

Oleksii HUMIN

Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
Head of the International
and Criminal Law Department,
Doctor of Law, Professor
oleksii.m.humin@lpnu.ua
ORCID iD: <https://orcid.org/0000-0002-8016-945X>

Dr. Arkadiusz SZAJNA

University of Occupational Safety Management in Katowice (Poland),
Doctor of Laws, Ph.D

VIOLENCE AGAINST MINORS: CONCEPT AND TYPES

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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.

Keywords: violence, family, minor, physical force.

Formulation of the problem. Along with the concepts of «family» and «minor member of the «family», trace to decide with Another concept used in criminological research is «violence», and, based on that from this, our task is to define the concept of «violence against minors members family».

The concept of «violence», like the previous concepts under consideration, does not have unequivocal general literature and legal interpretation, ago presents itself expedient to spend analysis of existing ones definitions.

The purpose of the article to analyze concepts and types of violence against minors based on a criminal law approach.

Presenting main material. The term «violence» comes from the Latin word «violentia» and means a spontaneous and uncontrolled manifestation of force [1, p. 35–36]. Despite the fact that the concepts of «force» and «violence» are endowed with certain common features, they are distinguished by the fact that, in particular, violence is always understood as the application of force to an object not only against its will and desire, but also as a violation of the law [2]. A similar interpretation of related terms is found in reference sources. In modern legal encyclopedic editions, violence is defined as «the intentional physical or mental influence of one person on another, against his will, which causes this person physical, moral, property damage, or contains the threat of causing damage with a criminal purpose» [3, p. 68] .

In interpretive dictionary Ukrainian language under violence is interpreted as 1) application physical force to someone; 2) from the use of force to achieve something; ; 3) coercive influence on someone, something [4]. Dictionary of synonyms close in meaning to violence names the following words: «compulsion; power; pressure; pressure; forcibly; by force (or coercion); by force; slavery; force; force; put before necessity; oblige; servitude [5].

Etymological analysis of the word «violence» allows us to assert that its meaning is that it denotes a certain action of one person, perfect in relation to another contrary to him will (desire).

The term «violence» is currently widely used not only in everyday everyday life but and enters in terminological apparatus different of science Philosophy, psychology, criminal law, criminology, criminology and others science fit before you decide problems definition concept «violence» independently, without using already existing definitions in related fields of knowledge

Definition violence may to change in dependencies from goals him using. This is due to the fact that the violence itself has a rather «broad format». It is a socio-legal phenomenon, not limited by frameworks criminal law. In other words, violence can also include criminal offenses, and administrative offense, and also others forms behavior which formally not is torts, but enter in contradiction with generally accepted and approved norms behavior forming prerequisites violent crime as such

In connection with this is necessary clarify what in context real research will be used only criminal law concept violence, assessed from the point of view of the criminal law as an offense and, accordingly, owning by all him signs That's it concept necessary for clear definition subject research, surgery by him for demarcation related problems in process empirical study material

Turning to to analysis existing in specified sphere definitions, it should be noted their considerable number, and all of them have their own interpretation. In other words, there is no single point of view on such a fundamental question as concept criminal violence It connected also and with those what criminal by law the term «violence» not is revealed.

Without setting the goal of researching this concept and defining it, first of all, to carry out an empirical study, indicate that in today's research, under violence understood committing socially dangerous illegal intentional acts one person in relation to another against or without the will and consent of the latter or with use helpless state, which violates his constitutional rights and freedoms, related to physical or (and) mental or sexual influence on him.

Exactly its definition was used for software objectivity criteria at selection units empirical arrays and compatibility received in going studying the results.

Between those can not not to note what violence - always its manifestation aggression in interpersonal relationships her extreme form. Not succeeding in details theoretical searches, dedicated given phenomenon the term «aggression» in given articles is used as form socially dangerous behavior person who has its purpose infliction physical, mental damage another to a person (in our in the case of a minor member family).

Analyzing the norms of the Criminal Code of Ukraine, it can be stated that in criminal laws under violence is meant only physical violence. Mental same violence legislator determines by using instructions on the threat of physical violence and other methods specified in the law influence on the will of a person to force him to do what is necessary for the guilty behavior.

At the same time, physical action is an effect on organs and tissues (their physiological functions) body another person.

The science of criminal law defines violence as an external intentional and illegal physical or mental influence on a person (or a group of persons) on the part of other persons, which is carried out against or against his will and is capable of causing him organic, physiological or mental trauma, as well as limiting the freedom of expression of his will or actions [6, p. 52]; deliberate use of physical force to violate the bodily integrity of another person against or against their will, or threats to commit violent acts; socially dangerous unlawful physical or mental influence on a person, which is carried out against or against his will, poses a danger to his life or health at the time of infliction, deprivation of freedom, which may result in harm of varying degrees of severity or death [7, p. 3].

Public relationship components species object physical violence, are related with biological protection properties, physical benefit a personas natural creatures which ones is life, health and physical freedom.

There are five types of consequences of physical violence: death, harm health, physical pain and physical suffering, loss of physical freedom. They encroaching on inviolability physical basics existence a person.

In a way infliction data consequences physical violence is energy influence on bodies and fabrics, their physiological functionsanother person [8].

All the listed types of physical impact can have place and in family situation violence.

In own turn, mental impact - is an impact on the body of another person in the form of giving influence to his psyche. Making such an impact with the help of mental factors external environment and makes up content mentalviolence».

Trace to agree what in within the framework criminological characteristics of family violence, the selection of sexual violence is appropriate because allows more carefully learn all of it sides, and him exception will unreasonably distort the actual picture of family violence, reduce it species and volume

At committed specified criminal offenses maybe application as physical, Yes and mental violence, and even their a combination going out with interpretation of the specified articles of the Criminal Code and law enforcement practice, special form rape and (or) committing violent actions sexual character in ago number of is using a criminal helpless state victims.

Rape and violent actions sexual character trace recognize perfect with using helpless condition of the victim persons in those cases When he, in strength his own physical or mental state (dementia or other mental disorder, physical disadvantages, unconscious state), age (minor or elderly) or other circumstances, could not understand nature and value committed with by him actions or to provide resistance guilty.

When something like this happens to a child, you should speak up exactly about sexual violence as way, after all as such signs physical and mental violence in strength certain conditions familyenvironment

and natural processes of closeness and trust of family members to each other the second may be absent, due to the fact that there are no prerequisites for suppression the will of the victim.

Thus, based on the goals of this study, the need selection and consideration sexual violence (as one with possible methods of action, and therefore one of the types of violence), Yes as it has certain specificity

Between those can not not to note the following: if consider species violence from the position of a specific subject of influence (directly the body another person - «body» or psyche), and not the way of committing, we can talk about distinguishing only two types of violence - physical and mental In this context, the selection of other types of violence is exactly the same impractical.

Manifestation of violence in the social context affects many spheres life, it very wide and multifaceted One of such spheres – family.

Violence in family represents by myself independent variety due to the specificity of the relationship between the criminal and the victim, local territory development conflict, limitations access the public to the resolution of contradictions». The main difference between violence in the family and other violence varieties in ago, what it occurs people who are in loved ones or in relatives relationships which, in principles should support and protect.

In Ukraine, there is also no established terminology to indicate this phenomena In the literature, several terms are used, considered as synonyms Most often, you can meet such concepts as: «intra-family violence», «family violence», «violence in the family», «domestic violence», «domestic violence», «cruel treatment of children».

It seems appropriate to introduce some clarity and order conceptual apparatus researched problems It necessary for more deep understanding of the phenomenon of violence.

When using the term «domestic violence» the emphasis falls on the fact that it violence is applied exactly on homely territory and not can be traced clear positions of that by whom it violence is carried out - members family or any persons but in home victim or common residence .

A number of researchers use the term «domestic violence», under which understood totality socially dangerous and criminal offenses intentional action trespassers on public relationship that provide good personality, as life, health or bodily inviolability related to the impact on another person's body or the threat of such influence by influencing his psyche, committed by one family member against another family member (regardless of the fact of their joint or separate residence) against or against their will the last.

Necessary also to note what under household relations refers to non-productive relations of family and household (ordinary relations in families, between members family), household leisure (extramarital , vacation, tourism), communal and household (relationship with neighbors on home, apartments, residents district, village), industrial and household of a nature arising from material and spiritual satisfaction needs a person.

Such way subjects household violence they can become not only relatives, but also, for example, neighbors outside the subject of this study means that «domestic violence» is broader.

What concerns concepts «intra-family violence», «family violence», «violence in the family», in our opinion, they have the same meaning in this as wellresearch are used as are equivalent.

Also going out with data by us above definitions concepts «violence» and «family», trace to state that there is violence in the family, taking into account all its signs socially dangerous illegal intentionally, punished deed, committed one a member family in relationship another against or except will and consent the last or with using helpless state disruptive him constitutional rights and freedom, related with physical, or (and) mental, or sexual influence.

We will immediately outline the circle of persons who can carry out this violence against children in families («subjects»):

- 1) parents, «new» married couple parents, roommates parents, persons that replace parents -

adopters , guardians;

2) relatives brothers and sisters or children others persons (except parents) specified in p. 1, live in as rule, together with «victims»;

3) other relatives (uncles, aunts, nephews, brothers, sisters, by with the exception of the specified in p. 2 and etc.).

Such way in subject given research are included as relationships «adults - minors», Yes and «minors - minors», where the first category is a criminal and friend refers to to categories victims in case exceptions relationship «minor - minor» can be missed number material facts, Yes as similar cases have place and in go studies were found. They differ in the originality of reasons, conditions, motives, situations, personal characteristics of both the criminal and the victim, others circumstances committing criminal offenses.

Yes, when determining the range of criminal acts that constitute a crime violence in the relationship minors members families, trace consider the specifics of family relations and the possibility of committing certain actsa member family relation to a minor.

The content of the concept of violence «...is difficult to mechanically extend to actually intra-family violent infringement».

Conclusions. Minors in need in constant directed educational influence: them necessary help understand regularities development societies, to produce correct presentation of pr social values. The main one role in upbringing, moral belongs to the family. In force this valid legislation is established requirement about carrying out the upbringing of the child in the family in accordance with his interests, and also with respect to the rights that belong him from birth.

REFERENCES

1. Wolin Sh. (1970). Violence and Western / Politikal Traditions. In: Violence: Causes and Solutions. N.Y. 123 p. [in English].

2. *Velykyi entsyklopedychnyi yurydychnyi slovnyk* [The Great Encyclopedic Legal Dictionary](2007). za red. akad. NAN Ukrainy Yu. S. Shemshuchenka. K.: TOV»Vyd-vo «Iurydychna dumka». 992 p. [in Ukrainian].

3. *Iurydychna entsyklopediia* [Legal encyclopedia] (2002). v 6 t. / redkol. Yu. S. Shemshuchenko ta in. K.: Vyd-vo «Ukrainska entsyklopediia» imeni M. P. Bazhana. T. 4. 720 p. [in Ukrainian].

4. *Slovnyk ukrainskoi movy. Akademichnyi tlumachnyi slovnyk* [Dictionary of the Ukrainian Language. Academic explanatory dictionary] (1970—1980). URL: <http://sum.in.ua/s/nasylyjstvo> [in Ukrainian].

5. Derkach P.M. *Korotkyi slovnyk synonimiv ukrainskoi movy* [Short dictionary of synonyms of the Ukrainian language]. URL: https://moodle.znu.edu.ua/pluginfile.php/503467/mod_resource/content/1/Korotkyi_slovnyk_synonimiv_ukr_movy_Derkach_1960.pdf [in Ukrainian].

6. Lysko T. D. (2008). *Kryminalna vidpovidalnist za zgvaltuvannia (porivnialno-pravovyi analiz)* : [Criminal liability for rape (comparative legal analysis)] dys. na zdobuttia nauk. stupenia kand. yuryd. nauk : spets. 12.00.08 «Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo». K. 218 p. [in Ukrainian].

7. Khomych T.M. (2010). *Fizychne nasylstvo yak odna iz form vchynennia nasylstva v simi* [Physical violence as a form of domestic violence]. Chasopys Natsionalnoho universytetu «Ostrozka akademiia». Serii «Pravo». № 2. [in Ukrainian].

8. Syploki M.V. (2018). *Nasylstvo yak oznaka zlochyniv u sferi pravookhoronnoi ta derzhavnoi okhoronnoi diialnosti* [Violence as a feature of crimes in the sphere of law enforcement and state security activities]. Visnyk Chernivetskoho fakultetu Natsionalnoho universytetu «Odeska yurydychna akademiia». №4. P. 218-229. [in Ukrainian].

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Олексій ГУМІН

Національний університет «Львівська політехніка»,
Навчально-науковий інститут
права, психології та інноваційної освіти,
завідувач кафедри міжнародного
та кримінального права
доктор юридичних наук, професор
oleksii.m.humin@lpnu.ua
ORCID iD: <https://orcid.org/0000-0002-8016-945X>

Dr. Arkadiusz SZAJNA

University of Occupational Safety Management in Katowice (Poland),
Doctor of Laws, Ph.D

НАСИЛЬСТВО ЩОДО НЕПОВНОЛІТНІХ: ПОНЯТТЯ ТА ВИДИ

Захист дітей від насильницьких кримінальних правопорушень, які посягають на життя, здоров'я, моральність та статеву недоторканність є пріоритетною завданням національної безпеки, об'єднуючою зусилля сім'ї, держави та цивільного товариства.

Насильство в сім'ї над неповнолітніми має характерні ознаки, пов'язані зі специфікою механізму вчинення кримінальних правопорушень, причин і умов, його детермінуючих, з особистістю злочинців, особливостями поведінки потерпілого, що вимагає обліку при розробці спеціальних заходів попередження.

Аналіз законодавства та спеціальної літератури призводить до висновку про тому, що на сьогоднішній день не існує єдиного підходу до визначення низки найважливіших понять, які стосуються теми проведеного дослідження. Це в першу чергу стосується понять «родина» і «наси́льство».

Поняття «наси́льство» в даний час широко застосовується не тільки в повсякденному побуті, але і входить в термінологічний апарат різних наук. Філософія, психологія, кримінальне право, криминологія, криміналістика та інші науки підходять до рішення проблеми визначення поняття «наси́льство» самостійно, не використовуючи вже наявні визначення у суміжних галузях.

Визначення насильства може змінюватись в залежності від цілей його використання. Це пов'язано з тим, що саме насильство має досить «широкий формат». Воно є соціально-правовим явищем, не обмеженим рамками кримінального закону. Іншими словами, насильство може включати і кримінальні правопорушення, і адміністративні правопорушення, а також інші форми поведінки, які формально не є деліктами, але вступають в протиріччя з загальноприйнятими і схвалюваними нормами поведінки, утворюючи передумови насильницької злочинності як такої.

У зв'язку з цим необхідно уточнити, що в контексті справжнього дослідження буде використано тільки кримінально-правове поняття насильства, оцінюване з позиції кримінального закону як правопорушення і, відповідно, що володіє усіма його ознаками. Таке поняття необхідне для чіткого визначення предмета дослідження, оперування ним для відмежування суміжних проблем у процесі вивчення емпіричного матеріалу.

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