

КРИМІНАЛЬНЕ ПРАВО ТА ПРОЦЕС

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HISTORICAL AND LEGAL ANALYSIS OF THE CRIMINAL AND LEGAL APPROACH TO DOMESTIC VIOLENCE

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The article is devoted to the analysis of the concept of domestic violence at different times and in different countries, as a result of which it can be stated that regardless of the development of society, its evolution, the problems of domestic violence have always existed. It has been found that the roots of domestic violence in history are deep, come from ancient times and are determined by the peculiarities of national values, culture, traditions and, of course, religion of different peoples and states. Today, domestic violence is one of the most acute problems of society, which is quite widespread in the whole world and during the period of quarantine restrictions, it is gaining larger and larger scales.

Modern society considers domestic violence as a type of criminal offense, but in most cases in Ukraine, domestic violence remains a family secret, because victims of such violence are ashamed to admit it and report it to law enforcement authorities.

Realization of personal human rights, guaranteeing the right to life and health, to free personal development is one of the main tasks of the legal social state, which Ukraine is declared to be. Ensuring these rights is directly related to combating violent acts and, in particular, domestic violence.

The first attempts to regulate family relations at the legislative level, as evidenced by historical monuments, were made as early as the 18th century BC, during the reign of Hammurabi, king of Babylon. In the laws of King Hammurabi, a lot of attention was paid to family relations - both property and non-property, as well as the protection of some rights of children. Thus, the analysis of individual provisions of these laws makes it possible to assert that they protected the interests of the family and established equal rights of spouses regarding property and dignified conditions of family life, as well as provided for clearly defined grounds for divorce, both on the part of the man and the woman. At the same time, the laws of King

Hammurabi also provided for the possibility of placing a woman or child in debt bondage for a certain period in case of inability to repay the debt.

Gender-based violence has deep historical roots both in Ukraine and abroad . It takes its origin from ancient times, since mankind began to exist on Earth.

It is worth noting that domestic violence is an urgent problem at the current stage of development , both for the person against whom it is committed, as well as for the families where it is committed and, of course, for our society in general, because domestic violence is one of the most common forms of human rights violations in the world.

Key words: domestic violence; gender violence; physical violence; psychological violence.

Formulation of the problem. Modern society considers domestic violence as a type of criminal offense, but in most cases in Ukraine, domestic violence remains a family secret, because victims of such violence are ashamed to admit it and report it to law enforcement authorities.

In Ukraine, over the past year, bodies and institutions combating domestic violence recorded 211,362 appeals regarding domestic violence, most of them from women . Thus, 180,921 appeals were received from women, 27,676 from men and 2,756 from children [1].

Gender-based violence has deep historical roots both in Ukraine and abroad . It takes its origin from ancient times, since mankind began to exist on Earth.

Analysis of recent researches and publications. Throughout the entire historical development of society, the issue of domestic violence was highlighted taking into account the type of legal systems, political regime and certain historical conditions.

Various aspects of domestic violence, misconduct in the family and everyday life are studied by various sciences. Law, sociology, psychology illuminate domestic violence through the lens of inherent principles, methods, mechanisms and tools.

Domestic violence was examined by foreign scholars and human rights defenders, including Jane Connors, Rebecca Cook, Rebecca Sewall, Andrew Bernes, Hilka Pietile, Katarina Bartlett, etc. In Ukrainian legal science, separate studies of this problem were carried out by A. Blaga, V. Holin, K. Levchenko, A. Nour, O. Rudneva, and H. Hristova.

The works of V. S. Malyshev, Y. M. Antonyan, Y. I. Gilinsky, T. A. Sydorenkova, V. M. Kudryavtsev, and K. A. Gurkovska are also devoted to the study of domestic violence. etc.

The purpose of the article is to study domestic violence through the prism of historical facts and features.

Presenting main material. Realization of personal human rights, guaranteeing the right to life and health, to free personal development is one of the main tasks of the legal social state, which Ukraine is declared to be. Ensuring these rights is directly related to combating violent acts and, in particular, domestic violence .

As practice shows, domestic violence it has no geographical boundaries or borders, it belongs to all peoples , classes and religions . Its consequences can be a threat to the life and health of a person, the task of psychological trauma, which can have a negative impact on the victim's family life. Violence has particularly severe consequences on the personality of a child who has become a witness or victim of it.

In our opinion, domestic violence, along with rape, is one of the most under reported crimes in the world. Traditionally, Ukrainians associate domestic violence primarily with physical violence, but this is not the case.

Domestic violence is any intentional action (action or inaction) or threat of such an action (action or inaction) of a physical, sexual, psychological or economic nature by one member of the family or household against another, if these actions violate constitutional rights and freedoms of a member of the

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family or household as a person and a citizen and cause him moral harm, harm to his physical, mental health or economic interests [2, p. 11].

According to Art. 126¹ of the Criminal Code of Ukraine, domestic violence is the intentional systematic commission of physical, psychological or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of working capacity, emotional dependence or deterioration of the victim's quality of life [3].

Traditionally, European culture perceived violence as an inevitable evil, believing that violence is as natural as power and politics, without which the development of society is impossible, and if so, then it is necessary to coexist with violence.

It is important to state that one of the important origins of domestic violence are the remnants of patriarchal consciousness in modern society. In a patriarchal society, the figure of a man was absolutely dominant, who was obliged to provide the family with all the resources necessary for life, as well as to protect it from any external danger. At the same time, women and children were completely without rights and completely subordinated to the man – the head of the family. Male power was maintained by brutal violence. Cultural tradition, supported by religion, not only justified violence in the family, but often made it a mandatory element of life [4, p. 43].

To a certain extent, the patriarchal way of life could be justified by the existing then method of production, which required significant physical strength, as well as the need to defend the family independently with a weapon in hand. Since those times, the way of life has fundamentally changed, but public opinion and cultural tradition have great inertia and persist for decades and centuries after the objective reasons for their occurrence have disappeared. And in our time, views inherited from the patriarchal society are still widespread, which often justify domestic violence in the public consciousness.

The first attempts to regulate family relations at the legislative level, as evidenced by historical monuments, were made as early as the 18th century BC, during the reign of Hammurabi, king of Babylon. In the laws of King Hammurabi, a lot of attention was paid to family relations – both property and non-property, as well as the protection of some rights of children. Thus, the analysis of individual provisions of these laws makes it possible to assert that they protected the interests of the family and established equal rights of spouses regarding property and dignified conditions of family life, as well as provided for clearly defined grounds for divorce, both on the part of the man and the woman. At the same time, the laws of King Hammurabi also provided for the possibility of placing a woman or child in debt bondage for a certain period in case of inability to repay the debt [4, p. 76].

State regulation of family relations in European countries in the period of its formation was carried out with the help of canon law, which was due to the special position of the Catholic Church and its significant influence on all aspects of public life and state administration. However, from the XV–XVII centuries in Great Britain, France, and Germany, royal authority departed from church dogmas regarding the regulation of marriage, and it began to be viewed not only as a religious rite, but also as an act of civil status. At the same time, the relationship between spouses (full power of the husband, unconditional submission of the wife to him, etc.), which was regulated by canon law, had no fundamental differences from the features of the rights of each of the spouses that we have given – the inequality of personal and property rights, the dependent position of the woman, etc. Individual provisions of the above provide grounds for the assertion of the presence of common factors – inequality in the rights of men, women and children, due to the peculiarities of traditions, culture and religion, the patriarchal system of social life [6, p. 173].

In Ukraine, for a long time, a man who beat his wife was punished, a man who killed a religious woman was condemned and a wife who killed her husband was buried alive in the ground. Only in the 70s of the 20th century, the problem of family violence became socially significant, and spousal violence was recognized as unacceptable in the West. Domestic violence officially “did not exist” in the Soviet Union. As a rule, the study of this phenomenon was reduced only to consideration of physical violence in

accordance with the articles of the Criminal Code. First, it was not good to “take the garbage out of the house. “ If a man hits you, you are to blame. And if she is not guilty, bear it, such is a woman’s fate. Secondly, even those women who did dare to submit a statement to the police, returned home with nothing – they refused to accept the statement [7 , p. 74].

Historian Volodymyr Maslychuk, who researches criminal cases of past centuries, writes that in the 18th century assault was widespread in all spheres of interpersonal relations. That is, we are talking not only about the relationship between husband and wife, but also with other relatives and children. For example, mothers often physically punished their children with a hand, a rag, a belt or a sharp object. Such education was considered to be the most effective way of influencing a child. We see the reflection of these beliefs in Ukrainian folklore: “Love children, but hold them by the rod”, “Without a vine, a child will not grow into a person”.

In folklore, a lot is said, for example, about the evil mother-in-law. Volodymyr Maslychuk recorded cases when the mother-in-law not only beat, but also starved her daughter-in-law. After all, we all remember Ivan-Nechuy Levytskyi’s “Kaidashev family”, which very vividly shows the realities of that time. The passionate quarrels of members of a traditional family are described with humor, but in fact the author unfolds before us a social and domestic drama from the life of a patriarchal society. “Hit means love “ is not the only saying that reflects the realities of that time. “Love like a soul, and shake like a pear”, “Not even a wound hurts from a nice man “, “A woman is not beaten - her scythe is not riveted!”. Folklore shows physical violence in family relationships as a certain norm, justifies and even encourages it. Analyzing the relationships in the families of our past generations, we see that violence was considered a justified tool capable of “setting things in order” in the distribution of gender roles. And order was needed exclusively in order to keep the economy in order. However, the days of the “Kaidashev family” are far behind. And domestic violence should remain exclusively on the pages of fiction, which we need to interpret wisely for future generations. After all, in modern Ukrainian families, which are built on the values of gender equality, there is no place for violence [8, p. 9].

For the first time at the global level, the problem of family violence was actualized thanks to the joint active actions of the international movement for the protection of women’s rights, since they were the most vulnerable and unprotected group that suffered from violent actions by husbands, brothers, parents, etc. That is, at the initial stage, the prevention of domestic violence entered the field of view of the world community as a component of violence against women in general [9, p. 14].

In the modern world, Y.Yurki’s review states domestic violence as certain conscious actions of one family member against another, if these actions violate constitutional rights and freedoms of a family member as citizen and cause damage to his physical, mental or moral health [10, p. 186].

Conclusions. Summarizing all of the above, it is worth noting that domestic violence is an urgent problem at the current stage of development , both for the person against whom it is committed, as well as for the families where it is committed and, of course, for our society in general, because domestic violence is one of the most common forms of human rights violations in the world.

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ІСТОРИКО-ПРАВОВИЙ АНАЛІЗ КРИМІНАЛЬНО-ПРАВОВОЇ ПРОТИДІЇ ДОМАШНЬОМУ НАСИЛЬСТВУ

Стаття присвячена аналізу поняття домашнього насильства у різні часи та у різних державах, унаслідок чого можна констатувати, що незалежно від розвитку суспільства, його еволюції проблеми домашнього насильства існували завжди. З'ясовано, що коріння домашнього насильства в історії є глибокими, походять з давніх часів і зумовлені особливостями національних цінностей, культури, традицій та звичайно релігії різних народів та держав. На сьогодні домашнє насильство є однією з найбільш гострих проблем суспільства, яка досить розповсюджена у всьому світі і в період карантинних обмежень набуває все більших масштабів.

Протягом усього історичного розвитку суспільства питання домашнього насильства висвітлювалося з урахуванням типу правових систем, політичного режиму, тих чи інших історичних умов.

Сучасний соціум розглядає домашнє насильство як вид кримінального правопорушення, але у більшості випадків в Україні домашнє насильство залишається родинною таємницею, адже жертвам такого насильства є соромно про це зізнатись та повідомити правоохоронні органи.

Як свідчить практика, домашнє насильство не має географічних меж чи кордонів, воно є в усіх народах, класах та релігіях. Його наслідками можуть бути загроза життю і здоров'ю особи, завдання психологічної травми, що може мати негативний вплив на сімейне життя жертви. Осо-

бливо тяжких наслідків насильство завдає особистості дитини, яка стала його свідком або жертвою.

Домашнє насильство поруч із зґвалтуваннями є одними з найбільш неосвітлених злочинів на світовому рівні. Традиційно домашнє насильство асоціюється в українців перш за все саме із фізичним насильством, але це ж не так.

Важливо констатувати, що одним із важливих джерел домашнього насильства є пережитки патріархальної свідомості у сучасному суспільстві. У патріархальному суспільстві абсолютно домінуючою була постать чоловіка, який був зобов'язаний забезпечувати сім'ю всіма необхідними для життя ресурсами, а також захищати її від будь-якої зовнішньої небезпеки. При цьому жінки й діти були абсолютно безправними і повністю підпорядкованими чоловікові – голові сім'ї. Влада чоловіка підтримувалась за допомогою жорстокого насильства. Культурна традиція, підтримувана релігією, не просто виправдовувала насильство у сім'ї, а нерідко робила його обов'язковим елементом життя.

Гендерне насильство має глибоке історичне коріння як в Україні, так і за кордоном. Воно бере свій початок із давніх-давен, відтоді як почало існувати людство на Землі.

Домашнє насильство є актуальною проблемою на сучасному етапі розвитку як для людини, над якою воно вчиняється, так і як для родин, де воно вчиняється і, звичайно, для усього суспільства загалом, адже домашнє насильство – одна з найбільш поширених у світі форм порушення прав людини.

Ключові слова: домашнє насильство; гендерне насильство; фізичне насильство; психологічне насильство.