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Protection from Violence not Dangerous to the Life and Health of a Victim. Is the Case Private or Public? Article 1. Criminological, Criminal Law, Criminal Procedure, and Administrative Aspects of the Unified Socio-Cultural Problem of Violence in the Family, Household, Labor, and Military Community

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Abstract

Introduction: the issue of the limits of public intervention in private conflicts, especially against the background of decriminalization of beatings and development of the institution of administrative prejudice, is debatable. The author raises important issues of legal qualification, judicial practice and social attitudes. The *purpose* of the study is to determine a socio-legal phenomenon of violence that is not dangerous to the life and health of the victim in the family, household, labor, and military collective, clarifying the conceptual and categorical apparatus. In the framework of a complex purpose of the study, it is required to determine whether all the types of violence are a crime and whether the fight against this violence is a private or public matter? As part of in-depth cognition of socio-legal reality, criminological, criminal law, criminal procedure, administrative law, socio-cultural, philosophical and other aspects of violence are considered. *Methods*: historical, comparative-legal, statistical, empirical, and included observation. *Conclusions*: first, the problems of violence studied in both psychology and law are studied superficially, fragmentally; second, both criminology and the legislator do not clarify, whether beating is a crime or not? Third, the society does not want to put up with a ban on the physical coercion of a predicate rapist to peace. The author attempts to systematize a complex and controversial practice and offers an original interdisciplinary view of the problem through the prism of philosophy, psychology, and cultural studies. The formulated conclusions are problematic and stimulate further scientific discussion.

Keywords: private prosecution cases; articles 115, 116, 116.1 of the Criminal Code of the Russian Federation; Article 6.1.1 of the Administrative Code of the Russian Federation; predicate victim; predicate rapist; systemic interpretation of the Criminal Code of the Russian Federation and the Administrative Code of the Russian Federation; moral and moral postulates.

5.1.4. Criminal law sciences.

5.1.1. Theoretical and historical legal sciences.

5.1.2. Public law (state law) sciences.

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Introduction

We present a series of articles devoted to the analysis of problems that arise due to the manifestation of violence in the family, household, labor and military collectives that is not dangerous to the life and health of a victim. We classify the above types of violence as a socio-legal phenomenon. Criminological, criminal law, criminal procedure, administrative law, socio-cultural, philosophical and other aspects of the problem are consistently analyzed. Separately, the author will focus on such a negative phenomenon as "barracks hooliganism" (Article 335 of the Criminal Code of the Russian Federation) or non-statutory relations, which in one of the articles will be analyzed through the prism of specific court decisions. In conclusion, an ordinary mutual "fight" in a women's team, bad consequences of hasty mutual accusation, and negative social and criminal legal results of the conflict will be considered in detail.

The author pays special attention to socio-legal consequences of the medial turn (phase transition) in the determination of the significance of beatings, which, as part of general decriminalization, was carried out by the legislator on June 3, 2016.

Within the framework of Russian reality, the analyzed violence is perceived as a single whole, while in most countries the total amount of violence that is not dangerous to the life and health of victims is usually divided by gender or age.

The empirical basis of the study is the author's personal experience (included observation) acquired during his years of service in the system of the Ministry of Internal Affairs of the MSSR (Kishinev, 1983–1991) during the investigation, albeit according to the rules of public prosecution, of "minor" criminal cases (hereafter we will use the modern Russian classification) on causing minor harm to health and beatings (including on charges of torture) initiated as a result of both purely family and various domestic and industrial conflicts.

We also gained similar experience in the framework of consideration on the merits of mostly private prosecution cases (mainly under Article 112 of the Criminal Code of the RSFSR) in 1983-1991 during the period of service as a judge in the Industrial District Court of Kursk.

In subsequent years, while working in the Kursk Regional Court (1997-2002), the Supreme Court of the Russian Federation (2002-2007), as well as in the framework of intensive scientific activity, the author continuously monitored the current stage of evolution of the institution of private prosecution cases of minor injury, beatings and torture.

Some results of our scientific research on family violence, violence in educational, industrial and military groups, stalking, bullying, and private prosecution cases have been noticed. In particular, in 2018, the author was specially invited as a leading expert to participate in an expanded scientific and practical seminar on "Domestic violence" in the Rostov Oblast Police Department. Based on the results of this event, a popular science article "From jealousy to stalking" was published [1].

In 2000-2025, the author was repeatedly invited as an official opponent to dissertations on the general topic of "Private prosecution cases" and several his reviews were published in the form of scientific articles [2]. It should be emphasized that these dissertation studies were actually carried out in 3 scientific specialties at once: 5.1.1. Theoretical and legal historical sciences; 5.1.2. Public law (state law) sciences and 5.1.4. Criminal Law sciences. This once again testifies to the multidimensional nature and the importance of the topic being covered.

At the same time, we published an article in two parts entitled "Private prosecution cases: eternal or outgoing?" [3; 4]. Violence (causing minor harm to health, beatings) in military groups is commonly referred to as "barrack hooliganism" [5; 6]. We have already discussed some controversial issues on this topic in a series of articles published in 2024 in the Military Law Journal [7–9]. Some aspects more characteristic of "barrack hooliganism" were studied by the author using the method of included observation during the period of military service in the Soviet Army (1975–1977), as well as during the military training of reserve officers.

The author identified many unique aspects of domestic violence, the reaction of society

and the state to it in 2000 during a business trip to Canada (Alberta province). Among other things, we studied domestic violence in itself (a phenomenon in the broadest sense of these terms, without exaggeration, at an international level) and methods for its suppression (more precisely, minimization), used primarily by civil society, as well as by individual law enforcement agencies (police, Prosecutor's Office). Special attention was paid to the work of the Provincial Court in Calgary and its functioning in temporary locations, including Indian reservations. It is noteworthy that in Canada they still faithfully follow the precepts of J. Bentham (1748-1832), according to which judicial activity should be organized in such a way that the participants in the process would not spend more than one daylight day to resolve the dispute [10]. What is more, if people (for example, a victim and a rapist) cannot physically come to court to resolve a conflict due to the remoteness of court facilities, then the court (a government agency) comes to them on schedule, even if it is an Indian reservation.

The practice of using the judicial separation institution in Canada is of particular interest. Victims of violence (usually a woman and her children) are physically removed from the conflict zone as quickly as possible, with the mandatory relocation of victims to a new comfortable environment.

The form of violence is usually a type of abusive relationship in which the partner (rapist), by being violent, not only violates the personal boundaries of another person, but also, in order to suppress the victim's will, causes slight harm to her health.

It is also noteworthy that, for a number of reasons, the victim of such a relationship is unable to terminate them. The relationship between the victim (Article 42 of the Criminal Procedure Code of the Russian Federation) and the rapist (suspect, accused, defendant, convicted, articles 46–47 of the Criminal Procedure Code of the Russian Federation) is not only rational, but also irrational. It is rather disputable, which behavior within the framework of abusive relationships is primary and which is secondary [11].

Finally, special significance of the analyzed problems is also evidenced by the fact that on March 3, 2026, the Law Faculty of M.V. Lomonosov Moscow State University held the III All-Russian Research-to-Practice Conference "Topical Problems of the Russian Criminal Process" devoted to problems and prospects of criminal prosecution in private charge. We will analyze results of the conference as they are published.

The reason for the current series of publications was the study of rapid development of criminal procedural relations caused by an ordinary quarrel between two women, which soon, due to a whole range of circumstances, instantly turned into a mutual fight.

1. Private and public accusation

We believe that all public prosecution cases, without exception, originate from private ones. Social development encompasses gradual integration of such an abstraction as the state into private relations between people.

It is known that Louis XIV (1638–1715) argued ""L'etat c'est moi" (the state is me). Since some rulers interfered with personal affairs of their subjects, they were considered as those "aspired to be godparents at all christenings, the groom at every wedding, and the deceased at every funeral". In every private conflict, the sovereigns would like to be in the guise of both the predicate rapist and the most humble victim. The reason for such aspirations is monarchs' deep conviction that they have no right to leave their subjects without attention for a minute.

At the moment, the government, represented by its officials, is also very skeptical about the citizens' ability to independently sort out even the simplest family conflicts.

In the conditions of modern Russia, the legal existence of a person is almost unthinkable without having a set of mandatory permits issued by various state authorities on seemingly purely personal matters: a birth certificate, marriage, divorce, death certificate, as well as a passport with a legal address, etc.

At the same time, as a general rule, relations between people are first regulated by moral norms, and if they are not sufficient, then by legal norms, the source of which in Russia is mainly a normative legal act of a certain legal force.

The question arises, whether there are any areas of human communication that are not regulated by the rules of law? Undoubtely, there are numerous relationships between people, in the regulation of which the role of the state is insignificant. It is precisely in the sphere of such relationships where domestic violence is widespread.

2. Family and domestic violence – an unknown phenomenon

Family and domestic violence is an unstudied phenomenon. There are no reliable statistics characterizing this negative phenomenon.

Here are the official statistics for 2023. A total of 520 700 criminal cases were submitted to the first instance district courts for consideration on the merits, with only 4 400 (0.8%) being cases of private prosecution. The total number of criminal cases considered by justices of the peace was 187 100, with 5.200 (2.8%) being private charges (Part 1 of Article 115, Part 1 of Article 128.1 of the Criminal Code of the Russian Federation). These figures indicate that within the framework of the general jurisdiction of a private prosecution case, this is a drop in the bucket [12].

Apparently, given the extremely small volume of cases of this category in court proceedings since 2024, there is no separate section in the official documents of the Judicial Department at the Supreme Court of the Russian Federation.

In the research, we used official data published by various news agencies (for example, the Agency for Legal Information registered by the Federal Service for Supervision of Communications, Information Technology and Mass Communications, certificate No. FS 77-63321) and departmental information (the Ministry of Internal Affairs, the Prosecutor's Office, the court). The data provided for 2023 have no noticeable dynamics.

Here and below (unless otherwise indicated), it is assumed that the data on criminal records in cases of crimes provided for in articles 115–117, 156 of the Criminal Code of the Russian Federation are analyzed (Table 1).

Table 1

Analysis of data on criminal records in cases of crimes provided for in articles 115–117, 156 of the Criminal Code of the Russian Federation

Article	Convicted	Acquitted	Imprisonment	Conditionally	Restriction of liberty	Fine	Correctional labor	Compulsory labor	Forced medical measures
Total	512 845	990	144 837	111 841	23 787	79 733	45 955	65 956	7 516
Art. 115, part 1	1 356	116	0	0	2	697	186	376	30
Art. 115, part 2	7 114	9	1 018	1 217	851	113	650	2 643	280
Art. 116, part 1	22	0	2	1	0	0	8	10	1
Art. 116, part 2	2	0	0	0	1	0	1	0	0
Art. 116	370	4	27	27	41	5	49	178	28
Art. 116.1, part 1.1	1 240	13	0	0	5	357	268	573	10
Art. 116.1, part 2	5 120	4	0	0	3 686	58	751	523	24
Art. 117, part 1	403	0	63	25	259	4	2	0	11
Art. 117, part 2	402	2	174	217	0	1	5	1	11
Art. 156	424	3	10	12	1	162	59	159	9

Table 2 shows unofficial data for 2025 obtained as part of the prosecutor's supervision of the investigation of crimes under Part 2 of Article 115, Article 116.1 of the Criminal Code of the Russian Federation. It should be noted that the figures of departmental statistics do not significantly differ from other information.

Table 2

Information on the progress of criminal cases initiated on the facts of the detection of crimes provided for in Part 2 of Article 115, Article 116.1 of the Criminal Code of the Russian Federation

	Number of crimes	Decline rate	Number of cases investigated	Decline rate	Number of victims	Decline rate
Art. 115 part 2	24 930	– 13.5 %	19 847	– 14.7 %	23 645	– 13.5 %
Art. 116.1	9 682	– 18.0 %	8957	– 19.2 %	8494	– 18.9 %

For comparison: according to unofficial data from the Prosecutor General's Office of the Russian Federation, in 2024, 1,356 people were convicted and 116 acquitted under Part 1 of Article 115 of the Criminal Code of the Russian Federation.

At the same time, in 2023, under Article 6.1.1 of the Administrative Code of the Russian Federation "Beatings", magistrates issued final decisions against 26 700 persons (73.8% of the total number of persons against whom cases were considered for offenses under Chapter 6 of the Administrative Code of the Russian Federation), of which 31% were punished (91.9% – an administrative fine, 3.9% –compulsory labor, and 4% – administrative arrest) [12].

Within the framework of these statistics, the number of people punished for beatings is alarming. Until 2016, this figure was several times lower, at least it could be compared with the number of people convicted of causing minor harm to health. The number of people punished (convicted) for non-criminal beatings is five-fold higher now due to the transfer of this composition from the system of private charge to public prosecution. The intermediary state in the conflict between the victim and the rapist, represented by specific officers from the Russian Interior Ministry system, naturally does not intend to reconcile anyone. Let us not forget that performance indicators are important for ordinary officers. Let us say more, according to Article 6.1.1 of the Administrative Code of the Russian Federation, officers, resolving the same conflict, may consider two indicators, since not only the predicate rapist will be punished, but also the predicate victim (the real victim) who physically resisted the rapist.

Besides, we find it important to define "phenomenon" to further study the totality of categories "faith", "trust", "veritas" (truth), "authority", "law", "state", "efficiency" and "authority of law of the state and the court" that are mandatory for judicial activity.

Our contemporary, the French philosopher A. Comte-Sponville, notes that "the phenomenon is not an illusion, but a perceived reality (unlike a "noumenon", according to Plato, an entity comprehended only by the mind". The phenomenon is a reality for us (in contrast to the "thing in itself" by I. Kant). A. Comte-Sponville, referring to J.-P. Sartre, notes that the phenomenon "exposes itself as it is, in absolute terms, because it reveals itself in its essence. The phenomenon is relatively absolute; it can be studied and described" (introduction to the book "Being and Nothing"). Further in his arguments, he refers first to the philosopher M. Conche, comparing the phenomenon to "pure appearance", and then to C. Rosse, who considered the phenomenon as a reality [13, p. 659].

According to A. Comte-Sponville, our (blind/non-blind) "faith is a belief that is not supported by any evidence; the latter is replaced with will, trust or grace". At the same time, the philosopher warns all researchers, "to believe is to obey blindly". "Every faith sins by arrogance and lack of knowledge". In the preface to the second edition of the Critique of Pure Reason, I. Kant wrote about the limitation of knowledge in order to make way for faith. A. Comte-Sponville replied that over the past 25 centuries, scientists had been doing just the opposite [13, pp. 85–86].

Analyzing categories of "faith" and "trust" in relation to historical "knowledge" and post–historical "post-knowledge", we cannot but mention a category of "truths" – "exact correspondence between the conceivable and the real" [13, p. 86].

With regard to the analyzed set of problems related to cases of private and public prosecution, we are talking about what we (blindly/non-blindly) believe in - the declared form of effectiveness of moral and legal norms or their real effectiveness. At the same time, we proceed from the denial of the possibility of the existence of such a category as "objective truth". In our opinion, any truth is always subjective, because it (a moment of reality in nature) is just an assessment of reality by the subject [14; 15] (participants in the criminal process, the court).

At the same time, we share the position of those researchers who believe that issues related to justice in general, its doctrine [16; 17], history and current practice, as well as their corresponding legal techniques, are the subject of modern judicial phenomenology [18].

3. "Violence" in the dialectic of G.W.F. Hegel

The topic of violence as a legal category has been of interest to philosophers at all times. In this regard, G. W. F. Hegel wrote, "the science of law is a part of philosophy" [19, p. 60]. In his fundamental work "Philosophy of Law", the founder of dialectics addressed the topic of violence at least twenty times [19, p. 62, 106–107, 141–144, 155, 258, 301, 468]. It is not the inevitability of classifying violence as a phenomenon that is

evidenced by Hegel's judgment that violence is derived from "a feeling dictated by the heart, it is both inclination and arbitrariness" [19, p. 62]; the author specifically emphasizes that "philosophy does not recognize such authorities" [19, p. 62] (that is, feelings, inclinations, and arbitrariness).

Our position is that violence is primarily biological and psychological in nature, as well as power, law and the state. Hegel describes the law based on violence as "fist law" [19, p. 62], which sounds quite modern. At the same time, the philosopher criticizes separation of violence against the body and the soul. He concludes, "violence committed by others to my body is violence committed to me" [19, p. 258]. Sometimes, by torturing the body, we only harden the soul. Professor I.M. Rahimov underlines that "the soul suffers, the body endures" in his works of on the morality of punishment and social reality [20].

Attempts to separate violence against the body and the soul are not new, but still not clear to everyone [21]. For example, it is such a form of violence as the deprivation of persons sentenced to life imprisonment of the right to long-term visits with family members [22].

Analyzing violence, Hegel noted that this phenomenon, as well as coercion, is unlawful [19, p. 142]. At the same time, the thinker understood that "the primary compulsion is removed by the second compulsion, the latter is necessary to remove the first" [19, p. 142].

Modern criminology is well aware of such a type of violence as "snapping" of the convict's personality. An example of such an illegal phenomenon is convict F.'s violent actions in relation to M., sentenced to life imprisonment, in the Vladimir pre-trial detention center, which ended with the victim's reprisal against the predicate rapist [23]. The convict M. went on a hunger strike. The administration of the pre-trial detention center transferred him to cell No. 26, where convict F. was being held. The latter demanded that M. give up his hunger strike. M. categorically refused to do this, then F. (predicate rapist) tied him up and from 14:00 on February 3, 2017 to 7:30 on February 4, 2017, systematically beat M. (Part 1 of Article 117 of the Criminal Code of the Russian Federation). Realizing that M. had no one to expect protection from, murdered the predicate rapist. These actions were qualified as premeditated murder (the decision of the judge of the Supreme Court of the Russian Federation A.S. Chervotkin on the transfer of the cassation submission of the Deputy Prosecutor General of the Russian Federation for consideration at a court hearing of the Court of Cassation No. 86-UDP19-7 of December 13, 2019, as well as the cassation ruling of the Second General Jurisdiction Court of Cassation No. 77-165/2020 of February 13, 2020).

It is worth mentioning that Hegel's judgment that coercion, including violence, is a weapon that a teacher needs in relation to a negligent student [17, p. 142] (corporal punishment has been practiced in many educational institutions up to the 1990s). At the moment, this statement of the philosopher is controversial. Any form of violence by a teacher towards a student is unacceptable. Thus, according to the verdict of the justice of the peace of the judicial district No. 10 of the Sakhalin Oblast (Okhinsky district) of July 18, 2023, the teacher K. was convicted under Article 156 of the Criminal Code of the Russian Federation for improper performance of duties related to the upbringing of a minor, coupled with ill-treatment. She had forced a "negligent" (for medical reasons) student to get a piece of paper from under the table and pressed him with a chair (Cassation ruling of the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation No. 64-UD24-5-K9 of October 2, 2024).

According to the rules of juvenile justice, not only any violence by a parent against a child, but also psychological coercion is the basis for removing the latter from the family.

So, the general trend is to minimize all imaginable forms of not only physical, but also psychological violence.

4. Violence: assessment of the modern philosopher A. Comte-Sponville

According to A. Comte-Sponville, "violence is primarily the excessive use of force" [13, p. 337]. At the same time, the philosopher believes that violence is necessary (moderation is not always possible), but it is never a blessing. Violence is always deplorable" [13, p. 337]. The opposite of violence is gentleness (not to be confused with weakness).So, "gentleness is a virtue, weakness is weakness (the opposite of strength), and violence is guilt (except when it is necessary and legitimate). Violence against the weak is cowardice, cruelty, and atrocity" [13, p. 337].

At the same time, we agree with A. Comte-Sponville that "there cannot be an absolute ban

on violence against a rapist, because such a ban is nothing more than connivance to barbarians and bandits" [13, p. 337].

We also back the philosopher's balanced assessment of non-resistance to evil by violence. Referring to S.A. Weil, A. Comte-Sponville states that this biblical approach "is suitable only when it is effective" [13, p. 337]. Considering the tendency to "gravitate towards mercy", the pragmatic philosopher first of all emphasizes that the institution of non-resistance to evil requires "a lot of self-control, courage and intelligence, but it is also necessary to take into account the assailant" [13, p. 337].

What is more, A. Comte-Sponville praises stoic behavior of Mahatma Gandhi in the framework of nonviolent resistance to the British (1921–1948) and courage of participants of the French resistance during World War II. He believes that "violence is acceptable only in cases where its absence is even worse" [13, p. 337]. He makes the following conclusions: "violence has a right to exist", the problem is to "limit, impose strict limits, and bring it under control". Referring to M. Weber, A. Comte-Sponville argues that "for this we need a state (army, police, laws, courts, prisons)" [13, p. 337]. "At the level of civil society (the totality of individuals subject to one supreme law, the unity of the second, subordinated to the unity of the first – the authorities, in the republic, the first and second are identical), the means of combating violence is the ability to resolve conflicts" [13, p. 131]. The philosopher points out that this still "requires (the police – that is, the state), politics and politeness" [13, p. 337].

As we can see, Hegel and A. Comte-Sponville interpret categories of violence, rapist, victim of violence, and the victim's inalienable right to resist violence (self-defense and necessary self-defense) holistically and constructively. These are approximately the points of view of some of our recognized criminologists, for example, Academician V.N. Kudryavtsev [24, pp. 65-67] and Professor E.F. Pobegailo [25, pp. 303-337].

What is more, we have repeatedly discussed these aspects of the problem of violence [26; 27], research in this area in criminology, criminal law and the process is going on.

5. The state's response to domestic violence in England and Russia at the turn of the 19th–20th centuries in comparison with the corresponding judicial practice in Russia at the end of the 20th century.

Let us take a closer look at the problem of domestic violence and the reaction of society and the state to it in England and Russia over the past 100 years.

Professor P.A. Lyublinskii [28] notes that "the most characteristic feature of the English legal system was its complete isolation from the public interference of family life". An Englishman had the right to declare that his family is his kingdom. The state could not interfere in the relations between a head of the family and his wife and children [29, p. 278]. In fact, the old common law at least did not prohibit a husband from "teaching his wife". In relation to Russia of that period, P.A. Lyublinskii recognized that our "Domostroi" also gave the husband the right to "politely teach his wife" and punish children.

It should be noted that until a certain time in England there were no government agencies that could be entrusted with such interference in family affairs. Later, the police court became such a body.

In the Russian Empire, as in other European countries, the police and the court interfered with family life only in the case of crimes committed by one of the spouses against the other. In accordance with Article 239 of the 1857 Statute on the Prevention and Suppression of Crimes, "the police should not interfere with private disputes and disagreements between spouses, and only in the case of a crime the police are obliged to act according to the rules set out in the laws of judicial procedure" [30, p. 150].

Chapter 3 of the Statute on Quarrels, Swearing, Fights, Beatings and Similar Offenses stipulates the following: "the police see to it that 1) harassment, insults and beatings are not be inflicted on anyone and everyone treats others politely and avoid rude quarrels; 2) abusive and obscene words are not used in a public place and in front of noble people and women, and there is no shouting, noise, fights and outrages anywhere; 3) in unimportant cases of misconduct, all self-will is immediately stopped and the quarreling parties are reconciled" (Art. 238). A significant number of references to the decisions of the Senate in the article–by-article material to Article 238 is a clear evidence of the relevance of this rule.

Let us emphasize the fact that Article 241 of the Statute on the Prevention and Suppression of Crimes forbade the quarreling parties to "call for help of comrades or to summon the people".

Attempts to “break up a fight” (Art. 243) were forbidden, since this was the function of the state. At the same time, the police were charged with providing “assistance” to victims (Art. 242).

A variant of such assistance (without undue interference in the private life of spouses) was presented in the “Instructions to the ranks of the police” (1904). The Prosecutor of the Moscow Judicial Chamber N.V. Murav’ev, referring to the decree of the Governing Senate of April 13, 1882, demanded to begin an inquiry immediately in case of the offense conducted (including in case of only suspicion of misconduct), and report to the district magistrate whether or not there was the victim’s complaint [31, pp. 7–8].

So, in these regulations, the prosecutor demonstrates the “acumen” of a professional, for whom it is not the victim’s desire to bring the perpetrator to justice that matters, since today the latter may not have such a desire, but suddenly tomorrow it will appear, then where to look for evidence. We will only point out that the discovery and consolidation of evidence of domestic violence cannot be postponed for later, as evidence may not only be lost, but also falsified by the parties to the conflict.

What was the court’s assessment of the results of a domestic scandal at the turn of the 19th and 20th centuries? P.I. Lyublinskii illustrates probable results of such a trial with a quote from a poem by Pierre-Jean de Beranger: “Commissioner, Commissioner! Colin beats his Colette! There is nothing special in it; quarrel is the messenger of love” [29, p. 279]. An English judge could do only decree an act of separation of the spouses. According to the 1895 Law on the Protection of Married Women, the spouse received the right to demand from the court to imprison the betrothed for up to three months.

When considering the women’s complaint of violence, the judges first listened to the victim’s testimony, then asked a few questions to the defendant, then questioned the local constable, and sometimes talked with the missionary. What the outcome might be?

Women seldom insisted on putting their husband in prison, since imprisonment, first, sharply worsened the financial situation of family members as a whole, and second, prison did not correct, but only embittered the spouse.

If the judge decided on separating spouses, he forced payment of no more than two pounds per week in favor of the wife.

Naturally, spouses had the right to apply to the Supreme Court with a claim for divorce. The minimum amount of court costs was 300 rubles without a lawyer and 750 rubles with a lawyer. The English procedural law of that time already knew the institution of complete exemption of the poor from legal costs, but in practice it was rarely used.

After the adoption of the law “On habitual drunkards” in 1898, the practice of applying the act on separating spouses became more liberal, since it was enough for the wife to prove that the spouse had been convicted of drunkenness at least three times during the year.

Let us project this situation to the Soviet era. Every Friday morning (reception day), three or four women were already standing outside the office, ready to file reports of domestic violence. Communication with them began with giving the victim a referral for a forensic medical examination. As a rule, only half of the victims returned a week later. The victims’ possession of a forensic medical expert’s report made it possible to draw up an appropriate statement on the involvement of a spouse for causing bodily injury or beatings in a private prosecution. This was followed by routine Soviet Socialist criminal procedure proceedings, which almost always ended with reconciliation of the parties.

It must be borne in mind that as in the early 20th century in England, at the end of the same century in the reformed RSFSR, a woman who “put” her husband in prison immediately suffered a severe blow to the family economy. There had never been an institution of separation of spouses in Russia. Moreover, the vast majority of husbands prosecuted had not had stable official earnings.

But this does not mean that the “domestic bullies” have remained unpunished. If it is impossible according to the law, then it is possible according to the rules of the unspoken “police-judicial precedent”. In case of family scandals, either district police officers or patrol service squads compiled reports according to a template, stating that a particular man swore in a public place and committed actions that were elements of the objective side of the offense provided for in Article 158 of the Administrative Code of the RSFSR 1984.

There was an unspoken agreement between the police chiefs and the judges: if a family scandal was accidental, the parties went to reconciliation, then the police chiefs punished vio-

lent husbands by imposing a fine under Article 27 of the Administrative Code of the RSFSR. If a "shake-up" was required for the brawler, then the administrative case (usually referred to as the material) was sent to court and by a judge's order, the perpetrator of domestic violence was subjected to administrative arrest under Article 32 of the Administrative Code of the RSFSR. Naturally, both after administrative arrest (according to the rules of the Administrative Code of the Russian Federation) and after serving a criminal sentence in places of imprisonment, the domestic rapist returned back to his family, to the same living quarters, often to a room in a family dormitory.

6. Assessment of domestic violence by some foreign criminologists

In 2000, the third edition of the textbook on criminology was published under the editorship of Professor of California State University J. Shelley. It describes categories of violence in general [32, pp. 49, 141, 153, 204, 205, 222, 223, 242, 261, 327, 381, 387, 418, 488, 495, 559, 623, 640, 648, 650, 665, 671, 692], physical violence [32, pp. 228, 409, 567, 600], including concepts of "domestic violence" [32, pp. 97, 98, 568], "family violence" [32, pp. 253, 268] and "retaliatory violence" [32, p. 242].

Analyzing legislation regulating criminal liability for domestic violence, the textbook authors approach this issue more than utilitarianly.

Let us recall a poem "A skyscraper in a section" by V.V. Mayakovskii (1925): "Towering over the hearth of the household, having saved his strength from sports from a young age, the sir of his lawful mistress, having learned of treason, is bleeding her face". According to legislation of the relevant state, this type of violence is a private matter. Moreover, this violence is not even a crime, but a misdemeanor. We immediately recall Article 6.1.1 "Beatings" of the Administrative Code of the Russian Federation. Now, if in Russia the husband is just "bleeding her face", this is also an ordinary offense (a crime before July 3, 2016). However, unlike in America, beatings are no longer a private matter, but a public one.

Since the 1990s, the Russian legislator has been asking researchers for help in formulating legal norms that, if implemented into relevant laws, would guarantee protection of women from domestic violence. In this case, we are talking about utopia, the search for a kind of philosopher's stone, the appearance of which magically, without investing effort and money, will solve all problems in an instant. Our references to specific foreign experience, according to which countering domestic violence is primarily a matter for civil society, and only then for the state, upset the legislator, since it comes to the immediate relocation of victims of domestic violence to a safe environment, which requires appropriate comfortable housing, clothing, food products, etc . We would like to emphasize that these issues are not the responsibility of the police, but of an organized group of volunteers. At the same time, the public (mostly law students) always proceeds from the fact that it is better to save any family.

For example, in Calgary (700 000 people), only four sergeants investigate "domestic violence"; the main burden of primary conflict resolution caused by domestic violence falls on volunteers. Therefore, foreign researchers primarily do not study domestic or family violence itself, but rather write about how politicians are looking for an appropriate electorate that will allow them to defend the draft law on combating domestic and family violence [32, pp. 97–98].

They cannot adequately assess domestic violence due to the lack of a proper empirical basis.

Highlighting the problem of "family violence", American criminologists honestly write that this concept carries an internal contradiction. On the one hand, "the family is a safe haven of love and care in a boiling, restless world", on the other, the results of recent research are as follows: "the family is one of the most violent institutions of our society". The empirical base available to criminologists is clearly insufficient, even for elementary forecasting of the near future [32, pp. 268–269].

Studying problems of retaliatory violence of a predicate victim in relation to a predicate rapist, foreign authors note, first, that a woman, as a rule, is victimized a priori in a domestic or family conflict, because by nature she is weaker than a man. Therefore, the man attacking her must initially accept that "the legal conflict will be resolved at his expense, since it is not caused by an objective reason, but is generated solely by his unlawful will" [33]. At the same time, other scientists warn victims of domestic violence and their defenders against vigilantism when retaliatory actions exceed the legitimate limits of justified self-defense [32, pp. 241–242].

7. Features of criminal procedural evidence in cases of crimes provided for in Part 1 of Ar-

ticle 116.1 of the Criminal Code of the Russian Federation

Historically, the attitude towards cases of administrative offenses (both among the people in general and among professionals in particular) is not always serious. The proceedings in such cases in Russia have been codified relatively recently. The first Administrative Code of the Russian Federation was adopted only on June 20, 1984, just five years before the collapse of the USSR. Up to this point, both the grounds for liability for administrative offenses and the procedure for imposing appropriate penalties had been regulated by separate decrees of the Presidium of the Supreme Soviet of the USSR and the RSFSR.

The authors of the first Administrative Code of the RSFSR and then their successors, the authors of the Administrative Code of the Russian Federation, set themselves the goal of protecting (guaranteeing) the rights of participants in the process at the stages of: 1) registration of offenses; 2) bringing a person to justice; 3) imposing punishment on him/her; 4) appealing decisions on punishment. The codifiers saw the achievement of this goal in gradual convergence of procedural regulations of the Administrative Code of the Russian Federation with the time-tested provisions of the Criminal Procedure Code of the Russian Federation.

At the end of the second decade of the 21st century, researchers discussed the third draft Administrative Code of the Russian Federation in the history of modern Russia actively. However, this discussion died down soon, since some scientists were convinced that according to the rules of the Administrative Code of the Russian Federation, a person can be held accountable only for such a minor offense, which a priori does not comply with the requirements of Part 1 of Article 14 of the Criminal Code of the Russian Federation, that is, does not pose public danger. At the same time, another part of the administrative science representatives (for example, B.V. Rossinskii [34], Yu.P. Solovei [35]) are convinced that any offense (including administrative) in itself poses a certain degree of public danger.

Representatives of the first trend in administrative science believe that this is “police law”, that is why procedures, prescribed by the Criminal Procedure Code of the Russian Federation, when resolving a case of an administrative offense is clearly unnecessary. Other researchers insist on maintaining the necessary procedural form when considering cases under the rules of the Administrative Code of the Russian Federation.

We have already expressed our position on the significant and insignificant in substantive and, as a result, in procedural law [36–39]. Professor Yu.P. Solovei notes that denying the degree of public danger of an act punishable under the rules of the Administrative Code of the Russian Federation is unacceptable due to the fact that it initially suppresses law enforcement officers’ sense of responsibility for their work [35]. We completely agree with the researcher, as the author’s personal observations prove a completely different attitude to cases of administrative offenses from that to criminal cases.

Denying the real significance of the offense provided for in Article 6.1.1 of the Administrative Code of the Russian Federation is also fraught with the fact that the decision of the justice of the peace issued in the case of such an offense may have prejudicial significance in criminal law (Part 1 of Article 116 of the Criminal Code of the Russian Federation), as well as criminal proceedings.

When higher courts check sentences against persons convicted under Part 1 of Article 116.1 of the Criminal Code of the Russian Federation, it often turns out that there were gross violations of the rights of participants in the process at the stages of 1) accepting a statement about beatings, 2) conducting a pre-trial check by the police and 3) resolving the case by the court.

This means that the collection of evidence in criminal cases of beatings (Part 1 of Article 116.1 of the Criminal Code of the Russian Federation) does not begin from the moment a criminal case is initiated (!), but from the moment a predicate statement on beatings is accepted according to the rules of the Administrative Code of the Russian Federation.

8. The court in a family conflict – institutionalization of society’s expectations

Continuing the discussion on judicial power (specific judicial instances) involved by society and the state in private matters, in case a victim of domestic violence seeks help, we state that the analyzed form of judicial power is a special case of the manifestation of power in general, more precisely, one of the forms of state power. In this regard, judicial power is a metaphysical (that is, beyond the limits of real physics) and historical reality, unique and at the same time

naturally emerging social relations, the social nature of which lies in the potential ability of humanity, relying on inherent social values, such as morality and law, and using speech, symbols, and signs to mobilize its resources to resolve certain categories of social conflicts.

Let us also not forget that society (represented by specific judges) has the right (opportunity) not only to make wise decisions in the process of resolving family conflicts, but also to ensure that they are strictly enforced by following rules of law (written/unwritten).

Thus, in cases of private prosecution, judicial power is a means inherent in human social nature and at the same time a necessary condition for the functioning of a highly developed social community, as well as a means of universal communication that arises between highly organized people in the process of resolving certain categories of social conflicts, a symbolic mediator that ensures the fulfillment of mutual obligations for citizens and the state on the basis of norms of law.

It should be emphasized that judicial power is also the institutionalization of the society's expectation that resolution of social conflicts in accordance with the laws and based on them will be given due attention. Judicial power is a procedural and legal paradigm of the behavior of legal entities in resolving social conflicts adopted by a certain human community. Judicial power is known to be characterized by its multidimensional nature, complexity, and consistency [40–42].

Judicial power (the very concept of "power" and its special extension "judicial") is a term that found its widest application during the 1864 Great Judicial Reform. In particular, Article 1 of the Judicial Regulations of November 20, 1864 states that "judicial power belongs to justices of the peace, congresses of justices of the peace, district courts, judicial chambers, and the Governing Senate". Later, in 1888, within the framework of the quasi-judicial organization, the zemstvo district chiefs were actually vested with judicial power in some localities. According to the general rule (albeit with certain exceptions), judicial power extended to persons of all classes (Art. 2).

Today, judicial power is also a special state-legal category fully recognized by domestic legal science. Moreover, judicial power at the constitutional level has been officially proclaimed as one of the branches of state power (Article 10 of the Constitution of the Russian Federation).

The judicial system is an apparatus of judicial power materialized both in our minds and in the material world, with all its attributes. Currently, private prosecution cases in the first instance are resolved mainly by justices of the peace, federal district judges, as well as courts (sometimes only judges alone) in the appellate, cassation and supervisory instances (that is, judges of the Supreme Court of the Russian Federation).

Private prosecution cases as a criminal procedure category have repeatedly been the subject of study by the Constitutional Court of the Russian Federation.

First intermediate conclusions

1. Violence (only in principle not dangerous to the life and health of the victim) in the family, household, and work collective is nothing more than a socio-legal phenomenon that has not yet been properly assessed either in science or in society as a whole. What is more, a significant part of society allows the use of such violence in the family, against neighbors, in labor and military collectives, and educational institutions. According to many people, such violence is moral.

2. On July 3, 2016, the legislator made a significant medial turn (phase transition), having fixed both in Article 6.1.1 of the Administrative Code of the Russian Federation and in articles 116, 116.1 of the Criminal Code of the Russian Federation the regulations according to which unqualified beatings inflicted for the first time are not a crime. Criminal liability for such beatings occurs only if the person 1) was previously punished under the rules of the Administrative Code of the Russian Federation for battery; 2) has an outstanding criminal record for violent crimes.

3. In our opinion, the complete decriminalization of non-qualified beatings is erroneous due to the fact that the degree of public danger of this type of violence (beatings) has not decreased.

4. Since July 3, 2016, the acts provided for in Article 6.1.1 of the Administrative Code of the Russian Federation have been transferred from the category of cases of private charge to the category of public prosecution.

5. In our opinion, this type of violence (beatings) is an exclusively private matter, public interference in family relations should be minimized as much as possible.

6. Domestic violence is characterized by: 1) criminological (including criminogenic), 2) criminal law, 3) criminal procedure, 4) administrative law, 5) socio-cultural, 6) philosophical and other aspects. The conducted research allows us to conclude that Russian criminology has not given an honest and unambiguous answer to the question, whether beating is a crime or not?

7. In Russia, at the legislative level, the possibility of establishing a world-renowned institution of marital separation has not been seriously considered. It implies the transfer of victims of violence (usually a woman and her children) from the conflict zone to a new comfortable environment as quickly as possible.

8. Of particular interest is the fact that society is not ready to accept that the state has actually established a moratorium on the permissibility of physical coercion of predicate rapists.

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