

## PREVENTION OF VIOLENCE BY MEANS OF MORAL NORMS AND RELIGION IN THE FAMILY

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**Abstract.** The author analyses the reasons for the occurrence of violence in Ukrainian families, as well as, the possibility of preventing and protecting violated norms of morality on the basis of international judicial practice. It has been ascertained how the norms of morality, religion and law correlate in the context of regulating family relations, their interaction, dynamics and development. In Ukraine, just like in the whole modern world, the problem of violence, despite all the aspirations of mankind for good and happiness, remains relevant. Violence in the family is not just a form of violence, it is a form of human rights abuses. Victims of such violence are more often women, children, persons who become dependent on various reasons (economic, psychological). In 2009, 104336 cases of offenses of domestic violence were brought to the courts of Ukraine, and 38171 cases related to non-fulfillment of duties of upbringing children. In 93049 and 32899 cases people were accused; in 2331 and 1090 cases people were exempted from administrative responsibility. According to the Ministry of Internal Affairs of Ukraine, about 85,000 people were arrested for committing domestic violence in 2011, for some of them official warnings were issued or safeguards were applied; others have been fined or sent for corrective labour; in some cases administrative arrest was imposed. Physical and psychological violence is the most widespread kind, it accounts for 95% of all cases. According to statistics, the National Police of Ukraine registered nearly 60,000 statements of domestic violence in 2017. 439 criminal proceedings were completed on the facts of committing crimes related to domestic violence. In 2017, almost 77,000 women were victims of criminal encroachments according to criminal court proceedings, comprising 38% of the total number of victims. By choosing the "path of dignity" Ukraine assumed a great deal of commitment. The key role in the realization of these tasks is the improvement of the judicial system. A person in his everyday life faces a variety of different situations on a daily basis, thus, people are forced to be guided by a multitude of different standards and rules that are designed to ensure the integrity of the system of society, stability and public order, regulating relations between people. Prior to the emergence of law human behaviour was regulated by other social norms, such as the norms of morality, religion, customs, and so on, they had an inner orientation. Family is a multifaceted institution, inextricably linked with the society; therefore, all changes that take place in the society may affect family relationships. Kant wrote, "The path to the future always goes through the past".

**Key words:** *norms of morality, religion, family, modernity, violence.*

This article analyses the works of Ukrainian historians in the second half of the nineteenth and early twentieth centuries, as well as those of our contemporaries. Dozens of scientists made a significant contribution to the study of the relationship between morality and law as social phenomena. They include: R. Abolina, A. Averin, R. Bachynin, A. Bernyukov, R. Voitova, V. Grafskyi, V. Grachov, S. Dnistrianskyi, O. Drobnitskyi, V. Yefimenko, A. Zayets, O. Zaychuk, B. Kistyakivskyi, V. Koretskyi, Paliyenko, M. Panov, O. Petryshyn, L. Popov, P. Rabinovych, Yurkevych and others. Some works are devoted to the prevention of domestic violence: O.B. Andreyeva, O.M. Bandurka, A.B. Blaha, O.V. Boyko, etc. Nowadays, unfortunately, we can see an ongoing general process of demoralization of the society, and this state of affairs cannot but affect its "core cell" – the family. Despite the huge amount of scientific works that raised a great number of problems, the practical realisation of research and development remains only on paper, viz: perception, understanding, awareness of the pragmatic significance of moral and legal influence on the formation of adequate social concepts of the Ukrainian society. The latter should have a significant impact on the processes of building up legal statehood, viz, it should be implemented in new legal con-

structions, which meet modern world legal requirements. There are many different rules in modern society: legal, moral, religious, ethical, aesthetic, corporate, norms of customs, traditions, etc. Legal reforms in Ukraine are at an early stage, their implementation requires the accomplishment of certain tasks in the field of human rights and freedoms.

Our desire to get a lawful state should be viewed in context when rule of law, real implementation, safeguard, protection and renewal of citizens' violated rights, mutual responsibility of the state and person, control and supervision over the formation and application of legal laws are ensured exclusively by legal means in the state, i.e. civilised functioning and development of civil society is ensured. The realization of these important principles presupposes the coordinated work of all the elements of the legal system. Taking into account the place the family takes among public relationships – for according to Art. 3 of the Family Code family is the main centre of the society – the regulation of family relations is an important element of regulating social relations in general. The norms regulating family relationships are thoroughly imbued with moral principles. Thus, the basis for the regulation of personal non-property legal relationships is the principle of equality in the acquisition and realisation of personal non-property rights and obligations of each spouse, i.e., the basic principle of family relations based on the recognition of the same social value – the personality of man and woman.

According to Art. 7 of the Family Code, the general principles regulating personal non-property relations between conjoints are their implementation, taking into account the right to privacy of both spouses, their individual right to personal freedom and the inadmissibility of arbitrary interference into family life; lack of privileges or limitations of each spouse based on race, colour of skin, political, religious and other beliefs, ethnic and social origin, material condition, place of residence, language and other features; the exercise of the rights and responsibilities of each spouse on an equal footing [4]. This principle is based on the general provisions of Art. 24 in the Constitution of Ukraine.

The norms of morality penetrate literally all family relationships, for example, you must treat family rights and responsibilities honestly, it is necessary for the conjoints to respect each other, to reckon the interests of another spouse, be respectful towards his/her individuality, habits and preferences, take care of building family relationships based on feelings of mutual love, deference, friendship, and mutual assistance (Article 51, 55 Family Code) [3].

Moral is objectively in the law, and law is in morality [5, p. 41-44].

Morality can be called the form of public consciousness, a certain set of modern life principles, views, norms of behaviour based on them determining and regulating the relationship between people [6, p. 327]. The philosopher Jeremy Bentham remarked that morality "in the broadest sense is the doctrine of art to direct human actions in such a way as to produce the greatest amount of happiness [7]. Moral needs are the needs of communication with other people in accordance with established (accepted) rules of conduct. Morality always has a social and group character: the moral of a family, the moral of a social group. Morality is imposed on the personality from the outside in the form of certain norms and rules. The assessment of moral behaviour emerges from the social environment. Morality is a way of informal regulation of human actions. Morality and law are closely intertwined. Moral norms of the society that prevail in the state are embodied in legislative acts. Both moral and

legal norms are social. Their common feature is that both types serve to regulate and evaluate individual's behaviour.

The differences include:

- 1) law is elaborated by the state, morality is developed by the society;
- 2) law is embodied in acts of state, morality is not;
- 3) violation of the norm of law involves sanctions of the state, violation of the moral norm stipulates public condemnation and criticism.

According to O. F. Skakun, morality is a system of norms and principles aimed at regulating people's behaviour in accordance with the notions of good and evil, which are supported by personal beliefs, traditions, upbringing, and the power of public opinion [8, p. 265]. V. Nersesyants believes that it is erroneous to think that law should be moral, since it means that law should not be law, but morality, that the content of law (positive law) should not be legal, but moral. Moreover, such moral legal thinking distorts the essence of both law and morality, since moralization of law is accompanied by legalisation of morality. In addition, the purpose of the theoretically developed juridical legal understanding is legal law (and not moral law) [9]. V. Solovyov states that "law starts with spirituality". To live and to behave in accordance with the law means not only to grasp the legal essence of life situations, to make or to follow corresponding legal decisions, to rely on existing norms, etc. but also, in particular, to act in a socially and morally justified way [10]. In relation to the interaction of law and morality, Kant, in his legal understanding, relied on the idea of "moral autonomy of the individual", its "absolute self-worth" that the person can create a law himself, know his duty and realize it [2]. Therefore, one can say that the norms of morality regulate family relations. For many years they have been the foundation of family building. Considering the influence of moral norms and religion on the family, we cannot but turn to the family, which has an exceptional place. It is the family from Nazareth: Jesus with His mother Mary and guardian St. Joseph. According to Christian doctrine, Jesus Christ sanctified family institution with His presence in the human family and his salvific activity, raising it to the dignity of a sacrament. It is not surprising that the Christian family is called "a church at home". Each married couple is meant to extend one's family. In religious families, parents are primarily responsible for giving the child a religious education, as far as religious education provides the basis of morality and helps to form the character of the child. It gives a person a guide, a direction and an ideal of life [11]. Various religious denominations interpret the notion of the family in different ways. Catholicism claims that the word "family" is found in the Holy Scripture. This indicates that the very existence of the family is part of normal human experience both in the Old and in the New Testaments. Among the most famous families found in the Bible, one can name the families of Abraham, Noah, Moses, David [11]. Apostle Paul warns his parents, "And you, parents, do not annoy your children, train them in service and obedience to the Lord" (Ephesians 6: 4). Parents must remember that their child is also a child of God, for whom they are responsible to the Creator, their duty is also to respect their child's dignity [12]. The family is believed to be a church at home, in which parents just like priests teach their children, educate and evangelise them. They are responsible for them before God, the Church and native country. In addition, the parents' main duty is to raise children in service and respect for the elders [11]. In a Christian family, children's duty is to respect, love, listen to their parents, and to care for them when they are old. Just like

primary school teaches children their native language, family practises religious life, nourishes Christian traditions, forms the character and brings up virtues both theological and social, viz: truth-telling, accuracy, sincerity, patriotism, honesty and mercy. Family forms good habits. Principles of family relationships are based on love. One of the best examples for children to imitate is the respect parents show to each other.

The ethics of Islam involves paying good for good, being generous, helping the poor, and so on. Failure to comply with moral orders in Islam, unlike Christianity, is absent [13]. The word "Islam" means "obedience". The relationship of an orthodox Muslim to God is the attitude of a submissive, not thinking servant who blindly performs what he is destined to do. "Islam's ethics embraces all problems. Rigours of life are filtered through an ethical regulatory net that saves people from domination of selfish passions and desires. Thus, Islamic ethics contributes to the creation of individuals with high moral and volitional character [13]. For centuries, Ukrainians have adhered to Christian norms of life, have always been religious and this fact enabled them to create a highly spiritual culture. The Ukrainian theologian B. Gudziak notes that Christianity was the main source of *fundamental ethical, moral* ideas and values of our nation [14]. Traditionally, husband in a Ukrainian family is the defender of the family and its breadwinner, wife is the guardian of the household. However, there is a modern problem in Christian families – low number of children or childlessness. According to the Bible, family continuation is perhaps the most important aim of the family, since a married couple, being one whole, is a community associated with love. Therefore, the family must bear the full load of this love and create a new life [15].

If we trace how law and its influence on family relations changed, one can say that XVII and XVIII centuries were characterized by common law. The most common family form in Ukraine in the middle of XIX century was a nucleic family, i.e. an extended one with relatives living under the same roof. According to V. Tarnovsky, in this period, not only distant relatives did not keep economic unity, but also a married son usually separated from his parents, built a separate house and introduced a separate economy. Two married brothers hardly ever lived under the same roof. Women usually got married at 16-23, while men did so at 18-25 [16]. In accordance with the rules of common law, marriage was an agreement between two parties, the mediators of which were fiduciaries. The most common form of marriage was an agreement or (marriage letter). In addition, parents' consent was obligatory. If young people got married without parents' consent, they were deprived of parental blessings and inheritance. Marriage without permission was condemned by people. Later on, the wedding ceremony began to spread to a wide range of people [16]. It became an integral part of the marriage ceremony. Scientists distinguish between the following forms of marriage common at the time: "normal marriage" and "civil marriage" [16]. Though rare, there were instances of divorce at the time. At the end of XVIII century, the church banned divorce. Thus, we can see that religion had great influence on family relations and marriage at that time [16]. In XIX century, the state and church united, thus forming one of the important principles of organizing society of the time. The state recognized only church marriage as lawful [16]. This period was investigated by such scholars as P. Pustokhod and M. Tratsevskiyi. They analysed the intensity of marriage, as well as seasonal variations in marriage in Ukraine in general, in its individual provinces, types of settlements, and religious groups of population [17]. At that time Ukraine belonged to the group of countries

with the highest intensity of marriage along with European Russia, Serbia, Bulgaria, Hungary and Japan. M.N. Tratsevskyi claims that the number of marriages in Ukraine grew each year in the second half of XIX century [17]. As to moral norms, people condemned adultery in general, they were against divorce. The Church maintained the same opinion. Sometimes, due to various reasons, a man or a woman left their families and formed a new one, in which they lived in civil marriage (without church marriage). Village people did not consider such unmarried spouses to be families. They were negatively treated for such a step was considered a sin.

In the late XIX and early XX centuries marriage traditions did not change, however, O. Kravets states that this period is characterized by the start of extramarital affairs [15]. The current Family Code has rules that are inextricably linked with the norms of morality. These are norms regulating personal non-property relations. However, these norms are dead, they do not work, despite the fact that family as an institution had been built for centuries on the basis of moral and religious values. Naturally, a question arises – where does the following statistics come from? [15]. The results of a Ukrainian population survey conducted with the assistance of the United Nations in late 2009 and early 2010 testify to the fact that almost half (44%) of the population suffers from various forms of domestic violence; furthermore, one third is abused by family members already in childhood. According to the Ministry of Internal Affairs of Ukraine, about 100,000 people per year stay in preventive registry for domestic violence. Moreover, this number is constantly rising testifying not to a real increase in cases of violence among family members, but to a slow decline in the level of its latency. The problem of domestic violence had for a long time been firmly concealed because the state was prohibited to interfere in private life. In 2017, the National Police of Ukraine registered nearly 60,000 statements of domestic violence. Currently, investigation units completed 439 criminal proceedings started on the facts of committing crimes related to domestic violence [1]. Modern legal doctrine, international law and the European convention inheritance, concentrated in the practice of the European Court of Human Rights, unambiguously asserted that the fundamental rights of every person include an inalienable right to life, freedom, personal integrity, due honour and dignity. General provisions on the equality of women and men, the right to life, liberty and bodily integrity, the prohibition of torture or cruel, inhuman or degrading treatment or punishment; unwarranted interference with private and family life, encroachment on the inviolability of one's home, discrimination on any grounds was internationally recognized and enshrined in the basic human rights documents of the United Nations: The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the UN Convention on the Rights of a Child (1989) and its Optional Protocols, the United Nations Convention on the Rights of Persons with Disabilities (2006). All of these international treaties are recognised by Ukraine, are legally binding and are to be applied by Ukrainian courts [18].

Court practice has numerous examples of dispute settlement related to domestic violence. European Court resolutions constitute the source of law for Ukrainian legislation. The court's leading role in the mechanism of prevention and counteraction to domestic violence is also emphasized by international standards in this sphere. The number of cases of domestic violence examined by courts testifies to the importance of the court in the mechanism of

counteracting to domestic violence in Ukraine. For a long time human rights issues have been considered at the international level, mainly in the context of human-state relations (illegal actions of state bodies, anti-democratic political regimes, etc.). The problems of human rights violations in the private sphere were carefully concealed by the prohibition to interfere with private and family life. However, recent decades saw the focus of international community shifted towards the state's commitment to protect human rights in private sphere as well. It has given impetus to the formation of international standards to prevent and counteract domestic violence. Thus, on December 26, 2002, the applicant's husband attacked his wife once again and threatened to kill her and their children. It was reinforced by the presence of firearm. First, the applicant's relatives informed the police of the threat to the applicant and her children's health and life, then the applicant herself did so. A police patrol arrived at the place, but the applicant's husband had already left.

The police took the applicant and her children to her parents' home and asked her to visit the police department in the morning to write a statement. However, the police did not react adequately and failed to take appropriate measures to ensure the safety of victims of domestic violence. On 31 December 2002 the applicant's husband shot both children and himself [19].

During 2003-2006, the applicant, Kontrova, tried to bring the police to justice for negligence and abuse of authority leading to the death of her children. However, court decisions either did not recognize the guilt of the police officers involved in the case or the punishment was conditional. The applicant, Kontrova, appealed to the European Court of Human Rights on February 20, 2004 alleging that the police had not taken appropriate measures to protect the lives of her children, her private and family life, despite the information on abusive behaviour towards her and her children and death threats from her deceased husband, as well as the impossibility for her to be compensated for the moral suffering she endured through the loss of her children. She complained about the violation of Articles 2, 6 and 8 of the Convention. The court approved on its own motion to consider the application of Article 13 of the Convention together with Articles 2 and 8 of the Convention. In 2007, a decision was made in this case and it read that Article 2 of the Convention had been violated as the authorities could not protect children's lives. Furthermore, Article 13 was violated as there were no effective measures in the national legislation to compensate the moral damages resulting from the loss of the children. In its judgment, the Court noted that, in the first sentence of Article 2 § 1, the Convention obliges States not only to refrain from intentional and unlawful deprivation of life, but also to take all necessary measures to protect persons under its jurisdiction. This includes the main obligation of the state to ensure the right to life by introducing effective criminal and legal provisions to prevent the commission of crimes against a person, backed up by law enforcement mechanisms to prevent, terminate and punish for violations of such provisions.

Under some circumstances, it also applies to the positive obligation of the authorities to take efficient preventive measures to protect a person whose life is threatened by a criminal act of another person (§49). The judgment also states that in resolving the issue of violation of Article 13 by the State as well as of the impossibility to obtain compensation for moral damages according to Article 2, in applicable cases the Court itself shall take a decision on just satisfaction, taking into account the pain, stress, anxiety and disappointment, experi-

enced by the injured party. Formerly, the Court concluded that in case of violation of Articles 2 and 3 of the Convention, which are the most fundamental provisions, compensation for the moral damage caused by the violation of these articles should be available as part of possible remedies (§64). In the present case, the European Court awarded a compensation for moral injury in the sum of EUR 25,000 and EUR 4,300 for the actual costs in the case [19].

### **Conclusions**

Thus, Ukrainians' marriage traditions in XVII and XIX centuries were characterized by consistency. Norms of common law were in force. The number of marriages was constantly growing, and early marriages were widespread. At the beginning of XXI century marriages in Ukraine retain certain traditional peculiarities. That period can be characterized by "marriage for life". Despite the fact that the Family Code has many norms regulating family relationships and they are based on the norms of morality, the stability of marriage, and "marriage for life" become less prevalent giving way to the rise and spread of divorces. Nowadays, the family, along with financial problems, experiences a crisis of spirituality.

The following problems can be identified:

- the problem of divorce and marital fidelity;
- lack of mutual respect;
- the loss of the value of femininity and masculinity;
- the loss of the value of motherhood and fatherhood;
- weakening of family relationships, the role of the family in the upbringing of children.

### **The problem of divorce and marital infidelity**

*"What God has joined, man will not destroy it."* This was facilitated by church marriages, sanctified by God's blessing. Christians believe that a person, being in such a marriage, is filled with inner serenity, joy, peace, and security. Why are the norms regulating personal non-property relationships sustainable? In my opinion, the reason is the legal ignorance of those who want to marry, for in practice this procedure is formal in departments of state registration of acts of civil status. The analysis of the norms of substantive law and jurisprudence shows that today it is practically impossible to properly protect personal non-property rights of the conjoints, regardless of the social status or financial status of each spouse. The norms of morality and religion cannot prevent family violence, while the norms of the current Ukrainian legislation cannot provide for the regulation of modern family legal relationships and the reason is their constructive imperfection.

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