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PROCEDURAL AND TACTICAL FEATURES WHILE INTERVIEWING DOMESTIC VIOLENCE FEMALE VICTIMS

Nevena Ivanova Ruseva, PhD

Department of Criminal Law,
"Angel Kanchev" University of Ruse
Tel.: +359889623456
E-mail: nruseva@uni-ruse.bg

Plamen Pyrvanov Penchev

Department of Criminal Law, Ph.D. Student
"Angel Kanchev" University of Ruse
Tel.: +359888521282
E-mail: pppenchev@uni-ruse.bg

Desislava Viktorova Petrova-Lyoleva, MEng.

Academy of Ministry of Interior, Sofia, Bulgaria, Ph.D. Student
Tel.: +359888435235
E-mail: desviktorova@gmail.com

***Abstract:** The purpose of this report is to address the issues related to necessity of applying an individual approach to procedural actions and, in particular, interviewing female victims of domestic violence as a witness, in its various forms and manifestations, provided by the Penal Code, The need for training on the topic in the initial and subsequent police preparation is described at the end of the present work.*

***Keywords:** crime, interrogation, evidence, victim, domestic violence, police education*

INTRODUCTION

Domestic violence is one of the most serious and widespread human rights violations, affecting not only the personal safety and security of victims³⁹, but also obstructing their personal and social development.

The study of the processes and phenomena in the main constituent cell of society - the family, builds up perceptions of the modern image of mankind. The family is a factor for socialization and social inclusion, but it is also a source of risks for its members and a territory for interpersonal conflicts⁴⁰.

According to the European Union Agency for Fundamental Rights (FRA), one in three women (61 million out of a total of 185 million) in the EU has been a victim of physical or sexual violence, or both, after the age of 15. According to researches by non-governmental organizations with a field of application in the area of domestic violence, every fourth woman in our country has been a victim of an act of such violence⁴¹.

³⁹In many situations, domestic violence experts prefer to use the term "survivor of violence" to describe a person who has experienced violence. In the field of law enforcement, however, the term "victim" is regularly used to describe the affected side (regardless of whether she has experienced violence or not).

⁴⁰Pushkarova, I. "Criminogenic risk factors in children and case law as a tool for their management", Bulletin of the SAA (February 2010).

⁴¹<https://alpharesearch.bg/post/843-seksualnoto-nasilie-nad-jeni-v-bulgaria.html>

Legislation and nature of domestic violence

Modern international legislation on domestic violence either regulates the protection of individuals against violent behavior in general, or specifically defines the rights and obligations of states and citizens regarding the recognition, counteraction and sanctioning of domestic violence⁴².

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence⁴³ defines in Article 3, letter "b" the term "domestic violence", which is similar to that in the Law on Protection from Domestic Violence (LPDV), but in Bulgarian law the circle of persons who can seek protection is more clearly defined. According to the LPDV, domestic violence includes "any act of physical, sexual, mental, emotional or economic violence, as well as the attempt to commit such violence, the forced restriction of privacy, personal liberty and personal rights committed against persons who are related to each other. who are or have been in a family relationship or de facto cohabitation". In practice, however, there is almost always an intertwining of domestic violence forms, so often several types of domestic violence are committed with a single act or omission.

The current Penal Code does not contain acts of domestic violence as specific crimes. Although some of its forms are fully comprehended (physical violence or rape) or partially (female genital mutilation as a bodily injury), they do not constitute specific crimes within a family or domestic context, but crimes of a general nature. With the latest amendments to the Penal Code, the legislator introduces a new qualifying circumstance - "the crime was committed in the context of domestic violence"⁴⁴ and based on the accumulated two years of case law practice to adequately comment on the results and subsequent steps to change the legal framework defining the problem.

According to the current norms of the Penal Code, when a crime is committed, apart from the fact that there is no obstacle for the victim of an act of domestic violence to receive protection under the LPDV, the current national legislation does not exclude civil, administrative and criminal liability of the perpetrator. At the same time, the proceedings under the LPDV offer the victim a specific set of measures for adequate protection and speed, aimed at stopping acts of domestic violence and preventing subsequent crimes related to it, which are not available in criminal proceedings.

A specific feature is that in addition to a directly injured by a specific act of domestic violence person, a child, present at an act of violence, may also be a victim of domestic violence, without the act being aimed directly at it (Article 2, paragraph 2 of the LPDV).

Although the statistics in the international and national plan eloquently show that the predominant perpetrators of acts of domestic violence are males and victims - females, in the current Bulgarian legislation there is no normative or factual obstacle to the reverse life and legal scenario.

The legal regulation of the victim of an act of domestic violence, constituting a crime, is regulated in the measures for protection of the victim under Article 67 of the PPC, informing the victim with specific needs for protection regarding the detention measures (Article 67a of the PPC), the rights of the victim in the pre-trial proceedings (Article 75 of the PPC), as well as in the regulated opportunities for active participation of the injured person in the criminal proceedings (Chapter 8 of the PPC): the right of the victim of a private crime to initiate and maintain criminal proceedings; the right of the victim of a crime of a general nature to participate as a private prosecutor and / or to be constituted as a civil plaintiff for compensation of the property and non-property damages, suffered by him.

⁴²Rusev, B., Domestic Violence. Concept and family law aspects. Petko Venedikov Publishing House, Sofia, 2020. ISBN 978-619-7469-13-4. ss. 19-24.

⁴³ Convention № 210, opened for signature and ratification on 11.05.2011 in Istanbul. It was signed by the European Union and 44 countries, including the Republic of Bulgaria on April 24, 2016, but by Decision № 13 of the Supreme Court of Cassation of July 27, 2018, it was declared unconstitutional.

⁴⁴Law for amendment and supplement of the Penal Code, prom. SG, no. 16 of 2019.

Procedural programming for the application of protection against domestic violence

The procedural order, which includes the actions of police officers after receiving a report of domestic violence (regardless of the form in which it is manifested), involves a set of approaches and actions according to the place and manner of receiving such a signal:

In the case of the message / signal being received in the operational duty unit (ODU) / operational duty center (ODC), the respective employee, receiving the signal, has the following responsibilities:

1. Collection of specific and complete information regarding: a) name, address and telephone number of the signal sender; in the capacity of which he gives the signal – a victim, a witness, an employee, etc. ; b) location of the incident; c) injured persons (their current condition) and to establish whether the perpetrator is still at the scene, in case he is not at the scene, collect information to establish his location; (d) the existence of data on whether the perpetrator is under the influence of alcohol and / or other intoxicants; (e) the availability of data on the weapon used and / or the likelihood that the perpetrator will have one and use it; f) the presence of a child / children at the scene of the accident; g) the nature of the act of domestic violence (i.e. what kind of domestic violence is - physical, mental, sexual or other violence);

2. Transmission of the information about the signal to the employees from patrol activity for verification of the submitted signal for committed domestic violence;

3. During the movement of the police team to the place of the incident, investigating the Ministry of Interior information systems for: a) availability of data for previous signals for incidents at the same place with the same victim and / or perpetrator; b) data on previous violations and crimes committed by the persons; c) issued protection orders under the PDPA; d) legally possessed weapon by the perpetrator or the persons living with him, and immediately submitting the received information to the police officers;

4. If necessary, maintaining constant contact with the injured person or the person who gave the signal until the arrival of the police team, incl. giving recommendations and directions for taking safety measures, both with regard to the injured person (the signalman) and the police officers sent on the site;

5. Informing the police officers sent about the situation development until their arrival. Upon receiving subsequent information (from the victim or other person) that no police intervention is necessary, informing the police officers about this circumstance, which does not release them from the obligation to visit the scene and draw up a report;

6. Mandatory recording of the data for the received signal in a special book - Book for the messages and signals received from the duty part for committed crimes and accidents;

7. Reporting of the collected and prepared materials for registration according to the established order;

8. Following a special order in the cases when a signal has been received for domestic violence committed against a minor or a juvenile person, a person placed under guardianship or a person with disabilities, incl. immediate notification to the Social Assistance Directorate (SSD);

9. In case of receiving information for violation of a protection order (permanent or immediate) notifying the employee, to whom the control over the execution of the protection order is assigned.

In case of the police officers visiting the scene of domestic violence, these officers face several groups of duties and responsibilities:

1. Undertaking actions for immediate separation of the injured person from the perpetrator;

2. Preserving the place where domestic violence has been committed and, if necessary, ensuring the provision of medical care;

3. Identifying witnesses and interviewing all persons present at the incident, and in the course of the interviews establishing whether the incident was attended by a minor or a juvenile person,

a person placed under guardianship or a person with mental or physical disabilities, in which occasion immediately to notify the ODC/MSF;

4. Establishing the use of alcohol and / or narcotics or weapons by the perpetrator of domestic violence;

5. Informing the injured person about the possibilities for protection (Penal Code, Ministry of Interior and Public Procurement Act), incl. clarification of the right of the injured person to submit an application under the LPDV to the District Court at the place of perpetration of violence for the issuance of restrictive measures within 1 month after the commission of the act of domestic violence;

6. Assisting the victim to collect basic necessities and, if necessary, transporting her to a safe place within the same settlement - to close friends, relatives, etc .;

7. Drawing up a protocol for warning under art. 65 of the LMI of the perpetrator of the attack, as a copy of the protocol is provided to the victim of domestic violence, against a receipt;

8. Exercising police powers to detain the perpetrator of the encroachment in the presence of the provisions of Art. 72 LMI prerequisites for this;

9. When there is an evidence of a crime of a general nature, notifying the MSC/ODC to send an on-duty task force to inspect the scene, incl. preservation of the scene.

The above procedural order is aimed at clarifying the circumstances and facts of the case, and in case of actual violence of the type viewed - to establish with an effective decision of the competent court for an act of domestic violence, the adoption of measures to protect the victim by issuing protection order and discloses a certain sanction character, insofar as in all cases of established violence the perpetrator is fined. The competent authority is the District Court at the permanent or current address of the victim, which in the law is terminologically called "victim". A peculiarity, in deviation from the general principles of civil capacity, is the recognized by this law possibility for the minor victim to act alone without the consent of his guardian. When the application contains data on direct, immediate or subsequent danger to the life or health of the injured person, the District Court issues in closed session, without summoning the parties, an order for immediate protection within 24 hours of receiving the application. This order is not subject to an appeal and is valid until a protection order is issued or the court refusal. The court proceedings are adversarial in nature, once instituted, and are subject to open court hearing and it is incumbent on the victim to establish the facts set out in his application for protection so that it is not rejected with all the ensuing consequences. The case is terminated if the victim retracts or withdraws her / his application. In addition to all evidence and means of proof, admissible under the Civil Procedure Code, the parties in the proceedings under the PDPA have the opportunity to use additional, specific for this law sources of evidence. These are the protocols, reports and other acts issued by the Social Assistance Directorates, by doctors, as well as by psychologists who consulted the victim; the documents issued by social service providers, licensed under the Social Services Act, and the statement for committed violence, issued by the applicant. This statement is of particular importance because, at the lack of other evidence, the court issues a protection order based on it alone. Criminal liability is borne for declaring false data, as the perpetrator is punished in proceedings, instituted and conducted in accordance with the Code of Criminal Procedure.

In the case of committing act of domestic violence and a crime of a general nature, provided for in the Penal Code, criminal proceedings are conducted under the general rules of the Criminal Procedure Code, regardless of the proceedings under the PDPA. The very non-execution of an order for protection, issued by the order of ZZDN, on the other hand, implements the signs of a crime of general character, provided in the provision of art. 296, para. 1 Penal Code. The victim of domestic violence in the PPC is terminologically referred to as a "victim of the crime". It is a fact that the criminal proceedings, once initiated, develop regardless of the will of the victim, including the fact that she / he cannot control their progress by retracting or withdrawing an appeal.

Tactical features of conducting an interrogation.

Along with the procedural obligation that stands before the investigating authorities - the rights, listed in Art. 75, para. 1 of the Criminal Procedure Code, to be explained to the victim and besides explaining his rights as a witness in criminal proceedings in a purely tactical, moral and professional plan, the activity of investigators who are about to interrogate a victim of a crime, committed in domestic violence, is defined by the following conditions and features, discussed below: Assessing the need for immediate medical or other specialized assistance to the witness; Acquaintance with the materials of the case; Establishing psychological contact with the victim; Consideration of the personality of the witness – her / his age, emotional, physical (including sexual) maturity; Compliance with the type of crime committed; Knowledge of the degree and nature of the harm of the person and / or property of the victim as a result of the committed crime; Knowledge of the conditions under which the witness has perceived the circumstances of the subject of the interrogation; Establishing the connection / relations between the victim and the other participants in the crime; Assessment for conducting the investigation action in time - in certain cases a short interrogation may be required to identify persons, places and events in order to undertake urgent investigative actions - search, inspection, expertise, etc .; Assessment of the place where the interrogation should be conducted; Significance for the personality of the interrogator and the need for specialized training to work with certain categories of victims of crime; Strong intention to avoid re- and / or secondary victimization.

An individual approach to the witness - object of encroachment under the conditions of domestic violence is also revealed in the use of specialized premises - the so-called "Blue room" or in other suitable premises, preventing direct contact between the victim (most often when it is a child or a female - author's note) and the perpetrator of the crime. Such a procedurally regulated meeting between a victim and a perpetrator shall be held in the cases of interrogation by the order of art. 223 of the PPC (interrogation before a judge) or in the court phase of the criminal proceedings.

Another important issue for discussion, related to the tactical features of the interrogation of a victim of a crime committed in the context of domestic violence, is the choice of time and place for the implementation of the considered procedural method of proof. The choice and assessment of the time for the victim's interrogation is linking the tactical recommendations discussed and determining the results of this interrogation. The assessment of the choice of the time in which the interrogation of a victim of a crime will be conducted is performed by the body, engaged in the investigation or at least in the performance of the specific action - the interrogation. This assessment, however, should take into account various factors and should be carried out in compliance with several tactical and not least - moral and ethical norms. As a rule, established in the world forensic tactics, the interrogation of a witness, incl. of a victim of a crime should be carried out soonest possible after the commission of the criminal act, thus obtaining most complete testimony, reliable and unencumbered through the prism of time (as a result of subsequent analyzes, comments with other witnesses, publications from the press, etc. - author's note). However, in the case of planning and conducting the interrogation of a victim of a crime, some exceptions to the above rule can and should be made. Their application is most evident in the investigation of crimes against the person in which the victim has suffered bodily injury and / or, as a result of the assault, has suffered severe physical or mental trauma. The interrogation of a witness, who is in a state of nervous tension, is tactically incorrect, even reprehensible for several reasons. First of all, by questioning a victim in a state of nervous tension, there is a risk of reproducing the experienced shock, pain and trauma and, instead of gathering the required evidence, achieving the opposite effect – of re-victimization, and, from psychological point of view – a "closing" of the witness to other persons, incl. to the bodies of the pre-trial proceedings, which would lead to a refusal to testify. Next to be noted, when discussing the questioning of a victim immediately after the commission of the crime, as a result of which she / he fell into stress or mental tension, is that the chances to collect objective, truthful and corresponding to reality testimony are minimal. And this is completely understandable: the author's investigative practice

and personal experience show that the testimony given immediately after the commission of the crime is often insufficiently clear, incomplete and inconsistent, and, in some cases, the emphasis is on irrelevant and insignificant to the subject of the interrogation details, at the expense of those that are of particular importance for the resolution of the case. The essence of this phenomenon is based on a process called in psychology reminiscence. From the forensic science viewpoint, we can deduce the meaning of reminiscence while conducting an interrogation of a victim in conditions of urgency as a manifestation of a kind of "blocking" by the witness. Therefore, according to the investigative situation in which the events under investigation took place, it is sometimes necessary and tactically appropriate to give to the witness, who has also been the victim of the assault, the opportunity to make sense and live through the experience within a few days (between 2 and 4), then, to be able to reproduce the complete relevant evidentiary information, after having compared individual parts and elements of these events, incl. analysis of the connections between them. As a rarely applicable exception to that tactical recommendation, we can point the individual hypotheses in which it is necessary to interrogate a victim as an urgent action in the investigation. It refers to investigative situations in which the victim is the only one who can provide information about the location of persons or places, give a description of the perpetrator or other data that must be recorded in the interrogation report, in order to objectify them under the order of the PPC and to be able to proceed further to follow-up actions of the investigation, which cannot be postponed - e.g. a search, a personal perquisition, search operations, etc. The tactical requirement in such a situation is for the interrogation to be short, with clearly formulated questions, aimed at establishing circumstances that cannot be postponed, and an explanation to be provided to the witness that only he can provide information to identify the perpetrator (or other circumstances). A more detailed interrogation can be initiated only at a later stage, in compliance with the other prerequisites and in compliance with the other conditions discussed. The above mentioned assessment requirements apply also to the place where the interview will be conducted, as the importance of determining proper interviewing time has been clarified. Undoubtedly, it would be tactically appropriate to interrogate a victim of a crime at the place where it was committed. All the facts, relevant to the case, could be reproduced in this way with a completeness and accuracy to the greatest extent, and specific circumstances, related to the committed crime, could be deduced. However, due to a number of moral and ethical considerations, the investigative tact and the risk of re-victimization do not always suppose the interrogation of a victim to be executed at the crime scene. The current tactical recommendation for conducting this type of interrogation at the crime scene comes only as a last option in this sense, in cases where it is the only way to identify and individualize places and objects, related to the investigation. In the rest of the cases it is recommended that the interrogation is conducted in the interrogator's office, and if, necessary, according to the specifics of the situation - in a medical institution or in the victim's home. Lastly, when discussing the conditions that interrogators should observe and follow regarding the interrogation of victims of crime, in the course of its conduct lies the risk that it will inadvertently lead to re- or secondary victimization. As already mentioned above, it is entirely within the responsibility of the employee, involved in the testimony of a victim of a crime, to prevent the victim from being re-victimized. The first and fundamental condition, required "to protect the victim from becoming a victim again" is the careful personality selection of the body to conduct the interview, as well as the combination of personal and professional qualities it possesses. In this sense, as two main tactical recommendations can be derived the absolute prohibition to use a reprimanding tone and to reproach the behavior of the victim before, during and after the crime while interrogation being conducted, as well as the absolute restraint from going into details about the personal intimate sphere of the person interrogated and from maintaining the feeling of guilt and shame from what happened to the latter.

And, as a concluding and summarizing recommendation, building up over the above discussed, we can again call for the need for initial training and periodic professional training among investigative bodies, incl. specialized training courses, aimed at investigating certain types of crimes, in which emphasis should be placed on the requirement for individual tactical approach

to the witness's personality and the use of appropriate, consistent with the specific investigation tact. These are conditions, the observance of which will certainly protect to a large extent the mentality of the victims, and, on the other hand, will contribute to the successful resolution of the case.

CONCLUSIONS

Adequate and well-timed decisions, made by investigative police officers in the course of interrogation of a victim of domestic violence, are directly dependent on the specialized knowledge of the interrogation and the professional experience of the particular interrogator, as well as the level of knowledge of the specifics of the domestic violence phenomenon. Therefore, the training of investigative police officers on the issues concerned not only in the initial phase of their training, but also at a later stage - in a more in-depth form, is a key factor and increases the chances of a success of investigative actions.