

Limits of Acceptable State Interference in Privacy

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ABSTRACT

The problem of the limits of permissible state interference in private life is directly related to the protection of family life. Hence the relevance of the widespread discussion in Russia regarding the problem of domestic violence and the adoption of a federal law to combating this negative phenomenon. Russian statistics on domestic violence are fragmented, which makes it difficult to objectively assess the extent of the problem. Such uncertainty and incompleteness of information allows supporters and opponents of a special draft law on combating domestic violence to operate on the results of selective research that are convenient for them and the preferred sources of information. It is necessary to develop a legal definition of domestic violence, which includes a description of objectively recorded signs. The proposed formulations of the definition of domestic violence do not meet this requirement. The danger of interference in privacy has become not a threat but a fact. Sometimes the state intervenes in private life, performing protective functions. State intervention is permissible only if there is a real threat to life and health. It is also the state's task to develop mechanisms to protect and receive assistance on a voluntary basis to participants of conflicts that do not threaten life and health. The Russian criminal law has already criminalized various forms of manifestation of domestic violence. Therefore, the current Russian legislation as a whole cannot be recognized as an effective remedy against domestic violence. The complexity of the situation is associated not so much with gaps in legal regulation as with law enforcement practice, where the de facto problem of domestic violence by officials is underestimated or openly ignored.

Keywords: *domestic violence, state interference, private life, interference in privacy, legislation*

1. INTRODUCTION

When it comes to protecting privacy, it is traditionally meant to protect it from any external interference. This is due to the fact that private life is most often regarded as a moral, social and physical shell, which allows each person to live and develop taking into account his legitimate needs and desires. That is why private life, first of all, refers to family relationships, or rather, interpersonal relationships. Violation of privacy (the right of a citizen enshrined in the Constitution, protected by international and national legislation) entails legal liability.

Currently, processes that are not directly related to each other are taking place. On the one hand, it is a process of cardinal technological changes that provides opportunities and prospects for total control over people's daily lives. The range of such transformations in the era of globalization is extremely wide - from the all-pervasive surveillance of cameras and the fixation of communicative connections within the community to the digitalization of many aspects of public (and, inevitably, private) life, which also serves to strengthen state control in society. On the other hand, there exists and will continue to grow an objective contradiction between the due and the existing, since the development of technologies will always be

ahead of the development of law, which is an essentially conservative institution. It is obvious that as technological development (and it is enormously accelerated by the day), the "scissors" between him and the legal regulation of the permissibility of interference in private life (and not only the state) will continue to grow, thus creating ground for irresponsible, uncontrolled and unpunished abuse.

The question of the extent of permissible state intervention in private life depends on the choice of a conceptual paradigm that determines the relationship between personal and collective interests, on the philosophy of the system of priorities for political and social development. The actively discussed problem of domestic violence in Russian society, which has long been considered a taboo topic, confirms this position.

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2. METHODS

When considering the problem of domestic violence, the following questions must be answered: 1) What is the definition of domestic violence? 2) Where is the line between non-interference with privacy and the need for protective measures for victims of violence? 3) What is the reason for the inefficiency of the current Russian legislation?

These problems determined the choice of research methods. This article presents the results of an analysis of various approaches to the definition of domestic violence, which are used in both domestic and foreign studies. Based on a quantitative analysis of statistical information, the extent of this problem is estimated. The presented assessment of the effectiveness of the current legislation is the result of a generalization of law enforcement practice, which takes into account the peculiarities of the Russian law enforcement system.

3. RESULT

Our study showed that the lack of definition of the concept of “domestic violence” in Russian legislation significantly complicates law enforcement. The corresponding definition should contain objectively recorded signs of manifestation of domestic violence. In the opposite case, the principle of legal certainty will be violated, which can lead to both abuse of the law and ineffectiveness of the law on counteracting domestic violence. Russian law should be based on a systematic approach, considering certain administrative offenses and crimes as an extreme form of manifestation of family conflicts. When resolving family conflicts that develop into domestic violence, a balance must be ensured, on the one hand, inviolability of private (family) life, and on the other hand, protection of the victim by the state. The current Russian legislation cannot be recognized as an effective remedy against domestic violence. Meanwhile, judicial practice does not always take into account the essence and origins of family conflicts.

4. DISCUSSION

4.1. *The definition of domestic violence*

Russian statistics on domestic violence are fragmented, which makes it difficult to objectively assess the extent of the problem. Such uncertainty and incompleteness of information allows supporters and opponents of a special draft law on combating domestic violence to operate on the results of selective research that are convenient for them and the preferred sources of information.

According to the Federal State Statistics Service, the number of people recognized as victims of crimes related to violent acts against a family member amounted to 25.7

thousand women and 10.4 thousand men in 2017 (Federal State Statistics Service, 2018). The Ministry of Health and Social Development of the Russian Federation, which mainly collects information through subordinate centers for social assistance to families and children, provide these data to the Federal State Statistics Service. Given that victims of domestic violence rarely turn to crisis centers, and if they turn to, as a rule, to non-state funds, this data must be taken quite critically.

Media publications that focus on the immediate adoption of the draft legislation often use information that 14 thousand women, who are victims of their partner, die in Russia each year. These data were presented in 1999 in a report of the Russian Federation submitted to the UN Committee on the Elimination of Discrimination against Women (European Court of Human Rights, 2019). Although 20 years have passed since then, these data are often used, not taking into account either the decrease in crime, changes in its structure and dynamics, or significant changes in the demographic situation, or other important data.

In the statistics of the Ministry of Internal Affairs of Russia, information on victims of domestic conflicts is not detailed and is generally very limited. In 2019, the Russian Ministry of Internal Affairs reported that in 2018 21,390 crimes were committed against women as a result of domestic conflicts (RBC, 2019). As you can see, this information did not include information on administrative offenses. According to surveys of the All-Russian Center for the Study of Public Opinion, 40% of respondents are aware of cases of beatings in familiar families. According to experts, 60-70% of women who are victims of domestic violence do not seek help, and only 3% of such cases go to court (Human Rights Watch, 2018). Thus, the problem of streamlining the registration and recording of statistical information on domestic violence is one of the most acute. The complexity of its solution is associated not only with the definition of the subject (state structure), which should perform the relevant functions, but also with the answer to the key question, what exactly should be considered.

In the practice of most foreign countries, the term domestic violence is interpreted very broadly and applies to all forms of violence that relate to family relationships. The following types are distinguished: physical, sexual, financial (economic), emotional (psychological), verbal, neglect (Department of Justice, 2017). Such a broad understanding of domestic violence can put a law enforcer, accustomed to working with specific legal structures, in a difficult position. Therefore, it is necessary to develop a legal concept of domestic violence, which includes a description of objectively recorded signs. The proposed formulations of the definition of domestic violence do not meet this requirement. The law draftsman proposed to consider domestic violence “a deliberate act causing or containing the threat of causing physical and (or) mental suffering and (or) property damage that does not contain signs of an administrative offense or criminal offense”. Such a definition cannot be considered successful. Firstly, the use of categories such as “physical and (or) mental suffering” in itself raises many questions because of their

vagueness and subjective perception. Secondly, the logic of the law draftsman who excluded administrative offenses and crimes from the concept of “domestic violence” is not at all clear.

4.2. The limits of state intervention in private life

The trend of increasing control over the privacy is becoming apparent trends. In principle, the question of the extent of acceptable state interference in private life depends on the choice of the conceptual paradigm of the system of priorities for political and social development. Five to six years ago, the priority of individual rights, as enshrined in the 1993 Constitution, was at least declared. Over the years, in the public understanding and legal consciousness gradually, very consistently, fundamental changes took place. The concept of priority of individual rights has changed dramatically, it has been replaced by a fundamentally different content and meaning. At the same time, there was a rejection of Western values, which led to forced self-isolation of the country, the priority of national legislation over international, etc.

Total control over the means of communication and the dissemination of information have become commonplace. People are getting used to it more and more as an almost normal phenomenon, realizing that as technology develops, surveillance of private life and total control over everything will increase. The danger of interference in private life (we emphasize once again - not only from the state) has become not a threat but a fact.

At the same time, sometimes the state intervenes in private life, performing protective functions. This is especially pronounced in family conflicts. But where is the line between non-interference with privacy and the need for protective measures for victims of violence? In fact, the answer to this question is connected with the classic legal dilemma on the priority of rights. State intervention is permissible only if there is a real threat to life and health. However, this does not mean that in other cases the state cannot participate in resolving family conflicts. In the event of a conflict that does not pose a threat to life and health, any of the parties may turn to state structures or public associations for qualified assistance. The task of the state is to develop mechanisms that provide protection and receive the necessary assistance. And here we are again talking about primordial values (family life), about historical features, psychology and mentality that affect people's willingness to seek state assistance.

4.3. Evaluation of the effectiveness of existing Russian legislation

Today, unlawful acts in family conflicts, depending on the consequences, can be qualified in accordance with Article 6.1.1 of the Code of Administrative Offenses of the Russian Federation (beatings), Article 116.1 of the

Criminal Code of the Russian Federation (beatings by a person subjected to administrative punishment), Art. 115 of the Criminal Code (intentional infliction of slight harm to health). Most often, these articles are applied in practice, although qualification under other articles of the Criminal Code of the Russian Federation is also possible. The criminal law has already criminalized various forms of manifestation of domestic violence. The question arises about the advisability of introducing an additional (separate) *corpus delicti*. The main argument of the supporters of the criminalization of domestic violence, in contrast to criminal attacks by a stranger, in family conflicts, the victim of the crime is financially or otherwise dependent on the aggressor, as a rule, lives with him and, therefore, the violence is systematic. This argument undoubtedly deserves attention.

The following considerations are important when evaluating applicable laws and practices. Firstly, now criminal proceedings under articles 115 and 116.1 of the Criminal Code of the Russian Federation are carried out on a private charge basis. Under Russian law, criminal prosecution in private charge is carried out only upon application by the injured party or its legal representative to the magistrate court. The burden of proof lies with the injured party and it also pays for all legal costs. Thus, the responsibility for providing justice for domestic violence is in fact transferred to the victims of violence. Some experts assess this as a state evasion of obligations to victims of violence, putting these people at a disadvantage. Therefore, the current Russian legislation as a whole cannot be recognized as an effective remedy against domestic violence.

The second consideration is directly related to the decriminalization of beatings. Some Russian experts believe that this was a mistake; decriminalization was a significant step backward, as it gave the aggressors a signal of permissiveness, complicated access to justice for victims and weakened guarantees of protection. Other experts do not consider this decision a mistake. The introduction of administrative prejudice, in their opinion, simplified victims' access to justice (in contrast to Articles 116 and 116.1 of the Criminal Code of the Russian Federation). In addition, it must be borne in mind that very often, for various reasons, the victim of violence does not want to initiate criminal prosecution of the aggressor. In the most common scenarios of a family-domestic conflict, the use of a preventive measure — temporary isolation of the aggressor from the victim — is sufficient. In this case, administrative arrest, in our opinion, is the most effective measure. Meanwhile, judicial practice does not always take into account the essence and origins of family conflicts and, as a rule, such cases are punished with a fine, which is paid from the family budget. As you can see, the complexity of the situation is associated not so much with gaps in legal regulation as with law enforcement practice, where the *de facto* problem of domestic violence by officials is underestimated or openly ignored.

And the last one. In the draft law, the main subject of prevention of domestic violence is the police. In this regard, at least two questions arise. The first question is

whether the participants in the family conflict are ready for contacts with the police (it is known that the level of trust in the police is still not so high)? The second question is whether the police are ready to intervene in family conflicts within the existing staffing and resource provision. A positive answer to these two questions seems to be very problematic. This problem is characteristic not only for Russian society. As noted in special American studies, only about a quarter of cases of domestic violence go to the police, and the belief that the police cannot do anything is the main obstacle to seeking help (Hamby, Finkelhor & Turner, 2015; Caponera, 2007; Tjaden & Thoennes, 2000). At the same time, significant successes have been achieved in the prevention of domestic violence in the United States of America, Russia is at the initial stage.

5. CONCLUSION

Private life requires a responsible attitude to the most easily vulnerable sphere of human existence, especially since this applies to everyone. Unlimited state intervention has irreparable consequences and leads to the formation of a totalitarian system. In modern society, it is necessary to ensure a balance, on the one hand, the right to privacy, on the other hand, the possibility of government intervention in private life in order to ensure its protection.

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