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Criminology and criminal law – attempt to capture the relation as shown by the phenomenon of murder of one's own child

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Abstract— **The aim of the article is to find a common field of activity for criminology and criminal law with respect to the murder of one's own child. Three areas of analysis maybe considered in that subject: description of the phenomenon, perpetrator characteristics and his/her social situation. We propose to deal with the issue of problematizing the murder of one's own child on the basis of three elements: its statistical picture, the interest of the child as a legally protected value and the public perception of that act, taking into account categorization of child murders into three basic forms: neonaticide, filicide and infanticide. The search for the etiology and phenomenology of murder of one's own child seems to be one of the most important issues explored by the criminological literature and other fields dealing with that problem, although, in our opinion, there is no conclusion as to why such killings occur.**

Keywords: murders of one's child, criminology, criminal law

I. INTRODUCTION

At the outset, it should be clarified why we made the problem of murder of one's own child a reference point for all our considerations, with the child understood dually as a descendant of the parents and at the same time a non-adult. It is a conduct that arouses extremely mixed emotions in societies and triggers diverse demands for punishment. In some situations, society demands a severe punishment for the parent / parents, considering killing a child to be by far the worst possible crime. Nonetheless, there are other situations which trigger pity for the perpetrator, who in the public perception should be acquitted, released from penalty or, alternatively, his/her penalty should be mitigated to the maximum extent possible (Ilski, Chmielarz, Kopeć & Kraskowska, 2014) Recognizing the legitimacy of the death penalty in the event of murder, Immanuel Kant allowed only two exceptions to that principle. One of them was murder of a child born out of wedlock (Warylewski, 2010).

The aim here is not to determine what criminal law should be like and thus what impact criminology should exert on it. We seek to demonstrate that different concepts of criminal law will draw on criminological research in a variety of ways and to a varying extent. The aforementioned act of murder of one's own child will therefore serve as a point of reference as well as an illustration of those complicated relations. The criminological material in that area is substantial, albeit not yet complete, as we will attempt to demonstrate (Horoszowski, 1947; Janowska, 1974; Pudysz, 1987; Hanausek & Leszczyński, 1995; Słabicka, 2001; Wolska, 2001; Lasocik, 2003, Gradoń, 2010).

It should also be noted that not only criminology provides knowledge on the killings of children by their parents. Psychology, sociology and even social rehabilitation pedagogy make a significant contribution to the issue and, interestingly, some researchers express the view that thus far criminology failed to deal with that subject at length, giving way to the above areas. Criminal law provisions are typically accompanied by numerous comments and substantiations seemingly referring to some scientific findings, but it is difficult to discern consistency in that regard. Moreover, legal provisions may in themselves arouse considerable interpretative and ethical controversy. Thus the phenomenon commonly referred to as infanticide, which in fact covers a wider scope of events constituting the murder of one's own child, is an excellent field of investigation.

The existing analyses allow the thesis that the contemporary nature of Polish provisions of Art. 149 (so-called infanticide) of the Criminal Code (hereinafter abbreviated as CC) and Art. 148 CC (killings in various forms) does not correspond to the phenomenology of the conduct referred to as the murder of one's own child (Włodarczyk, 2012; Pomarańska–Bielecka, 2010; Marzec–Holka, 2004). This is apparent both in the scientific and media discourse, as illustrated by a series of documentaries titled "Infanticidal Mothers" featured in the most popular daily magazine in Poland "Gazeta Wyborcza".

Moreover, modern Polish criminal law conveys two contradictory messages: a child being a victim of various crimes may constitute an aggravating circumstance increasing the severity of penalty, whereas in respect of infanticide in which

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only a child may be the victim, a privileged type with a much more lenient penalty than in the case of ordinary murder is constructed. Still, there are views that "The circumstances of qualifying certain conduct as child murder cannot be clearly defined, although a fairly restrictive attitude of judges in establishing that the defendant caused the death of a child and classifying certain acts as murder instead of infanticide or battery resulting in death are becoming more apparent." (Latoś, 2017).

For the purposes of determining the relation between criminal law and criminology with respect to the criminalization of murder of one's own child, three areas of analysis may be considered: description of the phenomenon, perpetrator characteristics and his/her social situation.

II. MAIN MANUSCRIPT SECTION

Polish criminal law addresses the issue of murder of one's own child in Art. 149 CC which provides that "A mother who kills an infant during the period of delivery under the influence of its course shall be liable to a penalty of deprivation of liberty for a term ranging from 3 months to 5 years." This means that the provision of Art. 149 CC envisages that the crime may be committed only by a biological mother influenced by the childbirth during its course. The murder of a child may also be subjected to a criminal assessment under the provisions of Art. 148 CC. This provision applies to perpetrators of each sex and to the act committed against any child in all circumstances, provided that under the principle of lex specialis, the conditions laid down in Art. 149 CC are not fulfilled. It should be further noted that the crime under Art. 149 CC carries a penalty of 6 months to 5 years' imprisonment (and pursuant to Art. 37a CC, it is possible that only a fine may be imposed), whereas the murder specified in Art. 148 § 1 CC is punishable by a minimum sentence of 8 years' imprisonment and a maximum sentence of deprivation of liberty for life.

At the same time, in English-language literature, criminologists employ three notions which make it possible to convey three varying meanings of the situation of killing a child: neonaticide – killing a child by a mother during childbirth, filicide – murder of an older child by a parent, and infanticide – a general term meaning child murder, sometimes used to describe its particular form (most often killing a child under one year of age). This in itself indicates that child murder is by no means a homogeneous concept.

Criminological research going beyond the group of perpetrators of infanticide understood as killing a new-born child leads to the adoption of a broader perspective, thereby various typologies of perpetrators emerge including, among others, unmarried poorly educated young women, living in poverty, often unemployed, emotionally immature, finding themselves in a difficult family, social and economic situation, suffering from psychotic disorders, acting for various reasons; whilst taking into account the most common causes of murder of one's own child: unwanted pregnancy, revenge, extended suicide, illness, child maltreatment resulting in death.

Were the analysis of the situation of perpetrators of the criminal offense specified in Art. 149 CC to be limited to the features foreseen in that Article alone, it would not exhaust the complexity of the social, economic and emotional situation of a woman who murders her own new-born child during the period of delivery under the influence of its course understood, inter alia, as the stress related to childbirth and impairment of cognitive functions. Attention should also be given to the broader definition of the term "under the influence of the course of delivery" in the case-law, as shown in the judgment of the Court of Appeal in Krakow, pursuant to which, the intention to commit infanticide under the influence of the course of delivery may result from a set of physical, psychological and social factors related to both delivery and the life situation of the mother (judgment of the Court of Appeal in Krakow of 24 October 2002).

As regards criminal law, the legislator must in essence examine three issues arising from the confrontation of criminal law provisions with criminological findings, i.e., whether and why the murder of one's own child should be penalized, when it should be penalized and how it should be penalized (more leniently or more severely than other types of murder). There is no doubt that the first issue set out above determines the subsequent ones, given that the second and third issues are very strongly correlated, even to the point of being inextricably linked in the reflections concerning them. Nonetheless, what needs to be established at the outset is whether the lawyer-legislator is capable of resolving the above issues single-handedly, or whether the answers should be found in cooperation with representatives of other sciences. The nature of the act under analysis would suggest the participation of a sociologist and psychologist or, for that matter, of a criminologist who after all combines their competences in the desired range. Notably, the relationship between criminology and the science of criminal law is not easy to determine. The literature review indicates that criminal (and penal) policy is precisely the area where the findings of the former encounter, harmonize or perhaps even cooperate with the latter.

That matter could conceivably be easier to address if the lawyers specializing in criminal law shared a common vision of criminal law and the functions assigned to it. But that is not the case. Representatives of the science of criminal law distinguish various types of functions and goals in this branch of law; hold different views on the hierarchy of particular functions and on the means of their implementation. That diversity of views is naturally reflected in a variety of proposals for shaping criminal law. Different concepts of criminal law impose a different approach to criminology and its findings, when in fact the meaning of criminal law and rationalization of penalty are inextricably linked to the prevailing worldview of a given age and every now and again undergo changes following its lead (Cieślak, 2010). In contrast, the worldview is shaped by many factors, including among others culture, science and religion. Thus, the evolution of criminal law and its essential assumptions reflects to a certain extent the human development.

Criminology itself is also diverse and one of the factors differentiating its perspective is its approach to punishment understood as the combined result of how a person committing

crimes is perceived under the three main criminological paradigms (even taking into account the new directions in criminology).

The recognition of the diverse nature of criminology should also be accompanied by a general methodological reflection on the possibilities criminology has for providing answers to questions submitted by representatives of criminal law seeking to build a phenomenological picture of given social conduct. Although the reflection is general, its objective is not to analyze all possible research techniques and methods, but it is intended to determine the basic data that can be obtained in criminology. The starting point should be the indication that since there are no methods specific for criminology, the scope of criminological research includes all that enables the construction of a phenomenological picture of murder of one's own child, regardless of the fact that it is also pursued by other social sciences, including psychology, sociology, pedagogy, etc. (Gartner & McCarthy, 2005).

The analysis of the literature reveals that the information on the scope of the phenomenon, its cultural diversity, statistical picture, data on perpetrators and causes is collected on the basis of statistical data, analysis of official documents, including primarily analysis of judicial documentation as well as psychological and psychiatric opinions prepared in connection with it and, to a lesser extent, on the basis of comparative analyses of specific groups of perpetrators. Depending on the cognitive assumptions of given disciplines, the emphasis is placed, among others, on issues related to mental health, early childhood experiences, family relationships or the social, economic and professional situation, which indicates that the murder of one's own child is primarily of interest to psychology and pedagogy of social rehabilitation. Although they may not be intent on pursuing that issue in order to provide answers to potential questions posed by criminal law, it cannot be overlooked that the findings made by those disciplines may be useful in analyzing the possibilities of determining the sanity of perpetrators and the rehabilitation practices applied to them, which in turn is an integral feature of certain criminal law functions, such as the retributive and preventive functions. Moreover, the literature review shows the existence of certain trends in determining the causes of murder of one's own child leading to the development of a typology of perpetrators, which focuses primarily on mothers and takes into account their victimological experience (from childhood and/or adulthood and at the time of the murder), their mental condition and, to a lesser extent, the scope of their rationality (where they are regarded as reasonable actresses and conscious participants in social life, assessing their own maternal situation as unfavourable and considering murder as an acceptable option of resolving their difficult situation).

Notably, the majority of the clarifications for the murder of one’s own child refer to women regardless of whether they focus on medicalization and psychologization of that problem; search for victimization experiences, or even on perceiving the murder of one’s own child as a tragic adaptation strategy.

The recognition of murder of one's child as a specific form of murder implied in the literature on the subject may be a consequence of identifying and describing that crime as one that was committed by a woman and which therefore calls for seeking out something more than the causes within the meaning of traditional ethology. It appears as if society, including its scientific representation, cannot come to terms with the fact that a mother may be capable of committing such an act. The sex of the perpetrator is in this sense a key issue in the study of murder of one's own child, although it is primarily related to the cognitive assumptions of researchers rather than to the phenomenological picture. Paying special attention to women as perpetrators, notwithstanding the fact that men kill children (whether their own, adopted, or remaining in the care of their partner) to at least the same extent, is a clear proof of that (Bourget, Grace, Whitehurst, A 2007). Moreover, it is another factor that differentiates between infanticide within the meaning of Art. 149 CC and the crime of child murder referred to in Art. 148 CC. The situation of women committing infanticide seems to have been determined and taken into account in criminal law and does not require further exploration, unless by those who question the validity of its features presented in that Article.

At the conclusion of the methodological considerations, it is noteworthy that the studies on the murder of one's own child should not remain limited to the analysis of cases qualified only under Articles 149 and 148 CC. All cases involving death of a child must be taken into account even if under criminal law legislation the classification of the act does not indicate murder. What sets a distinct limit of the data set may constitute an important weakness in this case. Therefore, the analysis should also cover situations where the death of a child was classified as unintentional causing of death and grievous bodily harm resulting in death.

An attempt to establish the impact and scope of criminology must be preceded by the determination whether the murder of one's own child by any parent is in fact a social problem, social pathology, or deviation, and which of the above reasons should be further explored and possibly be the subject of separate criminalization. Therefore, regardless of the legislator's views on the raison d’être for criminology, its impact on criminal law and the significance of criminological research, such issues should be determined as early as that stage. The legislator specializing in criminal law recognizes the social harmfulness of an act (social undesirability of an act) as a prerequisite for the decision to criminalize it. The social assessment of such a crime does not need to have much in common with its statistics and its media coverage is not a proof that it is a widespread phenomenon. Thus, the first question that the future legislator should ask criminologists-sociologists concerns the recognition of murder of one’s own child as a social problem, assuming that it is such a social condition that a significant part of society defines it as breaking the norms (Kudlińska, 2014). Presuming that another social problem is why society is ready to prevent and limit by various means the range of murder of one’s own child, one may wonder whether and to what extent criminal law accompanied by criminology are capable of reflecting the attitude of society towards that crime. It may be difficult to determine precisely, given that the scientific and media

discourse generally give little space to discussion on the possibility of social prevention of murder of one's own child, while focusing on individual factors conditioning such acts. On the one hand, the interest aroused by the murder of one's own child demonstrates the importance attached to that phenomenon, on the other hand, it does not trigger a wide set of preventive actions, which consequently results in retaliatory attitudes of society calling for the criminalization of child murder, in particular beyond the situation provided for in Art. 149 which governs infanticide under the influence of the course of delivery.

The starting point for any further penal legislative decisions is "the legal interest". As Dagmara Gruszecka points out, "only reaching the meta-legal level can ensure that, in accordance with the demands of justice, proportionality and the principle of nullum crimen sine periculo socialii, solely those acts that violate or jeopardize certain accepted social values are punishable" (Gruszecka, 2008). With the knowledge of the disputes in the doctrine as well as the difficulties in listing legal interests (Hirsch, 2002; Gruszecka, 2012), it should be pointed out that legal interest is a socially significant value, the violation of which requires a response from the state. The life of a born person is undoubtedly one of the most important legal interests demanding protection.

It should be the task for a criminologist acting in collaboration with a sociologist, social psychologist and perhaps a psychologist to establish what the child and its death mean in Polish social culture, what parenthood is, what the public perception of killing one's own child is and what that perception rather than another stems from (Mogilnicki, 1925). It is also necessary to determine how often such murders occur, what their dynamics is and what the rate of such murders is in comparison with all murders in total and with child murders in total (Latoś, 2012). This issue requires a much broader perspective than the scope envisaged by the provision of Art. 149 CC. We are of the opinion that one of the basic drawbacks of many studies regarding the problem of child murder is the aforementioned limitation – the analysis is based on prosecutor's or court files of female perpetrators suspected, accused or convicted of infanticide within the meaning of the Criminal Code. The adoption of such a research assumption leads to a situation where the scope of the study does not include such cases as the murder of her own child by Katarzyna W., or the repeated murder of her own children by Jolanta K. (in 1992-1998), whose corpses lay hidden in barrels for many years. Similarly, the killing of 5-year-old David by his own father (the event of July 2019) was not infanticide either.

The recognition of murder of one's own child as a social problem may not be so obvious. Depending on the concepts / theories / arrangements adopted for the etiology of that conduct, the murder of one's own child may be considered a social problem in itself or may be part of a wider social concern such as, for instance, violence against children, which indeed is of a problematic nature (Latoś, 2017; Kowalczyk & Latoś, 2016; Gartner & McCarthy, 2005).

We propose to deal with the issue of problematizing the murder of one's own child on the basis of three elements: its statistical picture, the interest of the child as a legally protected value and the public perception of that act.

One possibility of determining whether the murder of one's own child is a social problem is to refer to the data on its scale, i.e., how often such murders occur, what their dynamics is and what the rate of such murders is in comparison with the overall number of all murders and with the overall number of child murders. The literature review shows that the dark figure of murder of one's own child is high due to the identification of other causes of a child's death, which occurred as a result of unexpected or unknown reasons. Therefore, in particular international statistics far more often mention the term deaths of children, some of which result from intentional action of a parent (Włodarczyk, 2012).

It thus seems important to determine how the number of child murders compares with the wider phenomena in the context of which the killing of one's own child occurs most often, that is, the number of child murders as compared with the victims of homicides in total, with child victims of domestic violence, and in relation to the data on infanticide. The determination of the number of children who die at the hands of their parents and guardians may be hindered by the fact that, as indicated in the literature on the subject, there is no agreement yet on whether the homicide statistics include all situations in which children died at the hands of their parents. It is thus worth following very closely all the cases in which children died. Data from the recent years show that the number of child murders (children up to 17 years of age) is small compared to the overall number of murders (48 out of 824 victims in the years 2016-2018). It is even smaller, which is obvious from a criminological point of view, in comparison with the number of children who are victims of domestic violence (47 out of 45130 in 2015-2017). However, it is greater than the number of infanticide cases (7 infanticide cases in 2015-2017), which is of particular interest in the context of the discussion on the discrepancy between the provision of Art. 149 CC and the criminological picture of the killing of one's own child, including a new born. International data on the deaths of children, including those occurring as a result of murder by parents, show a small share of such acts in crime statistics in general, even taking into account cultural differences at the level of different countries and continents (Latoś, 2017; Włodarczyk, 2012; Porter & Gavin; 2010).

Another significant aspect is the analysis of the extent to which the public perception of the killing of one's own child, understood in the context of the seriousness of a given act, regardless of its size, may result in the need for separate criminalization. In so far as the questions regarding the child and parenthood in the social context of meanings go beyond the scope of criminological research, studies on the public perception of murders attracting wide publicity may be taken into account.

Although there is no doubt that the child should be under special care and legal protection; in the case of infanticide, the child-victim implies a privileged type with a much more lenient punishment than in the case of ordinary murder. Criminal law in cooperation with criminology should therefore study that issue more closely to establish whether, why and how murder

of one's own child should be punished, with reference made to the social and cultural meanings of the child, childhood, parents and parenthood established by means of sociological tools.

The high place occupied in the mass media by the child as a victim of murder becomes all too obvious every time news on child murder committed by a parent or guardian emerges. Virtually every month the mass media break such news, even though in statistical terms such murders occur on average once per month. The general public is informed of such cases whenever a child murder occurs and when sentences are passed in the subsequent criminal trials. Surely everyone is able to name a few high-profile murders of one's own child. Although the media attention surrounding such cases and subsequent public interest do not directly affect the construction of criminal law in that regard, public expectations regarding a criminal and legal response to such acts merit closer examination. An example is the study conducted by Stella Strzemecka in 2014 whose findings show that the number and content of comments placed under online articles on "mother killers" is an element of social retaliation, as evidenced by the dominant negative comments calling for the death penalty to be reinstated. The study of public reception also lies on the borderline between criminal law and criminology (Strzemecka, 2014).

In other words, it is a social assessment of an act, which the lawyer is in fact not competent to carry out, that gives the legislator the first impetus to take a decision on the punishability of the killing of one's own child and the scope of that punishment. The diagnosis advancing the view that killing a child is a serious social problem allows for the formulation of further questions directed to researchers specializing in criminology, yet the set of those questions and their nature depend largely on the adopted concept of criminal law. Another question to be addressed by the legislator in the context of the first issue is why, in response to a social problem, we wish to impose a penalty, with the knowledge that the state has a broad range of other measures at its disposal to achieve certain goals, and thus comply with the principle of ultima ratio of criminal law (Beccaria, 1958). The answer to this question is termed content, justification, rationalization or function of criminal law / penalty (Cieślak, 2010).

Given all the diverse views, we assume in this publication that criminal law (punishment) performs the legal, protective / preventive (including deterrence, elimination / isolation and education / resocialization), as well as compensatory functions. The literature review indicates that these functions may be postulated jointly (as happens most often), or as the sole purpose of criminal law. In view of the above distinction, an attempt can be made to prepare a list of the questions, issues and problems to be faced by criminology.

Assuming that criminal law performs a legal function: retaliatory, occasionally identified with the condemnation of an act but also with the commensurability of punishment and the act (Marek, 2010), quantifiers should be established for assessing the degree of the act and the damage itself, as well as circumstances reducing the degree of guilt of the perpetrator of specific conduct. This means that in the event of murder of a child, it is necessary to determine the position of the child and its life in the social hierarchy of values, the child's legal status and the social and psychological significance of that status, the parent's social and individual role, as well as the extent and significance of parental responsibilities, the parent's sex and its significance, the child's age and the significance of the murdered child's age, types of motivations leading to the murder of one's own child, motives, types of reprehensible conduct resulting in death of a child, the seriousness of the breach of obligations in the case of the unintentional death of a child. With such a wide range of variables and issues that may be used to construct a criminal-law response to the murder of one's child corresponding to the legal function, criminology is primarily useful in terms of knowledge on perpetrators and acts ignoring, with a few exceptions, the wider social context.

In this regard, criminological studies allow the identification and categorization of child murders into three basic forms, taking into account the child's age neonaticide, filicide and infanticide. Neonaticide means the murder of a newborn child, filicide – the murder of an older child by a parent, and infanticide – the murder of a child under one year of age. Therefore, age appears to be one of the most important variables differentiating the criminological picture of murder of one's own child, which may exert a significant impact (and in some countries it does) on a criminal law response to such acts. For instance, the separate penalization of murder of one's own child under one year of age involving the privileged type, which is applied by Great Britain, is associated with the period of lactation (Margaret & Spinelli, 2004).

The literature review may lead to a conclusion appearing at the borderline between criminology and criminal law that what may create the aforementioned diversity is the very approach to parenthood, and precisely to women and motherhood, given that the sex of the perpetrator is of utmost importance for the differentiation of the seriousness of and response to the act of killing one's own child. The debate on the possibilities of reducing or increasing the severity of the penalty imposed on perpetrators of murder of one's own child concerns above all women, which, as provided for by Art. 149 CC, stems from the biological and psychological state of the mother induced by childbirth. Such a scheme necessarily excludes the father and the issue of fathers who kill their own children is rarely discussed in the context of arguments for the need to take into account their situation, be it social or psychological. It would seem that in the event where the father kills his own child, the case is clearer and simpler in terms of criminology and criminal law. Similarly, the sex of the co-perpetrator is of major significance in that situation, too. The attitude of a woman who sits back and watches passively as the father's conduct towards her child leads to its death is in the public perception much more reprehensible than the opposite situation where the father does not respond to the mother's attitude towards her child, including a newborn, resulting in the child's death. The question arises whether it is a matter of stereotypes, different social expectations or responsibility, although under criminal law and criminology, we are still in a place where the commission of crimes by women continues to surprise, concern and shock, which results in seeking further reasons and etiologies. Without

concluding whether this perception is correct, as under the feminist perspective, such a distinction could be accepted as right, it is worth pointing out that the issue at stake is the woman's responsibility which, depending on social sensitivity to her situation, results in more lenient or more stringent treatment of her case.

Polish criminological studies on the murder of one's own child very rarely focus on the sex of the perpetrator assuming, in the light of Art. 149 CC, that it must be a woman. Halina Janowska approached that issue in a different manner examining in her work not only female perpetrators, but also men who kill illegitimate children. Specifying clearly that the number of such cases is small, she noticed that although the victim is not always the perpetrator's child (e.g. illegitimate child of a partner - future wife), the motivation was similar to that of women – shame, other life plans, economic problems and notably "none of the perpetrators of those killings shows the characteristics of a clear social deviation." (Janowska, 1974).

In addition to the remarks on criminological research, it is worth noting that in her work published almost 50 years ago, Halina Janowska presents a typology of motivation of the perpetrators of murder. Apart from defense of personal dignity, erotic motivation, etc., it also includes a category of killing an illegitimate child, recognizing that in such cases it is not possible to indicate one type of value which prompted the perpetrator to kill a child (Janowska, 1974).

Depending on the adopted concept of the significance of circumstances "justifying" murder for the penalty and its length, it is appropriate to enquire about the impact of past experiences on the perpetrator (harm suffered, parenting model adopted for the upbringing), the cultural norms functioning in the near and distant environment of the perpetrator (among others, honor killing of an adolescent daughter, socially understandable shame brought by an illegitimate or extramarital child), and the social and economic situation of the perpetrator.

Criminological studies, and not only, indicate clearly that in the case of murder of newborn children unwanted by their mothers, the perpetrators are most often women with a low level of education, from rural areas, living in poverty, who are victims of violence by closely related persons, both in childhood and prior to the time of the murder (Włodarczyk, 2012; Pomarańska–Bielecka, 2010; Marzec–Holka, 2004).

They tend to be emotionally immature and are not ready and willing to perform the role of mother, which frequently results in concealing the pregnancy and failing to undertake any actions that take into account the existence of the child in their life. It is noteworthy that many studies show that women who kill children older than newborns differ considerably from those who kill their own child immediately after birth. They tend to be older, better educated and have a more regulated life situation – they are more often married (Porter & Gavin, 2010). Regrettably, there are no available studies in this respect on male perpetrators of murder of one's own child.

The most dominant sphere of research and theoretical considerations focuses on the life profile of male and female perpetrators, dating back to as early as childhood and extending to family relationships and patterns referring mainly to victimization experiences. It may be accompanied by a description of the current social and economic situation of female and male perpetrators (with particular emphasis on female perpetrators), which in turn shows an unsettled professional and family situation, as well as low social competences.

It should therefore be emphasized that the largest field of exploration of criminology and other disciplines is in fact its weakness point. The number of murders of one's own child is so small compared to the overall number of women who fit in the typologies put forward in criminology and related fields that it is difficult to find and determine unequivocally the real cause of killing one's own child.

In the case where the legislator prefers the protective/preventive function, it must be decided whether crime prevention (on the level of universal and individual prevention) is to take place by deterrence, elimination (or isolation) or by education (resocialization). The above issue is of utmost significance in the context of murder of one's own child and prevention.

The selection of the model based on deterrence requires the establishment, initially in a broader range, of the overall effectiveness of penalties and other penal measures as demotivating factors. Interestingly, a somewhat controversial, yet increasingly popular economic concept of criminal law, which seeks to base criminal policy on the economic model of human conduct aimed at maximizing the obtained profits, can play a role in that area (Czabański, 2005,).

The findings of the enquiries regarding effectiveness should be applied, among others, to the personality types of perpetrators of murder of one's own child, which will allow for the proper adjustment of the deterrent measures to the mechanism of how the intention to kill a child is formed and the role of emotions, the cause of neglect and abandonment, and to the assessment of what constitutes profit or loss in the consciousness of a particular type of perpetrator. Given that those issues remain primarily in the sphere of interest of other disciplines, modern criminological research in that area provides little research material. Criminological investigation into the personality of perpetrators and their susceptibility to specific criminal measures remains in the sphere of psychology, psychiatry or pedagogy. If criminologists make use of it, that is mainly to determine the reasons for the occurrence of murder of one's own child, and not necessarily to formulate a proposal for an effective legal and criminal response. In turn, the economic concepts, although interesting and innovative, draw little response as regards the murder of one's own child, although some attempts are made even in the Polish literature (Latoś, 2012). The attempt to examine the decision to kill one's own child is undertaken by means of applying the (now classic) social exchange theory, in which a glaring disparity emerges between what the mother / parent gives and what they gain in return. The lack of popularity of those concepts may be partly attributed to the treatment of murder of one's own child as extremely deviant conduct significantly exceeding the category of violation of the legal norm. The perception of women killing

their own children as sick or evil, which is the case in most literature on the subject, restricts the possibility of treating such conduct as a rational, relatively conscious reaction to the situation in which the woman finds herself (Weare, 2013). However, it cannot be overlooked that certain attempts have already been made in criminology to treat mothers killing their own children as rational actresses (Gartner & McCarthy, 2005).

The protection of society against the repeated unacceptable parent conduct by means of elimination or isolation requires completely different criminological decisions. The first task for a criminologist is to determine whether, in certain types of conduct, there is a genuine risk of the repetition of the same act. Then, assuming that isolation is not always necessary and elimination may indeed be sufficient, the question is whether and what penalties or other penal measures will eliminate the perpetrator from family life, thus depriving them of the actual possibility of acting as a parent. Given that the list of penal measures no longer includes the option of deprivation of parental rights (but merely a notification submitted to a family court division in the event where the court deems it appropriate to order or withdraw parental rights), the criminologist may either consider such a notification to be sufficient, or may postulate the restoration of the former criminal measure or, alternatively, recognize that only isolation can effectively prevent the repetition of the crime of child murder.

The legislator's faith in the effectiveness of education and resocialization requires the most extensive criminological research supplemented with findings in the field of rehabilitation pedagogy. The etiology of killings should be established, both in social and individual terms, to determine whether and what will persuade the potential perpetrator of murder of one's child to abandon that intention (Latoś, 2012). It seems that the problem will lie in the selection of an appropriate criminological approach: classical, positivist – e.g. the biological aspects of childbirth and motherhood (Kosińska, 2015), or radical / critical / new criminology. The criminologist will also need to consider what penal measures will best promote the achievement of the educational goal in relation to specific types of perpetrators.

The search for the etiology of murder of one's own child seems to be one of the most important issues explored by the criminological literature and other fields dealing with that problem, although, in our opinion, there is no final conclusion as to why such killings occur. One of the most common forms of developing the etiology is by referring to the reasons that lead parents to take that step. The examples of typologies of such causes are numerous in the literature. By way of illustration, Resnick (1970) quotes altruistic reasons, murder committed due to mental health disorders, resulting from the unwillingness to have a given child, the outcome of violence against a child, a manifestation of revenge, intention to hurt someone else and getting rid of a newborn child. In contrast, D'Orban (1979) compiles a list of reasons referring to the types of female perpetrators, which mostly concerns the social situation in which they find themselves: experience of violence, mental disorders (in particular in the case of murder of a newborn child), getting rid of an unwanted child, revenge or murder out of pity.

On the whole, the literature on the subject discusses primarily the reasons associated with mental disorders (specific to motherhood, childbirth, confinement or of a general nature), the experience of violence and the difficult and complicated situation of perpetrators, in particular female perpetrators (family, professional and social status). None of those fields of interest provide unequivocal conclusions. Numerous studies confirm the relationship between the woman's mental state and the commission of murder of one's own child by her (Bourget, Grace, Whitehurst, 2007; Margaret G. Spinelli, 2004), yet others question that correlation (Weare, 2013; Morris & Wilczynski, 1993; Porter & Gavin, 2010).

The above typologies indicate that the reasons for the murder of one's own child are attributable to the perpetrator, which may not be so obvious in criminological terms. The key weakness of those typologies is their reliance on compiling lists of various situations and conditions in which parents (mainly mothers) find themselves, which, due to the wider occurrence of such situations and conditions in social life, does not adequately explain the actual reason for the murder of one's own child. The number of women, fathers, carers of both sexes who have mental problems or use violence against women who do not want the child is larger than the amount of murder cases. The same applies to the socio-demographic features which are indicated in the literature as the characteristics of women who commit murder (with the rightly indicated distinction between women who commit infanticide and murder).

The examination of the possibility of deterrence by means of criminal law and its other functions should lead to further reflection on the current practice regarding punishment in the event of murder of one's own child. The foreign literature review shows that women tend to be treated more leniently than men. The question is why and whether it may have some connection with prevention. It could be of great interest, since motherhood is the most frequently cited argument to explain the more lenient treatment of women, even though they in a sense reject motherhood and it surely forms the background to the crime. The question thus arises whether we should continue to perceive them as mothers, but only as mothers who lost self-control.

Out of all the basic functions under analysis in this publication, account should also be taken of the compensatory function. Satisfaction of the postulates of restorative justice requires that the criminologist should address the matter of the consequences of the conflict between the parent and the killed child and determine how to defuse the tension between the parent-offender and the society. Therefore, the research in that area should to a large extent refer to the social restitutive expectations in the event of the victim's death and the possibility of their fulfilment by the perpetrator of murder of one's own child. It must be concluded that the criminological literature review concerning murder of one's own child shows a lack of information on such a perception of the consequences associated with that offense and, consequently, of the punishment itself.

In conclusion, apart from two basic concepts of criminal law:

offense and punishment, the legislator cannot lose sight of the other "elements" of the condition created as a result of the committed criminal offense. These elements are the offender, the victim and society. The sum of these circumstances makes up the science called criminology, which after all the legislator cannot overlook.

III. Conclusions

The attempt to find a common field of activity for criminal law and criminology with respect to the murder of one's own child should start with the key question concerning the existence or the non-specific nature of that act. This is essential not only from the point of view of criminal law, which may put forward a separate typification, but also in terms of criminological research and considerations, which will either seek to look for specific reasons underlying the murder of one's own child or, alternatively, will (only) make use of the criminological output on homicide or other deviant conduct, including violence against children (Porter &. Gavin, 2010; McKee, Mogy & Holden, 2001).

It appears that one of the directions of problematizing the murder of one's own child is either to recognize it as a separate social phenomenon or as a consequence of using violence, with the murder itself being "the last circle of hell." The search for differences between situations when a child is hurt and situations when it is killed seems to be one of the most important issues / directions of further theoretical and empirical explorations. Violence is also an essential element allowing for the construction of a profile of the perpetrators. It must be recognized that the murder of one's own child is related to victimization, be it the use of violence as well as experience of violence in the past (as a child) and in the present (as a wife, partner). In this sense, experiencing childhood violence can become a risk factor for violence against one's own children, which in extreme cases may become a risk factor for child murders. Such a relation, given the existing large disparity between the number of children being victims of homicides and the number of children who are victims of domestic violence, and regardless of any methodological reservations, may be seen as being at least statistically unverifiable. The same applies to the comparison of murder of one's own child with homicides. An analysis of murder of one's own child from the point of view of criminology seems to indicate that there is common ground connecting what happens at the meeting point of murders, violence and the situation of the perpetrators being as it were a critical experience, in which one should look for the causes of murder of one's own child that may result in a better and more adequate construction of criminal law in that respect.

Another important issue needing further examination is the sex of the perpetrator. The matter is only seemingly obvious in the area of murder of one's own child. Nonetheless, the identification of murder of a newborn child as a crime that can only be committed by a biological mother under the influence of childbirth remains far from the actual sex differentiation and the related consequences for the criminological picture, as well as possible legal and criminal solutions. This is an issue which forms part of a much wider discussion on the place of sex in criminology.

Various typologies show that the causes of murder of one's own child are attributable to the perpetrator. The weakness of those typologies lies in their dependence on compiling lists of various situations and conditions in which parents (mainly mothers) find themselves, which, due to the wider occurrence of those situations and conditions in social life, does not adequately explain the actual cause of murders of one's own child. The number of women, fathers, carers of both sexes who have mental problems or use violence against women who do not want the child is larger than the amount of murder cases. The same applies to the socio-demographic features which are indicated in the literature as the characteristics of women who commit murder (with the rightly indicated distinction between women who commit infanticide and murder).

Attempts to find the reasons for the murder of one's own child mainly in individual factors, whether in psychological or sociological terms, suggest that not much research is conducted outside the positivist trend. It follows from the scope of questions posed by criminal law that anti-naturalistic criminology could contribute significantly to the debate on the murder of one's own child, as we largely center around social meanings and expectations that determine not only the legal and criminal response, but also criminological considerations themselves. The calls for taking that trend into account result from some kind of disappointment with the positivist approach which focuses on the reasons for the murder of one's own child.

The literature review shows that a valuable contribution to the subject could be made by anti-naturalistic criminology, including its feminist branches, and even Carol Smart with her concept of developing a feminist perspective in criminology. We still center around social meanings, i.e. mainly social expectations which determine not only the legal and criminal response, but also the criminological considerations themselves. The emergence of that trend as the most important may partly stem from some kind of disappointment with the positivist attempts which seek primarily to uncover the reasons for the murder of one's own child.

It may be that we draw a distinction between the murder of a child and violence against children, or between the murder of one's own child and any other kind of murder because of our inability to come to terms with the fact that women, and also men, carry out such killings (although historically they were permissible, even to a much greater extent than today).

Finally, it should be admitted that the criminal lawyer-draftsman does not in fact have the competence to provide answers to the issues raised in the initial part of this article. The lawyer specializing in criminal law who draws up legislation knows (or should know) how to formulate criminal provisions, what principles of criminal law must be applied, and above all, what the principle of nullum crimen sine lege certa et stricta means. The lawyer specializing in criminal law who applies the provisions of law knows (or should know) how criminal provisions should be interpreted in the light of the above principles. If nothing goes wrong at any of these stages, the perpetrator will be sentenced for committing the act, when it is

socially justified and to a penalty that satisfies social needs, on the condition that the provisions of law the lawyer specializing in criminal law introduces and interprets take into account the achievements of criminology. Moreover, one cannot ignore the opinion, or in fact as he himself put it, the supposition of Marian Cieślak, an outstanding lawyer specializing in criminal law, who wrote "that the legislator does not give much thought to the sense and purposefulness of criminal sanctions, that he remains unaware of the plurality of functions that a given type of penalty can satisfy, and that he deals with these matters rather «by intuition». Then the author goes on to make his point in no unequivocal terms: "Therefore, it would be appropriate for the legislator before identifying the types of acts threatened with criminal sanctions, first of all, to decide what he has in mind and what he wants to achieve by applying those sanctions."(Cieślak,2010).That is precisely where criminoligical knowledge becomes necessary.

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