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SOME ISSUES OF ANALYSIS OF CAUSES AND CONDITIONS OF CRIME IN THE SPHERE OF DOMESTIC RELATIONS

The concept of the legal policy of the Republic of Kazakhstan until 2030 states: "The balance of punitive, restorative and preventive means of criminal law regulation is important. In this context, the maximum focus of criminal legislation on the restoration of violated rights, the prevention of new offenses by both convicts and other persons will increase. When forming sanctions of criminal law norms, the principle of their proportionality of the degree of public danger and the nature of the offense should be strictly observed."

Nevertheless, as life shows, the measures taken by the state in the framework of the implementation of the concept are not enough to protect the family from spiritual and moral decay. If you open any news site, you will face data on violence against minors, women in the family in different parts of the country.

Despite the adoption of the Law of the Republic of Kazakhstan of December 4, 2009 N 214-IV "On the Prevention of Domestic Violence" and its entry into force, the problem of domestic violence is still an acute, urgent topic (Law of the Republic of Kazakhstan of December 4, 2009 N 214-IV "On the Prevention of Domestic Violence").

Preventive activities of law enforcement agencies, various public organizations, non-profit organizations, centers do not produce appropriate results.

According to 150 independent services, over 15 years they made 2.5 million calls. In 2020, 3377 domestic violence calls were received on the line. In 2021, the number of calls amounted to 226,455 units, of which 7184 calls came from children under 18 years old. (EL.KZ: https://el.kz/ru/news/obshestvo/kak_zashchitit_detey_ot_nasiliya_/).

Key words: domestic violence, family, domestic relations, crime, cause, situation, prevention, system of measures, conflict of interest, social situation, market economy, etc.

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Отбасылық-тұрмыстық қатынастар аясындағы қылмыстылықтың себептері мен шарттарын талдаудың кейбір сұрақтары

ҚР құқықтық саясатының 2030 жылға дейінгі тұжырымдамасында: «Қылмыстық-құқықтық реттеудің жазалау, қалпына келтіру және алдын алу құралдарының теңгерімділігі маңызды болып табылады. Осы тұрғыда қылмыстық заңнаманың бұзылған құқықтарды қалпына келтіруге, сотталғандар тарапынан да, өзге адамдар тарапынан да жаңа құқық бұзушылықтардың алдын алуға барынша бағытталуы артатын болады. Қылмыстық-құқықтық нормалардың санкциясын қалыптастыру кезінде олардың қоғамдық қауіптілік дәрежесі мен құқық бұзушылық сипатына мөлшерлес болу қағидаты мүлтіксіз сақталуға тиіс» (ҚР құқықтық саясатының 2030 жылға дейінгі тұжырымдамасы).

Тұжырымдаманы жүзеге асыру шеңберіндегі мемлекет тарапынан жүргізіліп жатқан шараларға қарамастан, отбасын рухани-өнегелік азғындаудан қорғаудың жеткіліксіз екендігін өмір айқындап беріп отыр. Кез келген жаңалықтар сайтын ашсаңыз, еліміздің түкпір-түкпірінде жасы толмағандарға, әйелдерге қатысты отбасы ішінде жасалып жатқан зорлық-зомбылық іс-әрекеттерімен кездесесіз.

Тұрмыстық зорлық-зомбылық профилактикасы туралы Қазақстан Республикасының 2009 жылғы 4 желтоқсандағы N 214-IV Заңының қабылданып, күшіне енуіне қарамастан тұрмыстық зорлық-зомбылық мәселесі әлі күнге дейін өткір, өзекті мәселелердің қатарынан түскен жоқ (Тұрмыстық зорлық-зомбылық профилактикасы туралы Қазақстан Республикасының 2009 жылғы 4 желтоқсандағы N 214-IV Заңы). Құқық қорғау органдарының, әртүрлі қоғамдық ұйымдардың, коммерциялық емес ұйымдардың, орталықтардың алдын алу қызметі тиісті нәтижелерге қол

жеткізіп отырған жоқ. 150 тәуелсіз қызметтің мәліметі бойынша, 15 жылда аталған қызметке 2,5 млн. қоңырау шалынған. 2020 жылы линияға тұрмыстық зорлық-зомбылық бойынша 3377 қоңырау түскен. 2021 жылғы қоңыраулардың саны 226 455-бірлікті құрайды, олардың 7184-і 18 жасқа дейінгі балалардан түскен (EL.KZ: https://el.kz/ru/news/obshestvo/kak_zashchitit_detey_ot_nasiliya_/).

Түйін сөздер: тұрмыстық зорлық-зомбылық, отбасы, отбасылық-тұрмыстық қатынастар, қылмыстылық, себеп, жағдай, алдын алу, шаралар жүйесі, мүдделер қақтығысы, әлеуметтік жағдай, нарықтық экономика және т.б.

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Некоторые вопросы анализа причин и условий преступности в сфере семейно-бытовых отношений

В концепции правовой политики РК до 2030 года отмечено: «Важным является сбалансированность карательных, восстановительных и превентивных средств уголовно-правового регулирования. В данном контексте будет возрастать максимальная направленность уголовного законодательства на восстановление нарушенных прав, предупреждение новых правонарушений как со стороны осужденных, так и иных лиц. При формировании санкций уголовно-правовых норм должен неукоснительно соблюдаться принцип их соразмерности степени общественной опасности и характеру правонарушения».

Но как показывает жизнь, принимаемые со стороны государства меры в рамках реализации концепции недостаточны для защиты семьи от духовно-нравственного разложения. Если вы откроете любой новостной сайт, то столкнетесь с данными о насилии по отношению к несовершеннолетним, к женщинам в семье в разных уголках страны.

Несмотря на принятие Закона Республики Казахстан от 4 декабря 2009 года N 214-IV «О профилактике бытового насилия» и вступления его в силу, проблема бытового насилия все еще остается острой, актуальной темой (Закон Республики Казахстан от 4 декабря 2009 года N 214-IV «О профилактике бытового насилия»).

Профилактическая деятельность правоохранительных органов, различных общественных организаций, некоммерческих организаций, центров не дает соответствующие результаты.

По данным 150 независимых служб, за 15 лет им было совершено 2,5 млн звонков. В 2020 году на линию поступило 3377 звонков по бытовому насилию. В 2021 году количество звонков составило 226 455 единиц, из них 7184 звонка поступило от детей до 18 лет. (EL.KZ: https://el.kz/ru/news/obshestvo/kak_zashchitit_detey_ot_nasiliya_/).

Ключевые слова: бытовое насилие, семья, семейно-бытовые отношения, преступность, причина, ситуация, профилактика, система мер, конфликт интересов, социальное положение, рыночная экономика и т.д.

Introduction

According to article 4 of the Law of the Republic of Kazakhstan “On the Prevention of Domestic Violence”, domestic violence can be expressed not only in the form of physical or psychological violence, but also in the form of sexual and (or) economic violence.

According to the United Nations, around 400 women are killed each year by domestic violence in Kazakhstan. According to the Kazakh authorities, the number of complaints of domestic violence in 2019 increased by 104 percent compared to 2015. According to 2018 statistics, 17 percent of women aged 18 to 75 have experienced physical or sexual abuse by a husband or partner, including exes. The

state of the already established picture in 2020 was further worsened by the sudden global problem – “coronavirus infection (COVID-19)”. After the introduction of quarantine, factors of domestic violence against women became more frequent. Moreover, this situation, according to the United Nations, has developed around the world. ‘It’s a worrying sign. Women and girls are not able to reach organizations that can support them. Perhaps they do not have access to a mobile phone, computer or the Internet, since they can be under the supervision of the criminal and other members of his family, “the UN noted. In addition, UN representatives noted that... “Epidemics exacerbate existing inequality, including those based on economic status, abilities, age, and gender. In the post-crisis period, violence

against women will be accompanied by unemployment, financial difficulties. Women facing violence during a crisis find it harder to save themselves”.

The numbers we face are appalling and they clearly require concrete action. Today, the current situation can be called – “epidemic of domestic violence”. As for the legal regulation of these illegal actions, there are significant gaps and shortcomings. If before 2017 the aggressor who committed violence against a woman could be prosecuted; then after the decriminalization of the articles “beatings” and “intentional infliction of minor harm to health,” which were most often used to investigate and prosecute the facts of domestic violence, this possibility is excluded.

Methodology

The research methodology is based on the harmonization of the requirements of general scientific and private scientific methodologies. The general scientific methodology includes accounting for objective and subjective factors, cause and effect relations and relationships, their institutionalization and subordination. As private scientific methods, the following were used: methods of formal-legal, structural-system analysis, methods of logical, social analysis and synthesis.

Main part

To explain the emergence and development of crime, it is primarily necessary to analyze the causes and conditions of crime, its determinants, and the factors that generate crime. In this regard, the study of the causes of crime is one of the important problems of criminological science. Therefore, identifying the causes of crime makes it possible to build an effective crime prevention system.

Many scholars consider the phenomena and processes of public life as the causes of crime (Criminology, 1998).

The conditions that contribute to the commission of crimes are both specific natural and social or technical factors that do not in themselves generate crimes, but help their implementation and implementation. The causes of crime and the conditions that contribute to it are united by the general term “determination of crime,” that is, its objective dependence on other phenomena of nature and society.

Currently, political, economic and social phenomena that determine domestic crimes also attract attention when considering the common causes of crimes of one type or another.

Modern family-household relations in themselves should not lead to negative manifestations of social relations. In this regard, they should not cause social contradictions directly related to the family. Complex social relations arising from domestic relations give rise to problems in the life and actions of people that do not have a solution and subsequently lead to crimes of other offenses. Apparently, it is still impossible to get rid of such contradictions in domestic relations. At present, it is impossible not to notice the family differences between the old and new, past and future, which meet the modern requirements of the development of society. That is, there are still active contradictions in domestic relations. This provides evidence of criminal negatives manifesting “within” the family. As a result, the crime (its causes and conditions, the factors that gave rise to the crime), having appeared “inside” the family, actually acquires a family character. In connection with these circumstances, such types of life as a criminal lifestyle appear and operate in the system of family relations. This is nothing more than a contradiction between private family and social interests. This contradiction will not disappear on its own. On the contrary, it more often develops into the form of another, more negative state, including family conflicts, clearly manifesting “criminal conflicts”. Such conflicts usually lead to negative manifestations of family relations – family crimes. In other words, social contradictions in the family are most often “resolved” by committing a crime. Of course, this cannot be avoided. However, in family and domestic relations, it is necessary to see all the opposite.

By studying the social contradictions inherent in family and family relationships, it is necessary to determine their connection to crime, as well as their causes and conditions. These are, first, contradictions of a negative nature. They usually occur between individuals on domestic grounds. Therefore, they are limited to special, that is, family-household relations and cannot “extend” to other areas. Family disagreements, as well as contradictions in general, arise as a result of violation of moral and legal norms, and, of course, have no absolute solution. Here, the types of contradictions mean opposite relations to each other and are solved to a comparative extent. Most often, they are constant and do not find a solution, generate either “criminal” conflicts, or the causes and conditions of the crime. Therefore, the negativity of these contradictions arises for the above reason. Scientists write about this as follows: “since social disagreements have always expressed relations between people and influenced their inter-

ests, crimes can also be considered a manifestation of contradiction, limiting the view of actual real possibilities carried out with the objective interest of society and criminals to solve contradictions in an optimal way for society” (Buchholz, 1975:68). Here, in fact, we are talking about criminal social contradictions. The basis of their manifestation is family members, family and household relations between relatives. The fact is that in the family people are trying to resolve disagreements between themselves according to their interests. This, in turn, most often leads to crimes and other offenses.

D.A. Shestakov systematizing family criminogenic cases distinguishes the following links: marital conflicts; conflicts between the older and younger generation; conflicts related to other kinship relationships and characteristics (Shestakov 1976:129).

When studying crimes in the field of family and family relations, it is necessary to rely on the fact that a conflict, namely a family conflict, is a prerequisite for the commission of such crimes.

A family-domestic conflict should be understood as a conflict (contradiction) of the views, aspirations and personal interests of people associated with marriage, family, family, related, friendly, close or neighboring relations, realized by these people. As we noted, the conflict, being a social defect, is inherent in almost all household relationships. In addition, it is in family and domestic relations that control over the behavior of citizens by state and public bodies is rather weak. Here we are talking about social control, which is extremely important in the prevention of crimes, including family crimes.

Many works of leading criminologists are devoted to the concepts of conflict, conflict situations (Kudryavtsev 1976:18). Thus, Y.M. Antonyan understands the conflict situation as a contradiction of interests, views, the opposite of aspirations, complex disagreements between the parties, causing a complex form of struggle (Antonyan 1974:73). Such characteristics of conflicts and conflict situations are often found in the legal literature. In this case, conflicts are classified into collision stages (initial stage, formation of conflict relations, apogee and final stage). Psychologists define “their” specific groups of conflict situations. They distinguish between conflicts between representatives of different groups. For example, V.V. Petrov distinguishes between the following three groups of contradictions that can cause the emergence and development of conflict situations in domestic relations: intergroup, group and interpersonal (Petrov, 1981:26). We are interested in conflicts that arise between people in

certain relationships, in particular, in domestic relationships.

During the study of domestic crimes, E.P. Kim, when considering conflicts, divides them into types of crimes in accordance with the stages of hostile relations between the victim and the criminal. According to E.P. Kim, family and domestic crimes are mainly characterized by conflicts that lasted more than three months (Kim 2002:221). However, the classification of conflicts by type of crime does not affect preventive measures. Since it is impossible to determine which type of crime in the family has the greatest conflict. In this regard, conflicts in time are considered only in relation to relations between family members.

It is safe to say that crimes in the family cannot occur without conflict. However, conflicts in domestic relations necessarily require a solution, but in order to neutralize conflicts, it is necessary to know what factors influence the occurrence of conflicts in domestic relations. This makes it possible to get a criminological characterization of domestic relations.

There are factors that influence the commission of a crime in the family. The mechanism of influence of factors on crimes in domestic relations is extremely complex. Sometimes the criminogenicity or anticriminogenicity of the influence of any factors on the occurrence of collisions can only be spoken conditionally.

Given the fact that the scope of factors that influence crime is very broad, we will limit ourselves to looking at factors that influence crimes in domestic relationships. In addition, here we are talking about factors inherent in the relationship between specific family members.

The first factor covers demographic, socio-economic (material, housing, medical), cultural, educational and educational elements.

The above factors do not affect the relationship between family members and relatives who do not live with them. Demographic factors affecting family conflicts in family relationships need to be considered. This is due to the particular relevance of defining regional differences in demographic processes.

Demographic factors. This factor is closely related to family-household relations.

This factor is especially important, since, as criminological literature shows, the population has a certain impact on the growth of migration crimes throughout the country. Of course, the migration process is mainly determined by the location of new jobs in Kazakhstan.

As you know, this is due to family-household relations, contradictions and conflicts in such relations, and also affects the criminological characterization of this area, crimes committed in the family-household sphere.

Demographic factors include birth, marriage and divorce (Avdeev 1999:29). The latter is inherent in the family and household sphere. They should be considered in the system of relevant relationships.

Socioeconomic factors. According to research, everyday disagreements most often arise not because of deep, unsolvable contradictions, but because of many life difficulties, needs and shortcomings. Therefore, there is a need to study socio-economic factors, that is, the level of material existence, the degree of satisfaction with housing and other household needs. When studying criminal cases, it became known that material difficulties give rise to acute domestic conflicts; as a result, the nature of domestic crimes was determined.

The group of socio-economic factors also includes dissatisfaction with housing conditions in regions with an average provision of housing per resident. According to research, unsatisfactory living conditions largely cause negative social contradictions in everyday life and everyday conflicts. Crimes related to this fact are also frequent.

We want to draw attention to such factors as the provision of members of society with consumer goods and food. As you know, this element is closely related to everyday life.

About 80% of the disagreements that arise in the family and turn into family and household conflicts are associated with a low level of well-being of the population. To the question: "What exactly is the family-household conflict connected with?" the following answers were received:

- poor living conditions – 50%;
- low level of material provision – 60%;
- insufficient provision of consumer goods – 15%;
- low level of food supply – 40%;
- low level of provision of the population with household appliances – 10%;
- unsettled work on repair work in apartments – 35%

In addition, the free time from study and work of members of society, especially adolescents and minors, the improper organization of free time, etc., affect the growth of crime. There is a psychological violation or, as scientists write, a social "explosion" in domestic relations. It is no coincidence that 80% of disagreements for the above reasons are turned into family crimes.

Educational factors. Among the factors playing a criminal role in the spread of domestic crimes, special attention should be paid to such factors as the lack of educational work.

In recent years, weak educational work has been noticed in public life, this leads to the generation in society of non-aligned views and traditions, the revival in the minds of people of old foundations and beliefs.

The current situation in this direction can be defined as a stage of struggle between a system of outdated values with significant shortcomings and a new system. The shortcomings of educational work affect the preservation of a low cultural level of the population. For example, some people, especially young people, do not know how to spend their free time and what interesting types of leisure activities can be found. "The beautifully wrapped culture of exchange, the product of popular culture, the real preaching of the" new missionaries "of the West and East, various and often contradictory political, ideological and religious ideas and myths are actively promoted among young people" (Buldenko 1999:12; Popov 1988:76). This is one of the reasons for clashes in everyday life, leading to various kinds of crimes. Another reason is the lack of youth employment due to the lack of jobs.

More than half of the victims of crimes within the framework of family and household relations, as well as more than half of those who committed family and household crimes noted that the reason for domestic contradictions was the lack of the opportunity to spend free time in cultural institutions. Also, many categories of people noted that they do not want to spend their leisure time in clubs (in urban and rural areas), since in such places free time is not spent with elements such as lectures, reports that affect the increase in education of the population. We want to say that today at the institutional and substantive levels; educational work is undergoing a crisis. In particular, the commercialization of cultural processes in society leads to a significant deviation from high cultural norms and values towards a mediocre example of aggressive pop culture, obviously manifested in electronic media. This all negatively affects the ideals of the younger generation. In addition, the shortcomings of educational work are complicated by the preservation in some part of the population of outdated traditions, unfavorable customs and ways. As criminological literature, a backward lifestyle, urban and rural traditions, formed views, do not always pass without negative consequences. As it turned out because of systemic calculations,

contradictions occurring in many places exacerbate and increase the criminogenic effect (Goryainov 1985:115). In this regard, we would like to dwell in more detail on such a phenomenon as alcoholism. The negative value of such traditions and customs as the “washing” of an event (seeing off in the army, hiring, having a child, buying a certain thing, etc.) is the “coverage” of such a phenomenon of all groups, from younger to older, men and women. This is directly related to the relationship system, especially the system of leisure and domestic relations. In criminology, an attempt was made to analyze the traditions and customs of drinking in connection with the study of crimes committed in everyday life. About 50% of domestic conflicts and about 12% of crimes are related to the traditions and customs of washing (in fact, all of them are crimes). This is all based on domestic alcoholism.

Traditional alcoholism in modern society continues even after the eradication of the historical conditions that gave rise to it. It can be noted that there is a process of turning the use of alcoholic beverages into the usual way of daily life. In the domestic relations of our society, these processes are certainly much more dangerous than the development of the tradition of drinking alcohol. “Drinking alcoholic beverages in each repeated case of meeting with relatives, friends familiar from familiar communication develops into a physiological habit. After such changes, alcohol turns from an addition to communication between relatives and loved ones into an invitation to drink alcohol for a drunken conversation. The joy of human communication is lost and alcoholism appears”, said I.V. Sukhanov (Sukhanov 1976; 91). Alcoholism turns into the cause of conflicts that develop into a crime. For example, 85% of cases of domestic hooliganism in the family were committed while intoxicated.

Many people perceive the traditional drinking of alcoholic beverages as any other behavior of a person, as a common phenomenon, without thinking about the meaning of such behavior, about its harmful consequences. As a result, under the influence of various reasons in most people who drink alcoholic beverages, such “drunkenness” in the family turns into a tradition and develops into alcoholism. Thus, according to G.G. Zaigraev, 61% of 932 experts named among the factors affecting the predisposition to drink alcoholic beverages the traditions and customs of drinking that have developed in everyday life (Zaigraev 1980:38). Therefore, considering the traditions and customs of drunkenness as one of the factors of alcoholism, it is safe to say that they

occupy one of the first places in the emergence of illegal actions in everyday life. The systematic observance of the habit of drinking alcohol leads to negative changes in the social characteristics of alcoholics. For example, the range of their social needs and interests is significantly narrow, as well as the prospects for the existence of such people are limited by the expectation and search for reasons for drinking alcohol, as a result, the positive qualities of a person weaken and behavior alien to society. Subsequently, this may turn into one of the factors of the appearance of contradictions in everyday life, which flow into everyday crimes.

Factors affecting the emergence of conflicts in the family and household sphere. It should be noted that they have a number of features. Considering family-household relations as a special form of relationships, it can be noted that it is at this level that the behavior of all traditional views in family-household relationships is intertwined, including the process of their interaction.

Violence in family and domestic relationships manifests itself in the following forms: propaganda of the dictate of violence; the formation of behaviors that are impossible without violence among young people, including rural youth; the influence of illegal traditions and customs in all spheres of family and household relations; negligence on the part of state institutions and non-state structures to ensure the stable functioning and life of the family.

As studies show, among those who committed crimes, there are a lot of people who grew up as children as only children (mainly without a father) or without parents. Once again, we want to note that this is closely related to conflicts between spouses, parents, children, relatives and, after all, affects the growth of crime in families.

Conflicts can arise on the basis of adultery. According to sociological studies, most facts of divorce are based on non-preservation of marital fidelity.

Conflicts in domestic relations can also arise in connection with disagreements in the upbringing of children, jealousy of one of the spouses, incompatibility of characters, failure to fulfill family duties on the basis of different views. Consequently, family and domestic conflicts, offenses, and even crimes arise.

Factors that influence the emergence of conflicts between various relatives who do not live together in the same house, in the same apartment are of interest. In the process of such a relationship, various excesses occur, leading to conflicts between relatives. An analysis of crimes committed by family

members showed that crimes were committed due to the lack of a common culture of behavior between relatives. It is no secret that there are relatives scandalizing on any, even minor occasion, and even reaching the fight. Most often, this is due to the low culture of one or even two relatives, that is, each of them.

The criminogenic factors of such kinship relations include the difference between the psychological characteristics of the character and temperament of relatives that is, psychological incompatibility, unfriendly and contradictory relations, the excessive density of the place of residence and the resulting objective obligation of constant "forced communication." Outdated traditions and customs that lead to family-household conflicts contribute to the emergence of conflicts between relatives who do not live together. About 30% of conflicts between relatives are related to such traditions and customs. Most of them turn into crimes or other offenses.

Crimes between relatives who do not live together include deliberate destruction of property, harm to health, and even murder. The reason for such a crime is due to the "debt" of revenge for the grievances caused.

Sometimes all factors are intertwined and can manifest themselves in any relationship between people in family or other relationships.

Conclusion

What necessary steps we see today in solving these problems of domestic violence prevention, in addition to fundamental study of foreign experience and awareness of the importance of preserving our own family values and traditions in determining the role of the state and society in strengthening the

institution of the family. Of course, the state and society should play an important role in resolving this issue, but only from the point of view of a comprehensive study of the problem, from the point of view of wide discussion among the public of possible measures by the state to strengthen the institution of the family and exclude their negative impact on the family, parenthood, existing family values and traditions. The main role of the state should be to provide legal support and create all social conditions for the family to fulfill its social functions, including the birth and upbringing of children. We should only talk about the prevention by the state and society of a decrease in the quality and level of family well-being (economic, psychological and other social), it should consist primarily in:

- promoting the development of legal, psychological literacy of parents, children,
- providing an affordable assortment of leisure and sports activities for children,
- the development of preventive measures for social and psychological assistance, taking into account the needs of not only disadvantaged families, but of various families (young, large families who find themselves in difficult life situations, having children with special needs, children in specialized institutions),
- ensuring the availability of the activities of crisis and other rehabilitation centers, providing assistance for families, persons who find themselves in a difficult life situation,
- increasing the level of organizational and managerial support for the activities of the state and civil society institutions on family strengthening, solving personnel issues in institutions working with families, parents, children, etc.

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