

## Legal Definition of Psychological Violence



**Bevziuk Inna**

*PhD in Psychological Sciences,  
Senior Lecturer of the Department  
of Prosecutors Training on Work Organization,  
Special Training Institute,  
National Prosecution Academy of Ukraine*



**Koziakov Ihor**

*Doctor of Law, Professor, Honored Lawyer  
of Ukraine, Head of the Department of Scientific  
and Methodical Support of Prosecution Activity  
beyond Criminal Justice Sphere,  
Scientific-Research Institute,  
National Prosecution Academy of Ukraine*

**Abstract.** *The article provides a theoretical and methodological aspects of the definition of the term “psychological violence”, the types and forms of its manifestations in interpersonal relations with the aim of improving the legal regulation and enforcement in counteracting this phenomenon.*

**Keywords:** *violence; domestic violence; mental violence; psychological violence; mental suffering; moral harm.*

### Problem statement

The need for the implementation of European standards for the prevention of domestic violence has given rise to the intensification of the process of lawmaking, aimed at modernizing normative legal acts. As a result of legal circle introduced new concepts. For example, as a result, in the legislation on criminal liability, along with the term “mental violence”, the term “psychological violence” is used, along with the phrase “moral suffering” – “psychological suffering”, etc. Moreover, the Criminal Code of Ukraine does not contain the authentic definitions of these novelties, and their definition in the norms of special legislation on prevention and counteraction to domestic violence does not reveal the true legal and psychological nature of these phenomena, and the terminology used has conflicting essential characteristics that demonstrate different approaches to determining the scope of generic and species concepts of the legislation in this area.

Ukraine’s European integration aspirations are linked to the positive dynamics of the implementation of the national legislation of the Council of Europe standards in preventing and combating violence against women and domestic violence. Activation of the process of lawmaking in this direction determines the modernization of legal acts, as a result of which the legal circle introduces new concepts.

Taking a course on the development of a law-governed state, Ukraine recognizes man, his life, health, honor, dignity, integrity and safety as the highest social value, and one of the most priority areas of his activity is the observance and protection of human and civil rights and freedoms. One of the violations of the lawful rights, interests and freedoms of man and citizen, which has recently been of concern to society and the state, is the commission of domestic violence, which has a destructive effect on the personality, the family and undermines their stable functioning as a social phenomenon. The most common forms of domestic violence are psychological violence.

#### **Analysis of recent research and publications.**

The fundamental foundations of modern theories of violence were laid down in the studies of H. Aranguren, G. Blummer, R. Darendorf, E. Durkheim, S. Freud, E. Fromm, D. Galtung, L. Gumplovich, L. Kozer, R. Merton, G. Mosci, G. Simmel, N. Smelzer, A. Smoll, O. Spengler, W. Sumner, G. Tarda, M. Weber and others.

The legal problems of prevention and counteraction to violence in the family were studied by O. Bandurka, A. Blaha, O. Dzhuzha, O. Kostyry, Y. Krupka, L. Kryzna, K. Levchenko, O. Litvinov, G. Moshak, M. Panov, Y. Sotak, O. Starkov and other scientists. The above-mentioned researchers have formed a number of fundamentally important provisions and recommendations on prevention and counteraction to domestic violence. But in today's realities, given the legislative stories and the current practice of law enforcement on the prevention of violence against women and domestic violence, the intensification of the struggle against these phenomena, the problem chosen does not lose its relevance and needs further investigation of its legal characteristics.

**The purpose of the article** is to develop theoretical and methodological aspects of the definition of the term "psychological violence", the types and forms of its manifestations in interpersonal relations with the aim of improving the legal regulation and enforcement in counteracting this phenomenon.

#### **Presentation of the main research material.**

Currently, every legal intelligence in the field of domestic violence has a significant impact on the results of sociological and psychological studies of this phenomenon, which makes it difficult to compare the problem of violence with any one discipline. Not by chance O. Juzha rightly emphasizes the fact that domestic violence is an interdisciplinary problem of law, health, psychology, pedagogy, sociology, and its consequences are a burden on society [1].

Other scientists who agree that violence is not only a legal problem [2], but also to a large extent philosophical [3] and socio-cultural [4], resembles a similar point of view.

Domestic violence is a product of family personal conflicts. It is a constant act of violence and an image, the continuous creation of a situation in which the victim is injured, sharing with the offender the dwelling, depending on him and even that is very common, feeling love towards him. Therefore, the main features of domestic violence should be considered a process consisting of an unlawful, guilty, systematic physical or mental impact on family members committed against their will in order to force another person to make undesirable actions for them by causing pain, an image, physical restriction as a threat or punishment. In addition, the use of physical and mental violence in the family concerning minors from persons obliged by law to take care of their education, full physical, mental, moral and intellectual development is particularly adversely affecting the formation of the future individual.

The general objective of legal regulation can only be achieved if the subject of law enforcement has a sufficient set of theoretical and practical knowledge through which means, methods, approaches, rules and ways it is possible to achieve it. The extent to which the legislator applies in its activities, the means of legislative technique and especially the definitions depends on the technical perfection of the acts adopted by it.

The legislator has formed an authentic definition, consolidating it in paragraph 3 of part 1 of article 1 of the Law of Ukraine "On Prevention and Combating Domestic Violence" [5]: "...domestic violence – acts (acts or omissions) of physical, sexual, psychological or economic violence committed in the family or within the place of residence or between relatives or between the former or the present

spouses or between other persons who live together with one family, but not staying in family relationships or in marriage with each other, regardless of whether the person who committed domestic violence resides in the same place as the injured person, as well as threats of such acts”.

At the same time, in the Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine in order to implement the provisions of the Council of Europe Convention on the Prevention of and Treatment of Violence against Women and Domestic Violence and the Fight against These Phenomena”, a lesser-than-standard norm was used in the wording of article 126<sup>1</sup> of the Criminal Code of Ukraine: “Domestic violence, that is, deliberate systematic physical, psychological or economic abuse of a spouse or ex-spouse or other person with whom the perpetrator is in family or intimate relationships, leading to physical or psychological suffering, disorder, health or disability, emotional dependence or deterioration in the quality of life of the victim” [6].

Accordingly, we will make two conceptual remarks. First, this law introduces the concept of “psychological violence”, “psychological suffering” for the first time in the criminal law vocabulary. Along with them, the term “mental violence” is widely used in the doctrine of criminal law and criminal liability law to use or to use psychic influence on another person against her will in order to achieve a harmful result. In special studies, it is emphasized that the main thing in mental violence is not the nature of threats and even their presence, but the incentive of any negative impact on the psyche of the individual. In other words, it has an effect on the will and consciousness of the victims of violence in order to subjugate its behavior, or direct it in the right direction. However, we consider the definition of intimidation as the only form of violence to be extremely inadequate. Eg I Hunia, describing the types of violence in criminal law, considers mental violence to affect the mental sphere of man, which manifests itself in her intimidation in any way [7]. We are convinced that this phenomenon is in fact much more complicated, based on at least the legal definition of the psychological effect that is

considered: “...the use of directed actions on the human psyche, conscious or unconscious, by means of persuasion, psychological transformation or suggestion for the formation of a certain system of representations, actions and relations that are subjectively perceived by the person as personally belonging” [8].

Secondly, if in general it is a directed influence on the human psyche, that is, the object of such influence is the psyche, then the more correct is the use of the term “psychological violence”. We proceed from the fact that psychology as one of the sciences of a person the object of study has the most complex sphere of human life – the psyche. Thus, the categories of psychology and psyche are correlated as an integer and part where the first is a general category and the second is direct. From these reasons, it is difficult to agree with the opinion of A Zaporozhets, what exactly is “mental violence” is a legally defined term, while “psychological violence” more contains a medical component [9].

Comparative and legal analysis of the above norms gives us reason to consider the failure of the lawmakers to develop a definition of domestic violence as a generic concept. As a result, for the needs of different branches of law enforcement proposed different in terms of the essence and definition of the same socio-psychological phenomenon. There is no consistency in the definition of forms of domestic violence (isolated in the form of sexual violence), subjects of such behavior and interaction, motivation and consequences of such behavior. It should be noted, in particular, that in the first case it is only an act (action or inaction, but in the second effect of intentional actions expressed in psychological suffering, disorders (including mental) health, emotional dependence or deterioration of the quality of life of the victim person.

Instead, in section 14, part 1, article 1 of the Law of Ukraine “On Prevention and Combating Domestic Violence”, the legislator, revealing the kinds of signs of psychological violence, creates a list of actions and consequences of such a form of domestic violence: “...psychological violence – a form of domestic violence that includes verbal abuse, threats, including against third parties, humiliation, persecution,

intimidation, other acts aimed at limiting the will of the person, control in the reproductive sphere, if such actions or inactivity were caused to the victim fear of their safety or security of third parties caused emotional insecurity, inability to protect themselves or harm the person's mental health" [5].

It is well-known that the application in lawmaking of such a technique of legal technique as an open list (and in the example given by this, the presence of the phrase "other acts" usually complicates the application of a specific norm and expands its discretionary framework. Interestingly, in the previous legislative act, which was devoted to the normative The family-based prevention of domestic violence has been covered by an exhaustive list. Psychological violence in the family was defined by the legislator as violence perpetrated by the action of one member m'yi on the psyche of another family member by verbal abuse or threats, harassment, intimidation, which intentionally caused emotional instability, inability to protect themselves and can cause or causes harm mental health (paragraph 5 of part 1, article 1 [10]);

Finally, one should focus on deficiencies in determining the consequences of psychological violence. The above mentioned absence of a single approach of lawmakers to the formation of legal norms-definitions, contributed to the creation of legal material, which, on the one hand, dissonant with universally recognized in law with negative legal consequences in the form of moral, physical or material damage. On the other hand, the legal, social, vital, psychological, and moral factors, which are concentrated in the legal norm, are, in our opinion, adversely affected by the unambiguousness of the legal assessment of the specific consequences of this form of domestic violence, since they can be broadly and ambiguously interpreted in the process of law enforcement. This equally applies to the concepts that denote the effects of psychological violence: psychological suffering, health disorders, mental health damage, emotional dependence or deterioration in the quality of life of the victim, emotional insecurity, inability to protect

themselves, fear of their safety or security of the third persons.

In general, in the current legislation, terms of physical, mental or moral suffering are determined by the legal category "moral harm", where suffering as emotional and volitional feelings of a person is the key word. It means that actions on causing harm must necessarily be reflected in the consciousness of the injured person and cause him a certain psychic reaction.

That is, it can be argued that in the emotional aspect of moral (non-property) harm finds expression in the negative emotional reactions (processes) and human conditions.

These include mental suffering, which manifests itself in feelings of fear, shame, humiliation, insults, guilt, as well as in others unfavorable to a person in a psychological sense, the consequences (sorrow, feeling of loss, experiences associated with loss of work, temporary disability, the impossibility of continuing an active social life, mutilation, etc. [11]). In law practice mental (moral, psychological) suffering is difficult to assess with the help of any technique, because they are not at all evaluable. Suffering is always associated with certain changes in the social and personal life of a person. They are perceived as an inability to fulfill their habits and desires, confusion, fear, experience, excitement, emotional instability, manifestations of depression, changes in blood pressure and the emergence of other psychosomatic diseases, deterioration of interpersonal relationships, loss of confidence of loved ones, etc. According to the fair conclusion V Vasiliev, suffering caused "reduction, the destruction of a certain personal non-property good" [12].

In addition, the mental state of a person caused by psychological (moral) or physiological (physical) feelings and impressions, in psychological science is called emotions. When a person is exposed to moral harm, his/her experiences become negative, negative emotional processes begin to dominate, including negative emotions (fear, anger, grief, despair, irritation, horror, insult, disgust, etc.), emotional states (mood, frustration, affection) and feelings (hate, despair, disappointment, etc.).

## Conclusions

As a result of the analysis of various approaches and definitions at the interparadigm level, it can be determined that psychological violence is a socio-psychological influence that forces another person into actions and behavior that were not part of its intentions and violate the individual limits of the personality carried out without informed consent and without ensuring the social and psychological security of the individual, as well as all legal rights; which leads to negative legal consequences in the form of moral, physical or material damage.

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