристика*. Санкт-Петербург: Санкт-Петербургский университет, СПб, 2000, p. 32.
14. Maksimaitis, M., and Vancevičius, S. *Lietuvos valstybės ir teisės istorija*. Vilnius: Justitia, 1997, p. 108, 191, 227.
15. Meyer, C.L., and Oberman, M. (with White, K., Rone, M., Batra, P., and Proano, T.C.). *Mothers who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the "Prom Mom"*. New York: New York University Press, 2001.
16. Nocius, J. *Nusikaltimai žmogui*. Vilnius: Vilniaus universiteto leidykla, 1998, p. 6.
17. Pavilionis, V., et al. *Baudžiamoji teisė. Specialioji dalis, 1 knyga*. Vilnius: Eugrimas, 2001, p. 21-27.
18. Попов, А. Н. *О начале уголовно-правовой охраны жизни в новом тысячелетии. Уголовное право в XXI веке*. Москва, 2002, p. 200-203.
19. Попов, А. Н. *Преступления против личности при смягчающих обстоятельствах*. Санкт-Петербург: СПб, 2001, p. 12.

20. Resnick, P.J. Murder of the Newborn: A Psychiatric Review. *Am J Psychiatry*. 1970, 126(10): 1414-1420.
21. Schwartz, L.L., and Isser, N.K. *Child Homicide: Parents who Kill*. New York: Taylor & Francis Group, 2007, p. 26-27.
22. Лопашенко, Н.А. *Современные разновидности российской и мировой преступности: состояние, тенденции, возможности и перспективы противодействия*. Саратов, Саратовский Центр по исследованию проблем организованной преступности и коррупции: Сателлит, 2005, p. 414-419.
23. Vancevičius, S. *Lietuvos Didžiosios Kunigaikštystės valstybiniai-teisiniai institutai (pagal 1529, 1566, 1588 m. Lietuvos Statutus)*. Vilnius: Mintis, 1981, p. 96.
24. West, S. G. An Overview of Filicide. *Psychiatry (Edgmont)*. 2007, 4(2): 48-57.
25. Wrightson, K. Infanticide in Earlier Seventeenth Century England. *Local Popul Stud*. 1971, 15: 10–22.

#### Legal documents:

1. The Child Resuscitation Standard approved by Resolution No. V-822 of the Minister of Health of the Republic of Lithuania on 31 August 2011. *Official Gazette*. 2011, No. 110-5214.
2. The Civil Code of the Republic of Lithuania. *Official Gazette*. 2000, No. 74-2262.
3. The Criminal Code of the Republic of Lithuania. *Official Gazette*. 2000, No. 89-2741.
4. The Criminal Code of the Soviet Socialist Republic of Lithuania. *Official Gazette*. 1961, No. 18-147.
5. The Criminal Statute 1903. *Official Gazette*. 1919, No. 2-3.
6. The Law of the Republic of Lithuania on Determining the Moment of Child's Birth. *Official Gazette*. 2002, No. 43-1602.
7. The Law of the Republic of Lithuania on Identification of Human Death and Critical Conditions. *Official Gazette*. 1997, No. 30-712; 2002, No. 43-1601.
8. The Lithuanian Medical Standard MN 112: 2008 "Physician Neonatologist. The Rights, Duties, Competence and Responsibility", approved by the Minister of Health of the Republic of Lithuania, Resolution No. V-1237 of 8 December 2008. *Official Gazette*. 2009, No. 3-74.
9. The Resolution of the Senate of the Supreme Court of the Republic of Lithuania No. 46, of 18 June 2004 "For Judicial Practice of Crimes against Life" paragraph 25.

#### Internet sites:

1. Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November [interactive]. [accessed on 2014-09-06]. <[http://www.cartercenter.org/resources/pdfs/peace/democracy/des/amer\\_conv\\_human\\_rights.pdf](http://www.cartercenter.org/resources/pdfs/peace/democracy/des/amer_conv_human_rights.pdf)>.
2. *Eur. Court. H.R. Vo v France*. Judgment of 8 July 2004, No. 53924/00 [interactive]. [accessed on 2015-02-13]. <[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61887#{"itemid":\["001-61887"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61887#{)>.

## NAUJAGIMIO NUŽUDYMAS IR JO TEISINĖ PREVENCIJA

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**Santrauka.** *Motinos savo naujagimio nužudymas visuomenėje visada sukelia išskirtinį emocinį atgarsį. Naujagimio nužudymo faktas emocijas sukelia ne tik dėl to, kad ką tik gimusi gyvybė yra pati pažeidžiamiausia, negalinti apsiginti visuomenės dalis, bet ir dėl to, kad motinos agresija, nukreipta į savo „kūną ir kraują“, prieštarauja visuomenės egzistavimo dėsniams, paneigia motiniškų instinktų tvirtumą, besąlyginę meilę savo vaikui. Darbo tikslas – išanalizuoti naujagimio nužudymo reglamentavimą Lietuvos teisės aktuose, šio nusikaltimo paplitimą, dinamiką, vietą, nusikaltėlių socialines charakteristikas, prevencinių ir reabilitacinių priemonių taikymo galimybes ir naujas teisinio reguliavimo perspektyvas Lietuvoje. Retrospektyvus tyrimo metu nagrinėtos Informatikos ir ryšių departamento prie Lietuvos Respublikos vidaus reikalų ministerijos pateiktos nuasmenintos statistinės kortelės, užpildytos registruojant nusikaltimą veiką, laikotarpiu nuo 1990 m. iki 2012 m. Darbo rezultatas – kompleksiskai išanalizuota naujagimių nužudymų situacija Lietuvoje, pateiktos praktinės rekomendacijos dėl naujų savokų įvedimo mokslo doktrinoje, esamų teisės aktų, susijusių su naujagimių nužudymais, tikslinimo ir naujų teisės aktų rengimo bei prevencinių ir reabilitacinių priemonių rengimo. Tyrimo rezultatai parodė, kad Lietuvoje 1990–2012 m. laikotarpiu užregistruota 116 privilegijuotų naujagimių nužudymų. Dažniau pirmos paros naujagimius gimdymo metu arba tuojau po jo nužudė moterys, turinčios menklą išsilavinimą, neįgijusios profesijos, neturinčios užsiėmimo (namų šeimininkės, bedarbės, niekur nedirbančios ir nesimokančios) Vidutinis naujagimius nužudžiusių gimdymo metu arba tuojau po jo moterų amžiaus vidurkis yra 27,4 ± 6,1 m. Vyraujanti amžiaus grupė 18–29 m. gimdyvės (63,9 proc.). Dažniausiai nusikaltimas padaromaskaimo vietovėse (63,8 proc.), moters gyvenamojoje vietoje (butas, namas). Tyrimas taip pat parodė, kad Lietuvoje iki šiol nėra legalios neonaticido prevencijos sistemos, taip pat kad kai kurie teisės aktai, susiję su šio nusikaltimo reglamentavimu Lietuvoje, yra taisytini.*

**Reikšminiai žodžiai:** *neonaticidas, naujagimio nužudymas, anoniminis gimdymas, gyvybės langeliai, ribotas pakaltinamumas, infanticidas, prevencija.*

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