

The influence of mitigating and aggravating circumstances on the application of criminal responsibility for family violence against a person

Galyna Didkivska,

Doctor of Law, Professor,
professor of the Criminal Department
Law and Process of the
State University of Ukraine,
<http://orcid.org/0000-0003-1714-4804>

Dmytro Shevchenko,

Doctor of Law, Professor of the Criminal
Department of Law and Process of the
State University of Ukraine,
<http://orcid.org/0000-0002-7891-3331>

Abstract. The article indicates the presence of mass violent behavior in society, which is largely determined by family relations. It is noted that the causes of violent crimes are rooted, as a rule, in social conflicts manifested at various levels of society, primarily in the family and domestic sphere.

The social environment at the macro-level of socio-economic factors that have an impact on the change in crime, numerous criminological studies indicate the state of family and domestic relations. The weakening of the role of the family in the formation of a minor, the reduction of its educational function as a result of the disintegration of the family, the absence of one of the parents, the occurrence of conflictual, criminogenic situations in the family - all this negatively affects the dynamics of crime.

The study analyzes the question of whether mitigating and aggravating circumstances for criminal offenses of family violence against a person will have an impact on the final type and degree of punishment.

Emphasis is placed on the criminogenic nature of the family institution today, during the war, which contributes to the formation of intra-family aggressiveness. The situation is also complicated by the fact that the use of mitigating circumstances in family conflicts is still not given much attention in our country. In the familistic specialist literature, the insufficiency of the development of the problem of the formation of marital tolerance, ways and methods of its upbringing of the personality of minors is noted. Which, in turn, reduces the possibility of releasing such persons from criminal liability.

Keywords: criminal responsibility, violence, person, criminal offense, crime, family conflict, mitigating, aggravating circumstances, sentencing, criminogenic factors, determinants, self-serving, violent crime.

Self-interested orientation, in professional literature, is understood as the tendency of an individual, manifested in certain life situations, to criminal behavior: law-abiding citizens do not have such motivation; the criminogenic contingent has a different degree of negative motivation, is attributed to different objects, volumes and forms of illegal activity (Danziger, Sheldon H., & Daniel H. Weinberg, 1994).

The question arises whether the mitigating and aggravating circumstances of criminal offenses for family violence against a person will have an impact on the final type and degree of punishment.

In most cases, the economic instability of the state provokes the commission of a self-interested and violent crime, which is a consequence of the interaction of self-interested orientation and violence against a person with a life situation, which in turn provokes the illegal influence of violent orientation. The self-interested motivation of the individual is inherent, in most cases, to embezzlers, thieves, swindlers, robbers, corruptors and other criminals and is formed under the influence of criminogenic determinants in various spheres, including against the person. But it is precisely in family relationships that there may be such circumstances that can affect the type and extent of punishment and criminal liability in general.

Relevance of the research topic. We consider, for today, research on the application of mitigating and aggravating circumstances to criminal offenses of family violence against a person and self-interested crime as a determinant of family violence against a person. Such questions are quite relevant, since it is necessary to take into account the

fact that Ukraine is currently in a state of war. And it is precisely such factors that create the material prerequisites for those social institutions whose activities are related to the education, upbringing and formation of a separate personality, which form a violent orientation against a person and give rise to the issue of taking into account mitigating and aggravating circumstances in criminal offenses for family violence against a person.

Analysis of the latest research. A significant contribution to the development of scientific research on issues of selfish crime as a determinant of family violence against a person and the use of mitigating and aggravating circumstances in criminal offenses related to family violence against a person at the national level is sufficiently widely covered in the works of domestic scientists, among which the works of V V. Golyny, B. M. Golovkina, O. M. Juzhy, G.V. Didkivskaia, O. O. Dudorova, A. I. Dolgova, A. P. Zakaluk, M. P. Karpushyna, M. Y. Korzhanskyi, O. V. Kozachenko, O. G. Kulyk, P. S. Matyshevsky, P. P. Mykhaylenko, M. I. Melnyka, Yu. B. Melnikova, A. A. Muziki, V. O. Navrotskyi, Yu.V. Nikitina, V.V. Topchiya, and others.

Presenting main material. We can agree that the main thesis in criminology is about the impact of selfish crime on the individual. The selfish motivation of criminals is largely determined by the attitudes that prevailed in family relations, where the contradictions between the needs of material support and the possibility of their satisfaction were discussed, what gave rise to criminogenic desires to be at the level of successful families, what formed selfish motivation in all family members of different ages.

As we can see, the self-interested orientation of the institution of the family forms the determinants of self-interested crime, interacting with criminal behavior, as a result, family violence against a person occurs. This relationship can be traced at all levels traditionally considered in criminology: the macro level - the general social level, the medium level - the immediate environment, the micro level - the individual.

Analyzing all the above-mentioned levels, it is worth noting that the general social level is complicated by the fact that at this level social phenomena of a domestic nature are not as open to direct analysis as phenomena in small social groups. However, the study of moods prevailing in society, public opinion, socio-psychological atmosphere, political and legal satisfaction and other mass phenomena is relevant and possible.

We can also agree with the fact that at the second level, the question of the social heterogeneous quality of the population, material satisfaction/dissatisfaction, which are discrepancies between social rules of behavior and their actual implementation, is investigated. The impact of these phenomena on criminal behavior, family violence and their impact on violence against the person. As already mentioned, to a large extent, it is the family that generates attitudes towards material and spiritual goods.

To date, the war with the Russian Federation has shown the problem of our society regarding the gap between people's provision of material resources, privileges, access to services, prestigious positions, and opportunities for recreation. It also showed a corresponding difference between their families, which is observed by the younger generation. The understanding of the well-being of a small group is to a certain extent formed thanks to the way of family organization of the people who are part of it. This understanding of the reference group is carried out collectively in the circle of one's own family, that is, again in the family sphere, through the prism of family perception. A certain dissatisfaction of part of the family with its position and opportunities in the field of consumption is generated in the process of observing successful families. It is from this that the criminal motivation for violence against a more successful person is formed, and the criminal way of consumption can also occur in the field of family education, since it is in the family that the state of social and legal behavior and the expediency of its observance are openly assessed in view of the achievement of criminal enrichment.

In modern society, it is observed that in a large part of families, the material prevails over the spiritual. From historical sources, we see that spirituality cannot appear on the same place, development involves a certain way of life and not one generation.

First of all, it affected the desire to get material benefits as soon as possible in any way, even criminal. So, it is obvious that the struggle for a new status begins with material resources: money, the order in society, obtaining benefits through the use of violence. The aggravation of the situation simultaneously leads to a misunderstanding of what justice is. These issues, on the other hand, are burdened by the war in our country.

In addition to the provisions discussed above, the decline in well-being, poverty, impoverishment and self-interested determinants of the institution of the family are directly related to the formation of self-interested orientation at the general social level, the achievement of such a goal is violent in nature, which is also related to the process of alcoholism as a socially negative phenomenon that also generates violence against a person.

It is also worth emphasizing the relationship between the criminogenic factors of the family institution and the totality of criminal offenses committed by family members against a person during the war period. A significant part of self-serving violent criminals, those who in most cases are negatively influenced by close people.

Criminological studies of families of juvenile criminals (as small social groups) who have committed criminal offenses against a person of a violent orientation make it possible to compile a list of some determinants of their self-interested and violent orientation related to the family sphere: 1) imbalance between the spiritual and material needs of the family; 2) presence of one of the parents; 3) alcoholism in the family; 4) selfish motivation of adult family members.

In domestic science, violent and desocializing families have been treated somewhat in isolation for a long time. Conflict families were studied mainly in connection with the problem of family disintegration, the commission of criminal offenses against family members; criminogenic families were studied in a broad sense of educational tasks. Today, the relationship between these two varieties needs a clearer definition, taking into account the problems that the war with the Russian Federation revealed.

Criminology considers family criminogenicity in two aspects: as one of the determinants created by the family in terms of adverse influence on the personality of a minor and as a situation of committing a criminal offense. The criminogenic family, antisocial effect of desocialization can manifest itself in criminogenic acts of a violent nature.

In its essence, violence consists in the confrontation of opposite personal positions. It is based on a contradiction that has an objective component and a subjective expression. In turn, the contradiction between people becomes a conflict with signs of violence, when it was previously hidden or hidden is exposed. We can agree that violence, from the point of view of its individual focus on a specific person or several persons, can perform the function of mental relief. Manifesting aggression as a need to relax the psyche, or as a result of the influence of external circumstances unrelated to it, then the projection of violence from the outside takes place.

Currently, there is a question about the essence of family violence against a person and its causes. origin. Based on the above, it is worth noting that the essence of family violence is non-acceptance of opposing positions of family members. The reason for the conflict is the contradiction between them. In this case, the task is to find relevant contradictions, to find out their hierarchy. In family contradictions, the personal collides with the personal, and the personal with the group. They are determined by the very fact of joining a family of several people whose interests cannot completely coincide. As long as the institution of the family exists, there have been and will be family disagreements for the same amount of time. They are sources of family development, both towards improvement and adaptation to new social conditions, and, under known circumstances, towards its destruction. The result of the clash of family contradictions is ultimately determined by the historically determined strength of the family at a specific stage of society's development. In other words, the probability of improving family relations with the help of family conflict is higher, the stronger people's need for maintaining family relations. Conversely, the probability of family destruction through family conflict is inversely proportional to the degree of interest of its members in preserving the family. As a general rule, the interest of all or individual family members in continuing relations, despite the conflict situation, is a stabilizing factor. At the same time, efforts aimed at preserving the family, with sufficient intensity or duration of interpersonal conflict, prolonging the acute conflict, may contribute to the commission of a crime. The sociology of family relations has accumulated material on the basis of which it is possible to judge the essence of family, mainly marital, collisions that cause conflicts between family members. At the same time, bringing the results of numerous studies into a single scheme of conflict-producing contradictions is complicated by the circumstance already noted above, namely, the fact that the authors of these studies, explaining family conflict with the action of all kinds of factors, either did not consider the sources of conflicts at all from the point of view of the contradictions of family life, or did so not consistent enough. In the studied families, in which intentional murders of one of the spouses were committed, the basis of the conflict was the opposing views of the spouses on the following important moments of married life: premarital and extramarital sex life; struggle for supremacy in the family; consumption of alcoholic beverages; housing issue (Danziger, Sheldon H., & Daniel H. Weinberg, 1994).

Scientists who have studied hooliganism, grievous bodily harm, and attempted murder committed by criminals against their family members include the following as the most typical contradictions within the family that influenced the commission of the

crime: 1) difficulties in adapting one of the spouses to the conditions of joint life, in which a new family should develop; 2) reluctance to admit relatives of one and the other spouse into the newly created family; conflict of interests, needs, value orientations of spouses; 3) supremacy of one of the spouses, which is imposed on other family members; 4) loss of interest of one of the spouses in the other; mutual loss of spouses' interests in each other; 7) low moral level of spouses; 8) negative moral and psychological restructuring of one of the spouses, as a result of which he gets involved in drunkenness and other immoral acts; 9) manifestation in relations with family members of irritation arising from disorder at work (Triest, 1998).

As criteria for the classification of conflict-producing family contradictions, it is possible to propose a type of family relationship along which the conflict develops (marriage, kinship, property) and is based on a disagreement, for example, regarding marital fidelity, budget allocation, child rearing, etc.

Previously, there was a well-founded opinion that the family is a system and that it is possible to use the methodology of system analysis in its study. A systemic approach to family relationships and their states, such as family or marital conflict, provides a deeper understanding of these phenomena, compared to a causal explanation. The application of system analysis creates prerequisites for modeling family relations, based on modeling it is possible to forecast the prospects of this family and the results of the development of family conflict (Brigitte et al., 1998).

As in any system, in the «family» system there are factors that form and support, as well as factors that disorganize and destroy. The former are reflected in the need to unite in a family, the latter in individual needs, the satisfaction of which will agree with the similar needs of other family members. The importance of interpersonal contradictions is actualized when the system of forming factors is weakened. The intensity of people's need to join families is determined by various factors and is ultimately determined by the conditions of social development. The inconsistency of family relations is based on the weakening of this need, which, in turn, is the condition that interpersonal relations make themselves felt. There is also an inverse relationship between family conflicts and the stability of the family as a whole. A closed circle will be formed, insufficiently strong need in the family contributes to the exposure of contradictions, and the clash of contradictions leads to further disorganization of the family. The negative orientation may initially come from one of the family members, who is less interested in its preservation than the other. This person does not want to sacrifice personal interests for the interests of other family members, which causes a corresponding reaction. Family conflict is both a factor in discordance between family members and a consequence of discord (Osberg, Lars, & Kuan Xu., 2000).

Family conflict and violent overcoming of it forms a violent orientation in minors and encourages them to commit violent crimes.

Violent orientation is a socially determined tendency of an individual to manifest violence against another person (persons), which, in interaction with a criminogenic situation, gives rise to the commission of a violent crime. It is the most essential, generalizing characteristic of the personality of a violent criminal. Violence can be both a means of achieving a criminal goal and an end in itself. As a means, violence is more often used by criminals of an «intellectual» plan, who commit a crime not due to their inherent intemperance, but under the influence of a criminal idea, usually of a selfish nature. Among them, there are few people who are characterized by primordial cruelty and a tendency to solve life's problems with the help of aggression. In this case, the criminal is preceded by self-inspiration, aimed at overcoming the limit of pity and regret.

As criminological studies show, criminal aggression, which consists in the desire of an affected minor, who is desperate, to prove his superiority (or at least equality), morally and physically destroy a successful competitor or, at least, cause damage to his health and property. With such mutual aggression, it is very difficult to determine the presence of mitigating circumstances.

According to most scientists, violent orientation can be characterized as a certain determination to end conflicts in an aggressive way. At the heart of the reproduction of violent orientation are contradictions between different population groups. With this development of events, on the contrary, as a rule, there are aggravating circumstances.

The presence of mass violent behavior in society is largely determined by family relationships. The causes of violent crimes are rooted, as a rule, in social conflicts that break out at various levels of society, primarily in the family and everyday life.

The social environment at the macro-level of socio-economic factors that have an impact on the change in crime, numerous criminological studies indicate the state of family and domestic relations. The weakening of the role of the family in the formation

of a minor, the reduction of its educational function as a result of the disintegration of the family, the absence of one of the parents, the occurrence of conflictual, criminogenic situations in the family - all this has a negative effect on the dynamics of crime.

The criminogenic nature of the family institution today, during the war, contributes to the formation of intra-family aggressiveness. The situation is also complicated by the fact that the use of mitigating circumstances in family disputes is still not given much attention in our country. In the familistic specialist literature, the insufficiency of the development of the problem of the formation of marital tolerance, ways and methods of its upbringing of the personality of minors is noted. Which, in turn, reduces the possibility of releasing such persons from criminal liability.

References:

- Buhmann, Brigitte, Lee Rainwater, Guenther Schmaus, & Timothy M. Smeeding. (1998). Equivalence Scales, Well-Being, Inequality, and Poverty: Sensitivity Estimates Across Ten Countries Using the Luxembourg Income Study (LIS) Database
- Danziger, Sheldon H., & Daniel H. Weinberg. (1994). The Historical Record: Trends in Family Income, Inequality, and Poverty. Wisconsin: Weinberg. Russell Sage Foundation
- Osberg, Lars, & Kuan Xu. (2000). International Comparisons of Poverty Intensity: Index Decomposition and Bootstrap Inference. The Journal of Human Resources
- Triest, Robert K. (1998). HasPoverty Gotten Worse? – Washington: Journal of Economic Perspectives