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The Ratio of the Victim's Identity and the Perpetrator's Identity in Criminal Offenses Related to Domestic Violence

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Abstract

The article examined the correlation of such elements of criminal characteristics as a perpetrator's identity and victim's identity, classified criminal offenses related to domestic violence based on the understanding of the peculiarities of the process of interrelation between the offender and the victim, stages of violence and the level of family relations. The purpose of the research is to determine the individual characteristics of the offender and the victim, as well as the interdependency of such characteristics, which are crucial for the selection of investigative tactics and directions of investigation of criminal offenses connected with domestic violence. To achieve this goal, general scientific methods are used. There are method of analysis and synthesis, induction and deduction, analogy and modeling. Also for the description of legal phenomenon, substantiation of legality of behavior of the subjects of violation and grouping of models of behavior of the offender and victim is a special-legal method. The specific sociological method is used to summarize available scientific research and results of the survey, questionnaire and interview of practical workers. The scientific novelty of the research is that due to scientific work and the given activity of subdivisions of the National Police of Ukraine individual peculiarities of persons who are approaching domestic violence are studied, such persons are classified according to their family status, gender, age. The study also identifies the peculiarities and stages of the relationship between the offender and the victim in criminal offenses related to domestic violence. A criminal classification of criminal offenses related to domestic violence was carried out on the basis of a summary of the data on the individual of the offender and the victim

Keywords:

domestic violence; criminalistics classification; victim's identity; perpetrator's identity; investigation

Introduction

Domestic violence is a problem not only in Ukraine, but also in all countries of the world, and every year this dangerous phenomenon is becoming more and more threatening. Given the historical experience of society, the fact that many religions occupy the dominant place of man, and the role of women and children submit to

men, domestic violence for a long time was considered a norm. It is such a historical heritage that today makes the victims of domestic violence not to talk about the facts of humiliation, abuse, and sometimes torturing by one of the family members, to perceive such situations as a norm, believing that the victims themselves are guilty and in such a way receive punishment [1, p. 181].

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O. Humin, V. Merkulova and others note that according to a study by the United Nations Population Fund and the Department for International Development of the United Kingdom, in the early 21st century, Ukraine became one of the first countries in Eastern Europe to recognize domestic violence as an important social problem, deprived law-enforcers of the opportunity to hide behind the screen of non-interference in private life. At the same time, in some Ukrainian segments of people, in particular, legal circles, is a common, erroneous and dangerous position, according to which family relations are a family affair and even domestic violence is not a crime [2, p. 284].

According to statistics from the National Police of Ukraine in 2020, the police received more than 200 thousand applications for domestic violence, i.e. 570 such reports daily. This is 47% more than in 2019. On average, 1 person suffers from domestic violence every three hours. At the same time, the police started 13 criminal proceedings every day and made 363 administrative protocols on the facts related to domestic violence [3].

Some questions concerning the definition of ways of prevention and counteraction to domestic violence in their works were considered by M.V. Kornienko and A.V. Labun [4], O.V. Pchelina [5], V. Meliankov, G. Usatyi [6], R. Erbas [7], P.R. Vieira, L.P. Garsia, E.L.N. Maciel [8], P. Parolari [9], V.V. Pakhomov, I.V. Karikh, M.O. Bondarenko [10] and others. In these works, scientific searches of the direction, mainly, to define administrative and legal principles of struggle against domestic violence; psychological and sociological characteristics of such violence. Taking into account the recent definition of the criminal nature of domestic violence, many scientific studies are devoted to the question of criminal-legal qualification of criminal offenses related to domestic violence; tactics of conducting separate investigative (search) actions involving victims of such violence; specifics of using special knowledge during pre-trial investigation of criminal offenses connected with domestic violence. However, comprehensive scientific research of the background and peculiarities of construction and implementation of the methodology of investigation of domestic violence was not carried out.

Some aspects of the criminal nature of the investigation of cases of domestic violence are covered in the work of T.V. Ishchenko [11], Y.M. Slukhaenko [12], K.A. Shapoval [13]. At the same time, it should be noted that many aspects of the investigation of the mentioned criminal offenses require further investigation, including criminal offenses related to domestic violence. According to the Law of Ukraine "On Preventing and Combating Domestic Violence", the following types of

domestic violence are singled out. There are physical, psychological, sexual and economic. This classification is based on violence, which makes it possible to understand the scale of such a dangerous phenomenon as domestic violence, but does not reflect what is happening as a result of such violence, i.e., offenses, both criminal and administrative in connection with such violence.

Therefore, it should be noted that even more dangerous than domestic violence, criminal offenses related to it. Domestic violence is usually a starting point for other criminal offenses and crimes, which are not necessarily confined to family and common premises. Therefore, it is no less urgent to develop and implement methods of investigation of criminal offenses connected with domestic violence in practical activity. Thus, according to the published statistical data of the Office of the Prosecutor General of Ukraine, only in January 2021, 414 criminal offenses related to domestic violence were recorded, in particular according to art. 126¹ domestic violence – 328 criminal offenses, on art. 129, the threat of murder is 145, on art. 115 deliberate murder, namely murder of a young child or a woman who is known for the guilty was in a state of pregnancy – 26, etc. [14].

By analyzing the Criminal Code of Ukraine², the list of criminal offenses related to domestic violence can be divided into two groups: 1) criminal offenses related to domestic violence; 2) domestic violence crimes. These groups themselves have a fairly wide range of criminal offenses, including mental injuries of various severity, and beatings and morbidation, and threats of murder and mental murder, exploitation of children, and forced entry into sexual intercourse and rape, and violation of the inviolability of housing, and the exclusion of children from payment of alimony, disabled parents and many others.

Mostly, the concept of "criminal offenses related to domestic violence" is being used by criminal law scientists: A.A. Voznyuk [15], O.O. Dudorov, M.I. Havronyuk [16], O.V. Kharitonova [17] and others. For the first time, the term "domestic violence crime" was used in criminal legislation in connection with the adoption of domestic violence legislation, when the Law of Ukraine "On the Amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the Provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence and the fight against these phenomena"³ of 06.12.2017 No. 2227-VIII the general part of the Criminal Code of Ukraine was supplemented by section XIII-1 "Restrictive measures, applied to persons who have committed domestic violence". Despite the introduction of the concept of "domestic violence crime" in the Criminal Code of Ukraine, the Criminal Code does not contain its

¹Law of Ukraine No. 2229-VIII "On Preventing and Combating Domestic Violence". (2017, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2229-19#Text>.

²Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³Law of Ukraine No. 2227-VIII "On the Amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the Provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence and the fight against these phenomena". Retrieved from <https://zakon.rada.gov.ua/laws/show/2227-19#Text> (accessed date: 17.10.2021).

formulation, which in fact brings this issue to the court's decision [18, p. 145].

The purpose of the article is to define the individual characteristics of the offender and the victim, as well as the interdependency of such characteristics, which are crucial for the selection of investigative tactics and directions of investigation of criminal offenses connected with domestic violence. To achieve the goal, it is necessary to solve the following *tasks*: to determine the causal links between the offender and the victim, stages and systematization of violence, to determine the circle of persons who suffer from domestic violence; conduct a criminalistics classification of criminal offenses of this category, choosing as a basis the identity of the offender and determining whether the perpetrator's identity is an offender or the victim's identity of domestic violence, taking into account the gender component and family status.

Materials and Methods

To achieve this goal, general scientific methods are used. There are method of analysis and synthesis, induction and deduction, analogy and modeling. Also for the description of legal phenomena, substantiation of legality of behavior of the subjects of violation and grouping of models of behavior of the offender and victim is a special-legal method. The specific sociological method is used to summarize available scientific research and results of the survey, questionnaire and interview of practical workers.

The analytical base of the survey is statistical data of the subdivisions of the National Police of Ukraine, data from the Single Report on Criminal offenses published by the Office of the Prosecutor General of Ukraine, data from the Single State Register of judicial decisions. Therefore, methods of analysis and synthesis of materials of criminal proceedings of this category of cases and results of questionnaires of practical workers were used to determine the individual characteristics of the offender and the victim in criminal cases related to domestic violence. The questionnaire was conducted in written form, giving out the way of 102 employees of the investigation units of the National Police of Ukraine, during the period from October 2021 to February 2022, during the last advanced training in the National Academy of Internal Affairs. To this end, in the forms of the questionnaire, open type, respondents were offered, based on their own practical experience, to indicate the characteristic features of the offender in criminal proceedings of the mentioned category, taking into account the gender component and family status.

The above mentioned allowed to separate the following scientific abstractions, namely:

1) interpretation of the statistical data obtained with a view to a deeper understanding of the essence of

the violent actions carried out with the use of qualitative means;

2) the use of the method of qualitative analysis allowed to obtain data on the life experience, opinions, opinions, etc. of domestic violence participants, to reveal subjective experience of victims. The understanding of the mechanism of mutual relations between the offender and the victim allows the investigator to understand the mechanism of the event, determine the tactics of gathering evidence, tactics of investigation (search) actions, etc.;

3) the combination of quantitative and qualitative analysis allowed a criminal classification of criminal offenses related to domestic violence by the perpetrator and victim, gender and family status. Also define the cycle and stages (phases) of domestic violence, which as a result lead to the introduction of more serious crimes.

Results and Discussion

The problems of investigation of the victim's identity and the perpetrator's identity are now quite widely investigated in scientific developments of various branch directions. It is not an exception and criminalistics. This issue was investigated by such criminal students as V.P. Bakhin, P.V. Tymbal [19], V.Y. Shepitko [20] and N.P. Yablokov [21] and others. One of the key elements of the criminal characterization of any crime is the perpetrator's identity. It can be established by means of knowledge of certain properties and qualities, which are reflected in traces of crime. The acquired knowledge is used as means of influence on this personality during conducting investigative (search) actions [11, p. 66].

Note that the criminal investigation of a person is aimed at solving the main tasks: – identification of the person – properties and signs that appear in the criminal behavior; – identification of the character of the behavior of the person before the occurrence of the crime; – investigation of the behavior at the moment of socially dangerous actions; – forecasting of the behavior of a person in the process of investigation [22, p. 62]. On the basis of examination of materials of criminal proceedings, judicial practice and questioning of employees of the National Police of Ukraine it is possible to have a criminal substantiation of classification of criminal offenses connected with domestic violence, based on the specificity of such an element of criminal characteristic as the person of the offender. As has been noted before, criminal offenses related to domestic violence have a complex and inhomogeneous character, which is caused not only by the problem of the qualification of such acts, but also by their latency and long period, so to speak by accumulation and growth of tension, the force of their introduction. Such circumstances arise precisely because of the nature of the person who committed criminal acts.

Domestic violence is not only physical violence; it

can also be sexual, psychological, emotional, economic, spiritual or legal violence [23]. The Declaration on the Elimination of Violence against Women¹ is inspired by gender-based violence as "any form of violence that causes physical, sexual or psychological harm or suffering to women, including the threats of such acts, forced arbitrary deprivation of liberty, both in public and private life." Any form of violence in the family is illegal and unacceptable. Domestic violence can be physical or psychological and can affect anyone, regardless of age, sex, national affiliation or sexual orientation. It may include behavior intended for intimidation, physical harm or control of a partner. Although all relationships are different, domestic violence usually includes unequal dynamics of power, in which one partner tries to exercise control over other different ways [23].

V.Ye. Bondar [24, p. 26] notes that L. Walker [25] as a result of many years of psychotherapeutic work with victims and initiators of domestic violence defined three phases. *The first phase* is the phase of increase in tension. It is characterized by increasing tension in relations. At this time, the man can resort to minor threats. However, minor images eventually become more brutal, tension in relations increases up to the assault of anger in the man. *The second phase* is the explosion or beating phase. In the second phase, aggressive actions accumulate very quickly and cause chain reaction, which leads to explosion. At this stage, violence can be expressed in various forms: from shock or compass to beating and causing serious injuries. *The third phase* is the phase of the love remorse. The tension decreases and becomes calm. Describing the third cycle, L. Walker claims that abusers show more activity in the phase of increased tension and violent incident than in the phase of love remorse, in which the victim takes a major role [24, pp. 26–27; 25].

In a more modern interpretation, the following phases have names: the phase of the construction of tension; the phase of the violent episode; the phase of the sincere remorse ("honeymoon"). Unfortunately, the nature of violence is cyclical and as a rule violence is repeated again and again [26]. Such behavior of the offender, following the specified sequence of phases, is repeated. However, each time the second phase acquires an increasingly aggressive character. As a result, there is another, more serious crime, committed by either an offender who does not count on his strength and is unable to control behavior, or the victim does not withstand the abuse, murders or another serious crime against his offender.

Intimate partner violence (IPV) is a global problem and is important to public health, including the constriction of harmful behavior committed within intimate partnerships, including physical, sexual and/or psychological violence that is known to affect women

disproportionately [27]. V.V. Nesterchuk notes that the facts of domestic violence against women are not isolated, repeated, in addition, have all signs of criminal offense. The process of clarifying the circumstances of violence against women is rather complicated, because the victim is forced to continue living with the offender in the same room, which causes recurrence [28, p. 68]. This is also the case for other victims of domestic violence, not just women.

Vulnerable groups are a category of people whose rights are a changing phenomenon in crisis situations in the country and the world [29]. Taking into account this circumstance V.Ye. Bondar [24] to this three-phase structure of domestic violence adds a fourth phase, which appears like the apogee of the ranks of violence. Namely, the use of force, on the one hand, increases the severity of the conflict, since the force influence becomes a decisive argument and often eliminates its solution peacefully, and on the other hand, it renders the conflict criminal. Having gained victory by force once, the person further reproduces negative experience in other similar situations. That is why after the third stage the conflict acquires a new quality. It becomes criminogenic, that is at any moment can break into a serious crime [30]. The fourth stage is the commission of a serious violent crime against a family member [24, p. 28].

Summing up the results of judicial and psychiatric examinations of women aged 17 to 53 years who have committed the murder of their men or domestic partner, V.Ye. Bondar found that almost all cases were related to chronic psycho-traumatic family situation (arguments, fights) against the background of economic difficulties and housing lack [24, p. 33]. In order to establish a methodology for investigating domestic violence-related criminal offenses, it will be appropriate to distribute such violent acts based on the results of the survey of practical workers, choosing as a basis the identity of the offender, determining whether the offender is a perpetrator or victim/victim of domestic violence. Understanding the behavior of perpetrators of domestic violence at different stages (mentioned above), it is possible to identify three groups of criminal offenses connected with domestic violence, taking as a basis the person of the offender:

- the first is criminal offenses and crimes committed by the perpetrator (68%);
- the second is criminal offenses and crimes committed by the victim of domestic violence, i.e. directed against the perpetrator (30%);
- the third is criminal offenses committed by a third party, which acts as a defense victim of domestic violence, as well as directed against the perpetrator (1.2%).

Also taking into account the gender component and family status, according to the results of the questionnaire of practical workers it is possible to classify

¹General Assembly Resolution No. 48/104 "Declaration on the Elimination of Violence against Women". (1993, December). Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx> (accessed date: 19.10.2021).

the perpetrator as follows: men – 97% (99 persons have chosen such answer); women – 2% (2 persons have chosen such answer); children – 1% (1 person have chosen such answer); suggested variant of answer: grandmother or grandfather – 1%; conservator (married couple) – 1%. Domestic violence differs from violent crimes through the word “family” means the use of violence by close people and within. Traditionally, domestic violence was largely associated with physical violence. However, domestic violence and its forms are now widely defined to include all the existing forms of violence that a family member may commit [31, p. 206].

It should be noted separately that the identification of areas of investigation, planning, organization and selection of tactics of investigation (search) actions promotes understanding of the personal characteristics of the victim. Proceeding from the above, for a qualified investigation of criminal offenses related to domestic violence, the following classification of such offenses by the victim identity will be appropriate:

- minor person;
- women/men;
- elderly persons;
- persons with disabilities;
- persons with mental disorders;
- internally displaced persons.

Given that a criminal offense as domestic violence has a legally defined circle of actors, it will be appropriate to separate the classification according to the peculiarities of the relationship between the offender and the victim, i.e. between whom it occurs:

- violence between married couple, between domestic partners, i.e. a couple without registration of marriage;
- violence between parents and minor children;
- violence between parents and adult children, and the victims of such violence can be both parents and children;
- violence between children of one family;
- violence between the conservators and the persons under care, and the persons under care can be both adults (elderly persons) and children;
- violence between relatives of different degrees of kinship.

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Conclusions

Thus, summing up the above, it is possible to conclude that in criminal proceedings of this category not everything is as clear as it may seem at first sight and after the initial examination of the scene. Namely:

1. The latency of such violations is covered in the person of both the victim and the perpetrator; the choice of the method of committing the offense depends not only on the individual's ability and skills, but also on his age, family, psychological state, the length and systematization of the situation of violence, the degree of threat of such violence, etc. That is why the person of the victim and the offender is the fundamental element of the criminal characterization of the method of investigating criminal offenses connected with domestic violence.

2. In order to properly qualify a criminal offense related to domestic violence and to ensure the fair punishment of the guilty person, it is worth understanding that the offender in this category of crime may be: 1) the perpetrator, i.e. a person (may not be alone), who causes systematic violence against family members; 2) the victim of domestic violence, i.e., criminal acts directed against the perpetrator; 3) the third person who acts in this way, protecting the victim of domestic violence.

3. The relationship between the perpetrator and the victim is of a long cyclical nature, which is divided into four phases. The first phase is the phase of the increase in tension. The second phase is the phase of explosion or beating. The third phase is the phase of the love remorse. The fourth phase is the phase of the criminal nature.

4. The investigator must thoroughly study and investigate the specifics of the person who committed a criminal offense, which is the consequence of the systematic act of domestic violence, i.e. both the persons who commit it and the persons in respect of whom it is committed. The perpetrator's identity and the victim's identity are always connected and trying, because of psychological condition, to hide the degree of conflict between them.

It is the consideration of these circumstances that will facilitate the proper conduct of pre-trial investigation of criminal offenses related to domestic violence, proper preparation of materials for judicial review.

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Співвідношення особи потерпілого та злочинця в кримінальних правопорушеннях, пов'язаних із домашнім насильством

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Анотація

У статті досліджено співвідношення таких елементів криміналістичної характеристики, як особа злочинця та потерпілого. На підставі результатів вивчення особливостей взаємозв'язку кривдника й жертви, етапів насильства обґрунтовано класифікацію кримінальних правопорушень, пов'язаних із домашнім насильством. Мета дослідження – визначення окремих характеристик особи злочинця та потерпілого, а також їх взаємозалежності, що має вагоме значення для обрання слідчим тактики й напрямів розслідування кримінальних правопорушень, пов'язаних із домашнім насильством. Для досягнення зазначеної мети використано загальнонаукові методи, зокрема аналізу, синтезу, індукції, дедукції, аналогії та моделювання. У межах опису правових явищ, обґрунтування законності поведінки суб'єктів правопорушення та групування моделей поведінки кривдника й жертви застосовано спеціально-юридичний метод. Для узагальнення наявних наукових досліджень і результатів опитування, анкетування й інтерв'ювання практичних працівників застосовано конкретно-соціологічний метод. Наукова новизна дослідження полягає в тому, що завдяки науковим напрацюванням і даним діяльності підрозділів Національної поліції України досліджено індивідуальні особливості осіб, причетних до домашнього насильства, здійснено класифікацію таких осіб відповідно до їх становища в родині, статі, віку. Визначено особливості та стадії взаємозв'язку між кривдником і жертвою в кримінальних правопорушеннях, пов'язаних із домашнім насильством. На підставі узагальнення даних про особу злочинця та потерпілого запропоновано криміналістичну класифікацію кримінальних правопорушень, пов'язаних із домашнім насильством.

Ключові слова:

домашнє насильство; криміналістична класифікація; особа потерпілого; особа злочинця; розслідування