THE CATEGORY OF VIOLENCE IN THE THEORY OF CRIMINAL LAW: THE NEED FOR RETHINKING IN LEGAL DOCTRINE AND LAW ENFORCEMENT

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ABSTRACT

Violence has numerous biological, neurological, physiological, behavioral, social and economic consequences for victims. There are two ways of understanding the phenomenon of violence: on the one hand, a narrow, "minimalist concept" and, on the other hand, a broader, "comprehensive concept". In the theory of criminal law, the problems of unambiguous interpretation and legal assessment of violent crimes are most fully revealed by the example of a socially dangerous act under Article 126-1 of the Criminal Code of Ukraine. At the same time, along with physical, economic, and psychological violence, some foreign researchers also identify other forms, including coercive violence, which involves the intentional subjection of a victim to violence committed by institutions or the state. Violence at the general social level of understanding has deep historical roots, reaching back to biblical legends. In the Ukrainian lands, the criminal law prohibition of certain forms of violence began to take shape in the collection of ancient law "Ruska Pravda" and in the texts of the Lithuanian



statutes. On the ideological level of understanding violence in our time, the culture of restraint has given way to a hedonistic culture of consumerism, free from restrictions, so images of war, death and suffering are consumed by the population as a representation of everyday life. Non-violence is in constant motion, being passed down from generation to generation and embodying certain factors fundamental to the formation of personality. That is why a child's observation of inter-parental violence and parental abuse has an impact on the child's future acts of violence.

Keywords: Violence; Theory of criminal law; Violent crimes; Forms of violence; Condoning violence.

A CATEGORIA DA VIOLÊNCIA NA TEORIA DO DIREITO PENAL: A NECESSIDADE DE REPENSAR A DOUTRINA JURÍDICA E A APLICAÇÃO DA LEI

RESUMO

A violência tem inúmeras consequências biológicas, neurológicas, fisiológicas, comportamentais, sociais e económicas para as vítimas. Existem duas formas de compreender o fenómeno da violência: por um lado, um "conceito minimalista" restrito e, por outro lado, um "conceito abrangente" mais amplo. Na teoria do direito penal, os problemas de interpretação inequívoca e avaliação jurídica dos crimes violentos são mais plenamente revelados pelo exemplo de um ato socialmente perigoso nos termos do artigo 126.º-1 do Código Penal da Ucrânia. Ao mesmo tempo, juntamente com a violência física, económica e psicológica, alguns investigadores estrangeiros também identificam outras formas, incluindo a violência coercitiva, que envolve a sujeição intencional de uma vítima à violência cometida por instituições ou pelo Estado. A violência no nível social geral de compreensão tem raízes históricas profundas, que remontam às lendas bíblicas. Nas terras ucranianas, a proibição penal de certas formas de violência começou a tomar forma na coleção da antiga lei "Ruska Pravda" e nos textos dos estatutos lituanos. No plano ideológico de compreensão da violência no nosso tempo, a cultura da contenção deu lugar a uma cultura hedonista de consumismo, livre de restrições, pelo que imagens de guerra, morte e sofrimento são consumidas pela população como representação da vida quotidiana. A não violência está em constante movimento, sendo transmitida de geração em geração e incorporando certos fatores fundamentais para a formação da personalidade. É por isso que a observação de uma criança sobre a violência interparental e o abuso parental tem um impacto nos futuros actos de violência da criança.

Palavras-chave: Violência; Teoria do direito penal; Crimes violentos; Formas de violência; Apologia à violência.



1. INTRODUCTION

The well-being of a person's life and society as a whole begins with the family, because it is in it that such important values as honor, dignity, respect for others, psychological climate, etc. are formed. Ukraine, like most countries of the world, is experiencing negative social processes, which are accompanied by significant crisis changes in society. One of these phenomena is domestic violence, which is one of the most common forms of human rights violations. According to sociological and statistical data, usually women, children and the elderly suffer the most from violence. Without exaggeration, domestic violence can be equated to a pandemic, because this negative phenomenon destroys human values, negatively affects both the development of the individual and public society. Domestic violence in the family is inherent in many states, despite their positive achievements in the legislative, political and practical spheres (Ablamskyi, Drozd, Muzychenko, Stativka, 2023).

The desire to form a state governed by the rule of law should be considered in a context where the rule of law, real implementation, enforcement, protection and restoration of violated rights of citizens, mutual responsibility of the state and the individual, control and supervision over the formation and application of legal norms are ensured exclusively by legal means in the state, that is, there is a civilized functioning and development of civil society (Kirichenko, 2018, p. 49). At the same time, in the light of the spread of such aspirations in the global context, the growth of violence, especially against women of all ages, as noted by H. Krauss (2006, p. 4), forced the World Health Organization (hereinafter called the Organization) to take measures to address this problem. To this end, the Organization formed an approach to health care that included (1) developing a definition of violence, (2) developing a typology of violent acts, (3) creating a single database for reporting violence, and (4) publishing a model for understanding violence and related phenomena.

Leading scholars have devoted their research to specific issues of combating human trafficking in domestic legal doctrine. At the same time, the fact that violence has numerous biological, neurological, physiological, behavioral, social and economic consequences for victims and their families is no longer in doubt. New integrative and interdisciplinary theoretical perspectives are needed, as well as multilevel methods that incorporate biobehavioral and sociocultural perspectives (Russo, Pirlott, 2006, p. 192).



The purpose of the article is to analyze the essence of the category of violence in the criminal law theory. To achieve this goal, it is necessary to solve the following tasks: to analyze the views of domestic and foreign researchers on the definition of violence as such; to consider certain forms of violence, in particular, those provided for in Article 126-1 of the Criminal Code of Ukraine, as well as some specific forms which have been studied at the doctrinal level; to touch upon certain issues of the historical formation of legal regulation in the field of violent crimes, as well as the impact of a child's observation of inter-parental violence and parental abuse on the child's future acts of violence; to reveal the essence of certain problematic aspects of condoning violence.

2. MATERIAL AND METHOD

The subject matter of this category of research, first of all, requires the use of the method of legal analysis, which consists in a consistent analysis of a legal issue. In our study, this is the study of the category of violence in the theory of criminal law. For a more in-depth analysis of the category of violence in the theory of criminal law, the authors used the IRAC method (Issue, Rule, Application, Conclusion), where:

- *Issue* is the formulation of a legal question that needs to be answered. To find the issue, ask yourself: "What is the contradiction in these facts?". The question should be stated in a specific, not general, form.

- *Rule* describes which law or regulatory act is applied to the given problem. The rule should be stated as a general principle, and not as a conclusion regarding a specific case or fact, that is, it is necessary to write down relevant articles of legislation. The rules help to make a correct legal analysis of the issue under consideration, using the relevant facts.

- *Application* helps to apply the relevant rule to the specific facts of the issue at hand. It is important to explain or argue why a particular rule is or is not applicable.

- *Conclusion* is the answer to the question posed (the result of the analysis is indicated). If there are several questions, there should, of course, be several conclusions.

In order to achieve reliable results, the authors have collected and consistently analyzed both primary and secondary legal sources, including empirical material related to the topic of the article. Based on the nature of the information collected in



this study, the data analysis method was used, with a qualitative rather than quantitative analysis of the legal material. The data obtained from the documents were analyzed for reliability in order to draw a conclusion that corresponds to the topic of this study.

3. RESULTS AND DISCUSSION

Violence has been and remains one of the most dangerous unlawful acts that infringes on human life and health, honour and dignity (Ablamskyi, Bakumov, 2023). Violence, as V. P. Kushpit (2014, pp. 137-138) is convinced, is an eternal problem of humanity. By its essential content, the concept of "violence" is not only a philosophical but also a socio-cultural category. Thus, by using violence, the perpetrator violates the most important human rights, especially the right to life and health, and therefore is held legally liable, including criminal liability. Thus, the criminal law essence of the phenomenon of violence is fully revealed only with a broad view of the general social significance of violence.

Sh. Wolin (1970, pp. 35-36) notes that violence comes from the Latin word "violentia", which means a spontaneous and uncontrolled manifestation of force as opposed to the concept of the legitimate use of force by the institution of the state. At the same time, V. Bufacchi (2005, p. 193) believes that there are two ways to understand the phenomenon of violence: on the one hand, there is a narrow, "minimalist concept", and on the other - a broader, "comprehensive concept".

Within the framework of a narrow approach, we consider it appropriate to quote the definition of the prominent British criminologist E. Stanko (2001, p. 316), who understands violence as any form of behavior of a person that intentionally threatens or causes physical, sexual or psychological harm to others or to oneself.

Broader approaches take into account the much broader context of social relations in which violence occurs, the non-physical harm and the possibility of violent consequences that were not consciously planned. In addition, violence does not always require physical force. V. Bufacchi (2005, p. 193) gives the example of slamming a door alone (which can be cruel, but does not constitute violence), as opposed to slamming a door on a person's hand, which is an act of conscious violence.

O. M. Khramtsov (2019, p. 89) proposes to understand violence as a criminal law category as a deliberate, socially dangerous, unlawful influence on another person,



which is manifested in a physical and (or) informational act (action or inaction) against or beyond the will of a person, thus affecting the freedom of his will or causing him physical and (or) mental harm or creating a real threat of causing them".

In the theory of criminal law, the problems of unambiguous interpretation and legal assessment of violent crimes are most fully revealed by the example of a socially dangerous act under Article 126-1 of the Criminal Code of Ukraine. According to Yu. V. Orlov (2020, p. 14), first of all, we are talking about the interpretation of alternative types of socially dangerous acts. And while there are mostly no questions about physical and economic violence, the same cannot be said about psychological violence. First of all, the blanket construction of the disposition of Article 126-1 of the Criminal Code of Ukraine, which refers to the provisions of the Law of Ukraine "On Prevention and Counteraction to Domestic Violence", which defines the specified types of violence.

Along with physical, economic, and psychological violence, some foreign researchers have identified other forms of violence. Thus, A. Monterrosa and A. Hattery (2023, p. 1762) identify such a new form of violence as coercive violence. The scholars note that unlike other forms of violence, including emotional, psychological, financial, and even physical and sexual violence, coercive violence involves the intentional subjection of the victim to violence by the abuser, committed by institutions or the state. Coercive violence, compared to coercive control, frees the abuser from the need to participate in the violence himself; rather, by his or her actions, he or she intentionally confronts the victim with institutional and state systems where he or she is subjected to violence. Examples include the risk of contracting serious diseases such as COVID, reproductive violence, and state violence in the context of the criminal justice system. Because coercive violence is perpetrated by institutions and the state, not individuals, coercive violence can and often does have long-term, even lifelong consequences for victims who experience it. While the bruises of physical abuse will heal over time and memories of emotional abuse may fade, the impact of law enforcement or the social welfare system can follow victims throughout their lives, affecting their ability to obtain employment, social assistance, or retain custody of their children. For immigrant women, the consequences can include deportation.

At the same time, violence at the general social level of understanding violence has deep historical roots. Thus, as L. Ray (2011, p. 2) notes, most of the epic stories of antiquity are stories of rape, jealousy, fratricide, and torture, and it is significant that



the next event in the Bible after the fall from Eden is the murder of Abel by his brother Cain. Such myths formed the idea of the destructive passions of desire and humiliation. Considering the problem of violence in retrospect, we note that in the Ukrainian lands during the Hetmanate, there was criminal liability for a number of war crimes (committed by Cossacks or Cossack officers), including attacks on private estates, murder, bodily harm, and rape of women (Mukhamedzhanova, 2016, p. 226). At the same time, certain provisions prohibiting certain forms of violence are contained in earlier sources, including the collection of ancient law "Ruska Pravda" and the texts of the Lithuanian statutes.

L. Ray (2011, p. 3) believes that violence as universal and interpersonal aggression, physical threat, assault, murder, and armed conflict has existed in all known human societies. At the same time, violence often appears external and threatens us from the outside. But manifestations of violence are embedded in the social fabric itself in many ways. Violence occurs in the public and intimate spheres and is intricately connected to everyday life. At the same time, the researcher understands the "modern social fabric" as one where the culture of restraint has given way to a hedonistic culture of consumerism, freed from restrictions - so images of war, death and suffering are consumed as a representation of everyday life.

Some researchers argue that such a "social fabric" is not uniform, stable, but is in constant motion, being passed down from generation to generation and embodying certain factors fundamental to the formation of a personality. The theoretical principles underlying the thesis of intergenerational transmission of violence can be found in the theories of social learning presented in the studies of R. Akers (2009) and A. Bandura (1977). According to these theories, violence is transmitted through third-party observations or direct experience (Bandura, 1977).

L. Eriksson and P. Mazerolle (2015, p. 947) note that researchers are increasingly studying the differential impact of victimization and observation of parental violence in childhood on subsequent psychological violence in order to understand whether social learning processes are role-based or generalized. At the same time, separate studies have shown that, compared to observation of interparental violence, the impact of child abuse is similar (Franklin, Kercher, 2012, p. 187) or even a stronger effect on committing violence in adulthood (Gover, Kaukinen, Fox, 2008, p. 1667). At the same time, we understand violence not only at the level of a specific individual, but also through the prism of interaction between individuals and whole communities. Such



understanding of the studied phenomenon outlines the problem of condoning violence, by which foreign researchers understand the justification, belittling, denial of violence or blaming the victim instead of the perpetrator¹.

In our deep conviction and based on the analysis of scholars' positions, condoning violence can take place in the family, in the team of students, and within the whole society. Thus, in the sphere of family life, as noted by H. O'Hearn and G. Margolin (2004, p. 159), exposure to violence in childhood is closely related to partner violence among men who hold views that condone the use of violence against female partners. It is no coincidence that some studies show that people who condone intellectual violence are more prone to this type of violence (Stith et al., 2004, p. 65).

The practice of the European Court of Human Rights in this area is interesting, in particular, the case of Eremia and Others v. the Republic of Moldova of May 28, 2013 is indicative in this regard. The essence of the case was that the first applicant and her two daughters complained that the Moldovan authorities failed to protect them from the aggressive behavior and ill-treatment of her husband and their father, a police officer. The Court found a violation of Article 3 of the Convention in respect of the first applicant in that, despite the fact that the authorities had information about the violence. they failed to take effective measures against her husband and to protect her from further domestic violence. In addition, the Court found a violation of Article 8 (right to respect for private and family life) of the Convention in respect of the daughters, on the basis that despite the detrimental psychological consequences that had occurred due to their father's violence against their mother in the family home, no or very few measures had been taken to prevent the recurrence of such behavior. As a result, the Court found a violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 3 in respect of the first applicant, given that the actions of the authorities had repeatedly led to the condoning of such violence and demonstrated their discriminatory attitude towards the first applicant as a woman².

The problem of condoning violence is closely related to the safety of the educational environment. K. Megens and F. Weerman (2010) note in light of this problem that although attitudes can be formed on the basis of early experiences, they

² See: Information bulletin - Domestic violence // Partnership for the sake of good governance: site. Retrieved from: https://rm.coe.int/fs-domestic-violence-ukr-web/16808e9a30



¹See: Condoning violence against women // Safe + Equal (16.06.2020)⁵¹² Retrieved from:³ https://safeandequal.org.au/2020/06/16/condoning-violence¹ against women// Janeiro/Março 2024.

can also be shaped by closer experiences, such as the impact on attitudes in a peer group. It is no coincidence that in groups of students, especially in the system of general secondary education, as noted by I. Skorbun and T. Slobodian (2020, p. 37), when faced with violence among students, some teachers and heads of institutions take a position of non-interference, considering conflicts in student groups a normal and inevitable phenomenon necessary for the education of character, resilience, the ability to defend their views, stand up for themselves and be prepared for difficulties in adulthood. Indulgence in "small" violence usually leads to its degeneration into bullying not only of weak and unpopular students, but also of teachers.

The problem of condoning violence also occurs in the public space in cases where public figures express ill-considered or even deliberately provocative judgments that may mean (or be interpreted as) condoning violence¹. Based on our analysis of the category of violence in the theory of criminal law, we have identified certain features which, taken together, form the latest broad view of violence in the organic combination of criminal law and general social aspects of this phenomenon.

1. Violence has numerous biological, neurological, physiological, behavioral, social and economic consequences for victims.

2. There are two ways of understanding the phenomenon of violence: on the one hand, a narrow, "minimalist concept" and, on the other hand, a broader, "comprehensive concept".

3. Along with physical, economic, and psychological violence, some foreign researchers also distinguish other types, including coercive violence.

4. Violence at the general social level of understanding has deep historical roots, reaching back to biblical legends. In the Ukrainian lands, the criminal law prohibition of certain forms of violence began to be laid down in the collection of ancient law "Ruska Pravda" and in the texts of the Lithuanian statutes.

5. On the ideological level of understanding violence in our time, the culture of restraint has given way to a hedonistic culture of consumerism, free from restrictions,

HandbookIstanbulConvention-UA.pdf



¹ See: The Istanbul Convention is a powerful tool for combating gender-Based 1016 (2019). violence against women and domestic violence. Council of Europe. (p. 27). Retrieved from: https://assembly.coe.int/LifeRay/EGA/WomenFFViolence/2022/2022-

so images of war, death and suffering are consumed by the population as a representation of everyday life.

6. A child's observation of inter-parental violence and parental abuse has an impact on the child's future acts of violence.

7. Condoning violence, which means justifying, belittling, denying violence or blaming the victim rather than the offender, can occur in the family, in the team of students and within the whole society.

4. CONCLUSIONS

Summarizing the above, it can be noted that violence has numerous biological, neurological, physiological, behavioral, social and economic consequences for victims. In the theory of criminal law, the problems of unambiguous interpretation and legal assessment of violent crimes are most fully revealed by the example of a socially dangerous act under Article 126-1 of the Criminal Code of Ukraine. At the same time, along with physical, economic, and psychological violence, some foreign researchers also identify other forms, including coercive violence, which involves the intentional subjection of a victim to violence committed by institutions or the state. Violence at the general social level of understanding has deep historical roots, reaching back to biblical legends. In the Ukrainian lands, the criminal law prohibition of certain forms of violence began to be laid down in the collection of ancient law "Ruska Pravda" and in the texts of the Lithuanian statutes. At the global level of understanding violence today, the culture of restraint has given way to a hedonistic culture of consumerism, free from restrictions, so images of war, death, and suffering are consumed by the population as a representation of everyday life. At the same time, violence is in constant motion, being passed down from generation to generation and embodying certain factors fundamental to the formation of personality. That is why a child's observation of interparental violence and parental abuse has an impact on the child's future acts of violence.

Condoning violence, which means justifying, belittling, denying violence or blaming the victim rather than the offender, can occur in the family, in the team of students and within society as a whole. We emphasize the need to conduct further interdisciplinary research on a wide range of aspects of the category of violence, including general social, ideological and criminal law, studying foreign experience in



this context, holding relevant conferences, round tables, seminars and summits aimed at scientific and creative understanding of the phenomenon of violence.

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