

The Concept of Violence and its Expression in Criminal Law

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Abstract: The very concepts of violence, studies of its forms from the criminal law viewpoint may be instrumental in dissociating criminalised violent actions from non-criminalised though having a legal significance or the actions falling outside the area of criminal regulation; furthermore, such studies can help identify the actions that in criminal law should be viewed as socially useful (for instance, the circumstances excluding criminal responsibility). It should be noted that the concept of violence and identification of its expression forms have not only a theoretical value, but also, as has been by this study proven, is applicable in legislation (for instance, for the purpose of criminalising different types of violence), as well as in case law (for instance, when identifying possible violence manifestation options). In the light of the above the present paper focuses on the definition of violence, the possible forms of its manifestation; the authors also looked into the specific forms the coercive criminal acts can acquire in the legislation.

Keywords: Criminal law, violence, physical violence, psychical violence, freedom of will.

INTRODUCTION

Freedom of an individual is one of the most fundamental values protected by international, European Union (EU) and national law; freedom creates a premise not only for the protection of most human rights, legitimate interests, but is also considered to be one of the key security guarantors. The positive freedom theory of Immanuel Kant claimed that freedom is an imperative to respect humanity and consider every individual the highest goal (Arlauskas and Petrėnaitė 2013). The principle of a modern democratic society is the basis for the constitutional framework and the rule of law. "... the only freedom worthy of this name is the freedom to pursue one's own good in the way one chooses, as long as one does not try to deprive others of their good or hinder their efforts to acquire it" (Mill 1995). Personal physical freedom and free will is the fundamental guarantor of human rights. While enshrining the idea of inherent dignity, the idea of recognition of universal and inalienable rights the Universal Declaration of Human Rights (1948) (hereinafter – the Declaration) or the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (hereinafter – the Convention) declare that "Everyone has the right to liberty and security of person". "No one shall be deprived of his liberty save ... in accordance with a procedure prescribed by law" (Article 5 of the Convention); "everyone has the right to life, liberty and the security of person" (Article 3 of the Declaration).

Criminal law has established an axiom that not every impact upon an individual acquires features of a

coercion act, but rather only the acts that are exercised against the individual's will. In research papers personal will is often analysed in the context of free decision predicating that the freedom of will may be based on an independent decision only. If somebody orders a person to act against its will, the person no longer acts at his own volition, but rather is being forced, and in that case, there is no free will expression. It is specifically the human will, as an empowerment of human freedom is a manifestation of one's capacity to choose and take independent decisions. Since will is expressed through a possibility to choose, one is free when he/she is not precluded from a possibility to choose. Free deliberation, free decision, free action (inaction) is the result of the free will (Stančienė 2008; Bilotskiy *et al.* 2017).

The very concepts of violence, studies of its forms from the criminal law viewpoint may be instrumental in dissociating criminalised violent actions from non-criminalised though having a legal significance or the actions falling outside the area of criminal regulation; furthermore, such studies can help identify the actions that in criminal law should be viewed as socially useful (for instance, the circumstances excluding criminal responsibility). It should be noted that the concept of violence and identification of its expression forms have not only a theoretical value, but also, as has been by this study proven, is applicable in legislation (for instance, for the purpose of criminalising different types of violence), as well as in case law (for instance, when identifying possible violence manifestation options). In the light of the above the present paper focuses on the definition of violence, the possible forms of its manifestation; the authors also looked into the specific forms the coercive criminal acts can acquire in criminal legislation.

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For the purpose of the study covered by the present paper the authors used comparative, systemic, document analysis, historic and aggregation methods.

THE CONCEPT OF VIOLENCE AND ITS EXPRESSION IN CRIMINAL LAW

Violence is a universal concept. What is violence, or its essence, expression forms – the equations that not only psychology and philosophy, but also the different branches of law, i.e. criminal, administrative, international and even civil law – have been trying to find the answers to. The different aspects of violence have been extensively covered in research papers; however, rarely comparable views were found the phenomenon being highly complex in its content and form. One of the most common ways of defining violence is to only consider forms of criminal violence and to argue that violence is the use of force that has been prohibited by law (De Haan 2009). Nevertheless, identification of the types of violence in itself does not disclose their internal connections or disclose the essence of violence. In order to understand violence not only as a social phenomenon, but also as an independent category it is necessary to explore the characteristics of violence, and its forms with potential relevance to criminal justice that need to be distinguished (Bogoviz *et al.* 2017; Petrovsky and Shmelev 2019).

Linguistically violence is defined as “the use of force and making somebody to do something” (Keinys 2012). Definitions of violence normally contain attributes like illegal, restrictive, insulting and arbitrary action (Dal 1989). An analysis of the etymological origin of the term provides a somewhat more detailed interpretation, claiming that violence is a “forced impact of a person against another person” (Ozhegov 1983), at the same time emphasising the arbitrary, illegal, restrictive nature of violence aimed at enforcing somebody else’s will (Ozhegov 1983). Yet, linguistically and etymologically violence is defined in general terms only, without identifying it as a legal category (in terms of criminal law in this case). The special language of law further prompts the need to interpret linguistic signs, each time determining the true meaning of ambiguous legal terms. The same word in ordinary language may have one meaning and acquire a completely different shade in the text of a law or another specific context (Mikelėnienė and Mikelėnas 1999; Herasymovych 2018).

The term “violence” is derived from a Latin word “violentia” meaning a strong intensive force. Noticeable

is the link of the term with another Latin word, – violare, which means “violation”. It is specifically the combination of the two terms, i.e. “intensive force” and “violation” discloses the essence of violence, and constitutes the basis for the two concepts interpreting violence, of which one is built on violence as force, violation being the basis for the other.

The violence of force theory also refers to the term of violence in the narrow sense of the word (Bufacchi 2005), according to which violence is interpreted as exercise of a physical attack against a person seeking to inflict physical harm (a range of bodily injuries up to death of the person). Interestingly, certain dictionaries of legal terminology define violence as only a physical act aimed at taking somebody’s life or inflicting serious bodily injury (Golovistikova and Grudcyna 2008). In the long run advocates of the theory extended the concept claiming that violence can go beyond a conventional, i.e. impact by using physical force, and can also mean not only a conventional impact, as it may include any other impacts potentially causing or causing harm, such as biological, mechanical, chemical and thermal (Sharapov 2001).

The further development of the concept gradually introduced an idea of psychic impact which eventually was recognised as an equivalent form of expression of violence. The establishment and the recognition of that form of violence prompted a great number of scholars in the area to rethink and often change their conventional approach towards the essence of criminal impact, and acknowledge that harm may be caused to a person not only on the basis of physical force but also in the form of psychical violence. A German criminologist G. Kaiser (1996) specifically noted that associating violence solely with violation of bodily inviolability is an overly mechanical view. According to G. Kaiser it is utmost important to properly consider the psychical impact that should be considered to be an independent form of violence. Harm to the values protected by criminal legislation may be inflicted not only by the use of physical force, therefore modern doctrine often defines violence as an illegal, intentional physical and/or psychical impact upon a person (Naumov 2015; Karmaza *et al.* 2018).

The second, the violence as violation theory, promoted as part of the doctrine, is referred to as violence in the broad sense of the word. One of the most prominent advocates of the concept was the 20th-century researcher N. Garver, who in his research papers suggested that the idea of violence is much

more closely connected with the idea of violation than it is with the idea of force. He challenged the traditionally dominant understanding of violence as an exercise of force and proposed a significantly broader interpretation. N. Garver argued that violence should be viewed through the violation of fundamental human rights, and in particular, the right to bodily autonomy and personal dignity. Ordinarily violence is perceived as encroaching on the integrity of another person's body or restricting (or depriving of) his/her ability to make independent decisions. N. Garver claimed that the means of violation of human rights (whether physical, psychical or any other) is irrelevant since the essence of violence lies within the very violation of human rights (Bufacchi 2005). As part of further developing the concept the doctrine defined two types of harm: "harm of reduction" and "harm of repression" (Haan 2009). "Harms of reduction" was interpreted as a harm caused through removing something from a person's existing status or worsening his position as a human being.

For example, physical harm inflicts bodily pain or loss (of blood, organs, limbs, physical functioning). In contrast, harm of repression is associated with the loss of ability to act according to own will of the person against whom violence is exercised by depriving the target of the capability to take independent decisions (for instance, in the face of a threat). In summary, the concept of violence as violation focuses on violations of human rights that limit or eliminate the person's capability to act on his/her own will, rather than on the identification of specific impacts or their analysis. It should be noted that this concept does not repudiate the conventional forms of expression of violence, it rather focuses upon violations of human rights caused by coercive acts. It is the restriction of freedom of will that is an essential criterion for distinguishing coercion from other unlawful acts committed, and reveals the essence of violence, i.e. that the coercive impact upon the person restricts, or completely deprives of his capability to exercise his will. Therefore, the supporters of the violence as violation concept define violence as actions directed against the exercise of the person's free will. In the criminal law doctrine, the concept of violence is expressed as an entirety of three elements – illegality, force and coercion (Tokarchuk 2008; Khamzin *et al.* 2016).

Thus, a number of theories approaching the concept of violence from different angles make it possible to perceive violence as an independent category of criminal law; furthermore, violence is

defined as a dangerous action prohibited by criminal law exercised through an illegal impact upon a person against the persons will and manifested in the form of physical and psychical impact. Ordinarily, such general characteristics of violence are specified by defining the specific types of violence. For instance, the concepts of threat (as a form of psychical violence) as presented in the case law of Lithuanian courts clearly display an impact from the concepts of violence as earlier mentioned, namely violence as force, and violence as violation. Thus, in the case law, a threat is seen not only as a process of mental influence; courts tend to point out the impact of a threat upon the will of the victim (namely, as violation of his rights and freedoms). With a view to revealing the intent of the perpetrator the court noted that "the threatening understands that he is affecting another person psychically by frightening him seeking to make him to surrender, and in fact the perpetrator does that wilfully". Furthermore, descriptions of a threat contain a claim that threatening is a "dangerous intentional impact upon the psyche of another person forcing the victim to fear that any further actions of the threatening can lead to serious adverse consequences". "Thus, when establishing a threat not only the method that the person is subject to is important, but also whether or not the impact affected the expression of the person's actual will (Khamzina *et al.* 2015; Polovchenko 2019).

When establishing violence as a category of criminal law it is necessary to define its concept, determine its types, at the same time deciding regarding the entirety of the features qualifying the action as criminal. One of the main features of violence is acting (inaction) against another person's will. Suppression of the persons will be forcing the person to act according to the wish of the perpetrator, also by denying or ignoring the other person's ability to choose own course are the characteristics of an assumed coercive offence. Because of such coercive impact the possibilities for the victim to choose own course of conduct are severely restricted or completely removed. Thus, the scope of action for the perpetrator is considerably extended at the account of the interests of the victim "... the freedom of will must be understood as an ability to choose one's course of action. If only one option is available to a person, means there is no choice, there is no chance for the freedom of will to manifest itself" (Černeckis 1971). It should be also noted that because of the restrictions of human free will doctrine refers to violence as a violation of human autonomy (Gilligan 2002) that is expressed using such

verbs as control, manage or dominate over another person or with respect to decisions taken by them.

Restriction of a person's will be not the only attribute of coercion. The criminal law doctrine specifically claims that to be referred to as criminal violence must have the attributes of dangerousness and contradiction to criminal legislation (Ivanova 2002). This reflects the material and formal attributes of the criminal act itself (Republic of Lithuania Law... 2000). Those attributes of violence are recognised to be material constituting the basis for qualifying the impact as criminal, and consequently, calling for the application of criminal responsibility (Nazarov 1968; Polovchenko 2020).

Any more extensive discussion of the features identifying violence should refer to an attribute assessing the internal and invisible side the criminal impact, i.e. the personal fault. Each criminal act ("criminal untruth") externally displays harm or a threat of harm, with guilt manifested internally (Stankevičius 1925). The requirement to establish the requirement may be based on two fundamental and interlinked principles of criminal responsibility – the elements of criminal acts as the basis for criminal responsibility and the principle of "no criminal act without guilt". Such principles not only constitute the basis for a modern democratic rule of law, but also reflect the main criteria of the criminal justice activity (Prapiestis and Prapiestis 2016). Dangerous violence that is contradictory to criminal law manifests itself by intent which implies that the coercive impact upon the person is in all cases realised by performing conscious, wilful and targeted actions followed by restrictions upon the freedom of will of the victim. Meanwhile, negligence, lack of responsible approach towards legal requirements or general precautionary or safety rules are consistent with the content of negligence and for that reason are not related to wilful physical impact or intimidation. Such actions (inactions) do not reflect the essence of a coercive action, and therefore should not be referred to as violence (Kostruba 2018).

Importantly, not every impact upon a person becomes the object for criminal legal consideration, rather only such impacts that cause harm or creates a realistic danger for the appearance of danger towards the values protected by criminal law. Cesare Beccaria, an Italian criminologist in the 18th c., noted that "recognised as publishable may be only the acts that cause explicit damage to the society, and whose criminality, in addition, could be beneficial to it" (Bekarija 1992). Both on the doctrine, and the legal

regulation level it is absolutely necessary to ensure the constitutional principle of the rule of law, i.e. enforcement of criminal prosecution only for illegitimate impact whole threat to the protected legal values is beyond any doubt, also known as "an act that is wrong in and of itself" (Lat. – "mala ense") (Švedas 2012). O. Fedosiuk (2012), a promoter of the criminal responsibility as a last resort (Lat. – "ultima ratio") principle had on numerous instances in his research papers claimed a necessity to actually follow and implement the ideas of the principle on the legislative and law enforcement levels: It is not the function of criminal law to protect ethical, moral or ideological values; criminal law protects only legal values and needs to criminalise only the acts attributable to "the public evil", sufficiently severe actions that would justify public condemnation and punishment of a person concerned.

The legal significance of the ultima ratio principle and its binding nature derives from the constitutional principles of proportionality and reasonableness, and, alternatively, from the function of criminal law to protect the society from socially dangerous acts. The Constitutional Court of the Republic of Lithuania had on several occasions stated that "according to the Constitution legislators may indicate as criminal only the acts that are genuinely dangerous, are used to inflict harm on the interests of persons, society and those of the state, or pose a threat that such damage will be inflicted ... Crimes are violations of law that severely infringes human rights and freedoms, and other values protected and safeguarded by the Constitution ... encroaches on the foundations of state and public life" (Ruling of the Constitutional Court... 2000).

The approach whereby only criminal offences of specific level of dangerousness fall within the scope of criminal law regulation is primarily evident from the peculiarities of criminalization of certain types of violence in the Criminal Code of the Republic of Lithuania (hereinafter – the CC RL). For example, criminal responsibility for threats in Lithuania applies only if a person has been threatened with murder or serious harm to his health (if there were sufficient grounds to believe that the threat may be perpetrated) (Article 145(1) of the CC RL). The circumstances qualifying as threatening in Lithuanian legislation include terrorising a person by threatening to blow him up, to set him on fire or to commit another act dangerous to his life, health or property or who systematically intimidates the person by mental

coercion (Article 145(2) of the CC RL). As stated in the case law “the legislator considers terrorising and systemic intimidation of a person to be sufficiently serious crime causing actual threat to human life or health”. It follows that any threatening of a different content (i.e. threatening that is not terrorising or has no features of systemic intimidation) is not criminalised as an independent criminal act within the meaning of the CC RL. For instance, no criminal responsibility would arise in case of established isolated instance of a threat to cause just insignificant, rather than serious health impairment. The Supreme Court of Lithuania has in this respect noted as follows: “For the purpose of prosecuting according to this provision of the CC RL, it is necessary to identify both the content of the specific threat, i.e. threatening to deprive the victim of life or seriously impair his/her health, rather than any other negative consequences, and a sufficient basis for fearing that the threat will be realised”.

The need to assess the dangerousness of violence, and in particular the psychical violence was specifically noted in the case law, *inter alia*, referring to the case law of the Constitutional Court of the Republic of Lithuania: In order to prevent illegal acts, it is not always expedient to consider certain acts as crimes and for them to impose the most severe measures-criminal punishments; every time, when it is necessary to decide whether to consider a certain acts as a crime or as other violation of law, it is very important to assess what results may be achieved while applying other means (which are not linked with application of criminal punishments), *inter alia*, administrative sanctions (Rulings of the Constitutional Court... 2017). This provision has become specifically relevant when interpreting the attributes of the threat within the meaning of Article 145(1) of the CC RL. According to the Supreme Court of Lithuania, a position whereby any conflicts between persons are classified as crimes without analysing the sufficiency of the danger of the actions committed or assessing the effectiveness of other legal norms in restoring any violated rights should not be considered viable. According to the Court such practice is not consistent with the purpose of criminal legislation. Adherence to such position “allows avoiding criminalisation of any conflicts between persons”. Therefore failure, in the cases of this category to assess the sufficiency of the dangerousness of the actions, or the feasibility of the threats, or a failure to assess the efficiency of other branches of law in restoring the violated rights would be inconsistent with the purpose of criminal law.

FORMS OF MANIFESTATION OF VIOLENCE IN CRIMINAL LAWS

Normally criminal laws do not designate criminal acts by an umbrella title, however, a range of different and more specific forms for the expression of violence are referred to in different special or general provisions of criminal law. Criminal legislation covers a broad spectrum of criminal acts with attributes of violence as their constituent part. Systemically, in terms of its forms of expression violence can be divided into the following groups: physical and psychical impact that is criminalised as a stand-alone criminal act; physical and psychical impact used as a means to force a person to act against one's will, or to subdue resistance; an impact upon a person not in the form of conventional impact or threats, but nevertheless restricting or disabling the person subjected to act according to his own will (Kostruba 2019; Lialina 2019).

Criminal legislation refers to numerous criminal acts with physical or psychical violence as an independent criminal act (Lat. – “*delicta sui generis*”). The Lithuanian Criminal Code provides for criminal liability for different violence-related crimes, ranging from murder (Article 129 of the CC RL), health impairment of different severity (Article 135, 138 and 140 of the CC RL; the Code also distinguishes some forms of psychical violence as independent criminal acts, such being a range of threatening, for instance, a threat to kill or cause a severe health impairment, or terrorising a person (Article 145 of the CC RL), a threat to commit a terrorist crime (Article 250³ of the CC RL), etc. (Tsytko *et al.* 2019; Yereskova *et al.* 2020).

Arguably the most prominent physical violence in the criminal law was expressed in the process of building the constitution of a murder, as a crime of unlawful taking of another person's life. In several murder-related cases the Lithuanian case law of cassation instance noted that “the act can be committed in different ways: by exercising the physical force of the perpetrator, or using different tools, such as weapons, household tools or utensils, poison and other means that become instrumental for the perpetrator to commit a crime. Within criminal proceedings sometimes due to different causes (such as a decomposed or destroyed body, destroyed or hidden tools of crime) it is not possible to determine the exact method of the murder, or the specific tools used to commit it. This circumstance, however, does not affect the judgement of guilt of the perpetrator where it has been established that he/she has killed another

person". An analysis of a physical impact is likewise relevant in criminal cases concerning intentional impairment of health (describing the impairment of health as a provable circumstance) (Lietuvnikė *et al.* 2018; Romanenko and Chaplay 2016).

It should be noted that according to the CC RL the characteristics of the cases of health impairment are defined by the Rules for Determining the Extent of Health Impairment as approved by the Government of the Republic of Lithuania or an institution authorised by it (Article 141 of the CC RL). The Rules define a range of different concepts, including the concept of health impairment that covers bodily injury or making the victim sick (Clause 5). Bodily injury means disruption of the anatomical integrity of human tissues or organs, or of the bodily functions by a mechanic, physical or chemical impact; and causing illness means disruption of human organism functions by biological physical, chemical or psychological impact, or by denying the person of the necessary medical assistance (Clause 5) (Republic of Lithuania Law... 2000). The interpretations of the terms provided in the Rules did affect the case law decisions regarding an objective manifestation of bodily injuries. For instance, the different methods for the manifestation of violence was specifically noted in criminal cases on negligible health impairment (Article 140 of the CC RL). "Objectively actions are expressed by beating or other violent actions"; "the law does not specify how the beating or other violent actions must be performed – an important condition for the criminal responsibility to arise is the appearance of the consequences as defined in the provision"; "this criminal act includes both violent acts not leaving any marks but still causing physical pain, or causing a short-term health impairment". In fact, any impact that causes physical pain only can be categorised as physical violence. "Physical pain is the minimum threshold of criminal damage to health. The concept of physical pain can also include physical sufferings of other nature, e.g. inability to inhale, the sense of excessively high or low temperatures, or other similar conditions". Thus, physical impact (sometimes also referred to as energetic (Moshkov 2010) (because of the impact upon human body) can be referred to as physical violence. Such impact upon human body leads to an infringement of inviolability of a physical person, or even taking his/her life. In summary, physical violence can be defined as any physical, chemical, thermal, biological or mechanical impact aimed at injuring the person's body as the entirety of the biological (physical) structure.

Being one of the forms for expression of violence, psychological violence, in the same way as physical violence is an independent category in criminal law the establishment of which in the criminal law is considered to constitute a guarantee for personal inviolability. Criminal law does not provide a definition of psychological violence or any associated concepts (such as psychological coercion, threatening, intimidation, terrorising); similarly, it is difficult to define the forms of expression of psychological violence referring to solely criminal laws. Not infrequently psychological violence is considered an equally effective regulator of person's will as physical violence (Moshkov 2010). Changes in the psychological condition such as fear, anxiety or stress caused by psychological impact cause people to behave according to the will of the perpetrator. It can also be pointed out that psychological violence is best described through the concept of fear of impact, which can be used as a synonym to define psychological violence. The fear of impact actually reflects the very purpose of psychological violence, i.e. personal intimidation by forcing him/her to submit to the pattern (model) of behaviour enforced by the perpetrator. It has been also maintained that in the light to such understanding of psychological violence, threatening is defined as a "process of intimidation, inciting fear to other person" (Bezruchko 2015). The form of expression of psychological violence – threatening – can be criminalised also as an independent criminal act, for instance, threatening to murder or cause severe health impairment within the meaning of Article 145 of the CC RL. Psychological violence (threats) is expressed through informative, otherwise called psychological impact. Such information-psychological impact is realised in a specific way, i.e. transmission of information aimed at harming the person's psyche. Seeking to point out the exclusive nature of psychological impact it is often referred to as "of intangible nature" or "non-material" (Pavlova and Koryakina 2014; Tumanyan 2018a; Tumanyan 2018b). The case law of the Lithuanian cassation instance courts defines psychological violence as the different methods of impact transmitting information capable of adversely affecting the psychological condition of the person concerned his/her psychological health. As indicated in a Ruling by the Supreme Court "the law does not specify the method of threatening"; "threatening can be expressed verbally, in writing, certain intimidating behaviour, it may be communicated directly to the victim or through other persons, or in public statements" (Yessilov and Kalashnikova 2015)†

It should be noted that an interpretation of psychological violence in the broad sense of the word associates

such violence not only with threats, but also with degrading and offensive actions such as defamation, oppression, bullying, cruel treatment, etc. The arguments underlying this interpretation are related to the very mechanism of psychic harm itself. Supporters of the concept (Vaske 2010) argue that psychological violence targets human psyche, therefore its forms of expression should be considered to include different actions that can cause damage. Since the adverse impact upon human psyche is produced not only by intimidation by threatening, but also other actions degrading a person's honour (dignity), or actions that are described as bullying or cruel behaviour, and therefore forms of psychological violence should be considered to include any actions (omissions) that have a negative impact on a person's psyche (Vaske 2010). Such adverse impact can cause a range of movements psychological condition, such as anxiety, fear, stress, anger, etc. This aspect of the concept of psychological violence could be attributed to a considerable number of criminal acts that are criminalised, *inter alia*, because of their impact upon the person's psychological health (Nasyrova *et al.* 2015; Tumanyan 2018c; Vapniarchuk *et al.* 2019).

For instance, in Lithuania libel is a criminally prosecuted (Article 154 of the CC RL). The case law of cassation instance court noted that in case of libel "the victim is humiliated in the eyes of other people at the same time damaging his honour and dignity". The actions of the perpetrator meant to spread false information about another person that could arouse contempt for this person or humiliate him or undermine trust in him will inevitably have a negative impact on the victim's normal mental state and could therefore, in a sense, be considered to be psychological violence. The Lithuanian Criminal Code also criminalises psychological harassment of a child (Article 163 of the CC RL). Such actions (inaction) of parents or other legitimate representatives of are considered to be one of the forms of abusive treatment of children directed against the child and the family as the value protected by the criminal law. As claimed in the case law "the mental harassment of a child is understood as long-term ... psychological violence exercised on a systemic basis, i.e. characterized by repeatability and periodicity". The above interpretations naturally raise a question whether or not psychological violence should be associated only with intimidating actions manifested by threats, as negative impact upon a person's psyche can also be caused by many other actions (Toleubai and Kizdarbekova 2018).

The above interpretations of psychological and physical violence are relevant also with respect to other option of criminalisation of violence, – when identifying physical or psychological influence as one of the methods of forcing another person to behave against his will or overcoming resistance. Dangerous violence is not necessarily a goal in itself, often such violence is used as a means facilitating the perpetrator in achieving his/her desired result, as it overcomes the actual or potential resistance on the part of the victim. Therefore, in such cases violence, whether physical or psychological, becomes a guarantor of the will imposed by the perpetrator. Because of the used physical violence or being scared of negative consequences the victim shall succumb to the will imposed by the perpetrator, perform the required actions or refrain from them. Violence treated as a method for committing a criminal act is criminalised as part of different criminal acts. Thus, for example, qualified as unlawful deprivation of liberty is linked, for example, holding a person in captivity using violence (Article 146(2) of the CC RL); rape is defined as a sexual intercourse with a person against its will, *inter alia*, using physical violence or threatening the immediate use thereof (Article 149 of the CC RL); robbery in the Criminal Code is defined as seizing another person's property through the use of physical violence or by threatening the immediate use thereof (Article 180 of the CC RL). In this respect, it is also relevant that the methods of committing a criminal act defined in the criminal law display the manifestations of psychological violence in the broad sense of the word (not limited to threats only).

Thus having implemented the provisions of Directive 2011/36/EU of the European Parliament and of the Council "On preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA" (2011) (hereinafter – Directive 2011/36/EU), Article 147 of the CC RL added to the composition of the trafficking crime, *inter alia*, an attribute of taking advantage of the victim's vulnerability. In accordance with the provisions of the Directive, "vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved" (Article 2(2) of the Directive). The cassation court case law further specifies the human trafficking method by indicating that taking advantage of a victim's vulnerability is "a malicious offer to a person who is forced to accept the offer because of a difficult situation. It is a situation where the victim has no real or acceptable choice but to accept such an offer".

Vulnerability in such cases may be related to the victim's mental or psychical vulnerability, alcohol dependence, drug addiction, the victim's financial situation, or other factors. All such considerations mean a restricted choice for the victim, enabling the perpetrator to manipulate the person concerned. Since such malicious impact the victim exercised seeking to subdue his will, control and involve him in exploitation, is linked, *inter alia*, with a direct negative impact on a person's psyche, it could be considered to constitute psychical violence in the broad sense of the word (Omelchuk *et al.* 2020).

Systemically criminal law defines violence as an impact upon a person manifested in an unconventional physical or psychical method, at the same time restricting or depriving the victim of a possibility to act according to own will. For instance, such impact upon a person can be designated as "a different method of disabling the victim's resistance". Such will restriction method alternative to a physical or psychical impact is a characteristic element of such criminal acts as human trafficking, rape or robbery, all defined in the Criminal Code of Lithuania (Republic of Lithuania Law... 2000). The case law in criminal cases regarding criminal acts against the freedom of sexual self-determination specifies the definition of impact as "Confinement of a person in an isolated room, tethering (provided that no violence is used), ingestion of narcotic or psychotropic substances, hypnotics or other involuntary drugs by the victim without his or her knowledge or by deception, false presentation of any information relevant to the victim's decision and other". In this respect an important role in the cases on trafficking of human beings is played by Directive 2011/36/ES that defined the criminal acts related to trafficking in human beings and obligated Member States to take measures ensuring that trafficking crimes are punishable, *inter alia*, if committed using force or other forms of coercion (Article 2(1)). It may be concluded that such broad description of an impact upon human will suggests that a perpetrators intent can be realised using other methods than physical or psychical impact. Furthermore, since such criminal acts go beyond the limits of physical impact or threatening, such criminal activity should be categorised not as coercion but rather as violence.

CONCLUSIONS

Criminal violence can be defined as a dangerous intentional physical or mental impact on a person, carried out against the will of that person, established

by criminal law. Such criminal impact aims at restricting or completely depriving the victim of the possibility to exercise his/her freedom of will. Therefore, when defining violence, it is important to refer to the complementary concepts of violence as force and violence as violation. While most ordinarily violence is realised through physical or psychical impact, the latter should not be interpreted in a narrow sense of the word as only the use of physical force or threatening. Physical and psychical violence may have different forms of expression. Physical impact can manifest itself not only in the form of physical force, but also by biological, mechanical, chemical or thermal effects; psychical impact – not only through real threats, but also in other ways that affect a person's psyche, such as psychical harassment, taking advantage of a person's vulnerability, etc.

Criminal laws normally do not provide a general definition of a violence-related crime, but criminal acts containing an element of (physical or psychical) violence can be criminalised in the legislation in different ways. First, separately physical and psychical impact can be criminalised as an independent criminal act; second, such impact may be treated as a way to force a victim to behave against his own will; third, an impact upon a person may not necessarily be referred as traditional physical impact or threat, but nevertheless restricting or completely removing the victim's ability to act according to his/her will.

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