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## VIOLENCE AS A PHENOMENON AND SOCIAL PHENOMENON

Protecting children from violent criminal offenses that infringe on their life, health, morality and sexual inviolability is a priority national security task that unites the efforts of the family, the state and civil society.

Domestic violence against minors has characteristic features related to the specifics of the mechanism of committing criminal offenses, the causes and conditions that determine it, the personality of the perpetrators, and the peculiarities of the victim's behavior, which must be taken into account when developing special prevention measures.

The analysis of legislation and specialized literature leads to the conclusion that today there is no single approach to the definition of a number of the most important concepts related to the topic of this study. This primarily concerns the concepts of "family" and "violence".

The concept of "violence" is now widely used not only in everyday life, but is also included in the terminology of various sciences. Philosophy, psychology, criminal law, criminology, forensics and other sciences approach the problem of defining the concept of "violence" independently, without using existing definitions in related fields.

The definition of violence may vary depending on the purpose of its use. This is due to the fact that violence itself has a rather "broad format". It is a social and legal phenomenon that is not limited to the criminal law. In other words, violence can include criminal offenses, administrative offenses, as well as other forms of behavior that are not formally torts, but contradict generally accepted and approved norms of behavior, forming the prerequisites for violent crime as such.

In this regard, it is necessary to clarify that in the context of this study, only the criminal law concept of violence will be used, assessed from the standpoint of criminal law as an offense and, accordingly, possessing all its features. Such a concept is necessary for a clear definition of the subject of research and its use to distinguish related issues in the process of studying empirical material.

**Key words:** *violence, family, minor, physical force.*

### **Гумін О. М. Насильство як явище та соціальне явище**

Захист дітей від насильницьких злочинів, що посягають на їхнє життя, здоров'я, моральність та статеву недоторканість, є пріоритетом національної безпеки, який об'єднує зусилля сім'ї, держави та громадянського суспільства.

Домашнє насильство щодо неповнолітніх має специфічні риси, пов'язані з особливостями механізму вчинення злочину, причинами та умовами, що його



детермінують, особистістю кривдників та особливостями поведінки жертви, які необхідно враховувати при розробці спеціальних профілактичних заходів.

Аналіз законодавства та спеціальної літератури дозволяє зробити висновок, що на сьогодні не існує єдиного підходу до визначення низки найважливіших понять, пов'язаних з темою цього дослідження. Насамперед це стосується понять «сім'я» та «насильство».

Термін «насильство» сьогодні широко використовується не тільки в повсякденному житті, але й входить до термінології різних наук. Філософія, психологія, кримінальне право, кримінологія, криміналістика та інші науки підходять до проблеми визначення терміну «насильство» самостійно, не використовуючи існуючі визначення в суміжних галузях.

Визначення насильства може відрізнятись залежно від мети його використання. Це пов'язано з тим, що саме насильство має досить «широкий формат». Це соціально-правове явище, яке не обмежується рамками кримінального права. Іншими словами, насильство може включати кримінальні злочини, адміністративні правопорушення та інші форми поведінки, які формально не є деліктами, але суперечать загальноприйнятим і схваленим нормам поведінки, що формують передумови для насильницької злочинності як такої.

У зв'язку з цим необхідно уточнити, що в контексті цього дослідження буде використовуватися лише кримінально-правове поняття насильства, яке оцінюється з точки зору кримінального права як злочин і, відповідно, володіє всіма його ознаками. Таке поняття необхідне для чіткого визначення предмета дослідження та його використання для розмежування суміжних питань у процесі вивчення емпіричного матеріалу.

**Ключові слова:** насильство, сім'я, неповнолітній, фізична сила.

Along with the concepts of “family” and “underage family member”, it is necessary to define another concept used in criminological research – “violence”, and, on this basis, our task is to define the concept of “violence against underage family members”.

The concept of “violence”, like the previous concepts under consideration, does not have an unambiguous general literary and legal interpretation, so it seems appropriate to analyze the existing definitions.

The term “violence” comes from the Latin word “violentia” and means a spontaneous and uncontrollable manifestation of force. Despite the fact that the concepts of “force” and “violence” have certain common features, they are distinguished by the fact that, in particular, violence is always understood as the use of force against an object not only against its will and desire, but also as a violation of the law [1]. A similar interpretation of related terms is contained in reference sources. In modern legal encyclopedic editions, violence is defined as “intentional physical or mental influence of one person on another, against his or her will, which causes physical, moral, property damage to that person, or contains a threat of harm for criminal purposes” [6, p. 68].

The explanatory dictionary of the Ukrainian language defines violence as 1) the use of physical force against someone; 2) the use of force to achieve something; 3) coercive influence on someone or something. The dictionary of synonyms names the following words as close in meaning to violence: “coercion; force; pressure; pressure; forcibly; by violent (or coercive) means by force; by force; by captivity; to force; to compel; to put in front of the need; to oblige; to enslave [2].

The etymological analysis of the word “violence” suggests that its meaning is that it denotes a certain action of one person committed against another person against his/her will (desire).

The concept of “violence” is now widely used not only in everyday life, but is also included in the terminology of various sciences. Philosophy, psychology, criminal law, criminology, forensics and other sciences approach the problem of defining the concept of “violence” independently, without using existing definitions in related fields of knowledge.



The definition of violence may vary depending on the purpose of its use. This is due to the fact that violence itself has a rather “broad format”. It is a social and legal phenomenon that is not limited to the criminal law. In other words, violence can include criminal offenses, administrative offenses, and other forms of behavior that are not formally torts, but which contradict generally accepted and approved norms of behavior, forming the prerequisites for violent crime as such.

In this regard, it is necessary to clarify that in the context of this study, only the criminal law concept of violence will be used, assessed from the perspective of criminal law as an offense and, accordingly, possessing all its features. Such a concept is necessary for a clear definition of the subject matter of the study, and it is used to distinguish related issues in the process of studying the empirical material.

Turning to the analysis of the definitions existing in this area, it should be noted that there is a significant number of them, and all of them have their own interpretation. In other words, there is no single point of view on such a fundamental issue as the concept of criminal violence. This is also due to the fact that the criminal law does not define the term “violence”.

Without aiming to study this concept and defining it primarily for empirical research, we would like to point out that in the present study, violence is understood as the commission of socially dangerous unlawful intentional acts by one person against another against or without the will and consent of the latter or by exploiting the helpless state, which violates his or her constitutional rights and freedoms, and is associated with physical and/or mental or sexual influence on him or her.

This definition was used to ensure the objectivity of the criteria for selecting units of empirical arrays and the compatibility of the results obtained in the course of the study.

Meanwhile, it should be noted that violence is always a manifestation of aggression in interpersonal relations, its extreme form. Without going into the details of theoretical research on this phenomenon, the term “aggression” in this article is used as a form of socially dangerous behavior of a person aimed at causing physical or mental harm to another person (in our case, a minor family member).

Analyzing the norms of the Criminal Code of Ukraine, it can be stated that the criminal law refers to violence only as physical violence. Mental violence is defined by the legislator by pointing to the threat of physical violence and other ways of influencing the will of a person to force him or her to behave in a way that is required by the perpetrator.

In this case, physical action is an impact on the organs and tissues (their physiological functions) of another person's body.

The science of criminal law defines violence as an external intentional and unlawful physical or mental impact on a person (or group of persons) by other persons, which is carried out against or beyond his/her will and can cause organic, physiological or mental injury, as well as restrict the freedom of his/her will or actions [6, p. 52]; deliberate use of physical force to violate the bodily integrity of another person against his/her will or contrary to it, or threats of violent acts; socially dangerous unlawful physical or mental influence on a person, which is carried out against or beyond his/her will, poses a danger to his/her life or health at the time of infliction, deprivation of liberty, which may entail harm of varying severity or death [5, p. 3].

Social relations that constitute the specific object of physical violence are related to the protection of biological properties and physical benefits of a person as a natural being, such as life, health and physical freedom.

There are five types of consequences of physical violence: death, harm to health, physical pain and suffering, and loss of physical freedom. They encroach on the inviolability of the physical foundations of human existence.

The method of causing these consequences of physical violence is the energy impact on organs and tissues, their physiological functions of another person [4].

All of the above types of physical impact can occur in a situation of family violence.

In turn, psychological influence is an impact on the body of another person in the form of influencing his or her psyche. The exercise of such influence with the help of mental factors of the environment is the content of mental violence”.



It should be agreed that within the criminological characterization of family violence, the allocation of sexual violence is appropriate, as it allows for a closer examination of all its aspects, and its exclusion will unreasonably distort the true picture of family violence, reduce its types and scope.

In committing these criminal offenses, both physical and mental violence may be used, and even a combination of both. Based on the interpretation of these articles of the Criminal Code and law enforcement practice, a special form of rape and/or sexual assault is the use by the perpetrator of the victim's helpless state.

Rape and sexual assault should be recognized as committed using the helpless state of the victim in cases where he or she, due to his or her physical or mental state (dementia or other mental disorder, physical disabilities, unconsciousness), age (minor or elderly) or other circumstances, could not understand the nature and significance of the actions committed against him or her or resist the perpetrator.

When this happens to a child, we should talk about sexual violence as a method, because as such, signs of physical and mental violence may not be present due to certain conditions of the family environment and natural processes of closeness and trust between family members, due to the fact that there are no prerequisites for suppressing the victim's will.

Thus, based on the objectives of this study, it is necessary to distinguish and consider sexual violence (as one of the possible modes of action, and therefore one of the types of violence), as it has certain specifics.

At the same time, it should be noted that if we consider the types of violence from the standpoint of a specific object of impact (the body or psyche of another person), rather than the method of commission, we can speak of only two types of violence – physical and mental. In this context, it is inappropriate to distinguish other types of violence.

The manifestation of violence in the social context touches many areas of life, it is very broad and diverse. One of these areas is the family.

Domestic violence is an independent type due to the specificity of the relationship between the perpetrator and the victim, the local area of the conflict, and the limited access of the public to resolve contradictions.» The main difference between domestic violence and other types of violence is that it is inflicted by people who are in close or kinship relationships, which, in principle, should be supported and protected.

In Ukraine, there is also no established terminology for this phenomenon. The literature uses several terms that are considered synonymous. The most commonly used terms are: “intrafamilial violence”, “family violence”, “domestic violence”, “domestic abuse”, “domestic violence”, “child abuse”.

There are various reasons for this diversity of concepts:

First, the scientific novelty, poor development and multidimensionality of this problem;

Secondly, violence, including domestic violence, is the subject of study in a large number of disciplines, each of which, in accordance with its scientific interests, tries to build a system of concepts.

In addition, in most cases, theoretical and practical developments in this area are based on scientific research by foreign scientists.

It seems advisable to clarify and organize the conceptual apparatus of the problem under study. This is necessary for a deeper understanding of the phenomenon of violence.

When the term “domestic violence” is used, the emphasis falls on the fact that this violence is used on the home territory and there is no clear position on who commits this violence – family members or any persons, but in the victim's home or cohabitation.

A number of researchers use the term “domestic violence”, which means a set of socially dangerous and criminal intentional actions that encroach on public relations that ensure the benefits of the individual, such as life, health or bodily integrity, associated with the impact on the body of another person or the threat of such impact through the influence on his or her psyche, committed



by one family member against another family member (regardless of the fact of their joint or separate residence) against or without the will of the latter.

It should also be noted that domestic relations mean non-productive relations of family and household (ordinary relations in the family, between family members), leisure and household (non-family, recreation, tourism), communal and household (relations with neighbors in the house, apartment, residents of the district, village), production and household character arising from the satisfaction of material and spiritual needs of a person.

Thus, the subjects of domestic violence can be not only relatives, but also, for example, neighbors, which is beyond the scope of this study and means that “domestic violence” is broader.

As for the concepts of “intrafamily violence”, “family violence”, “domestic violence”, in our opinion, they have the same meaning and are used as equivalent in this study.

Also, based on the above definitions of the concepts of “violence” and “family”, it should be noted that domestic violence, taking into account all its features, is a socially dangerous, unlawful, intentional, punishable act committed by one family member against another against or apart from the will and consent of the latter or by exploiting the helpless state, violating his or her constitutional rights and freedoms, involving physical, and/or mental, or sexual abuse.

There are the following types of domestic violence:

- 1) violence against the wife (husband)
- 2) violence against children;
- 3) violence against the elderly, etc.

Of these types, the subject of this study is violence against children.

Let us immediately outline the range of persons who can commit this violence against children in the family (“subjects”):

- 1) parents, “new” spouses of parents, cohabitants of parents, persons replacing parents – adoptive parents, guardians;
- 2) siblings or children of other persons (other than parents) referred to in clause 1, usually living together with the “victims”;
- 3) other relatives (uncles, aunts, nephews, brothers, sisters, except for those mentioned in clause 2, etc.)

Thus, the subject of this study includes both adult-minor relationships and minor-minor relationships, where the first category is the perpetrator and the second category is the victim. In the case of the exclusion of juvenile-to-juvenile relationships, a number of significant facts can be missed, as such cases do occur and were identified in the course of the study. They are distinguished by the peculiarity of the causes, conditions, motives, situations, personal characteristics of both the offender and the victim, and other circumstances of the criminal offenses.

The concept of domestic violence against minors is closely related to another concept – “child abuse”. The concept of “cruel treatment of children”, in our opinion, is equivalent to the concept of “violence against children” as a social phenomenon.

Thus, when determining the range of criminal acts constituting criminal violence against minor family members, one should take into account the specifics of family relations and the possibility of committing certain acts by a family member against a minor.

The content of the concept of violence “...is difficult to mechanically extend to intra-family violent encroachment itself”.

Minors need constant directed educational influence: they need to be helped to understand the patterns of development of society, to develop a correct understanding of social values. The main role in moral upbringing belongs to the family. For this reason, the current legislation requires that a child be brought up in a family in accordance with his or her interests and with respect for the rights that belong to him or her from birth.

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