

UDC 343.985.7:343.615:343.541
DOI: 10.56215/0122273.55

Criminalistics characterisation of criminal offences related to domestic violence

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■ **Abstract.** Combating domestic violence has become a relatively recent issue. Compared to other criminal acts, domestic violence has for many centuries been considered, by religious standards, traditions and customs of peoples, a purely family affair. Despite all the adverse manifestations and consequences of such violence, not all countries have criminalised such actions to the present day. Improving the process of investigating domestic violence remains a challenge, even though significant progress has been made. The purpose of the research is to explore and develop a structure for the forensic characterisation of criminal offences related to domestic violence, which is the starting point for establishing an effective methodology for their investigation. The research uses scientific methods (analysis, modelling and heuristic) to explore the methods of investigation of various criminal offences, which resulted in determining the levels of forensic characteristics of the criminal offences being explored and systematising its main and most significant elements. In addition, the analysis of court practice has allowed the conclusion that during the pre-trial investigation, the facts of the connection between a criminal offence and domestic violence are not established or procedurally fixed, and therefore are not considered by the court. The investigator should strive to prevent such a situation. From the very first steps of the investigation, it is necessary to establish and record the facts of systematic violence in the family circle. And the knowledge of specific elements of forensic characteristics and their correlations is the foundation for choosing the tactics of investigation, its qualified management and planning

■ **Keywords:** investigation; method of commission; investigation process; procedural law; unlawful acts

■ Introduction

Despite its long history, domestic violence is an under-researched criminal offence, as criminal liability for its commission in Ukraine appeared only in 2019, and in many countries of the world, this offence is not considered criminal, mainly in the East. Researchers from the United States note that since the 1970s, intimate partner violence has received increasing attention at the national and global levels in their country [1], but there are still gaps in this research [2].

Among the Ukrainian scholars who have explored this issue, the following should be highlighted: I.A. Botnarenko [3], I.V. Hloviuk [4], T.V. Ishchenko [5], R. Kiflyuk [6], O. Pchelina [7], Yu. Slukhayenko [8] etc. In addition, researchers from many other countries have devoted their studies to the prevention and

investigation of domestic violence: T.E. Moffitt [9] – UK, L. Eriksson [10] – USA, R. Erbaş [11] – Turkey, S. Caman [12] – Sweden, P.R. Vieira [13] – Brazil, R. Shinwari [14] – Germany, etc.

The overwhelming majority of studies deal with the psycho-physiological characteristics of the offender or victim, the motives for committing domestic violence, the mechanism of conflict initiation, means of preventing violence, rehabilitation and psychological work with participants in domestic violence. However, few people mention criminal offences committed both during such violence and as a result of it. The number of such offences is quite large – it is the murder of intimate partners, forced marriage, sexual exploitation of both children and adult family members, various types of fraud, torture and torture, cruelty to animals and many other criminal offences related to domestic violence. Thus, the issue of developing effective mechanisms for organising and conducting pre-trial investigations of such facts is relevant.

Scientific support of the pre-trial investigation of criminal offences is essential for the organisation and effective conduct of the investigation by the

■ Suggested Citation:

Komarynska, Yu.B. (2022). Criminalistics characterisation of criminal offences related to domestic violence. *Scientific Journal of the National Academy of Internal Affairs*, 27(3), 55-64. doi: 10.56215/0122273.55

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■ Received: 11.07.2022; Revised: 30.09.2022; Accepted: 25.10.2022

investigator, who transforms the results of scientific analysis into effective investigative tools and measures.

The concept of forensic investigation includes forensic data at the beginning of the investigation in a holistic approach to the case, reflecting all possible data sets and information that can be relevant to the investigation [15].

Accordingly, the purpose and objective of the research are to identify and summarise the main and most significant elements of the forensic characterization of criminal offences related to domestic violence which quantitatively and qualitatively define such actions. It requires the identification of features that qualitatively describe both the process of violence, its course and criminal outcome. However, the identification of such signs will be important for the pre-trial investigation only if their close correlation is established, which is crucial both for the correct qualification and for the choice of investigation tactics. Thus, these elements themselves serve as the foundation for the investigator to determine the algorithm of actions from the first steps of the investigation.

■ Literature Review

The study of the scientific establishment of the doctrine of investigation methodology and forensic characterisation was based on the works of scholars such as V.P. Bakhin [16], V.K. Veselsky [17], I. Hora [18], A. Volobuev [19], A. Ishchenko [20], L. Kerik [21], A.N. Kolesnychenko [22], V. Pyaskovsky [23], B. Shchur [24], S. Cherniavskiy [25] etc.

Disputes over the very definition of “forensic characterisation”, its structure, the number and weight of its elements, and its practical significance for the study of criminal activity to counteract and prevent it continue to the present day. Disputes over the very definition of “forensic characterisation”, its structure, the number and weight of its elements, and its practical significance for the study of criminal activity to counteract and prevent it continue to the present day. However, the statement of V. Shevchuk [26], who in his research concluded that the forensic characterisation of criminal offences should be explored depending on the type of offence, is appropriate. The author states: “the forensic characterisation of crimes is not a “forensic relic of the past”, it is not an “illusion” or a “forensic phantom”, but a real scientific category of forensics, which is based on the development of the most optimal and effective methods of investigating offences” [26, p. 64]. S.S. Cherniavskiy notes: “the first and main structural element of the information and cognitive model of any forensic methodology, the core of its retrospective level is the forensic characterisation of the offence” [25, p. 139].

In addition, notably, the vast majority of modern scholars (I. Hora [18], T. Ishchenko [20], V. Pyaskovsky [23], B. Shchur [24], S. Cherniavskiy [25],

O. Pavlyuk [27]) are unanimous in the fact that the criminalistic characterisation is a fundamental element in the development of the investigation methodology, but the opinions of scholars on the definition of the very concept of criminalistic characterisation vary. Despite the differences in the wording of the definition of the subject matter of forensic characterisation, differences in the development of its structure, its importance and its place in the structure of the criminal investigation methodology, etc., these authors argue that forensic characterisation should serve and correspond to the practice requirements.

The primary requirement for the investigator's activities during the pre-trial investigation is to obtain as much information as possible, which is precisely to agree with the position of V.A. Zhuravel [28], who notes that it is the forensic characterisation which is an information model and occupies a fundamental place in the investigation methodology. The author notes that, depending on the specific type of criminal offence, its features form such an information model, and the interrelation of these features forms the corresponding system. In addition, notably, the purpose of a criminalistic characterisation is both to establish and develop forensic versions and to establish the evidence base [28, p. 213].

S. Cherniavskiy [25] defines the functional purpose of a forensic characteristic in the presence of a specific activity. The scientist refers to the generalisation of a significant amount of information that allows asserting specific features inherent in a particular type of criminal offence, with the establishment of correlations between them, provided that a significant amount of criminal offence materials, court decisions and sentences are processed and systematised [25, p. 145].

In agreement with this position, their work will be used to develop a forensic characterisation of criminal offences related to domestic violence. After all, the rapid development of society, legislative changes, intensification of activities to ensure the rights and freedoms of citizens, and criminalisation of specific violent acts establish the preconditions for continuing research into improving the structure of the forensic characterisation of some types of criminal offences as a fundamental element of the criminal investigation methodology.

■ Materials and Methods

To achieve this purpose, general scientific methods such as analysis and synthesis, induction and deduction, analogy, and modelling were used. Using the method of materialistic dialectic, the author explores the historical process of establishment, design and development of both the concept of criminalistic characterisation of a criminal offence and its structural elements. It, in turn, allowed rejecting subjective perception and,

based on criminal law characteristics, to identify levels of forensic characterisation of criminal offences related to domestic violence.

Using the dialectical method allowed for establishing and investigating the root causes and patterns of the emergence of forensically relevant information, the links between the sources of this information, and the established elements of forensic characterisation, and, as a result, establishing new elements that are important for the pre-trial investigation process. In addition, a specific sociological method was used to summarise existing research.

The empirical foundation of the study is the statistical data of the National Police of Ukraine [29], data from the Unified Report on Criminal Offences published by the Office of the Prosecutor General of Ukraine [30], and data from the Unified State Register of Court Decisions [31]. Thus, to identify new, essential elements of criminalistic characteristics such as “connection with administrative offences” and “systematic commission of domestic violence”, the methods of analysis and synthesis of materials from judicial and criminal proceedings in this category of cases for the period from 2019 to 2022 were used.

■ Results and Discussion

With the development of society, which includes both the improvement of the economic and social spheres and the human rights sphere, new criminal offences inevitably appear, as the improvement of the system of protection of human rights and freedoms results in the definition of actions that for many years were considered purely private matters as violent and unlawful. It primarily concerns the sphere of family relations. Considering the relative originality of domestic violence-related offenses in the field of criminal justice, there is a necessity to establish an effective methodology for their investigation, which includes research of the investigative, judicial and expert bases.

E. Orzhynska [32] rightly notes that the guideline for identifying and examining evidence in criminal proceedings is the specific data that constitute the system of forensic characterisation.

Speaking of criminal offences related to domestic violence, when summarising forensically relevant information to establish systemically dependent elements, difficulties arise due to the large array of both the types of offences themselves and the specifics of their elements. Such criminal offences have a complex aggregate nature and a wide range of forensically significant features at each stage of the manifestation of violent acts, which in turn are characterised by increasing manifestations, change and “improvement” of the tools and means of committing criminal acts, change in the attitude and attitude of the offender to the event, and, accordingly, change and increasing resistance to the perception of such a situation by the

victim (author's conclusion). Thus, it is appropriate to distinguish separate levels of forensic characterisation, which in turn will serve to establish and develop micro methods for investigating criminal offences committed as a result of domestic violence.

R.L. Stepaniuk [33] notes that establishing and using correlations between elements of the forensic characterisation of a specific group of crimes, when solving problems of detection and investigation of crimes is a laborious task. Similar difficulties arise when researching criminal offences related to domestic violence.

The issue of differentiating forensic characteristics into separate levels is of practical importance only when exploring criminal offences that have significant differences in the mechanism of commission, the degree of dependence between individual elements, and the weight and significance of established elements. Thus, A.N. Kolesnychenko, V.O. Konovalova & A.F. Volobuev distinguished full, incomplete and general levels of criminalistic characteristics of offences [19, p. 22-26; 22, p. 178; 34, p. 20].

S.S. Cherniavskiy [25], in addition to analyzing the content of the scientific discussion in the literature on the classification of criminalistic characteristics of crimes, considers it appropriate to classify the levels of criminalistic characteristics using the philosophical categories of “single”, “special” and “general”. Thus, he refers to a specific object (phenomenon) or process with specific inherent features, i.e. a specific crime, as a single level. A special level includes a specific group of criminal offences that are united in a particular way and intent but have differences in the mechanism of commission. And the last, broader level is the general level, which covers the patterns that arise during the commission of criminal offences combined into a particular type or class [25, p. 144].

R.L. Stepaniuk [33], using the example of economic crimes, provides facts that contribute to this situation, which can be transformed into criminal offences related to domestic violence. Thus, first, the author indicates the connection between illegal behaviour and changes in the regulation sector. Such changes force criminals to adapt to legal conditions, inventing ways to commit a criminal offence, and traces of the crime and other elements of forensic characteristics change accordingly [33, p. 177]. Accordingly, the fight against domestic violence and its consequences, in particular, and the investigation of criminal offences related to them, is a relatively new process that is still in its developmental stage. With the development of society and the increase in the level of technology, the methods of committing and concealing criminal offences are changing, which is reflected in the mechanisms of their commission and trace evidence, and, accordingly, in the correlations of the elements of forensic characteristics.

Secondly, when developing a forensic characterisation of specific types of criminal offences, one should consider the fact that a significant number of offences do not go to trial, as their latent nature prevents the collection of evidentiary information and sometimes even the establishment of the fact of a criminal event. This circumstance, according to R.L. Stepaniuk [33], prevents a systematic analysis of many types of crimes [33, p. 177]. The situation is similar to criminal offences related to domestic violence. In addition to the victim's reluctance to report domestic violence to law enforcement agencies, due to the established stereotypes that it is "the victim's fault" or out of shame, it can be noted that law enforcement officers themselves often dissuade victims from reporting such cases. The public human rights organisation "La Strada" notes: "58% of law enforcement officers believe that most reports of domestic violence are false [35]. The survey among police officers, judges and prosecutors was conducted in late 2016 and early 2017 jointly with the Geneva Centre for the Democratic Control of the Security Sector and with the support of the National School of Judges of Ukraine, the Academy of Prosecutors of Ukraine and the National Police of Ukraine [35]. According to "La Strada", four out of ten police officers believe that domestic violence – is a private matter. This figure is much higher among judges and prosecutors. "Almost 85 per cent of judges consider reconciliation in the family to be their main task, not punishment of the offender" [35].

The next factor that confirms the necessity of differentiating criminalistic characteristics into specific levels is the commission of a specific number of different criminal offences combined with one purpose. Accordingly, the number of practically relevant elements of forensic characterisation will be greater. It is relevant for criminal offences related to domestic violence, as such criminal offences are usually characterised by a combination of several forms of violence – psychological and physical, economic and psychological, and sometimes psychological, economic and physical. Accordingly, in such cases, various criminal offences are combined.

Thus, the following levels should be distinguished in the forensic characterisation of criminal offences related to domestic violence:

1. The general level of forensic characterisation of criminal offences related to domestic violence: the definition of the structural elements of forensic characterisation is based on the legally established classification of forms of domestic violence – physical violence, sexual violence, economic violence, and psychological violence.

2. A special level of forensic characterisation of criminal offences related to domestic violence: the definition of the structural elements of forensic characterisation is based on the criminal law classification

of criminal offences – criminal offences related to domestic violence; crimes related to domestic violence.

3. A single level of forensic characterisation of criminal offences related to domestic violence: determination of the structural elements of the criminalistic characterisation and their correlations is based on the inherent features of a specific type of criminal offence – homicide as a result of domestic violence; torture and ill-treatment related to domestic violence; driving to suicide as a result of domestic violence; human trafficking related to domestic violence; corruption of minors as a result of domestic violence; rape related to domestic violence; exploitation of children (part 3 of the Article 150 of the Criminal Code of Ukraine [36]) as a result of domestic violence; infliction of grievous bodily harm during domestic violence, etc.

In addition, notably, no matter what level of criminalisation a criminal offence related to domestic violence belongs to, the issue of defining its system remains relevant. Therefore, a separate controversial issue that affects the understanding of the meaning of a forensic characteristic in the methodology of criminal investigation is the determination of the quantitative and informational value of its elements, and necessarily the correlation between these elements.

Although the doctrine of the criminalistic characterisation of a criminal offence, and, accordingly, its structure, began to develop in the middle of the last century, as noted by B.V. Shchur [24] S.S. Cherniavskyi [25], & V.M. Shevchuk [26], it still requires thorough research nowadays. As E. Orzhynska notes [32]: "a qualitative investigation ends with obtaining a sufficiently complete and detailed forensic characterisation of a particular criminal offence" [32, p. 101]. Depending on the type of criminal offence, its participants, its conditions and its mechanism of commission, it is necessary to identify the most typical elements of criminalistic characterisation for each type. O.O. Shkuta [37] believes that an unchanged system of elements cannot be applied to each investigation.

In the textbook "Criminalistics" [23], the general elements of forensic characteristics are defined concerning various criminal offences, such as: the subject of the criminal offence, the method of committing and concealing the criminal offence; tools and means of committing the criminal offence; a typical "trace pattern"; the identity of the offender; the identity of the victim; time, place and setting of the criminal offence. However, the changes in society, legislation, and investigative and judicial practice that are currently occurring in the field of combating domestic violence allow identifying both these elements and additional, interdependent characteristics that arise during the commission of criminal offences related to this type of violence.

Thus, there is a demand to determine the information characteristics of criminal offences that indicate a connection with domestic violence. The analysis of the materials of investigative and judicial activities allows [4; 31], the author of the research, to identify specific information, in the forensic sense, categories of criminal offences under investigation, which must be considered when determining the structure of the forensic characterisation:

- the age of the participants in a criminal event that occurred as a result of domestic violence (the perpetrator and the victim) – minors, juveniles, adults and the elderly. Determining the age of the person will allow the investigator to model the mechanism of the event, identify sources of evidence and choose the tactics for conducting investigative (search) actions, etc;

- status of the offender in the family – a person who has committed a criminal offence related to domestic violence can be both an abuser and a person who has been subjected to systematic violence;

- type of violence: physical, sexual, economic, psychological, and family violence; in turn, each form of violence is characterised by separate methods of commission;

- social conditions – the level of social and material security of the family. Understanding the level of social conditions allows suggesting versions of the motives for the offence, determining the offender's capabilities to commit and conceal criminal acts;

- the method of commission and, accordingly, concealment. Criminally significant is the choice of the method of committing a criminal offence related to domestic violence, and the understanding of the chosen methods of committing domestic violence, its systematic nature and the manifestation of increasing aggression and force of violence. It is the possibility of systematic concealment of the consequences of domestic violence that increases the abuser's confidence in their actions and increases the feeling of impunity;

- selection of tools for committing a criminal offence. Again, notably, the choice of tools for committing a criminal offence allows for a conclusion to be drawn about the personal characteristics of the offender, the “convenient” form of domestic violence for the offender, the understanding of whether the offender is an abuser or a victim of domestic violence, etc;

- motives for committing violent acts – in addition to being mandatory for proving guilt, determining the motive for the crime contributes to the identification of accomplices, duration and systematic nature of violent acts, affects the qualification of a criminal offence and the establishment of aggravating or mitigating circumstances;

- criminal law characterisation of a criminal offence – will allow the investigator to identify signs of a crime or criminal offence, determine the degree of danger and adverse consequences, etc;

- the conditions of the place of residence: rural area, city or metropolis. According to the results of the study of judicial practice, manifestations of domestic violence in rural areas are less hidden, and information about the systematic nature is more readily available in the testimony of witnesses (neighbours, friends, colleagues, etc.). The forms of violence used vary (mostly physical violence), as do the motives for committing them;

- the systematic nature of violent acts. It is the presence and recording of the regularity of violence that allows for the correct qualification of a criminal offence and the collection of the necessary evidentiary information proving the connection between a criminal offence and domestic violence;

- the presence in the history of violence of recorded cases of administrative offences related to domestic violence.

As can be seen, all of these information-significant features are interdependent and interrelated. It is this information that contains the forensic features of the incident and is crucial for choosing the methods and tactics of pre-trial investigation, and proposing and testing investigative versions. Considering the wide range of informational and forensic features of the criminal offences under investigation, notably, the completeness of the elements of a forensic characterisation will depend on the level (defined above) of the forensic characterisation.

In addition, these information-significant characteristics indicate the classically accepted elements of forensic characterisation. However, in the author's opinion, it is appropriate to implement some changes and additions. First, the concept of the “identity of the perpetrator” requires expansion, as both misdemeanours and crimes can be committed during domestic violence, thus, it would be more appropriate to use the term “identity of the offender”.

Secondly, there is a demand to define such quantitative characteristics as the “connection of a criminal offence with administrative offences” and the “systematic nature of violent acts” as elements of a criminalistic characterisation.

It is explained by the fact that during the investigation of domestic violence cases, it is mandatory to prove the systematic nature of such actions, and it is the identification of evidence of systematicity that allows the investigator to conclude that the criminal offence is related to domestic violence.

The importance and necessity of establishing and, accordingly, procedurally fixing the “systematic nature of violent acts” are noted by other scholars exploring the issue of domestic violence in administrative law [38-40]. Thus, O.V. Drozdova & K.G. Zarytska [38] note that the investigator must establish evidence of the presence or absence of facts and circumstances, the commission of domestic violence (as a criminal offence), namely its systematic nature [38, p. 680].

Criminal law scholars provide more detail on the meaning of systematicity itself. Thus, according to M.I. Bazhanov [39], if the unlawful actions are an expression of a particular adverse trend in the behaviour of the guilty person, i.e., the commission of an act more than twice (i.e., three or more) [39, p. 56]. O.O. Dudorov & M.I. Khavronyuk [40] define systematicity: “it means the constant repetition of identical or similar actions (or inaction), each of which in itself can give the impression of insignificance, but in aggregate they have an extremely adverse effect on the victim, the intensity of this effect may depend on both the degree of aggressiveness of each act and the number” [40, p. 78].

It is the research of scholars in the field of administrative and criminal law that allows asserting that such categories as “connection of a criminal offence with administrative offences” and “systematic commission of violent acts” are of important forensic importance and, in turn, characterise the event from the quantitative and qualitative side. In other words, these elements are mandatory in the system of forensic characterisation of criminal offences related to domestic violence.

■ Conclusions

Considering the above, based on the interpretation of domestic violence in the legislation and the forensic classification of criminal offences related to domestic violence, and having identified the correlated interrelated forensic and informational features which specifically affect the planning and organisation of pre-trial investigation of the explored category of criminal offences, it is necessary to divide their forensic characteristics into levels:

- general level: criminal offences related to domestic violence committed in the form of physical violence / sexual violence / economic violence / psychological violence;

- special level: criminal offences related to domestic violence / crimes related to domestic violence;

- single level: homicide related to domestic violence; torture and ill-treatment related to domestic violence; driving to suicide as a result of domestic violence; human trafficking related to domestic violence; corruption of minors as a result of domestic violence; rape related to domestic violence; exploitation of children (part 3 of the Article 150) as a result of domestic violence; infliction of grievous bodily harm during domestic violence, etc.

In addition, understanding the knowledge and considering the interdependence of the elements of a forensic characterisation allows the investigator to determine the cause and effect of a criminal event, which ensures efficiency in identifying, collecting and processing evidence. Therefore, the structural elements of the forensic characterisation of a criminal offence related to domestic violence are:

1. The object of a criminal offence.
2. Method of committing and concealing a criminal offence.
3. A trace picture.
4. Identity of the victim.
5. Identity of the offender.
6. Motive for committing a criminal offence.
7. Place, time and circumstances of the criminal offence.
8. Connection of a criminal offence with administrative offences.
9. The systematic nature of violent acts.

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Криміналістична характеристика кримінальних правопорушень, пов'язаних з домашнім насильством

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■ **Анотація.** Боротьба з виявами домашнього насильства набула актуальності досить недавно. Порівняно з іншими кримінальними діями домашнє насильство багато століть вважалося, з огляду на релігійні норми, традиції та звичаї народів, суто сімейною справою. На сьогодні не всі країни криміналізували такі дії, попри всі негативні вияви та наслідки зазначеного насильства. Удосконалення процесу розслідування фактів домашнього насильства залишається актуальним навіть з огляду на значні досягнення в цьому напрямі. Метою статті є дослідження та розроблення структури криміналістичної характеристики кримінальних правопорушень, пов'язаних із домашнім насильством, яка є початком для створення дієвої методики їх розслідування. У роботі, завдяки застосуванню наукових методів (аналізу, моделювання, евристичного), досліджено методики розслідування різноманітних кримінальних правопорушень, що сприяло визначенню рівня криміналістичної характеристики досліджуваних кримінальних правопорушень, проведенню систематизації основних і значущих її елементів. Аналіз судової практики дозволив дійти висновків, що під час досудового розслідування не встановлюються або не мають процесуального закріплення факти зв'язку кримінального правопорушення з домашнім насильством, відповідно їх не враховує суд. Слідчий повинен прагнути не допускати такої ситуації. З перших кроків розслідування необхідно встановити та зафіксувати факти систематичності вчинення насильницьких дій у родинному колі. Знання визначених елементів криміналістичної характеристики та їх кореляційних зв'язків є підґрунтям для обрання тактики розслідування, його кваліфікованої організації та планування

■ **Ключові слова:** розслідування; спосіб учинення; процес розслідування; процесуальне право; протиправні дії