Criminological Analysis of Domestic Violence Against Children

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Abstract. The study of statistical data shows a clear discrepancy between the number of criminal cases and the actual facts of cruel treatment of children in the family. If the courts, reviewing cases of deprivation of parental rights, revealing signs of a crime, reported to law enforcement agencies, the latency of the crime in question would decrease. The criminological analysis shows that about a third of the facts of violence against children are for complete families, a quarter for incomplete ones. More than 70% of criminal offenses are committed against minors aged 0 to 12 years. These persons are vulnerable not only because of their age, but also because of their state of health. In recent years, there has been a dynamic increase in the proportion of women among those convicted of child abuse, which, in our opinion, is due not so much to the increase in female aggression, as a significant proportion of divorces. In the case of child abuse in the family, the mother is usually brought to criminal responsibility, since the violence used by the partner (new husband) is classified as a crime against health. In recent years, parents committing crimes from falsely understood educational goals have been condemned, which must be taken into account when carrying out preventive measures, as these persons need social and psychological assistance, unlike parents who show aggression towards children because of drunkenness and failure to perform duties on their maintenance and upbringing in respect of which it is necessary to apply measures for the removal of children. The article raises issues related to ensuring the rights of minors who have been subjected to ill-treatment in the family.

1. Legal Framework for the Protection of Children's Rights

In accordance with Art. 18 and 19 of the International Convention on the Rights of the Child, every child is recognized a whole range of rights and freedoms, including the right to parenting and care by parents, who are responsible for respecting these rights.

The modern mechanism of state-legal protection of the family and the rights of the child in the Russian Federation is based on international standards, norms of the Constitution of the Russian Federation and industry legislation.

In accordance with Art. 38 of the Constitution of the Russian Federation, taking care of children, their upbringing is not only a right, but also an obligation of parents. The constitutional duties of parents are specified in the norms of the Family Code of the Russian Federation. Article 65 of the Family Code of the Russian Federation states that, in exercising their rights, parents cannot harm the physical and mental health of children, their moral development, and methods of education should exclude dismissive, tough, rude, degrading treatment, abuse or exploitation of children.

2. Dynamics of Violent Crimes Against Minors in the Family

One of the guarantees of ensuring international standards and constitutional requirements relating to the upbringing of children is the establishment of art. 156 of the Criminal Code of the Russian Federation criminalize child abuse in the family. The dynamics of the crimes under Art. 156 of the Criminal Code of the Russian Federation is characterized by a slight increase and a consistent decrease: 2010 - 12.2%; 2011 - 12.1%; 2012 - 10.2%; 2013 - 7.5%; 2014 - 5.1%; 2015 - 4.0%; 2016 - 3.3%. At the same time, the considered crime is among the high latency ones. For example, in 2016, the courts of the Arkhangelsk region under Art. 156 of the Criminal Code of the Russian
Federation, 28 criminal cases on crimes against minors in a family were considered, at the same time 526 decisions on deprivation of parental rights were made. Thus, there is a discrepancy between the number of criminal cases initiated and the actual facts of cruel treatment of children by the parents.

In this regard, it is necessary to pay special attention to the fact that when deciding on deprivation of parental rights, the courts should inform the law enforcement agencies about the discovery of evidence of a crime, which is not carried out in practice, since no crimes on this basis have been identified. In the overwhelming majority, the reason for initiating a criminal case are reports from the juvenile police units, medical organizations, guardianship agencies, relatives of the child or neighbors, as well as information obtained during the investigation of other criminal cases.

In practice, there are also opposing situations where the court, when convicted under Art. 156 of the Criminal Code of the Russian Federation, does not resolve the issue of ensuring the safety of children who have been affected by hard treatment.

H., convicted under Art. 156 of the Criminal Code of the Russian Federation, the mother of four children from a newborn up to 12 years old, cruelly treated them for 2 years, caused physical pain, did not prepare food (there were no food in the house). She kept the dwelling in an unsanitary condition, took alcohol and smoked with others in the presence of children (including at night, depriving children of sleep). Regarding the crying of children, she used obscene expressions, put the newborn child in an unmade bed. Having fallen asleep while intoxicated, she left the infant in the summer for a whole day in a stroller near the house, and the child, choking on a bottle on the nipple, choked on vomit before assisting by unauthorized persons. In the cold season, the eldest son (12 years old) was forced to chop wood, to heat the stoves and feed the younger children. The family was deprived of social assistance due to unformed documents, and was limited in the supply of electricity due to non-payment of utility bills.

At the same time, X. was not deprived of parental rights, the children were not removed from the family and at the time of the trial continued to live with their mother.

Analysis of court decisions shows that the vast majority (97%) of crimes under Art. 156 of the Criminal Code of the Russian Federation, is committed in the family, with 29% of them being complete families; 22% are incomplete, in which minors live with their mother and 4% with their father; 23% of crimes are committed in families where the mother and her new partner are bringing up the child, in 17% the new husband; 3% are families in which the joint household is kept by the father and mother of the child who are divorced.

The analysis conducted in the course of the study allows to conclude that the increase in the proportion of females among the convicts under art. 156 of the Criminal Code. So, if in 2005 the proportion of fathers who show aggression towards children was 80%, then in 2017 it is already 55% (therefore, 45% are females). The revealed dynamics is caused not so much by the growth of female aggression, as by a significant proportion of divorces. In cases of child abuse in the family, under art. 156 of the Criminal Code involves a parent (in most cases, the mother, with whom the child remains), since the violent actions of the partner (new husband) qualify for a crime against health.

In the materials of a large part of the investigated criminal cases there is information that parents were repeatedly brought to administrative responsibility for failure to fulfill or improper fulfillment of duties to maintain and educate a minor, or they were repeatedly warned by the guardianship authorities about the inadmissibility of such violations.

About a third of all registered under Art. 156 of the Criminal Code of the Russian Federation criminal acts are committed against one minor, in all other cases two or more children (up to five) suffer. Moreover, more than 70% of criminal offenses are committed against persons aged 0 to 12 years. These persons are vulnerable not only because of their age, but also because of their state of health. Since a significant part of them were diagnosed with a whole complex of diseases, often chronic, that are directly causally related to the guilty behavior of the parents and guardians responsible for their material maintenance and provision with everything necessary.
3. Prevention of Child Abuse in the Family

Criminologists [1, 2, 3] have long proved that the effectiveness of preventive measures directly depends on the identification of the causal complex of criminal acts. It should be noted on the positive side that the court decisions specify the causes and conditions for the mistreatment of children in the family. Among them are the following:
- abuse of alcohol by parents of minors. Without taking care of children, parents condemn them to a virtually homeless lifestyle. In studies of foreign scientists, it is also noted that minors become constant witnesses to adults (often by unauthorized persons) drinking alcoholic beverages, committing immoral, indecent acts, hear obscene language, scandals. [4, p. 25 - 26; five]
- prisoners do not have regular earnings, they are deliberately unemployed, which entails the parent’s inability to materially support their children, to provide them with adequate living conditions, upbringing and education, and sometimes the child’s lack of the most necessary food, clothing, and medicines.

The expansion of law enforcement practice in assessing the actions of persons found guilty under art. 156 of the Criminal Code. So, if in the mid-2000s, only children brought up in families in a socially dangerous position came into the view of legal practitioners, then today parents are also brought to criminal responsibility for committing crimes on the grounds of falsely understood upbringing of children. (punishment for bad behavior, unsatisfactory study, lack of help with housework, dependence on computer games).

The identified dynamics can be explained primarily by the fact that in recent years, the issues of ensuring and protecting the rights of children are among the priority areas of the state’s activity, which is also confirmed by significant changes in the criminal law, which strengthened the criminal responsibility for crimes related to assault on minors. Daily education through the media contributes to the identification of violations of the rights of the child in the family, creating the conditions ensuring the inevitability of parental responsibility.

Considering the above, as well as relying on foreign experience [6], in carrying out preventive work it is necessary to distinguish between parents applying physical impact to children for falsely understood educational purposes in the absence of excessive cruelty and parents showing aggression against children because of drunkenness and non-fulfillment responsibilities for their content and education.

If in the first case, parents and children need social and psychological assistance, in the second case, when the way of life of parents and the measures they take to raise their children present a real threat to their life and health, it is necessary to apply measures to protect children from abuse as provided by law.

4. Ensuring the Rights and Legitimate Interests of Children Subjected to Violence by Persons who are Charged with the Responsibility for Their Upbringing

I would like to draw attention to two more issues related to ensuring the rights and legitimate interests of children who have been subjected to violence by persons who are charged with the responsibility for their upbringing.

The first. Considering that due to age, material and psychological dependence on parents or persons involved in their upbringing, children are often deprived of the opportunity to independently protect their rights and legitimate interests, part 2 of article 45 of the Code of Criminal Procedure provides for the mandatory participation in the criminal case of their legal representatives.

An analysis of law enforcement practice shows that the preliminary investigation bodies and the courts not only occasionally exercise the powers granted by part 2 of art. 45 of the Code of
Criminal Procedure, but in individual cases, decide on the termination of criminal prosecution for reconciliation of the parties (Article 25 of the Code of Criminal Procedure, Article 76 of the Criminal Code of the Russian Federation in connection with reconciliation with the victim), despite the obvious conflict of interests of the parents and the children they represent. As an example, we can cite the criminal case on charges of U., who, being intoxicated, hit his head on the armrest of the chair of the 12-year-old son of U.D. It follows from the case file that the family is registered as being in a socially dangerous position, both parents do not work, were brought to administrative responsibility for failure to fulfill the duties of maintaining and raising children. Mother uses obscene expressions when communicating with children. U.D. is registered with the juvenile police department for being in a public place while intoxicated and for theft. During the investigation of the case, the teenager was placed in a social rehabilitation center for three months, at the time of the trial he returned to his parents. The mother, allowed to participate in the case as a legal representative, filed a petition for termination of the criminal case for reconciliation of the parties on the basis of art. 25 Code of Criminal Procedure. The court satisfied her statement (at the same time, even the position of the teenager was not clarified, since he was absent at the court hearing) [8].

Second. The study of court decisions leads to the conclusion that in all cases of crimes under Art. 156 of the Criminal Code of the Russian Federation, claims were filed (by prosecutors or legal representatives) for compensation for damage caused to a minor. In this case, in all cases the recovery of the claim is carried out in favor of the legal representative. In those cases where there is every reason to believe that the amounts to be recovered will be spent in the interests of the child, the need for this practice is beyond doubt. At the same time, there are widespread facts of recovery in favor of the legal representatives of the amounts aimed at compensating the moral and physical harm caused to children as a result of committing a crime under Art. 156 of the Criminal Code, the factual circumstances of the case show that the actions of legal representatives are not aimed at protecting the interests of the persons represented by them. (In one of the cases, the recovery was made in favor of the legal representative, who himself was repeatedly brought to administrative responsibility for not improperly performing the duties of raising a child. Otherwise, the ex-spouse of the perpetrator, being in conflict with the child’s father, tried to use the fact of the criminal behavior of the ex-husband towards her son in order to revenge for the offenses and (or) solve their material problems). In this situation, it is necessary not only to resolve the issue of recovery of the stated claims from the guilty, but also to ensure their targeted use.

5. Conclusion

The modern mechanism of state-legal protection of the family and the rights of the child in the Russian Federation is based on international standards, norms of the Constitution of the Russian Federation and industry legislation. One of the guarantees of ensuring international standards and constitutional requirements relating to the upbringing of children is the establishment of art. 156 of the Criminal Code of the Russian Federation criminalize child abuse in the family.

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References


[8] Criminal case No. 1-37//Archives of the Magistrates' courts of the judicial district No. 1 of the Kholmogos District of the Arkhangelsk Region.