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NAXÇIVAN DÖVLƏT UNİVERSİTETİNİN ELMİ ƏSƏRLƏR JURNALI

SOME ISSUES OF QUALIFYING INTENTIONAL HOMICIDE COMMITTED UNDER AGGRAVATING CIRCUMSTANCES

Taleh BAGIROV
Investigation Department, Prosecutor General's Office of the Republic of Azerbaijan, Baku, Azerbaijan
**Corresponding author: talehbagirov.prok@gmail.com*

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ABSTRACT
The purpose of this article is to examine how investigators, prosecutors and courts in Azerbaijan apply the aggravating features of intentional homicide when several of them coincide in a single act, and to identify the points at which current judicial guidance leaves room for inconsistent qualification. The analysis focuses on Articles 120.2.4 (special cruelty), 120.2.5 (mercenary motive), 120.2.7 (killing of two or more persons), 120.2.9 (killing of a person known to be helpless) and 120.2.11 (killing connected with robbery) of the Criminal Code. Object of the study: social relations protecting human life and the law-enforcement practice of qualifying aggravated homicide. Research methods. The study combines formal-legal and systematic interpretation of the Criminal Code and of Resolution No. 3 of the Plenum of the Supreme Court of 12 December 2002, a comparative review of the approaches taken in Russia, Germany and England and Wales, and the analysis of a model situation typical of investigative practice. Originality and scientific novelty of the study. The article argues that the number of wounds cannot by itself establish special cruelty without forensic evidence that the victim was conscious and suffering, shows that the line between Articles 120.2.5 and 120.2.11 depends on when the intent to obtain property arose, and proposes specific additions to the Plenum's guidance and to investigative practice.

INTRODUCTION

Article 27 of the Constitution of the Republic of Azerbaijan proclaims every person's right to life (*Constitution of the Republic of Azerbaijan*, 1995), and criminal law gives this right its strongest protection. Article 120 of the Criminal Code (*Criminal Code of the Republic of Azerbaijan*, 1999) distinguishes intentional homicide without aggravating features (Article 120.1) from homicide accompanied by one or more of the twelve qualifying features listed in Article 120.2. The distinction has real consequences: the sanction of Article 120.2 extends to life imprisonment, so including or omitting a single qualifying item can considerably change the outcome for the accused.

In investigative practice, these features rarely appear one at a time. A typical serious case may involve two victims, a weapon used again and again, and a financial motive behind the attack. Each of these facts points to a different item of Article 120.2, and each item has its own content and must be proven separately. Problems arise when the investigator merges them into a single impression of "a particularly grave murder". Some features are then charged without sufficient evidence and later excluded by the court, while others that the evidence would support are left out of the charge altogether.

The main interpretive guidance is still Resolution No. 3 of the Plenum of the Supreme Court of the Republic of Azerbaijan of 12 December 2002, "On judicial practice in cases of intentional homicide" (Plenum of the Supreme Court of the Republic of Azerbaijan, 2002). Although the Resolution has been amended since its adoption, its paragraphs on special cruelty, mercenary motive and killings connected with robbery still leave several practical questions open, even though forensic medicine, comparative criminal law and judicial practice have developed considerably over the past two decades.

The problem has been approached from several directions in the literature. The general theory of qualification treats it as the task of establishing an exact correspondence between the features of the act and the features of the criminal-law norm (Kudryavtsev, 1999). English scholarship shows how a legal system without degrees of murder handles the same aggravating facts at the sentencing

stage rather than through qualification (Ashworth & Horder, 2013; Horder, 2012), and the Law Commission (2006) examined whether such factors should instead structure the offence itself. German case law defines cruelty (*grausam*) through the pain or suffering inflicted on the victim and the offender's callous attitude, not through the number of blows (Bundesgerichtshof, 2005). More recent work questions the automatic link between multiple injuries and cruelty: a review of Russian judicial practice shows that the courts make the forensic findings on the victim's consciousness decisive (Smirnova, 2024), while forensic and criminological research associates "overkill" mainly with impulsive, uncontrolled reactions (Tavone et al., 2022). These strands have not yet been brought together in relation to Article 120.2 of the Azerbaijani Criminal Code, which is the gap the present article seeks to fill.

This article addresses four of these questions: (1) when a large number of injuries amounts to special cruelty under Article 120.2.4; (2) where the line lies between a mercenary killing under Article 120.2.5 and a killing connected with robbery under Article 120.2.11; (3) how the features relating to the victims, namely the killing of two or more persons (Article 120.2.7) and the killing of a person known to be helpless (Article 120.2.9), should be established when the victims differ in age and condition; and (4) how the charge should be formulated when several features coincide. The analysis is written from the perspective of a prosecution service practitioner, and its proposals are addressed primarily to investigators and prosecutors.

MATERIALS AND METHODS

The normative basis of the study consists of the Constitution of the Republic of Azerbaijan, the Criminal Code and the Code of Criminal Procedure (*Constitution of the Republic of Azerbaijan*, 1995; *Criminal Code of the Republic of Azerbaijan*, 1999; *Code of Criminal Procedure of the Republic of Azerbaijan*, 2000). The Resolution of the Plenum of the Supreme Court No. 3 of 12 December 2002 served as the principal source of judicial interpretation (Plenum of the Supreme Court of the Republic of Azerbaijan, 2002). To place the Azerbaijani approach in a broader context, the study also draws on Resolution No. 1 of the Plenum of the Supreme Court of the Russian Federation of 27 January 1999, which interprets the Russian provision structurally closest to Article 120.2 (Plenum of the Supreme Court of the Russian Federation, 1999); on § 211 of the German Criminal Code (*Strafgesetzbuch*, 1998) and the case law of the Federal Court of Justice on the feature "cruelly" (*grausam*) (Bundesgerichtshof, 2005); and on Schedule 21 to the Sentencing Act 2020 of England and Wales (*Sentencing Act 2020*, 2020), together with the Law Commission's work on the reform of homicide law (Law Commission, 2006). Forensic and criminological literature on so-called overkill was used to assess the evidentiary weight of multiple injuries (Tavone et al., 2022).

Methodologically, the study relies on formal-legal and systematic interpretation of the relevant provisions and on the comparative method. To test the conclusions against the realities of investigation, the article uses a model situation constructed by the author on the basis of typical features of homicide cases; it does not reproduce the facts of any particular criminal case. The theoretical starting point is the classical understanding of qualification as establishing an exact correspondence between the features of the act committed and the features of the criminal-law norm (Kudryavtsev, 1999).

RESULTS AND DISCUSSION

Qualifying features as independent elements of the charge

Each item of Article 120.2 describes a separate circumstance that increases the social danger of a killing. Some concern the method (special cruelty, a generally dangerous method), some the motive or purpose (mercenary motive, hooliganism, hatred), some the victim (pregnancy, helplessness, official activity), and some the number of victims or the link with other crimes. Because they relate to different elements of the offence, they do not exclude one another. Paragraph 18 of the 2002 Resolution draws the practical conclusion: where an act contains several qualifying features, it must

be qualified under all of them, while the punishment is imposed once rather than for each item separately.

Two consequences follow for the investigator. First, every feature included in the charge must be proven independently, by its own evidence; the presence of one serious feature lends no weight to another. Second, the rule of cumulative qualification has exceptions established by the Resolution itself, the most important of which concerns the relationship between Articles 120.2.5 and 120.2.11 (paragraph 15). Both points are easily lost in a case that, judging by its overall appearance, seems obviously "aggravated".

A model situation

The difficulty can be illustrated by a model situation that combines features frequently encountered in practice. Two people, an elderly man and his adult daughter, are found dead in their flat. Both have numerous stab and incised wounds inflicted with a kitchen knife. Valuables and money are missing from the flat, and the investigation also has to determine whether the attack was carried out by one person or jointly by several.

At first sight, the case seems to fall under almost every item of Article 120.2 at once. On closer analysis, however, the investigator has to answer at least five separate questions: (a) whether the large number of wounds establishes special cruelty; (b) whether the financial motive should be expressed through Article 120.2.5 or through Article 120.2.11 in conjunction with Article 181; (c) whether the two deaths were covered by a single intent, as Article 120.2.7 requires; (d) whether either victim was helpless within the meaning of Article 120.2.9; and (e) whether the killing was committed by a group of persons under Article 120.2.1. The following sections deal with the first four questions. The group feature raises separate questions of complicity and is not examined here.

Special cruelty and the number of injuries

According to paragraph 8 of the 2002 Resolution (Plenum of the Supreme Court of the Republic of Azerbaijan, 2002), special cruelty is linked both to the method of killing and to other circumstances showing that the offender acted with special cruelty, and the offender's intent must be directed precisely at depriving the victim of life in this manner. The Resolution gives examples: torture, torment or humiliation of the victim before or during the killing, and methods known to cause the victim special suffering. Among the latter it lists the infliction of a large number of injuries, the use of a painful poison and burning the victim alive.

In practice, the reference to "a large number of injuries" is often treated as a self-sufficient rule: once the forensic report counts dozens of wounds, Article 120.2.4 is added to the charge. This reading does not match the structure of paragraph 8. Multiple injuries are mentioned there as an example of a method that causes special suffering; the substance of the feature is the suffering itself and the offender's awareness of it, while the number of wounds is only one way of proving it. The same paragraph confirms this logic. It states that humiliating acts committed on a corpse do not in themselves indicate special cruelty and must be assessed separately under Article 245 of the Criminal Code (insulting acts on a grave or corpse) (*Criminal Code of the Republic of Azerbaijan*, 1999), and that destroying or dismembering a body in order to conceal the crime cannot be regarded as special cruelty. If acts committed after death are excluded, then wounds inflicted after death, or after the victim lost consciousness, cannot logically support the feature either.

Russian practice, which interprets an almost identical formula, has reached the same conclusion. Paragraph 8 of Resolution No. 1 of the Plenum of the Supreme Court of the Russian Federation of 27 January 1999 (Plenum of the Supreme Court of the Russian Federation, 1999) likewise mentions the infliction of a large number of injuries as a possible manifestation of special cruelty. Yet, as Smirnova (2024) shows in her review of case law, where the charge rests solely on the number of injuries, the forensic findings become decisive. If the victim lost consciousness after the first blows and could not feel pain, or if the remaining injuries were inflicted after death, the feature is not established.

Forensic and criminological research offers a further reason for caution. In a study of 71 autopsy cases from central Italy, Tavone et al. (2022) found that victims of overkill bore on average about eighteen wounds and that such killings most often arose from disputes over trivial matters. The authors associate overkill, particularly with improvised weapons, with impulsive and uncontrolled reactions rather than with premeditation. A large number of wounds may therefore reflect rage, panic, intoxication or the victim's resistance rather than an intention to make the victim suffer. For the purposes of Article 120.2.4, the decisive question is not how many blows were struck, but what the offender sought to achieve and what the victim actually experienced.

Comparative law points in the same direction. Under German law, a killing is "cruel" (§ 211(2) StGB; *Strafgesetzbuch*, 1998) when the offender, acting from a callous and merciless attitude, inflicts physical or mental pain or suffering that, in intensity or duration, exceeds what is necessary for the killing. The cruel conduct must occur before the fatal act is completed and must be covered by the offender's intent (Bundesgerichtshof, 2005). English law has no degrees of murder and deals with aggravation at the sentencing stage (Ashworth & Horder, 2013; Horder, 2012; Law Commission, 2006). Even so, Schedule 21 to the Sentencing Act 2020 is instructive (*Sentencing Act 2020*, 2020). Alongside "mental or physical suffering inflicted on the victim before death" (paragraph 9(c)), a separate factor, "the use of sustained and excessive violence towards the victim" (paragraph 9(fa)), was added in 2024 (*Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2024*, 2024). The legislator thus treated excessive violence and the infliction of suffering as two distinct circumstances, which is precisely the distinction that practice under Article 120.2.4 tends to blur.

For the investigator, these considerations translate into a concrete evidentiary task. When a charge under Article 120.2.4 is based on multiple injuries, the questions put to the forensic medical expert should cover at least the following points: which injuries were inflicted while the victim was alive and which after death; the sequence in which they were inflicted and which of them was fatal; how much time could have elapsed between the first injury and death; whether the victim could have remained conscious and able to feel pain during that period; whether there are defensive injuries indicating that the victim was aware of the attack and resisted; and where the injuries are located, that is, in vital areas, which suggests an intent to kill quickly, or in areas where damage prolongs suffering. The expert's answers should then be compared with the accused's statements, the nature of the weapon and the offender's conduct during the attack. Only this combination of evidence makes it possible to show that the intent covered the cruel method, as paragraph 8 of the Resolution requires.

In a double homicide, special cruelty may also rest on a different basis. Paragraph 8 of the Resolution recognises special cruelty where the offender kills the victim in the presence of persons close to the victim, knowing that this causes them special suffering. If the evidence shows that one victim, for example the daughter, witnessed the killing of the other, and that the offender was aware of this, Article 120.2.4 may be established regardless of the number of wounds. This, however, requires establishing the order in which the victims were killed and what each of them could perceive, which again depends on careful forensic and situational analysis.

Mercenary motive or killing connected with robbery

The financial background of a killing can be reflected in the charge in different ways, and the choice between them is one of the most frequent sources of error. Paragraph 9 of the Resolution defines a killing committed for a mercenary purpose (Article 120.2.5) as one aimed at obtaining a material benefit for oneself or others, such as money, property or rights to housing, or at being released from material obligations such as repaying a debt or paying alimony. Paragraph 15, in turn, provides that where the offender also makes an attempt on the victim's life in the course of robbery, extortion, banditry or terrorism, the act constitutes a combination of crimes and is qualified under Article 120.2.11 together with the article covering the relevant crime. Although such crimes are usually committed for gain, no additional qualification under Article 120.2.5 is required.

Read together, the two paragraphs yield a working rule based on the timing and content of the intent to obtain property:

1) if the offender attacked the victim in order to seize money or property and the killing was part of that attack, the act is qualified under Article 120.2.11 together with Article 181 (or Article 182 in the case of extortion), without Article 120.2.5;

2) if the killing itself was the means of obtaining a material benefit other than through a violent seizure, for example to avoid repaying a debt, to acquire housing or an inheritance, or for a reward, the act falls under Article 120.2.5;

3) if the intent to take the victim's property arose only after a killing committed for other reasons, the mercenary feature is absent: the killing is qualified under Article 120.1 or 120.2 according to its actual motive and method, and the taking of property separately under Article 177 (paragraph 9 of the Resolution).

In the model situation, the mere fact that money and valuables disappeared from the flat does not settle the question of qualification. The investigator has to establish whether the money was demanded or taken during the attack, whether it represented a debt owed by or to one of the parties, and at what moment the decision to take it was made. The size of the sum is irrelevant to qualification: a killing for a small sum is just as mercenary as a killing for a fortune. What matters is the structure of the intent. Charging Articles 120.2.5 and 120.2.11 simultaneously for the same financial motive contradicts paragraph 15 of the Resolution and gives the defence an easy ground for appeal.

Features relating to the victims

Article 120.2.7 applies where two or more persons are killed. According to paragraph 11 of the Resolution, the offender is liable under this item where the killings are covered by a single intent; the deaths need not occur at the same moment. Where one victim was killed and the attempt on the other failed, the act cannot be treated as the completed killing of two persons, and the completed and attempted parts require separate legal assessment. If, in the model situation, both deaths occurred during a single episode and the evidence points to a single intent to kill both occupants of the flat, this supports Article 120.2.7. If, however, the second victim was killed because she unexpectedly witnessed the first killing, the investigator should also consider Article 120.2.6 (killing in order to conceal another crime) in respect of the second death.

The helplessness feature calls for greater care. Under paragraph 13 of the Resolution, a person is helpless when, owing to his or her physical or mental condition, he or she is unable to defend himself or herself or to resist the offender, and the offender is aware of this. The Resolution mentions, among others, elderly, sick and young persons, in some cases minors, as well as persons who are unconscious, asleep or heavily intoxicated. Neither old age nor minority creates a presumption of helplessness. An adolescent may be physically capable of resistance, while an elderly person may or may not be, depending on his or her health. Each victim must therefore be assessed individually on the basis of medical records, witness testimony and the circumstances of the attack, for example whether the victim was asleep. English law takes a similar line: under Schedule 21 to the Sentencing Act 2020, the aggravating factor is that the victim was "particularly vulnerable because of age or disability" (paragraph 9(b)) (*Sentencing Act 2020*, 2020), which makes vulnerability a question of fact rather than an automatic consequence of age.

This reveals a gap. Article 120.2 does not treat the killing of a minor as an independent qualifying feature, so the age of a child victim can affect qualification only through Article 120.2.9 or, at the sentencing stage, as an aggravating circumstance under Article 61.1.7 of the Criminal Code (*Criminal Code of the Republic of Azerbaijan*, 1999) (an offence committed against a minor, an elderly or a helpless person); under Article 61.3, the same circumstance cannot be taken into account twice if it already forms part of the qualification. Since the helplessness route is unavailable for most adolescents, the additional protection of minors depends largely on judicial discretion in sentencing. Whether a separate qualifying feature should be introduced is a matter for the legislator, but practice would benefit at least from a clarification in the Resolution of how the age of a minor victim is to be taken into account.

Formulating the charge

Table 1 summarises the evidentiary requirements for the features discussed above.

Table 1. *Evidentiary requirements for selected qualifying features of Article 120.2*

Feature (Article)	Guidance of the 2002 Resolution	Key evidence
Special cruelty (120.2.4)	Para. 8: intent directed at a cruel method; acts on a corpse excluded	Intravital nature and sequence of injuries; victim's consciousness; defensive wounds; presence of close persons; accused's statements
Mercenary motive (120.2.5)	Para. 9: material benefit or release from obligations	Debts, property relations, inheritance, reward; moment the intent arose
Killing connected with robbery (120.2.11 with Art. 181)	Para. 15: combination of crimes; no additional 120.2.5	Attack aimed at seizure; property demanded or taken; sequence of events
Two or more persons (120.2.7)	Para. 11: single intent	Unity of the episode; motive in respect of each victim; statements
Helpless victim (120.2.9)	Para. 13: inability to resist and the offender's awareness of it	Medical records; age and physical condition; circumstances (sleep, intoxication)

Once these questions have been answered, the charge should list every established item, as paragraph 18 requires. For the model situation, depending on the facts proven, the formula might cover Articles 120.2.7 and 120.2.11 of the Criminal Code together with the relevant part of Article 181, with Article 120.2.4 added only if the forensic evidence confirms special cruelty and Article 120.2.9 only if the helplessness of a particular victim is proven. An inflated charge does not strengthen the prosecution. On the contrary, it creates points at which the court may lawfully exclude features, and each such exclusion weakens the prosecution's overall position.

RESULTS

The analysis leads to the following conclusions.

1) The qualifying features of Article 120.2 are independent elements of the charge. Each must be proven by its own evidence, and the overall gravity of a case cannot substitute for proof of a specific feature.

2) A large number of injuries is evidence of special cruelty, not the feature itself. Article 120.2.4 is established only where it is proven that the victim experienced suffering beyond what was necessary for the killing and that the offender's intent covered this method. This approach follows from paragraph 8 of the Resolution and is consistent with Russian and German practice, as well as with the distinction drawn in Schedule 21 to the Sentencing Act 2020 between suffering and excessive violence.

3) The choice between Articles 120.2.5 and 120.2.11 depends on when and how the intent to obtain property arose. Simultaneous qualification under both items for the same financial motive is inconsistent with paragraph 15 of the Resolution.

4) Old age or minority does not in itself make a victim helpless; helplessness must be established individually for each victim.

On this basis, the following proposals are made:

1) to supplement paragraph 8 of Resolution No. 3 of the Plenum of the Supreme Court of 12 December 2002 with an explicit statement that special cruelty cannot be inferred from the number of injuries alone and requires establishing that the injuries were inflicted while the victim was alive and that the victim was capable of experiencing suffering;

2) to develop, in the form of methodological recommendations of the Prosecutor General's Office, a standard list of questions for the forensic medical expert in homicide cases involving multiple injuries, covering the points set out in the subsection on special cruelty above;

3) to supplement paragraphs 9 and 15 of the Resolution with examples distinguishing a mercenary killing, a killing connected with robbery, and a killing followed by theft;

4) to consider whether the minority of the victim should be reflected in Article 120.2 or, at a minimum, to clarify in the Resolution how the age of a minor victim is to be assessed in qualification and sentencing.

Implementing these proposals would make the qualification of aggravated homicide more predictable and help avoid situations in which charges have to be revised at the trial or appeal stage.

DECLARATION ON THE USE OF AI TOOLS

The author used an AI tool to assist with language editing and structuring of the text; the legal analysis and conclusions are the author's own.

ETHICS COMMITTEE APPROVAL

Not applicable. The study is a doctrinal legal analysis based on legislation, published judicial guidance and literature. It did not involve human participants, animals, biological material or identifiable personal or medical data; the model situation is hypothetical and does not reproduce the facts of any real case.

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XÜLASƏ

AĞIRLAŞDIRICI HALLARDA TÖRƏDİLƏN QƏSDƏN ADAM ÖLDÜRMƏNİN TÖVSİFİNİN BƏZİ MƏSƏLƏLƏRİ

Taleh Bağırov
Azərbaycan Respublikası Baş Prokurorluğunun İstintaq idarəsi, Bakı, Azərbaycan

Məqalənin məqsədi Azərbaycanın istintaq, prokurorluq və məhkəmə təcrübəsində qəsdən adam öldürmənin bir neçə ağırlaşdırıcı əlamətinin eyni əməldə birlikdə mövcud olduğu hallarda necə tətbiq edildiyini araşdırmaq və mövcud məhkəmə izahlarının fərqli tövsifə yol açdığı məqamları müəyyənləşdirməkdir. Əsas diqqət Cinayət Məcəlləsinin 120.2.4 (xüsusi amansızlıqla), 120.2.5 (tamah məqsədi ilə), 120.2.7 (iki və ya daha çox şəxsin öldürülməsi), 120.2.9 (təqsirkar üçün aşkar surətdə köməksiz vəziyyətdə olan şəxsin öldürülməsi) və 120.2.11 (quldurluqla əlaqədar adam öldürmə) maddələrinə yönəldilmişdir. Tədqiqatın obyekti: insan həyatının mühafizəsi ilə bağlı ictimai münasibətlər və ağırlaşdırılmış qəsdən adam öldürmənin tövsifi üzrə hüquq tətbiqetmə təcrübəsi. Tədqiqatın metodları. Tədqiqatda Cinayət Məcəlləsinin və Azərbaycan Respublikası Ali Məhkəməsi Plenumunun 12 dekabr 2002-ci il tarixli 3 nömrəli qərarının formal-hüquqi və sistemli təhlili, Rusiya, Almaniya, İngiltərə və Uels yanaşmalarının müqayisəli təhlili, habelə istintaq təcrübəsi üçün tipik olan model situasiyanın təhlili tətbiq edilmişdir. Tədqiqatın orijinallığı və elmi yeniliyi. Məqalədə əsaslandırılır ki, zərərçəkmişin şüurlu vəziyyətdə əzab çəkdiyini təsdiq edən məhkəmə-tibbi sübutlar olmadan xəsarətlərin sayı özlüyündə xüsusi amansızlığı sübut edə bilməz. 120.2.5 və 120.2.11-ci maddələr arasındakı sərhədin əmlakı ələ keçirmək niyyətinin yaranma anından asılı olduğu göstərilir, Plenum qərarına və istintaq təcrübəsinə konkret əlavələr təklif olunur.

Açar sözlər: *qəsdən adam öldürmə, ağırlaşdırıcı hallar, xüsusi amansızlıq, tamah məqsədi, cinayətlərin tövsifi, quldurluq, məhkəmə-tibbi ekspertiza*

РЕЗЮМЕ

НЕКОТОРЫЕ ВОПРОСЫ КВАЛИФИКАЦИИ УМЫШЛЕННОГО УБИЙСТВА, СОВЕРШЁННОГО ПРИ ОТЯГЧАЮЩИХ ОБСТОЯТЕЛЬСТВАХ

Талех Багиров
Следственное управление Генеральной прокуратуры Азербайджанской Республики, Баку, Азербайджан

Цель статьи — исследовать, как в следственной, прокурорской и судебной практике Азербайджана применяются отягчающие признаки умышленного убийства при их совпадении в одном деянии, и выявить положения действующих судебных разъяснений, допускающие неединообразную квалификацию. Основное внимание уделено пунктам 120.2.4 (с особой жестокостью), 120.2.5 (из корыстных побуждений), 120.2.7 (убийство двух или более лиц), 120.2.9 (убийство лица, заведомо для виновного находящегося в беспомощном состоянии) и

120.2.11 (убийство, сопряжённое с разбоем) Уголовного кодекса. Объект исследования: общественные отношения в сфере охраны жизни человека и правоприменительная практика квалификации убийства при отягчающих обстоятельствах. Методы исследования. Использованы формально-юридический и системный анализ Уголовного кодекса и Постановления Пленума Верховного Суда Азербайджанской Республики № 3 от 12 декабря 2002 года, сравнительный анализ подходов России, Германии, Англии и Уэльса, а также анализ модельной ситуации, типичной для следственной практики. Оригинальность и научная новизна исследования. Обосновывается, что количество ранений само по себе не может свидетельствовать об особой жестокости без судебно-медицинских данных о том, что потерпевший находился в сознании и испытывал страдания. Показано, что разграничение пунктов 120.2.5 и 120.2.11 зависит от момента возникновения умысла на завладение имуществом, предлагаются конкретные дополнения к разъяснениям Пленума и к следственной практике.

Ключевые слова: *умышленное убийство, отягчающие обстоятельства, особая жестокость, корыстные побуждения, квалификация преступлений, разбой, судебно-медицинская экспертиза*