

## КРИМІНАЛЬНЕ ПРАВО ТА ПРОЦЕС

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### OBJECT OF THE CRIMINAL OFFENSE PROVIDED BY ART. 126-1 OF THE CRIMINAL CODE OF UKRAINE

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The article analyses the issue of the object of the criminal offense under Art. 126-1 of the Criminal Code of Ukraine. It identifies different approaches to the definition of the main direct object of domestic violence, their advantages, and disadvantages. According to the sanctions imposed by the legislator, the criminal offense of domestic violence due to the degree of severity is a non-serious crime.

The very definition of the object of unlawful encroachment is the main starting point for clarifying the nature of any criminal offense. The main feature of the object of any criminal offense is social relations because social relations reflect the most important ties between people, the realization of their social interests in the process of life. The commission of a criminal offense leads to the violation of these ties, which implies consequences in the form of harm to the person, society and provides for the social danger of such acts.

1. The generic object of this criminal offense is public relations in the field of health and life of a person.

Based on the theory, the object of the criminal offense corresponds to social values, and the main direct object of domestic violence is: the victim, ie the spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, its integral good – health; the human rights (of the victim) to health care, honour, dignity, freedom, the right to work, education, entrepreneurship, a sufficient standard of living for himself and his family, property rights, etc.; social ties between members of society.

**Key words:** object of criminal offense; domestic violence; physical violence; psychological violence; economic violence.

**Formulation of the problem.** The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, or the so-called Istanbul Convention, was signed on

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11 May 2011 in Istanbul. To implement international experience in Ukraine, based on the Istanbul Convention and the achievements of various scholars, amendments were made to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine, which entered into force on January 11, 2019. As a result, new norms in criminal law appeared, and domestic violence was criminalized, Article 126-1 of the Criminal Code of Ukraine in particular.

The appearance of a qualitatively new article in the Criminal Code of Ukraine immediately aroused the interest of scholars, which resulted in several publications on various aspects of the interpretation and application of this criminal law. Analysis of these publications allows us to conclude that there are a number of problematic issues related to the interpretation of the criminal offense under Art. 126-1 of the Criminal Code of Ukraine.

One of such questions is to define and correctly understand the main direct object of the investigated composition of the criminal offense.

**Analysis of recent research and publications.** Analysis of the criminal offense under Art. 126-1 of the Criminal Code of Ukraine, in general and the study of the object of this criminal offense was paid attention to the works of A. A. Voznyuk, O. O. Dudorova, V. O. Ivashchenko, N. I. Lesyak, K. M. Plutitskaya, M. I. Khavronyuk, S. V. Yakimova and a number of other lawyers. At the same time, the complexity of the question and the presence of quite different views on the definition of the main direct object of the investigated composition of the criminal offense necessitates further research in this area.

2. **The purpose of the article** is to analyse the issue of the object of the criminal offense under Art. 126-1 of the Criminal Code of Ukraine.

3. **Presentation of the main material.** Before identifying the object of such a criminal offense as “Domestic Violence” under Art. 126-1 of the Criminal Code of Ukraine, it is necessary to define the concept of the object of a criminal offense at first.

4. The very definition of the object of unlawful encroachment is the main starting point for clarifying the nature of any criminal offense.

5. One of the definitions given by scholars in the field of criminal law is as follows: the object of a criminal offense is protected by criminal law social relations, which encroach on the criminal offense. It is the object of the criminal offense that determines the scope of the criminal law, contributes to the correct qualification of the act and the distinction from other related criminal offenses, thereby allowing clarification of its social and legal nature of encroachment, nature, and danger.

6. The main feature of the object of any criminal offense is social relations because they reflect the most important ties between people, the realization of their social interests in the process of life. The commission of a criminal offense leads to the violation of these ties, which implies consequences in the form of harm to the person, society and provides for the social danger of such acts.

7. The theory of criminal law distinguishes the following structural elements of social relations:

- 1) subjects (carriers) of relations;
- 2) the subject about which the relationship exists;
- 3) social connection (socially significant activity) as the content of relations.

The structure of any social relations is unchanged.

There can be no impersonal relations in society. The subjects of social relations may be various associations of citizens, legal entities and individuals, the state. If there are no participants in the relationship, then there is no relationship itself, which always constitutes certain social ties between their participants. It is the establishment of the circle of participants in social relations, i.e., their subject composition, as well as their social functions in the relationship itself, allows to identify and separate those social relations that are the object of a criminal offense.

The subject of social relations is everything about which or in connection with which these relations exist. The objects of relations include property, things, material, and spiritual values, as well as the person himself. Depending on the characteristics of the subject, all social relations are divided into two main

groups – material (the subject of which is property, animals, plants, etc.) and intangible (government, spiritual goods, etc.).

Social connection as an element of social relations is always inextricably linked with other structural elements.

Social connection always arises and exists in connection with a specific subject of social relations, and therefore it has a substantive nature. As well as social relations, the social connection has an objective manifestation, i. e., it exists in real reality and is manifested in various forms of human activity [1, p. 34].

The essence of the concept of “domestic violence” is explained in the disposition of Art. 126-1 of the Criminal Code of Ukraine, according to which domestic violence is the 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 problems, loss of ability to work, emotional dependence or deterioration of the victim's quality of life [2].

According to the sanctions imposed by the legislator, the criminal offense of domestic violence belongs to the degree of severity of non-serious crimes. The generic object of this criminal offense is public relations in the field of health and life of a person (person).

The question of determining the main direct object of a criminal offense under Art. 126-1 of the Criminal Code of Ukraine, in the legal literature is resolved rather ambiguously. For example, V. O. Ivashchenko believes that the direct object of this criminal offense is human health [3, p. 201]. Indeed, even a cursory analysis of the composition of the criminal offense under study clearly indicates that human health is its main direct object.

The preamble to the Statute of the World Health Organization, as well as Article 3 of the Law of Ukraine “On the Fundamentals of Ukrainian Legislation on Health Care” enshrines the definition of “health”, according to which it is a state of complete physical, psychological, and social well-being, not just the absence of disease and physical defects [4].

But health as an object of criminal law protection is not necessarily characterized by complete physical and mental well-being, otherwise socially dangerous encroachments on people even with minor illness would not be recognized as criminal offenses (in the absence of the object of encroachment), which is unacceptable [5, p. 90].

Therefore, speaking about health in this perspective, we must remember the following: under criminal law protection are certain, clearly defined in law or those that directly follow from the content of a particular criminal law, aspects of human health. These are, for example, an organ or its functions, mental health, ability to work, pregnancy. In fact, under criminal law protection is not health as a certain “ideal” state, characterized by completely uninterrupted functioning of all body systems – criminal law prohibits and establishes liability for actions that lead to the deterioration of human health, in which she was at the time of committing the relevant acts [5, p. 90].

According to Art. 126-1 of the Criminal Code of Ukraine human health, in such aspects as ability to work, absence of physical pain or health disorders and mental health is under criminal law's protection.

According to A. A. Vozniuk, the main direct object of domestic violence is public relations regarding the criminal protection of physical and psychological health of one spouse or ex-spouse or another person with whom the perpetrator is (was) in the family or relatives' relations. Additional optional objects of this crime may be property rights, will, honour and dignity of the person, family, and close relations, etc. [6, p. 8].

In our opinion, the separation of physical and psychological health in the structure of the criminal offense under Art. 126-1 of the Criminal Code of Ukraine, is correct and logical, because one of the forms of the objective side of this criminal offense is the systematic commission of psychological violence against the victim. However, there are many questions about understanding and interpreting the content of mental health.

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According to V. O. Lefterov, psychological health is not only mental but also personal health and is defined as the optimal functioning of all mental structures that provide a state of mental comfort in the social environment [7, p. 48]. Other psychologists-scientists define psychological health as: the state of harmonious balance between different spectra of a particular individual (R. Assajoli); the function of maintaining a balance between the individual and the environment, adequate regulation of human behaviour and activities, ability to resist life's difficulties (A. V. Petrovskij, M. H. Yaroshevskij); the process of the individual's vital activity, in which the reflexive, emotional, intellectual and behavioural aspects are balanced (M. G. Garanin, A. B. Kholmogorova); the balance between the needs of the individual and the society, which is maintained through constant efforts (S. Freiberg) [8, p. 79].

Despite the lack of a unified approach in psychology to the understanding of the concept of “psychological health”, its selection as an element of such a generic concept as “health”, on a par with “physical health” to characterize the main direct object of the crime Art. 126-1 of the Criminal Code of Ukraine, in our opinion, is justified. After all, this allows to more accurately determine the damage caused to the object of the criminal offense under investigation, in cases where domestic violence does not harm the victim because of domestic violence, but the person suffers psychological suffering.

The main direct object of the crime of domestic violence is the health and normal physiological, physical, and psychological state of the person. It should be noted that the main direct object of this crime will be an alternative and will depend on the nature of the violence and the consequences they cause. An additional optional object is the will, honour and dignity of the person, his mental inviolability.

In view of the above, the natural question arises why economic domestic violence as a form of domestic violence is a crime against life and health? After all, in its essence and expression it is not aimed at the direct object of physical or psychological violence.

According to A. A. Vozniuk, the analysis of the disposition of the article under study, in particular the socially dangerous acts envisaged in it, shows that the main direct object of this crime is not limited to personal health. This gives grounds for a discussion on the place of commission of a criminal offense under Article 126-1 of the Criminal Code in the system of the Special Part of the Criminal Code of Ukraine [6, p. 8].

S. V. Yakimova and N. I. Lesyak also note that the reference to economic violence as a form of domestic violence in the context of criminal offenses, the generic object of which is the life and health of the person, does not seem entirely justified. Under current law, economic violence is primarily an economic offense that encroaches on another's property, right to use, dispose of or possess property. Its specific feature is the infliction of material and sometimes reputational damage in connection with economic activities, encroachments on intellectual property, the realization of their property rights. Thus, even though domestic violence in the form of economic offenses can have a wide range of criminal consequences, manifested in various types of criminal offenses, there is a certain inconsistency between the interpretation of economic violence as an economic offense and its location in the section where criminal offenses are grouped, the generic object of which is the life and health of the person [9, p. 193–194].

K. M. Plutytska notes that the placement of Art. 126-1 in Section II of the Criminal Code of Ukraine is somewhat controversial. Thus, if physical and psychological violence really causes harm mainly to the life and/or health of a person, i.e., is the direct object of the crime, then in the case of economic domestic violence the direct object may be property rights, honour, will, dignity, its civil rights (for example, the right to education, work, inviolability of housing, entrepreneurial activity, etc.) [9, p. 104].

In fact, one cannot disagree with the list of values defined by K. M. Plutytska, who may be the main direct target of domestic violence.

A significant achievement of the current Law of Ukraine “On Prevention and Counteraction to Domestic Violence” is the delineation of a clear range of persons who may be victims of domestic violence and an indication that a person may be a victim regardless of the fact of cohabitation with the perpetrator.

Thus, victims of domestic violence can be: spouses; ex-spouse; other persons with whom the perpetrator is (was) in a family or close relationship (bride; mother (father) or children of one spouse (former spouse) and the other spouse (former spouse); persons who live (lived) together with one family, but are not (were not) married to each other, their parents and children; persons who have a common child (children); parents (mother, father) and child (children); grandfather (grandmother) and grandson (granddaughter); great-grandfather (great-grandmother) and great-grandson (great-granddaughter); stepfather (stepmother) and stepson (stepdaughter); brothers and sisters; other relatives: uncle (aunt) and nephew (niece), cousins, cousin grandfather (grandmother) and cousin grandson (granddaughter); children of spouses, ex-spouses, brides, persons who have a common child (children) who are not joint or adopted; guardians, trustees, their children and persons who are (were) under guardianship, custody; foster parents, foster parents, foster carers, their children and foster children, foster children, children who live (lived) in the foster care family. Victims of domestic violence can be both men and women, both children and adults.

**Conclusion.** Based on the theory, the object of a criminal offense corresponds to social values, the main direct object of domestic violence is: the victim, i.e., the spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship, his inalienable good - health; the human rights (of the victim) to health care, honour, dignity, freedom, the right to work, education, entrepreneurship, a sufficient standard of living for himself and his family, property rights, etc.; social ties between members of society.

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**ОБ’ЄКТ СКЛАДУ КРИМІНАЛЬНОГО ПРАВОПОРУШЕННЯ,  
ПЕРЕДБАЧЕНОГО ст. 126-1 КРИМІНАЛЬНОГО КОДЕКСУ УКРАЇНИ**

Проаналізовано питання об’єкта складу кримінального правопорушення, передбаченого ст. 126-1 КК України. Розглянуто різні підходи щодо визначення основного безпосереднього об’єкта домашнього насильства, визначено їх переваги та недоліки. За санкціями, які визначив законодавець, таке кримінальне правопорушення, як домашнє насильство, належить за ступенем тяжкості до нетяжких злочинів.

Саме визначення об’єкта протиправного посягання є головною початковою точкою для з’ясування сутності будь-якого кримінального правопорушення. Основною ознакою об’єкта будь-якого кримінального правопорушення є суспільні відносини, адже суспільні відносини відображають найважливіші зв’язки між людьми, реалізацію їхніх суспільних інтересів у процесі життєдіяльності. Вчинення кримінального правопорушення призводить до порушення цих зв’язків, що передбачає наслідки у формі заподіяння шкоди особі, суспільству і передбачає суспільну небезпечність таких діянь.

Родовий об’єкт цього кримінального правопорушення – суспільні відносини у сфері здоров’я та життя особи (людини).

Відповідно до теорії об’єкт кримінального правопорушення відповідає соціальним цінностям. Основним безпосереднім об’єктом домашнього насильства є: потерпілий, тобто подружжя чи колишнє подружжя або інша особа, з якою винний перебуває (перебував) у сімейних або близьких відносинах, його невід’ємне благо – здоров’я; права людини (потерпілого) на охорону здоров’я, честі, гідності, волі, права на працю, освіту, підприємницьку діяльність, достатній життєвий рівень для себе і своєї сім’ї, право власності тощо; соціальні зв’язки між членами суспільства.

Ключові слова: об’єкт складу кримінального правопорушення; домашнє насильство; фізичне насильство; психологічне насильство; економічне насильство.