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## REASONS FOR OPPOSITION TO THE INVESTIGATION OF CRIMINAL OFFENCES RELATED TO DOMESTIC VIOLENCE

**Abstract. Purpose.** The purpose of the article is to analyse the practice of investigating criminal offences related to domestic violence, to identify and systematize problematic aspects that create opposition to the establishment of all circumstances of the incident and obtaining evidence. To achieve this, general scientific methods of cognition, such as analysis, induction, synthesis, deduction and modelling, were used. They made it possible to highlight problematic aspects arising at different stages of pre-trial investigation, to determine causal relationships, the causes of their advent and ways to overcome them. The use of the induction method enables establishing the recurrent nature of events that complicate the investigation and hence building up the areas of counteraction to opposition. The use of the historical method allows studying the process of developing opposition and creating problematic aspects during the pre-trial investigation of criminal offences related to domestic violence.

**Results.** The process of investigating criminal offences related to domestic violence is not limited to the investigation of only one type of crime, usually it is a certain chain of violent actions, which usually begin with psychological or economic violence and, over time, develop into more serious violent crimes manifested in physical and sexual violence. The focus is on a lack of communication and cooperation both between the National Police units and between the police and social organisations, such as guardianship and custody agencies, social service centres for families, children and young people, and social rehabilitation centres, medical-social rehabilitation centres, etc. The scientific novelty is in combining the scientific achievements and practical results of the investigation and prevention of domestic violence, which will contribute to the construction of a methodology for the investigation of criminal offences related to domestic violence.

**Conclusions.** The groups of the main problematic issues arising in the pre-trial investigation of criminal offences related to domestic violence enable the author to identify the risks of opposition to investigation the investigation, to determine the best tactics of investigative (search) actions.

**Key words:** domestic violence, investigation, criminal offence, opposition to investigation.

### 1. Introduction

Domestic violence is a widespread problem in many families around the world. A review of global sample studies from 48 countries revealed that 10–69% of women reported experiencing physical violence at the hands of an intimate partner or spouse, with the lowest rates recorded in Paraguay and the Philippines, and the highest rates recorded in Nicaragua. In the United States, approximately 22% of women over the age of 18 report experiencing stalking behaviour by an intimate partner during their lifetime. In addition, most women who are physically victimized

also report sexual or psychological abuse by an intimate partner.

In Ukraine, violence among family members is unfortunately also common. For a long time, the issue of domestic violence was considered a matter of custom and tradition and remained outside the scope of legal regulation. Any interference in family relations by the State and society was considered a gross violation of privacy and was not allowed. This situation has led to some arbitrariness in family relations and to their becoming a domain of latent offences, which have been neglected by the competent public authorities.

It should be noted that a number of public organisations have taken measures in Ukraine since the adoption of legal regulations governing relations in the family environment, thanks to the efforts of State and local authorities, which have contributed to significant changes in the formation of society to the problem of domestic violence, the establishment of a system for the rehabilitation of victims, the strengthening of the protection of children from domestic violence, etc. (Zaporozhtsev, Labun, Zabroda, Basystva, Drozdova, Bryzhyk, 2021, p. 9; Komarynska, 2021, p. 180).

However, the number of cases of domestic violence is not decreasing. This can also be explained by the fact that an increasing number of people, thanks to government programmes, information coverage and public concern, are aware of the dangers of such violence, not only for themselves, but also for other family members, due to their age or physical features.

For example, Deputy Minister of Internal Affairs of Ukraine Kateryna Pavlichenko noted that for 8 months of 2021, the National Police of Ukraine received more than 203,000 appeals on cases of domestic violence. For comparison, for the whole 2020 such appeals in Ukraine were more than 208 thousand. She stressed, however, that the data did not show that the incidence of domestic violence had increased or decreased. This is evidence that people have become more aware of this phenomenon, know how to recognize it and where to go for help (Official website of the Ministry of Internal Affairs, [mvs.gov.ua](http://mvs.gov.ua)).

These activities of both State and public organisations show how victims and witnesses of domestic violence can report it. The consequences of domestic violence are also widely exposed, that is, the murder of someone by the party to the conflict, such as human trafficking, deprivation of housing and other material goods, bodily harm of varying degrees of severity, which in turn causes disability and consequently deprives a person of access to basic needs, such as food, etc.

That is why, today, the issue of establishing a methodology for the investigation of criminal offences related to domestic violence is topical in the forensic science. However, as with most investigations of new criminal offences, there are a number of problematic aspects that lead to errors not only by the investigator, but also prevent the court from sentencing the perpetrator fairly.

At all stages of criminal proceedings, from the moment of obtaining information about a criminal offence to the adoption of a final procedural decision, the investigator uses the prosecutor's probable knowledge and assumptions about the event reflected in the versions.

V.M. Hlibko, A.L. Dudnikov and V.A. Zhuravel claim that mental and procedural activity of the investigator takes place in conditions of unknown natural causal ties, traces destroyed or disguised, the perverted link between things and events, the distorted nature of the phenomena in some cases (Hlibko, Dudnikov, Zhuravel, 2001, p. 209). Considering this, scientific developments are of importance for optimizing the activities on construction and verification of versions. Theoretical developments on versions and their role in the implementation of criminal proceedings were presented in the works by prominent forensic scientists: R.S. Bielkin, V.O. Konovalova, A.A. Korchahin, I.M. Luzhin, A.R. Ratynov, V.F. Robozero and others (Dufeniuk, Kuntii, 2015, p. 206).

## **2. Specificities of the methodology for the investigation of criminal offences related to domestic violence**

The study of the materials of criminal proceedings for criminal offences related to domestic violence and consideration of the opinion of the employees of the National Police of Ukraine reveal that silence, concealment, omission, that is, both conscious and unconscious opposition to an investigation occurs at the first steps of the investigation. Unfortunately, according to the results of the survey of the National Police (92%), such resistance continues throughout the investigation. That is, even the victims, after providing seemingly complete information at the initial stage of the investigation, become alienated and refuse to cooperate with the investigator. Such circumstances demonstrate the need to consolidate, study and analyse problematic aspects of the identification and investigation of criminal offences related to domestic violence and to address ways of overcoming such opposition.

In order to establish an effective methodology for the investigation of criminal offences related to domestic violence, it is important to identify the problematic aspects of the investigation, that is, a thorough analysis of the problematic issues, arising before the investigator in the detection of signs of unlawful conduct, in the collection and processing of evidence and forensic-relevant information in the planning and organisation of pre-trial investigation, as well as in the conduct of investigative (search) actions, is required. Moreover, this systematic approach shall enable to establish the causal links between these offences and to determine the most appropriate lines of investigation (Komarynska, p. 180).

The success of investigative actions is due to a set of actions that are components (aspects, elements) inherent in each investigative action.

A significant number of forensic scientists identify the following elements of investigative action: criminal procedure; moral and ethical; psychological; organisational and tactical. The organisational part includes actions that contribute to the most rational conduct of the investigation, its planning, preparation and conduct of investigative actions aimed at achieving the goals, the use of technical means, participants in investigation. The tactical part deals with actions aimed at solving the immediate tasks of the investigation, making tactical decisions and determining the timeliness of the investigative actions, assessment of the need to implement the planned activities in the light of the current investigation situation (Semenov, 2015, p. 246).

In order to achieve these goals, the investigator should understand the depth of the problem and its historical development.

For example, since the mid-1990s, measures to combat domestic violence have been actively introduced worldwide. In the post-Soviet area, the problem of domestic violence has been of interest since the late 1990s. Special legislation to counter it was adopted in Kyrgyzstan, Georgia, Moldova and Ukraine. Of course, there were reasons for the lack of development of ways to combat domestic violence in Soviet society: 1) The hidden nature of domestic violence was linked to the idealisation of the Soviet family; 2) The limited research on the range of domestic violence offences was due to the prevention of interference with the privacy identified with the family institute; 3) The Soviet family was subject to control and education and the State did not need to apply additional coercive measures of legal liability for violence, which did not fall under the elements of the crime; 4) For the Soviet legal ideology the development of the State was a priority, and the development of group cells, which included the family, was secondary; 5) The issue of family relations in the Slavic mentality was alienated to public supervision and interference (Topchii, Kyfliuk, 2019, p. 32).

In addition, T. Havronska, I. Krasnolobova, V. Bortniak, D. Bondar and A. Boiko conclude on the influence of political and religious traditions of the country that the level of violence against women and girls depends on the religion of the majority of the population in a given country. The highest levels of domestic violence are found in regions of the world where the majority of the population is Muslim, such as East Asia, South-East Asia, Africa (Havronska, Krasnolobova, Bortniak, Bondar, Boiko, 2021, p. 399).

According to V.V. Topchii and R.V. Kyfliuk, such circumstances are fundamental for the for-

mation of family ideology in Ukrainian society as well. The stigmatisation of victims of domestic violence leads to their closure, to a feeling of being guilty of provoking criminal acts against themselves. Accordingly, in the course of an investigation, the person unknowingly opposes the investigation when the investigator attempts to ascertain, at a minimum, the systematic nature of the violent acts, etc.

### **3. Obstacles in the pre-trial investigation of criminal offences involving domestic violence**

The results of the study of criminal proceedings and the survey of the investigators of the NPU reveal that the reasons for the obstacles encountered in the pre-trial investigation of criminal offences involving domestic violence can be grouped into:

The process of investigating criminal offences related to domestic violence is not limited to the investigation of only one type of crime, usually it is a certain chain of violent actions, which usually begin with psychological or economic violence and, over time, develop into more serious violent crimes manifested in physical and sexual violence (98% of respondents).

Alienation in communication between victims and the investigator. The victim's shame and the established perception that violence is a family matter and does not concern outsiders; the guilt; the hope of improving relationships; the fear of the loss of family and children hinder communication.

T.V. Ishchenko argues that 22% of respondents (56 people) said that one of the reasons why they did not report domestic violence to the police was threats and fear of retaliation from the offender (Ishchenko, 2020, p. 94).

3. Lack of awareness of victims about ways to avoid violence, about how to escape from the abuser.

Nowadays, this problem occurs mainly in small towns and villages (18%), where the victims are elderly and disabled (16%) and therefore cannot access the Internet or social services, to the police, or have a negative experience when they were denied help.

4. Lack of evidence. Generally, despite the prolongation of the violence, the victims are not aware of the ways how to record both the violent acts and their traces; fear that the perpetrator will notice or find photographs and videos of their actions.

Many scholars and the case law reveal that the lack of evidence of systematic domestic violence is a significant obstacle to justice.

The Association of Women Lawyers JurFem notes that it seems that one of the mandatory grounds for classifying actions under

article 126-1 of the Code is their systematic nature. However, article 126-1 of the Criminal Code of Ukraine does not contain a note that would explain the phrase “systematic commission of physical, psychological or economic violence”, which leads to that the questions during application of this rule as to the classification of an act under article 126-1 of the CC of Ukraine in the context of “systematic commission”. In particular, in the ruling of the Supreme Court of February 25, 2021, in case 583/3295/19, the court drew attention to the following: “The phrase “systematic commission of physical, psychological or economic violence” describes the actions. A criminal offence is considered completed from the moment of committing of one of 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, the restraining order or in another document. The fact of documentation is important for proof of systematisation, but not more than other legally provided proofs” (Zmysla, 2021).

5. Failure of the victim to recognize psychological or economic pressure as domestic violence. Usually, victims of psychological or economic violence consider themselves to be poorly educated, stupid, etc., so they are sure that the physical or sexual violence was started unexpectedly and had reasons.

For example, according to a study of criminal proceedings, 76% of the victims (mostly women) claimed that the men had married them and provided housing, so they were “demanding”; 22% lived after marriage in the husband and his family’s house, so “had no right” to comment on the domestic situation; 57% of such women had no higher education.

In Ukraine, for a long time, economic violence was not considered as violence at all, and therefore was not discussed or investigated (either from the standpoint of impact assessment or from the standpoint of prevention and counteraction). Moreover, when voicing the problem of domestic violence, instead of receiving support, compassion and understanding of the situation, victims often hear: “This is their personal business”. The situation is further complicated by the fact that significant part of the youth, according to the study (Molchan, 2016, p. 14), do not consider the deliberate deprivation of housing, food, clothing, other property or

money as violence, consequently, there are prerequisites for the further spread of economic discrimination. However, it is the problem of money and its distribution in the family that causes 42% of misunderstandings between the partners (Shakhrai, 2006, p. 30; Botnarenko, 2021, p. 43).

6. Lack of adequate communication and cooperation between units of the National Police and between the police and social organisations such as guardianship and custody agencies, social service centres for families, children and young people, and social rehabilitation centres, medical and social rehabilitation centres, etc.

According to the survey of employees of pre-trial investigation and the prevention units of the National Police, 74% of respondents indicated a low level of such cooperation.

7. Lack of investigation techniques for investigating the general and individual types of domestic violence and for the investigation of criminal offences involving domestic violence. 56% of employees of pre-trial investigation and the prevention units of the National Police say so.

8. Gender stereotypes among law enforcement officials.

O. V. Davydova notes that according to the results of the study by the Ukrainian Centre for Social Reforms on behalf of the UN Population Fund (UNFPA), with the assistance of the Department for International Development of the Government of the United Kingdom of Great Britain and Northern Ireland (UK DFID) revealed a fairly high male tolerance for domestic violence (for example, 18% of respondents justify physical violence in cases of adultery) and their bias against victims of sexual violence, often accused of provoking crimes by their behaviour or way of life (Davydova, 2021:80).

#### 4. Conclusions

The above-mentioned problematic aspects determine the areas of improvement of existing and development of new methods of investigation of criminal offences, such as murder, rape, defilement, etc., but in case if they are committed as a result of domestic violence. After all, the completeness of the available evidence affects the investigator’s success in modelling and understanding of the full picture of the event, that is, what happened and what the reasons of the criminal offence occurred were, what contributed to the formation of criminal intentions.

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## ПРИЧИНИ ВИНИКНЕННЯ ПРОТИДІЇ РОЗСЛІДУВАННЮ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ПОВ'ЯЗАНИХ ІЗ ДОМАШНІМ НАСИЛЬСТВОМ

**Анотація. Мета.** Мета статті – проаналізувати практику розслідування кримінальних правопорушень, пов'язаних із домашнім насильством, визначити та систематизувати проблемні аспекти, що створюють протидію у встановленні всіх обставин події та отриманні доказової інформації.

**Методологія.** Для досягнення мети використано загальнонаукові методи пізнання, такі як аналіз, індукція, синтез, дедукція та моделювання, що своєю чергою дозволило виокремити проблемні

аспекти, що виникають на різних стадіях досудового розслідування, визначити причинно-наслідкові зв'язки, причини їх виникнення та шляхи їх подолання. Використання індукційного методу дозволило встановити повторювальний характер подій, що ускладнюють розслідування і на цій підставі в майбутньому вибудувати напрями подолання протидії. Використання історичного методу дало можливість дослідження процесу формування протидії та створення проблемних аспектів під час досудового розслідування кримінальних правопорушень, пов'язаних із домашнім насильством.

**Результати.** Процес розслідування кримінальних правопорушень, пов'язаних із домашнім насильством, не обмежений розслідуванням лише одного виду злочину, зазвичай це певний ланцюг насильницьких дій, які зазвичай починаються з психологічного або економічного насильства і протягом певного часу переростають у більш тяжкі насильницькі злочини, що проявляються у фізичному та сексуальному насильстві. Наголошено на відсутності належної комунікації та взаємодії як між підрозділами Національної поліції, так і між поліцією та громадськими організаціями, такими як органи опіки та піклування, центри соціальних служб для сім'ї, дітей та молоді, соціально-реабілітаційні центри, центри медико-соціальної реабілітації тощо. Наукова новизна полягає в об'єднанні наукових досягнень та результатів практичної діяльності з питань розслідування та попередження домашнього насильства, яке буде слугувати основою в побудові методики розслідування кримінальних правопорушень, пов'язаних із домашнім насильством.

**Висновки.** Визначені групи основних проблемних питань, що виникають під час досудового розслідування кримінальних правопорушень, пов'язаних із домашнім насильством, дозволяють слідчому визначити ризики виникнення протидії розслідуванню, визначити найбільш оптимальну тактику слідчих (розшукових) дій.

**Ключові слова:** домашнє насильство, розслідування, кримінальне правопорушення, протидія розслідуванню.

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