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ABSTRACT

The armed aggression of the Russian Federation radically changed the life of every Ukrainian, and at the same time led to a number of challenges during the implementation of criminal proceedings on the territory of Ukraine. Therefore, with the aim of bringing criminal procedural activities closer to wartime realities, the Ukrainian Parliament adopted a number of laws aimed at regulating issues of criminal proceedings under the conditions of the state of war, in particular, regarding the specifics of carrying out certain procedural actions based on the decision of the investigating judge.

To what extent are such changes justified, does the scope of rights of people who can potentially become objects of criminal prosecution narrow, how should law enforcement agencies influence the observance of human rights in war conditions, how should the investigator work as a whole, so that the balance of interests is preserved – this is just a small list of questions that arise in today's conditions.

The article provides a systematic analysis of the norms regulating the procedural order of conducting a search under the conditions of state of war. The work analyzes the legislation of Ukraine, the practice of applying domestic legislation, the scientific positions of domestic procedural scientists regarding guarantees of protection of the rights, freedoms and legitimate interests of participants in criminal proceedings during a search. Scientific and practical recommendations have been developed regarding the legal application of provisions regulating the procedural order of conducting a search under the conditions of state of war, which raise questions for practical workers.

Keywords: *investigative (search) actions, search, pre-trial investigation, criminal proceedings, decision of the investigating judge, the state of war, criminal procedural legislation.*

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METHODS, PATTERN AND CIRCUMSTANCES OF DOMESTIC VIOLENCE

Юлія Гришко. СПОСОБИ, ФОРМА ТА ОБСТАВИНИ ВЧИНЕННЯ ДОМАШНЬОГО НАСИЛЬСТВА. У статті розглянуто способи вчинення домашнього насильства; сліди, що виникають після застосування того чи іншого способу та обстановку, у якій відбувається вчинення зазначеного злочину. Окремо розглянуто способи вчинення: фізичного насильства, що полягає у нанесенні тілесних ушкоджень, які можуть призвести до смерті постраждалого, порушення фізичного чи психічного здоров'я, нанесення шкоди його честі й гідності; психологічного насильства, що пов'язано з дією на психіку людини шляхом словесних образ або погроз, переслідування, залякування, якими навмисно спричиняється емоційна невпевненість, нездатність

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захистити себе та може завдатися або завдається шкода психічному здоров'ю; економічного насильства, що полягає в позбавленні людини їжі, одягу та іншого майна чи коштів, на які постраждалий має передбачене законом право, що може призвести до його смерті, викликати порушення фізичного чи психічного здоров'я.

Розглянуто сліди, що виникають при вчиненні домашнього насильства, у широкому розумінні, а саме сліди боротьби: безлад у приміщенні, перекинуті меблі, розбите скло, посуд, розкиданий одяг тощо та у вузькому – як сліди-предмети, сліди-речовини та сліди-відображення. Встановлено, що сліди при вчиненні домашнього насильства можуть бути матеріальними та ідеальними. Ідеальні сліди при вчиненні домашнього насильства утворюються в пам'яті учасників злочинної події. Конкретизовано види означених слідів у співвідношенні до способу вчинення злочину. При аналізі обстановки домашнього насильства встановлено, що до її структури входять місце, час вчинення злочину, морально-психологічні стосунки суб'єктів правопорушення та їх оточення, соціально-психологічне середовище у якому перебуває особа кривдника та впливає на його вчинки, а також соціально-політичне становище у країні. Обстановка пов'язана з іншими елементами криміналістичної характеристики: здатна впливати на вибір способу вчинення правопорушення, виникнення слідів, обрання потенційної жертви тощо. Відомості щодо способів вчинення правопорушення, обстановки та слідів використовуються насамперед на початковому етапі розслідування та дозволяють висувати версії, сприяють виявленню та затриманню підозрюваного.

Ключові слова: домашнє насильство, криміналістична характеристика, способи вчинення злочину, сліди злочину, обстановка вчинення правопорушення.

Relevance of the study. Despite the socio-political conditions in which our country found itself, domestic violence remains a fairly widespread crime. The victims of domestic violence are the most vulnerable and unprotected segments of the population: children, adolescents, women, disabled people, and the elderly. According to the Office of the Prosecutor General, as of November 2022, 1,468 crimes qualified under art. 126-1 of which persons were served with a notice of suspicion in 1202 cases [1]. However, the statistics reflect only the most dangerous forms of domestic violence: bodily harm, harm to health of various degrees of severity, assault, that is, those that cannot be hidden from law enforcement agencies. Considering the peculiarities of the participants of domestic violence, namely: the age of the victims, family and other dependence on the criminals, a significant part of the cases remain outside the attention of law enforcement agencies. In the methodology of investigation of domestic violence, considerable attention is paid to the forensic characteristics, in particular to such elements as the methods of commission, trace pattern and setting. The information that makes up the content of these elements is used, first of all, at the initial stage of the investigation to establish the identity of the criminal and the mechanism of the crime.

Recent publications review. Development of methods of investigation of certain types of criminal offenses such scientists as: Y. Alenin, V. Bakhin, V. Bernaz, V. Veselsky, A. Volobuev, V. Galagan, A. Ishchenko, N. Karpov., N. Klymenko, V. Kolesniknik, A. Kolesnichenko, V. Konovalova, V. Kuzmichev, V. Lisichenko, V. Lukashevich, E. Lukyanchikov, D. Nikiforchuk, O. Odery, I. Pyrih, M. Pogoretsky, A. Sainchin, M. Saltevsy, M. Segay, D. Sergeyeva, R. Stepanyuk, V. Tishchenko, L. Udalova, P. Tsimbal, K. Chaplinsky, S. Chernyavsky, V. Shepitko, M. Shcherbakovsky and other scientists. However, insufficient attention was paid to the development of a forensic characterization of domestic violence in their works.

The article's objective is to determine the methods, corresponding traces and circumstances of domestic violence, based on the analysis of the opinions of scientists and the data of judicial and investigative practice,

Discussion. A sign of family violence is the presence of moral, physical or mental damage to the health of a family member caused by illegal acts. Domestic violence, according to Art. 126-1 is a deliberate systematic commission of physical, psychological or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of work capacity, emotional dependence or deterioration of the victim's quality of life [2].

From the content of the specified article, the following types of domestic violence can be distinguished: physical – intentional infliction by one family member of another family member of beatings, physical injuries that may lead to or have led to the death of the victim, violation of physical or mental health, causing damage to his honor and dignity; psychological, which is related to the action of one family member on the psyche of another family member through verbal insults or threats, harassment, intimidation, which intentionally causes emotional

insecurity, inability to protect oneself and may cause or is causing damage to mental health; economic – deliberate deprivation by one family member of another family member of housing, food, clothing and other property or funds to which the victim has a legal right, which may lead to his death, cause a violation of physical or mental health.

There are the following ways of physical violence in the family: 1) use of coercion and threats: expressing threats and causing harm to health; a threat to leave the victim, to commit suicide, to leave without means of subsistence; forcing the victim to withdraw the accusations; forcing the victim to commit illegal acts; 2) intimidation: look, actions, gestures; breaking things; destruction of the victim's property; violence or killing of domestic animals; intimidation with a weapon; 3) use of emotional violence: underestimation of the victim's self-esteem; calling the victim names; making the victim think they are crazy; humiliation of the victim; making the victim feel guilty; 4) application of isolation: control of the victim's actions, his movements and surroundings; control of what the victim reads; limitation of the victim's social activity; 5) reduction, denial and blame: simplifying the problem of violence and refusing to take seriously the concerns of the victim; making a statement that violence did not occur; shifting responsibility for one's violent behavior to the victim; making statements that the victim is to blame; 6) using children: making the victim feel guilty because of the child; using children to transmit messages; using the child's visitation to annoy the victim; threat to take away children; 7) the use of male superiority: treating the victim as a servant; single-handedly making all important decisions; the behavior of the "lord of the castle"; definition of female and male roles; threatening to kill or harm children; 8) use of economic violence: preventing the victim from getting a job or staying at work; forcing the victim to ask for money; failure to provide monetary assistance to the victim; taking the victim's money; hiding from the victim information about family income and limiting access to these funds [3, p. 32-33]. The method of committing a criminal offense is a central element of the forensic characterization of any criminal offense, including domestic violence. Based on the study of the materials of investigative and judicial practice, it is necessary to note the need to expand the list of methods of domestic violence determined by scientists, taking into account the individual characteristics of the victim, his individual psychological and physiological traits.

In the system of elements of the forensic characteristics of any type of crime, the trace picture is an element that combines the setting and method of committing a criminal offense and indicates the characteristics of the person who committed it. Traditionally, in criminology, traces are understood in a broad sense, as changes in the environment, state, and appearance of objects that occur as a result of the commission of a crime, and in a narrow sense, as materially fixed reflections of the external structure of some objects on others. Traces in a broad sense can include both material and ideal (imaginary image in people's minds) reflections of actions, phenomena, objects, animals, people [4, p. 103; 5, p. 19]. The concept of "trace pattern", according to M. Saltevsii, includes ideal reflections and material traces, as sources of visible and invisible, projected traces that were formed at the time of the commission of the crime [6, p. 420].

When domestic violence is committed, traces in the broadest sense are traces that appeared during possible resistance of the victim, namely, traces of a struggle: a mess in the room, overturned furniture, broken glass, dishes, scattered clothes, etc. Traces in the narrow sense in forensics are traditionally divided into three groups: object traces, substance traces and reflection traces. Objects left in the case of domestic violence can be: torn, cut clothes of both the suspect and the victim, torn off buttons, tools of the crime, for example, with which bodily injuries were inflicted: knives, sticks, household objects (hammer, ax, screwdriver, rolling pin, etc.). Typical traces of domestic violence are traces of contact interaction: traces of resistance on the body of the suspect and violent actions on the body of the victim: bruises, wounds, bites, skin tears, sores, fractures, layering of various substances, burns, torn clothes on the victim, hematomas on the hands, face, neck, hips, etc.

Physical traces of domestic violence are, as a rule, traces of biological origin, which can remain on the body and clothes of the victim or suspect, as well as on objects of the surrounding environment: instruments of the crime, the floor, walls, furniture. These are, as a rule, traces of blood or saliva or microparticles of these substances. Traces of reflections remain on objects of decoration. These are traces of papillary patterns of hands (sometimes bloody) on instruments of violence, objects of decoration; traces of bare feet, socks or shoes on the floor; traces of tools used for violence on furniture. Such traces can be used in the future when the offender denies his presence in a certain place.

We agree with T. Ishchenko, who notes that material traces also arise when economic

violence is committed. First of all, they are formed in the context of domestic violence, for example, damaged property by arson, broken windows, gutted front doors and furniture, broken dishes, scattered things, lack of food, children's toys, mess, unsanitary conditions, lack of heating during the heating season, etc. In addition, such traces can be reflected in the appearance of the victim: dirty clothes, clothes that are out of season, out of size, neglected, sickly appearance [7, p. 58].

Ideal traces of domestic violence are formed in the memory of the participants of the criminal event. They can be the suspect, the victim, witnesses from among relatives, acquaintances or, more rarely, outsiders who happened to be at the scene of the incident. Ideal traces can contain information about the course of events, a description of the suspect, the instrument of the crime. The traces of committing psychological violence are formed in the consciousness of the victim and can be reflected in his psychophysiological reactions, manners of behavior, emotions, and also affect the mental state of a person. Information about the traces of domestic violence is necessary, first of all, at the initial stage of the investigation to determine the correct classification of the offense and the involvement of a specific person in the commission of the crime.

An important element of the forensic characteristics of a criminal offense is the situation in which it is committed. The circumstances of the commission of a crime are understood to mean a system of various interacting objects, phenomena and processes that characterize the place, time, natural and climatic, industrial and household, material and other environmental conditions before and at the time of the commission of the crime, as well as individual factors of objective reality, which determine the conditions, the possibility of committing and some other circumstances of the crime [4, p. 352].

Establishing the event of a criminal offense and the person who committed it most often begins with the analysis of the situation. The assessment of the situation allows obtaining data on the conditions and factors that immediately preceded the crime, interacted with each other, and influenced the course of the act; which of the elements of the situation were prepared by the offender, and which did not depend on him; which of them prevented or contributed to the preparation, commission and concealment of the crime; who could take advantage of the situation at a certain moment. The circumstances of the commission of a criminal offense in many ways adjust or even determine the choice of the method of its commission, affect the mechanism of activity. In the environment, certain important personal traits of the offender are revealed, which partially or completely forms the given environment and adapts to it.

To the structure of the situation of a criminal offense, V. Tishchenko includes the temporal and spatial characteristics of its stages; natural and climatic conditions; the material conditions for the preparation, commission and concealment of the crime; the behavior of event participants and the relationship between them; conditions of the criminal event; circumstances contributing to or hindering the offense [8, p. 88]. In turn, V. Dintu includes the material, microsocial, and moral and psychological environment in the structure of the situation of a criminal offense [9, p. 14].

By analyzing the materials of criminal proceedings, we found that the structure of the situation of domestic violence should include the place and time of the crime, the moral and psychological relations of the subjects of the offense and their environment, the social and psychological environment in which the perpetrator is located and influences his actions, and as well as the socio-political situation in the country.

The place of domestic violence is determined by the very concept of "home", which should be understood, first of all, as the place where the perpetrator and the victim live together. Such a place can also be the place of residence of either the criminal or the victim, if they do not live together. For example, when violence occurs between relatives or between former or current spouses, or other persons who lived together in the same family, but were not in a family relationship or married to each other. According to the research of T. Ishchenko, the place of domestic violence is the same as the place of cohabitation of the perpetrator and the victim in 50,7 %, the place of residence of the perpetrator that is shared with the victim – in 39,7 %, according to the place of residence of the victim – in 8,9 %, relatives, neighbors to whom the offender visited – in 0,9 %, in public places (store, railway station, medical institution, on the street, river, etc.) – in 2,6 % of cases [7, p. 56].

Our research of materials of criminal proceedings and court practice found that domestic violence is committed in the following places: where the offender and the victim live together – 77 %; residence of the victim, if he lives separately – 11 %; residence of the offender, if he lives

separately – 2 %; residence of relatives, acquaintances, neighbors with whom the participants ended up together – 6 %; in public and places of joint recreation (shop, street, bar, restaurant, in the forest, on the river, etc.) – in 4 % of cases. In terms of time, domestic violence is committed most often in the evening from 6 to 11 p.m. (62 %), and on weekends and holidays – during the day, which is explained by the common location of the victim and the perpetrator at these times. For the same reason, most of the crimes in question are committed during cold seasons (late fall, winter, and early spring), when weather conditions force people to stay indoors.

The moral and psychological relationships of the perpetrators and their environment have a significant impact on the perpetration of domestic violence. Domestic violence is characterized by the appropriate environment in the family, built on unfriendly relations between its members, which can be the result of various circumstances, in particular, the lack of funds to fully obtain the necessary material support: clothing, food, satisfaction of cultural needs. As a result, there are mutual accusations that lead to violent actions. Conflict situations between the criminal and the victim can arise both suddenly and be the result of long-term hostile relations. In any case, there is a significant role of the victim's behavior in creating conditions conducive to the commission of an offense. Sometimes the victim's behavior is thoughtless, immoral and illegal. The analysis of the data of judicial and investigative practice shows that at the time of committing family violence, about 30 % of the victims were intoxicated and drank alcoholic beverages together with the criminals, about 10 % of them were the initiators of insults and fights and ultimately contributed to the commission of the crime.

Another component of the situation is closely related to family relationships – the social and psychological environment in which the offender is located and which influences his actions: the immediate family environment at the place of residence, study or work, friends with whom a person spends his free time. Especially if immoral traditions are widespread in such places: debauchery, drunkenness, drug use, propensity for violence, cruelty, etc. It is common knowledge that during the consumption of alcoholic beverages and drugs, individuals use profanity, their communication is accompanied by conflicts and fights. In addition, the perception of impunity and the permissibility of violent actions to resolve conflicts has spread among certain sections of the population. This is facilitated by mass media propaganda of the cult of violence and cruelty, racial, national or religious intolerance and discrimination, sexual depravity, debauchery. Such information can encourage violent crimes because it carries stereotypes of behavior [10, p. 275].

In the case of domestic violence committed by a minor or a person under the age of 25 in relation to the elderly, it is necessary to consider the shortcomings of his upbringing, which contributed to the formation of an aggressive and violent orientation of a person's character, which is formed in childhood and adolescence. R. Blaguta notes the following factors of aggressive behavior of teenagers: upbringing in the family and in the education system, where aggression can be encouraged, facilitated and provoked; peer group influence, in particular, informal youth associations; the influence of youth subculture; the influence of mass communication and computer technologies, etc. [11, p. 8]. Demonstration of brutality and violence on television also has a negative effect on young people, who as a result become more cruel to others, lose compassion for others. The consciousness of young people is also affected by information from the Internet with the demonstration of fragments of cruel treatment among peers, scenes of bullying in which peers humiliate their friends, cause them bodily harm.

Conclusions. As a summary, it can be noted that we have considered the components of the situation, which are interconnected. The situation is also related to other elements of forensic characteristics: it can influence the choice of the method of committing an offense, the appearance of traces, the choice of a potential victim, etc. Information on the methods of committing the offense, the situation and the traces are used primarily at the initial stage of the investigation and allow to put forward versions, contribute to the detection and arrest of the suspect.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article discusses ways of committing domestic violence; traces arising after the use of one or another method and the environment in which the specified crime is committed.

The methods of committing: physical violence, which consists in inflicting bodily injuries that can lead to the death of the victim, violation of physical or mental health, damage to his honor and dignity, are considered separately. Psychological violence, which is related to the effect on the psyche of a person through verbal insults or threats, harassment, intimidation, which intentionally causes emotional insecurity, the inability to protect oneself and may cause or is causing damage to mental health; economic violence, which consists in depriving a person of food, clothing and other property or funds to which the victim has a legal right, which can lead to his death, cause a violation of physical or mental health.

Traces of domestic violence are considered in a broad sense, namely, traces of struggle: a mess in the room, overturned furniture, broken glass, dishes, scattered clothes, etc. It has been established that the traces of domestic violence can be material and ideal. Ideal traces of domestic violence are formed in the memory of the participants of the criminal event. The types of identified traces are specified in relation to the method of committing the crime.

When analyzing the situation of domestic violence, it was established that its structure includes the place and time of the crime, the moral and psychological relations of the subjects of the offense and their environment, the social and psychological environment in which the offender is located and influences his actions, as well as the socio-political situation in the country.

Keywords: domestic violence, forensic characteristics, ways of committing the crime, traces of the crime, the circumstances of the crime.

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THE IDENTITY OF THE CRIMINAL AS A KEY ELEMENT OF THE CRIMINAL CHARACTERISTICS OF OFFENSES REGARDING FORGERY OF COVID DOCUMENTATION

Юрій Харкевич. ОСОБА ЗЛОЧИНЦЯ ЯК КЛЮЧОВИЙ ЕЛЕМЕНТ КРИМІНАЛІСТИЧНОЇ ХАРАКТЕРИСТИКИ ПРАВОПОРУШЕНЬ ЩОДО ФАЛЬСИФІКАЦІЇ КОВІД-ДОКУМЕНТАЦІЇ. В науковій статті зосереджено увагу на одному з таких елементів криміналістичної характеристики як особа злочинця під час розслідування правопорушень за фактами підроблених ковід-документів. Проаналізовано особи злочинця через сукупність даних про соціально-демографічні, психофізичні, психологічні, біологічні і інші особливості суб'єкта, його виробничу, побутову, соціально-правову характеристики.

Зазначено, що особа злочинця представлена не тільки медичним персоналом, керівниками закладів охорони здоров'я, а й громадянами, які працюють у лікарнях на немедичних посадах або не мають відношення до медичної сфери, та діють через Інтернет самостійно або у змові з лікарями, медичними сестрами тощо. Наголошено, що у більшості випадків протиправні дії вчиняються у співучасті – групою осіб за попередньою змовою або організованою групою. Доведено, що криміналістичне дослідження особи злочинця у кримінальних провадженнях, пов'язаних із фальсифікацією ковід-документації, дозволяє встановити кореляційні зв'язки між іншими елементами криміналістичної характеристики (способом, місцем, часом, тощо) та повинно враховуватись для розкриття та попередження правопорушень. Акцентовано на взаємодії слідчих, оперативних підрозділів з відділами боротьби з кіберзлочинністю. Всі зазначені досягнення підтверджуються статистичними даними та практичними прикладами.

Ключові слова: пандемія, коронавірус, заклади охорони здоров'я, ковід-сертифікати, особа злочинця, криміналістична характеристика, підробка документів.

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