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## **CORRELATION OF SCIENTIFIC APPROACHES TO THE DEFINITION OF FAMILY VIOLENCE**

**Summary.** *The current legislation refers to acts of violence of a physical, psychological, sexual or psychological nature against a woman in the family as "domestic violence".*

*A review of scientific views on the definitions of "violence", "family violence", "domestic violence" demonstrates their ambiguity and problems, and thus actualizes their research.*

*The article is analyzed theoretical developments of famous domestic and international scientists, legal provisions on family violence were analyzed and modern approaches to the interpretation of this concept are identified.*

*It was established that the same actions of the offender were defined in the Law of Ukraine "On Prevention of Family Violence" as "family violence", and in the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" as "domestic violence".*

*It is determined that the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine operate with different definitions of domestic violence. At the same time, the signs of committing domestic violence, which entails criminal liability, are the regularity and extent of the damage caused to the victim.*

*It is concluded that the existing separation of administrative and criminal liability for domestic violence in the current legislation is justified and capable of ensuring the protection of human and civil rights and freedoms.*

*It was concluded that there is no need to replace the term "family violence" with the term "domestic violence", because the fundamental signs of domestic violence are the perpetrator and the victim, not the place where the wrongdoing is committed.*

*It is argued that the term "domestic violence" currently used in the law should be replaced by "domestic violence", as the latter is broader and covers all the features that characterize violence against women.*

**Key words:** *violence, family violence, domestic violence.*

**Statement of the problem.** Family violence against women is an urgent problem of the 21st century. The increase in the incidence of this negative phenomenon since March 2020 has been triggered by the COVID-19 pandemic, as long-term quarantine restrictions have forced family members to spend more time in a shared limited area. The occurrence of violence does not depend on the level of income, education, social status, class, racial, cultural, religious, socio-economic aspects. The need to find effective ways to protect women's rights from family violence necessitates research into the terms "violence", "family violence", and "domestic violence". After all, as we know, there is no legislative definition of this or that concept, there is no exact knowledge of its existence and the criterion for delimiting from other concepts [1, p. 15].

**Analysis of recent research and publications.** Significant attention to the protection of victims of family violence was paid by such scientists as A. Blaga [12], O. Bespal [13], O. Dmytrashchuk [9], L. Golovko [29], V. Gorbova [15], L. Nakonechna [7], O. Tkalenko [28], O. Khramtsov [8], etc. These scientists have formed a number of fundamentally important provisions and recommendations for preventing and combating family violence. But in the

current conditions of Ukraine, family violence does not lose its relevance and requires further research and development of measures to combat this phenomenon.

**The aim** of the article is to analyze and summarize the views of scholars on the definition of the terms "violence", "family violence", "domestic violence", outlining ways to improve the theoretical and regulatory framework on this issue.

**The main material.** According to the Dictionary of the Ukrainian Language, violence is defined as the use of physical force against someone and the use of force to achieve something, coercive influence on someone, something [2, p. 184].

The World Health Organization defines violence as "the intentional use of physical force or authority, actual or in the form of a threat, directed against oneself, another person, a group of persons or a community that results in (or is likely to result) bodily harm, death, psychological trauma, developmental abnormalities or various kinds of damage" [3, p. 72].

O. M. Ignatov proposes to understand violence as a deliberate, unlawful energy effect on the organs and tissues of the human body, their physiological functions, through the use of material factors of the external environment (mechanical, physical, chemical and biological) and / or the impact on her psyche through the informational action exerted or through inaction against or outside his/her (person's) will, capable of causing death, physical and / or mental injury, as well as limiting the freedom of expression of the will or actions of a person [4, p. 150].

According to V.I. Borisov, violence is an illegal physical impact on a person (for example, the use of physical force, hitting, beating, bodily harm, ingestion of various drugs, etc.) [5, p. 130]. A similar position is held by M.I. Melnyk and M.I. Havronyuk, proposing to understand violence as various types of physical impact on the victim, which are not beatings and are not related to

infliction of bodily harm: slapping, pushing, tying or other imprisonment, violent sexual abuse, as well as threats of use physical violence related to the requirements for the victim to perform any actions, etc. [6, p. 945].

Exploring violence as a pervasive criminal law concept, L.A. Nakonechna formulated the term "violence" as an unlawful intentional physical impact on the physical integrity and (or) personal freedom of another being carried out by an act, whether perceived by the addressee and causing or likely to cause physical (human or vertebrate) and (or) mental harm (to a person) [7, p. 6].

The opinion of A.M. Khramtsov, that violence is a criminal law category, by which it is necessary to understand the intentional, socially dangerous, unlawful influence on another person, motivated by hostile, instrumental or negativistic motivation, carried out by physical and (or) informational actions (action or inaction) in spite of or outside the will a person and affects the freedom of his/her will or causes him physical and (or) mental harm or contains a real threat of their causing also deserves attention [8, p. 66]. In turn, A.S. Dmytraschuk proposes to consider violence in a narrow and broad sense. In a narrow sense, violence is an unlawful influence on a person against his/her will, and in a broad sense - an act of a physical, sexual, psychological or economic nature, aimed at the victim against his will, or the threat of their use [9, p. 79].

Well-known Polish specialist in the prevention of domestic violence L. Alarkon defined the concept of "violence" as actions committed by one (or several) persons and characterized by such features: 1) carried out consciously, aimed at achieving a specific goal; 2) cause harm (physical, moral, material, etc.) to another person; 3) violate human rights and freedoms; 4) the perpetrator has significant advantages (physical, psychological, administrative, etc.), which makes it impossible to effectively protect the victim of violence [10, p. 185].

As we can see, there are no significant differences between the above definitions of scientists on violence. They all point out that violence is an

unlawful influence on a person that is committed against his or her will and violates his or her rights and freedoms.

In jurisprudence, when talking about the commission of family violence, they use the terms: "family violence", "domestic violence", in this regard, we consider it appropriate to clarify their essence.

In 2001, Ukraine became the first post-Soviet state to recognize the problem of family violence at the highest level, resulting in the adoption of the Law on the Prevention of Family Violence № 2789-III of November 15, 2001 [11], which established legal and organizational principles for the prevention of family violence and the bodies and institutions entrusted with the implementation of measures to prevent family violence. According to this legal act, family violence means any intentional acts of physical, sexual, psychological or economic orientation of one family member in relation to another family member, if these actions violate the constitutional rights and freedoms of a family member as a person and a citizen and cause him moral harm, harm to his physical or mental health. The terminological definition of "family violence" meant that it was committed only through active action, which did not deserve attention, as violence could also be committed through inaction. Violence affected various family members - spouses, minor children, parents (in cases of violence against them by adult children), other family members, etc.

A.B. Blaha by "family violence" means a deliberate unlawful act (action or inaction) of a discriminatory nature against a family member or a person with whom there was or exists a family relationship, committed with the use of advantage by imposing his will against or at the will of the victim [12, p. 66]. For the first time, a scientist identified and scientifically substantiated typical signs of family violence: 1) it is an intentional wrongful act; 2) manifested in the form of action or inaction; 3) is discriminatory; 4) committed in relation to a certain group of persons - family members or persons with whom there were or are family relationships; 5) accompanied by the use of the existing advantage of

the offender; 6) committed by imposing his/her will against or against the will of the victim; 7) may be covered, but not limited to, such as physical, psychological, sexual, economic violence [12, p. 78].

With the definition of "family violence" proposed by A.B. Blaha, O.L. Bepal does not agree, noting that it is unnecessary to say that the perpetrator has an advantage over the victim, because it is clear that when any kind of violence is committed (physical, mental, economic, sexual), the perpetrator has an advantage over the victim (for example, physical superiority or using external factors - tools or means) [13, p. 33].

T.R. Humennikov and A.S. Metil family violence is defined as an act (act or omission) of physical, sexual, economic or psychological violence perpetrated in the family [14, p. 14].

The definition of "family violence" formulated by O.M. Tkalenko, as any act or threat of use of any act of physical, sexual, psychological or economic orientation by one family member in relation to another family member, if it violates the constitutional rights and freedoms of a family member as person and citizen and causes him or may cause moral or material damage, damage to his physical or mental health [28, p. 41-42].

Later, the term "family violence" was gradually replaced by the term "domestic violence". In order to eliminate existing inconsistencies in the legislation and ensure effective combating of domestic violence, on January 7, 2018 the new Law of Ukraine "On Prevention and Counteraction to Domestic Violence" № 2229-VIII of December 7, 2017 was adopted, which regulates the term "domestic violence" as actions (acts or omissions) of physical, sexual, psychological or economic violence committed in the family or within the place of residence or between relatives, or between former or current spouses, or between other persons living together (or who lived together) as one family but are not (were not) in a family relationship or in a marriage with each other,

regardless of whether the perpetrator of the domestic violence lives (lived) in the same place as the victim, as well as the threat of such deeds [17].

Thus, we can conclude that the same actions of the offender in the Law of Ukraine "On Prevention of Family Violence" were defined as "family violence", and in the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" are already referred to as "domestic violence".

The definition of "domestic violence" is also enshrined in procedural legislation, which regulates administrative and criminal liability for its commission.

Thus, in Art. 173-2 of the Code of Administrative Offenses, domestic violence, gender-based violence means the intentional commission of any actions (acts or omissions) of a physical, psychological or economic nature (use of violence that did not cause bodily harm, threat, insult or harassment, deprivation housing, food, clothing, other property or funds to which the victim is entitled by law, etc.), as a result of which the physical or mental health of the victim may or has been harmed [18]. In turn, Art. 126-1 of the Criminal Code of Ukraine under domestic defines 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, leading to physical or psychological suffering, health disorders, loss of ability to work, emotional dependence or deterioration of the victim's quality of life [19].

As we can see, the signs of committing domestic violence, which entails criminal liability, are the regularity and extent of the damage caused to the victim. It should be noted that the Criminal Code of Ukraine does not provide a definition of the systematic nature of the act provided for in Art. 126-1 of the Criminal Code of Ukraine, so let's turn in this regard to the scientific literature and case law.

O. Dudorov and M. Khavronyuk note that systematicity "means the constant recurrence of identical or similar actions (or inaction), each of which in

itself may give the impression of insignificant, but together they affect the victim extremely negatively, and the intensity of this impact may depend both on the degree of aggressiveness of each individual act and on their number". Scientists add that the crime is considered completed from the moment of committing at least one of the three forms of violence (physical, psychological or economic) for the third time, resulting in at least one of the consequences specified in the law. It does not matter whether the first two acts of violence were reflected in the police administrative report, in the urgent injunction, in the restraining order or in another document. Of course, the fact of documentation is important for proving, but not more than other evidence provided by law - the testimony of victims, witnesses, expert opinions, etc. [20, p. 78].

In turn, O. Stepanenko believes that the systematic commission of physical, psychological or economic violence in the context of Art. 126-1 of the Criminal Code of Ukraine, the following cases should be understood: 1) the person commits violence three or more times, for each of which he has not been prosecuted; 2) a person commits violence for which he/her has not been prosecuted, but has previously been prosecuted two or more times under Art. 173-2 of Code of Administrative Offenses; 3) the person commits violence twice, for each of them was not prosecuted, but was prosecuted once under Art. 173-2 of Code of Administrative Offenses. The author notes that there may be many such combinations, but when there is prejudice, it is important to establish a new episode of violence after previous administrative prosecution [30, p. 326].

The ruling of 25 February 2021 in case № 583/3295/19 the Supreme Court rightly expressed that the fact of bringing the perpetrator to administrative responsibility for committing domestic violence is a confirmation of the systematic nature of the commission of domestic violence [21]. That is, if the offender was twice found guilty of committing an administrative offense under Art. 173-2 of the Code of Administrative Offenses of Ukraine, the next episode of domestic violence, subject to the relevant illegal consequences (physical or



psychological suffering, health disorders, disability, emotional dependence or deterioration of the quality of life of the victim), may be qualified under Art. 126-1 of the Criminal Code of Ukraine as "domestic Violence". At the same time, A.O. Drahonenko believes that not only systematic violence should be prosecuted, but also if it is committed once, because according to statistics, if criminal liability were imposed immediately, the risk of increasing domestic violence crimes could be reduced, which could lead to fatalities [22, p. 182].

We do not agree with the position of A.O. Drahonenko that a person should be immediately held criminally liable for domestic violence, as this would lead to a leveling of the institution of administrative responsibility as such. The main criterion for distinguishing between administrative and criminal offenses is public danger, the elements of which are the degree and quantitative factor (recurrence, recidivism). That is why it is expedient to impose an administrative penalty on a person for individual domestic violence, the application of which should educate the offender in the spirit of compliance with the laws of Ukraine, respect for the rules of coexistence, and prevent new offenses. The regularity of domestic violence is characterized by an increased level of public danger, and therefore a person must be held criminally liable for their actions. In our opinion, the existing separation of administrative and criminal liability for domestic violence in the current legislation is justified and ensures the protection of human and civil rights and freedoms.

The term "domestic violence" is also the subject of research in the scientific literature. S. Sharhorodska defines domestic violence as certain deliberate actions of one family member against another, if these actions violate the constitutional rights and freedoms of a family member as a citizen and harm his physical, mental or immoral health, as well as the development of the child [23, p. 14].

The point of view of V.D. Bayraktar, who suggests that domestic violence should be understood as any act of physical, sexual, psychological or economic

orientation by one family member in relation to another family member, if it violates the constitutional rights and freedoms of a family member as a person and citizen [24, p. 52].

The definition of domestic violence proposed by V.O. Horbova, namely: committed deliberately unlawful influence by one (several) family member (members) who has (have) significant advantages over another family member or person (family members, persons) with whom there are or have been family relations in the case of cohabitation, which is expressed in an act of physical, psychological, sexual and economic nature or the threat of such an act, violates the constitutional rights, freedoms and interests of man and citizen and causes moral or physical or mental health [15, p. 32]. In the above definition, V.O. Horbova notes that domestic violence is committed if the perpetrator and the victim live together, however, we believe that this was not a fundamental condition for the scientist, but rather a tribute to the legislative definition of domestic violence in the Law of Ukraine "On Prevention of Domestic Violence in Ukraine".

There is a debate in the scientific community about the relationship between "domestic violence" and "family violence". Thus, T.R. Humennikov and A.S. Metil do not separate "domestic violence" and "family violence" into separate categories [25, p. 14].

According to the Russian scientist V.A. Shakina, when using the term "domestic violence" the emphasis is on the fact that this violence is used at home and there is no clear position on who is committing this violence - family members or any person, but always at the place of residence the victim or place of residence. When using the term "family violence", the emphasis is on the fact that it is violence by current or former members of the same family, but is used not only in the home environment, but also in any other place outside the home (visiting , at the place of work, on the street, in places of rest, etc.). Therefore,

the researcher believes that the term "family violence" is broader in its meaning and exhausts all cases covered by the phenomenon under study [26, p. 14].

Similar in content is the position of A.B. Blaha, which when deciding on the relationship between the concepts of "domestic violence" and "family violence" suggests to prefer the use of the term "family violence", because its meaning is broader and covers all cases within the phenomenon under study: committed by current or former members of the same family, excluding employees (nannies, housewives, etc.); used not only in the home environment, but also in any other place; covers manifestations of violence in all spheres of family life - reproductive, educational, household, economic, leisure, emotional, sexual, areas of primary social control and spiritual communication [12, p. 183].

The opinion of I.A. Botnarenko, who believes that in contrast to the concept of "domestic violence", which features such a criminological feature as the place of commission, and which is not always related to marital and family relations, the concept of "family violence" covers the family nature of motivation committing illegal acts, usually due to the conditions of joint life of the victim and the offender. However, in the case of violence by an adult child against his or her elderly father, if they do not live together but are family law (Article 3 of the Family Code of Ukraine), such actions will also be domestic violence in the nature of their legal assessment [27, p. 41-42].

In contrast to the above, V.O. Gorbova emphasizes the need to use the term "domestic violence" instead of "family violence", explaining that the use of this term will expand the range of persons who will be subject to administrative and legal protection in the field of combating family violence [15, p. 26].

The position of O.S. Dmytrashuk is interesting, who believes that the category of "domestic violence" should be delimited from the concept of "domestic violence", and the latter in terms of its scope is narrower, because it only provides for unlawful influence on persons specified in the Family Code of

Ukraine, leaving without attention those living together, but not married to each other, their parents and children [9, p. 90-91].

We do not support the position of O.S. Dmytrashchuk and we believe that the common features that must meet the relationship between individuals in order for them to be considered a family are: living together, joint household, the existence of mutual rights and responsibilities. In addition, the current legislation gives the concept of "family member" in different meanings depending on the field of legal relations, which also includes parents and children. It is also undeniable that family relationships can arise between individuals on the basis of actual marital relations without a registered marriage.

Considering the relationship between the terms "domestic violence" and "family violence", O.M. Tkalenko proposes to go by expanding the categories of persons belonging to family members in the sense of legislation aimed at preventing domestic violence, without resorting to replacing the term "family violence" with the term "domestic violence" [28, p. 39].

We agree with the opinion of O.M. Tkalenko that there is no need to replace the term "domestic violence" with the term "domestic violence", and we support the position of scientists (A.B. Blaha, V.A. Shakin and others) who prefer to use the term "family violence", which is broader than the term "domestic violence". It should be noted that the basic signs of domestic violence are the perpetrator and the victim, not the place where the wrongdoing is committed. This follows directly from the definition of "domestic violence" specified in the law and Art. 3 of the Law of Ukraine "On Prevention and Counteraction to Domestic Violence", which provides that this legislation, regardless of the fact of cohabitation applies to such persons, which can be generally defined as persons related by family or relations. At the same time, the place of committing domestic violence is not important for the qualification of the offender's actions. Of course, such actions are most often committed in the place where the victim lives, but it is possible to use violence against the victim

on a visit, at work, on the street, in recreation areas, any office building, etc. At the same time, the term "domestic violence" is associated with the fact that violence should be committed exclusively at home. In view of this, we believe that the term "domestic violence", which is currently used in the law, should be replaced by "family violence".

**Conclusions and prospects.** Summarizing all the above, we note that in general, family violence can be defined as a social phenomenon that covers the whole set of illegal acts of psychological, economic, physical, sexual and other nature committed between family members. The essence of family violence is that it is socially conditioned, affects all spheres of public life, has a transnational character, economic, political, legal, psychological and moral aspects and the ability to constant mimicry. This understanding of family violence is the starting point and requires not to be limited to legal measures, mainly in the form of legal liability, but a set of economic, political, organizational and other countermeasures.

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