

Persecution as a Socially Dangerous Phenomena in Ukraine

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ABSTRACT

Fairly large number of researches have been surveyed on domestic violence. It is known that both men and women use physical and psychological violence, but despite this, law enforcement practice is surprisingly more focused on protecting women. If the issue of violence is more or less clear, and the state responds to it ex post facto, there is another much more complicated issue when the victim is already in a depressed state, but formally, no criminal or administrative offenses have been committed against her. Moreover, statistics represents an increase of threats among population. Examining the experience of foreign countries, it is obvious that this type of socially dangerous act is criminally punishable in different countries. Thus, the article is devoted to persecution as a mental influence on the will of a person. The Ukrainian legislation that indirectly concerns persecution, namely Art. 173³ of the Code of Ukraine on Administrative Offences, the Art. 126¹ of the Criminal Code of Ukraine. It is proposed to criminalize the Art. 146² of the Criminal Code of Ukraine "Persecution" where it's justified the need to ensure a high level of protection of the rights, freedoms and interests of citizens, including the protection of persons from negative psychological pressure. It's also provided the edition of the Art. 146² of the Criminal Code of Ukraine "Persecution" and amendments to the law on criminal liability in this edition are substantiated.

Keywords: *persecution, mental influence, intimidation, liability, threats*

1. INTRODUCTION

Modern researchers note that an increase of the volume and intensity of criminal threats in Ukraine since the end of the last century, alongwith other factors, have led to a decline in humanitarian values in the public consciousness and distortion of proper human relations. These processes negatively affected the state of morality of the Ukrainian society, distorted the socio-psychological matter of society.

We suppose that in the process of solving the issue of this research it is important to focus on the problems of non-criminalized (partially criminalized) mental violence, without diminishing the importance of problems related to criminal law assessment of criminal offenses [1], the way (means) of which, according to the letter law, may be mental violence. Moreover, many works are devoted to the latter in national jurisprudence, namely R.Sh. Babanli, Yu.V. Baulin, P.A. Vorobey, L.D. Gaukhman, N.O. Huturova, O.L. Hurtovenko, V.K. Hryscchuk, V.H. Hromov, V.P. Yemelyanov, I.E.Zhdanova, Z.A. Zaginey, V.H. Zaripov,

A.F. Zelinsky, V.V. Kalugin, O.O. Kvasha, O.I. Korobeev, G.M. Kulchiy, V.M. Kudriavtsev, V.A. Myslyviy, A.A. Musika, E.S. Nazimko, M.I. Panov, A.O. Pinaev, Yu.Ye. Pudovochkin, R.A. Sabitov, O.Yu. Sabitova, L.V. Serdyuk, V.Ya. Tatsiy, O.M. Hramtsov, R.D. Sharapov, M.D. Shargorodsky, the aspects of criminological analysis were considered in the works of Yu.M. Antonyan, A.B. Blaga, A.V. Boyko, O.G. Kolb, I.M. Kopotun, T.V. Kornyakova, O.Y. Korystin, O.M. Kostenko, O.H. Kulyk, V.V. Luneev and others.

2. THE PURPOSE OF THE ARTICLE

Particular attention in this perspective will lead to better understanding of the general problem of mental violence in Criminal Law, marking "rough edges" and highlighting the disadvantages of Criminal Law regulation. Thus, as it was already mentioned, among the insufficiently clearly defined manifestations of mental violence in the content of the Ukrainian criminal legislature are some forms of persecution, property and other threats, some types of blackmail, and the so-called

prolonged mental violence. Let us turn to these types of mental influence on the individual as persecution (stalking) which is a relatively new phenomenon for national theory and practice. And although, as some practitioners with extensive experience in Soviet Union times point out, it had happened that citizens could complain to law enforcement agencies with allegations of persecution (harassment), these cases were the exception rather than the rule, and sometimes even their statements about the persecution were fictional. In modern Ukrainian conditions, obsessive persecution is a quite common feature. At the same time, the experts emphasize that the lack of proper attention to this problem is rather due to conceptual disregard for such categories as "freedom, honor and dignity" and the lack of such a phrase in the lexicon of a modern lawyer (especially a practicing lawyer) as "quality of life" [2, p. 170].

3. THE MAIN MATERIAL

Criminal law of a number of foreign countries such as Austria, Australia, Belgium, Great Britain, Germany, Holland, India, Italy, Canada, France, Japan and others recognizes obsessive (moral) persecution as a criminal offenses with varying degrees of details.

According to the research of the US National Institute of Justice, stalking as a form of domestic violence is traditionally expressed in consistent (systematic) behavior directed at a particular person, which includes repeated (two or more times) physical or mental incoherent actions, or direct and also indirect oral and written threats (possibly a combination of them) that cause fear of the victim [3].

Researchers underline that one in thirteen men and one in four women are the victims of stocking in the United States each year. The same situation occurs in Austria [4; 5; 6, p. 523].

These figures indicate the high prevalence of criminal offenses related to persecution. The Ukrainian criminal law in terms of protection of the individual from mental persecution lags significantly behind foreign ones. Only certain manifestations of threats and obsessive persecution may constitute criminal offenses, the responsibility for which is established in Art. 120 CC, 129 CC, 126¹ CC, 154 CC, 151² CC, 182 CC, 195 CC [7].

Turning directly to the responsibility for persecution, it's necessary to emphasize that some articles are reflected in the Ukrainian legislation in Administrative and Criminal law, which we will compare and develop our proposal to criminalize this act.

In the Ukrainian legislation in Art. 173³ of the Code of Ukraine the liability for committing persecution is provided, but in the context of domestic violence, however, in our opinion, persecution has a rather broad

meaning, which goes beyond domestic violence, so it is necessary to consider it more detail. Thus, the mentioned article Committing domestic violence, gender-based violence, that is the intentional commission of any act (action or omission) of a physical, psychological or economic nature that has not caused bodily harm, threat, insult or **persecution**, deprivation of housing, food, clothing, other property or funds for which the victim has statutory law, etc.), as a result of which the physical or mental health of the victim may have been or was harmed, as well as non-compliance with the urgent injunction by the person against whom it was issued, or failure to notify the authorized units of the National Police of Ukraine in the case of such on the prescription [8].

However, liability for domestic violence is provided in the law of Ukraine on criminal liability, as in Art. 126² Domestic violence, ie intentional systematic 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 working capacity, emotional dependence or deterioration of the quality of life of the victim [7]. As we see in comparison with the administrative responsibility of persecution, as well as insult is not provided in the Criminal Code. The question arises whether these concepts have no signs of social danger? Let's focus on persecution in more details, taking into account that there is no liability in current Criminal Law for committing criminal offenses such as "Persecution". Persecution can also occur through telephone calls [9, p. 37]. In addition, in a pandemic, when physical contact is complicated, persecution takes place online or via mobile phone [10, p 77; 11, p. 31] and it should be remembered that online education during the pandemic gives reason to fear persecution [12, p. 61]. In the course of pandemic, the mental state of individuals changes and even a completely healthy person can acquire manic abilities due to isolation [13, p. 37].

Thus, definite type of mental violence deserves special attention: persecution is unwanted, obsessive attention to one person by another one or group of people, which is a form of intimidation and harassment, which is usually expressed in the form of harassment or surveillance of the victim.

As a result of persecution, the victim's mind is psychologically affected, which can cause feelings of fear, anxiety, irritability, and suicide is not ruled out. That is, persecution causes mental suffering (through systematic insults, blackmail, threats, intimidation, demonstrations of aggression) leading to health disorders, disability, emotional dependence or deterioration of the quality of life of the victim [14, p. 8].

Any psychological impact that leads to physical or psychological suffering, health disorders, disability, emotional dependence or deterioration in the quality of life of the victim must be assessed by the state.

The above explanation of "persecution" includes signs of the objective side of the wrongdoing, namely mental pressure on the victim, committed through systematic insults, blackmail, threats, demonstrations of aggression or other wrongful acts that harm the mental health of the victim. .

Considering that Ukraine is a state that defines the right to freedom of citizens as the highest social value, there is a need to protect individuals from psychological pressure that harms mental health of citizens and may have other consequences by criminalizing such acts as persecution.

Due to the fact that the current legislation does not provide criminal liability for persecution, law enforcement agencies have no grounds for accepting a criminal offense and, as a result, there is no mechanism to protect a person from actions that harm the mental health of citizens.

In view of the foregoing, it should be noted that the criminalization of "persecution" will have a positive impact on public safety and on ensuring respect for fundamental human and civil rights and freedoms. The proposed changes to supplement Article 146² of the Criminal Code of Ukraine "Persecution" are justified by the need to ensure a high level of protection of the rights, freedoms and interests of citizens, including protection of persons from negative psychological pressure.

On the basis of the above, we propose to criminalize this socially dangerous phenomenon in the following wording:

Article 146² "Persecution"

1. Persecution committed through mental violence (pressure) on the victim, by means of systematic insults, blackmail, threats, demonstrations of aggression or other illegal actions that harm the mental health of the victim,

- shall be punished by a fine of up to 50 tax-free minimum incomes, or community service for up to two hundred hours or correctional labor for up to one year.

2. The same acts committed by a group of persons using the media or telecommunication systems, including the Internet, combined with the dissemination of audio, photo or video materials or on the ground of racial, political, ideological or religious intolerance; or in respect of his or her close relatives or family members without their consent, including data used by that person or his or her close relatives or family

members in public information systems, including the Internet,

- shall be punished by community service for a term of one hundred and fifty to two hundred and forty hours, or arrest for a term up to six months, or restriction of liberty for a term up to five years, or imprisonment for a term up to two years.

3. Acts provided in part one or two of this Article, committed repeatedly or which have caused significant damage, as well as committed by prior conspiracy by a group of persons or an official using official position, -

shall be punished by a fine of four to seven thousand non-taxable minimum incomes or imprisonment for a term of two to five years, with deprivation of the right to hold certain positions or engage in certain activity.

Note. Persecution is unwanted, obsessive attention to one person by another one or by group of people, which is a form of intimidation and harassment, usually expressed in the form of harassment or surveillance of the victim.

This article defines "deterioration of quality of life" as deterioration of physical or mental health, including temporary health disorders or disability, the need for regular (three or more) changes in residence, work, telephone numbers, e-mail addresses, carrying the cost of security measures.

Significant damage in this article is determined as the infliction of medium bodily injuries or other more serious consequences

4. CONCLUSIONS

Therefore, summarizing the above, we can state the following. In the course of the research of mental violence in the Criminal Law, such a type of mental violence was established as persecution, which is socially dangerous and harms the mental health of citizens, but the current Criminal Code of Ukraine does not criminalize such an act.

In general, violence in the scientific literature is divided into two main categories: physical and mental violence. It is worth noting that despite the black and white nature of the issue, it has been controversial for many decades. In particular, even nowadays the concept of physical violence continues to be "sharpened" in scientific researches. The issue of mental violence is even more complex and deeper. There are many definitions that try to cover all its manifestations and signs. Each author offers his own definition, but the law "On Prevention and Counteraction to Domestic Violence" of 07.12.2017 № 2229-VIII already enshrines the definition of both physical and psychological violence. But despite the legislative enshrinement of these concepts, we believe that they will be corrected more than once, because we still remain supporters of

approaches to the division of violence into physical and non-physical. At the same time, the fundamental question is not the wording, but the fact that the process of causing mental harm and the impact on the human psyche has not yet been sufficiently studied. Consequently, in our opinion, it's not appropriate to

divide violence into physical and mental in a categorical manner, especially considering this fact, harming something alone - physics or psyche, a person inevitably injures another component (respectively, the psyche or physics) [15].

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