

сурового покарання преступников за новое преступление. Необходимо также строгое соблюдение режима в местах ограничения и лишения свободы, активное воспитательно-педагогическое влияние, поощрение за малейшие позитивные проявления в местах ограничения и лишения свободы, предоставления помощи в бытовом и трудовом устройстве. Быстрое выявление и раскрытие преступлений обеспечит осознание неотвратимости наказания и сдержит от совершения рецидива преступлений. Наказание призвано нейтрализовать преступное поведение, а если применяется отсрочка его исполнения, то осужденные считают это равнозначным освобождению от ответственности. Существует угроза неиспользования более сурового наказания, поэтому и не используется потенциал института наказания.

**Ключевые слова:** рецидивная преступность, наказание, уголовно-правовые меры, рецидив преступлений, рецидивист.

**Telefanko B. Criminal and Legal Means to Restrain Recurrent Crime.** The article is devoted to difficult questions of restraining of recurrent crime by means of criminal and legal measures. In Ukraine recidivists act more and more at the forefront every year. The bigger number of former punishments is, the stronger danger of new recurrence becomes. Essential criminal and legal means of controlling recurrence of crimes are the following: timely detection and solving of crimes, scrupulous study of the person in course of investigation, right and reasonable choice of the appropriate measure of restraint, imposing of fair punishment (its real serving), taking into account requirements for differentiation and individualization, steady ensuring of principles of inevitability and more severe penalty of criminals for a new crime. Also the attention is paid to the necessity of strict observance of the mode in places of restriction and imprisonment, active educational and pedagogical influence, encouragement for the slightest positive actions in places of restriction and imprisonment, help in the household and work arrangement. Fast identification and disclosure of crimes will provide awareness of inevitability of punishment and will constrain from commission of recurrent crimes. Punishment is aimed at neutralizing criminal behaviour, and if the delay of its execution is applied, the convicts consider it equivalent to the release from responsibility. There is a threat not to use more severe penalty, therefore the potential of institution of punishment is not used.

**Key words:** recurrent crime, punishment, criminal and legal measures, recurrence of crimes, recidivist.

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### **Criminological Aspects of Juvenile Delinquents' Violent Criminality**

The author of the article highlights a number of features that are inherent to minors. Violent criminality is regarded as one of the components of the general structure of crimes, which include offenses related to physical and mental violence against the person, or the threat of violence. The article presents a typology of the distribution of violent crimes committed in the «pure» and the presence of multiple offenses, and any illegal conscious influence is regarded as violent because of the danger of its consequences.

**Key words:** violent crime, juvenile delinquents, causes, dynamics, structure, criminology.

**Formulation of scientific problem and its meaning.** Juvenile delinquency, especially violent one, is increasing at a great rate out of proportion. According to the analysis of sources of criminal-executive and criminal law we should admit, that minor's offences have specific peculiarities, though they are a part of criminality in general. This fact gives the opportunity to consider it as an independent object of criminology study. It is well-known, that tight connection exists between juvenile delinquency and adult criminality. Special quantitative and qualitative characteristics are inherent in juvenile delinquency.

**The basic material and justification of the results of the study.** Without doubt, crime as social phenomenon is a significant menace to society; however juvenile delinquency has a strong social reaction. It can be explained by the peculiarities of this age category:

1) Psycho – physiological peculiarities (the age of 14-18 years is a turning point, which influences minors' further behaviour, the development of their convictions, and their perception of society) [2]. L. M. Prozumentov thinks, that the principal features of minority are the criticism of the «identity» formation,

which implies the image of a self in the environment; the development of personal relationships with peers by means of communication; the appearance of the feeling of adulthood; a low level of conflict competence, that is a major part of social competence [16],

- 2) The defect of social experience;
- 3) Increased emotionality, emotional excitability;
- 4) Disposition to imitation;
- 5) Discrepancy in behaviour and views;
- 6) Inclination towards outside influences;
- 7) Need of self-realization (self-realization and communication mostly take place in the companies of antisocial activity, therefore minors' offences have mostly group character) [6].

The question of violence appeared as a consequence of relations between people. The discussion of ideas of violence is connected with the names of such outstanding thinkers as Charles Montesquieu, Beccaria Cesare, Jean-Paul Marat, Cesare Lombroso, Zigmund Freud, and others.

From the point of view of I. Adamov [1], any kinds of violence can be studied only within a broad sociological concept. It gives the opportunity to disclose the peculiarities of a certain kind of violence, compare its concept with general sociological definitions.

Thus, as O. Y. Mykhailov points out, «modern sciences made everything possible for evident mixture of different kinds of violence: between animals and a person, revolutionary and criminal ones, equally aggressive» [13, p. 8]. Moreover, a legislator himself is not always logical in the use of such notions, as «violence», «enforcement», «threat», «assault», «terror», etc., admitting their various interpretation.

For example, considering the term «enforcement» the article 154 of Criminal Code of Ukraine (enforcement to sexual connection) says about psychical influence on a person, but in article 373 of Criminal Code of Ukraine (enforcement to give witness) this term also includes physical influence [12, p. 392, 411, 620].

Such a situation appeared, as O. Y. Mykhailov thinks [13, p. 230], as a result of absence of logical scientific treatment of these concepts in criminology as well as in other branches of law science. This phenomenon causes discrepancy in differentiation between violent offences and non-violent ones.

The analysis of legal literature confirms, that in the works of criminology, criminal law, criminal procedure, criminal-executive law and the science of crime detection the terms «violent crimes», «violent criminology» are also ambiguous; there is vagueness about distinct and exact determination of such crimes. In our opinion, the lack of the conception of violent crimes in the national legislation causes the diversity of approaches to the decision of this problem.

As for the features common to all violent crimes, we support the idea of L. D. Gauhman, who names the following ones: 1) criminality in general; 2) homogeneous object of encroachment; 3) the same way of committing a crime, which means the use of violence or the threat of violence, intentional conscious character of the used violence (threat of violence) [5, p. 31].

Among the noticeable features of minors' violent crimes N. P. Pliashchynyk points out social danger of a deed and violent character of a crime [15].

It should be mentioned, that an apparent feature of crimes of this type is violence against a victim that is understood as «illegal use of strength, a forced, made against one's will, action» [11, p. 49].

As a result, actions, that make attempts upon different objects and imply violent and aggressively violent motivation, should be included to the violent criminality. Thus, L. D. Gauhman said, that violence contains factual as well as legal features of violence [5, p. 4].

L. V. Levytska and H. M. Samilyk consider the arising or the threat of arising harmful consequences in the form of physical or moral harm to be the features of violent infringement [10, p. 19].

It is known in the theory of criminal law, that consequences in the form of doing particular harm are a necessary feature of objective side of material body of the crime, because crime, as an action against a particular person, can be a stress factor of considerable force. So, except for consequences, which are predicted in criminal law in committing violent crimes against minors, negative reactions of a person in psychological sense and, as a rule, after a considerable period of time after a committed crime, should be meant.

Another feature of violent infringement is named by the authors as the existence of intention (direct and indirect) in the criminal's actions [10]. This idea is supported by L. D. Gauhman, who thinks, that «all the crimes with intentional violent actions are included into the violent ones» [5, p. 43]. At the same time, according to the article 11 of Criminal Code of Ukraine, intention is determined in the analysis of any crime, because it is the reason to admit guilt. That is why we consider it irrelevant to point it out as an independent feature of violent crimes.

Actions against a victim's will, as a feature of a violent crime, are viewed as ambiguous. As L. V. Levytska and H. M. Samilyk show, «the use of violence against a person's will implies victim's comprehension of criminal's violent actions, consequences of that influence and unwillingness to be harmed, that appear as a result of those actions. The behaviour – e.g. resistance, cries for help, weeping, escape – can denote conscious perception of violence» [10, p. 24]. However, the absence of outer resistance to criminal actions cannot be regarded as the absence of a violent crime at all. Furthermore, if a person is incapacitated due to a psychic disease, she cannot realize distinctly the criminal's violent intention, and a person, who was given imperceptibly some drugs, cannot completely realize violent actions.

Researches also show, that some authors point out the existence of a motive in the intentional actions as a separate feature of violent crimes. V. Vasylevych admits that the first condition to include a crime to the group of violent ones, is a motive, which appears on the background of personal disregard, revenge, jealousy, and satisfaction of sexual passion or hooligan's intentions [4, p. 82]. The same idea is described by O. Y. Mykhailov [13]. But in this question we support the idea of L. V. Levytska and H. M. Samilyk [10], who pay attention to the fact, that the first profitable motive of a criminal may not correspond to the violent in its sense aim of a crime.

Other authors [3, p. 148] think that the purpose of a crime is the subjective feature of a crime: elimination of a person as a subject of social relations or her enforcement directed to the oppression of a victim's will. It is rather hard to agree completely with such thoughts, as if a person murdered someone incidentally during robbery, though she did not intend that, violent character of a crime cannot be established surely. On the other hand, motive and aim of a crime, if they efficiently influence the character and degree of social danger of actions, are included to Special part of Criminal Code and they are an obligatory part of the body of a crime.

Another important moment, which should be stressed in the investigation of features of violent crimes, is the fact that the subject of the criminologists' research is not any violence, but only the one, connected with the violation of norms of criminal legislation (criminal violence). On these grounds the amount of such crimes often excludes violent robbery, extortion, and other actions, which reveals so called instrumental violence, used only as a means to reach a profitable or political aim [7, p. 233].

In literature [7, 10] two types of criminal violence are pointed out:

Psychic violence in criminal literature is viewed as the most spread and dangerous kind of outer influence on a person. At the same time, the interpretation of the sense of this form of violence is different. For example, it can be spreading of slanderous information, making property damage (R. A. Levertova [9, p. 11]). At the same time thefts and destruction of property, as has already been mentioned, do not belong to violent crimes. That is why it is sometimes difficult to draw a line between instrumental and criminal violence.

Some authors distinguish such forms of psychic influence on a person as enforcement and incitement [14; 17]. However, as we have already established, enforcement may anticipate psychic as well as physical influence.

Psychic violence also includes influence on the person's psyche by means of intimidation and threats (L. D. Gauhman [5, p. 5-10], R. A. Levertova [9, p. 63]). But the interpretation of psychic violence only as a threat of making physical harm leaves people outside legal defence from other ways of violent influence on their will. Perhaps due to this in national criminal-procedural practice there is a tendency to consider violent those crimes, which included or anticipated the use of physical strength.

According to the criminal legislation of Ukraine a number of norms anticipate responsibility only for definite forms of psychic influence. They are, in particular, article 129 of Criminal Code – threat of murder; article 301 of Criminal Code – import, production, distribution and spreading of pornographic things; article 303 of Criminal Code – involving into prostitution; article 315 of Criminal Code – inclination to the use of drugs, psychotropic substances or their substitutes, etc. Even though we can view them as forms of psychic influence, formally such interpretation is not traced legally.

As for the interpretation of the sense of «physical violence», fundamental complex study of this problem took place in 60 – 70s of the last century (L. D. Gauhman [5] and others). Physical violence was considered mainly as a dangerous illegitimate influence on the organism of another person and the use of physical strength. But in newer scientific investigations it is shown, that physical violence «is able to make ... organic, physiological or psychic trauma and limit freedom ... of declaration of will or actions» (L. V. Serdiuk [17, p. 22]). That is why physical violence is any influence on the organism (not only the body) of another person.

Summing up, it should be stressed, that paying attention to the changes in the object of a crime, it is difficult or even impossible to differentiate psychic and physical violence. Therefore, it's unreasonable to

affirm, that a victim was influenced physically or psychically. Legislators do not make such differentiation either. Thus, article 11 of Criminal Code in the definition of a crime stresses on «socially dangerous intentional action (action or inaction)» [8], without specification of the character of an action – physical or psychic. Therefore, we agree with a widely spread in the criminal legal literature idea that physical and psychic violence ought to be researched as two homogeneous things, i.e. violence as their combination, especially taking into consideration the fact, that the consequences of physical as well as psychic violence may not be noticed immediately.

Using the researches of the mentioned scientists, we regard violent criminality as a part of the general structure of criminality, which contains actions, connected with physical and psychic violence against a person or the threat of its use. And, taking into consideration the specification of the object of infringement, we consider all criminal actions, the result of which is doing damage or a threat of doing harm to the life, physical, sexual, spiritual, and intellectual development of a person.

Concerning minors' violent criminality, we suggest distinguishing it as an independent category, which is viewed as a combination of actions (preparation to a crime – article 14 of Criminal Code, attempt upon a crime – article 15 of Criminal Code, a crime – article 11 of Criminal Code), which appear in socially dangerous guilty actions (actions or inaction), committed by the subjects of a crime (art. 18, art. 22 of Criminal Code), based on conscious (expressed in the form of intention or carelessness – art. 23, art. 24, art. 25 of Criminal Code) doing harm to minors or a threat of doing harm to a person's legal interests, listed in Criminal law (Special part of Criminal Code).

Another question, which should be mentioned in the consideration of violent crimes, is surely their typology. As the concept «violence» includes such forms as strength, enforcement, oppression, damage, influence, etc., we consider it to be necessary to divide violent crimes into primary and secondary ones.

**Conclusions and perspectives for further researches.** Our refusal of the traditional typology and similar to it is caused by the fact, that as a result of any violent crime the subject of a crime reaches material, psychological and physiological interest (satisfaction). So, the idea that, for example, rape is not a profitable crime only because the criminal does not gain his material profit, is groundless.

Primary violent crimes include those socially dangerous actions, which are directed first of all against life, health, freedom and dignity of a person: intentional murders (art. 115-118 of Criminal Code), manslaughter (art. 119 of Criminal Code), murder of a newborn child by the mother (art.117), bringing to suicide (art. 120 of Criminal Code), the threat of murder (art. 129 of Criminal Code), intentional body damage (art. 121-125 of criminal Code), careless body damage (art. 128 of Criminal Code), violent satisfaction of sexual passion in unnatural way (art. 154 of Criminal Code), beating and torturing (art. 126 of Criminal Code), torture (art. 127 of Criminal Code), hooliganism (art. 296 of criminal Code), banditry (art. 257 of Criminal Code), group violation of public order (art. 293 of Criminal Code), leaving in danger (art. 135 of Criminal Code), not giving help to a person in a dangerous for life state (art. 136 of Criminal Code), infringement upon the health of people under the pretence of preaching religions or performing religious ceremony (art. 181 of Criminal Code).

Secondary violent crimes include those ones connected with violence, but doing harm is not their final aim, it is only a means to realize criminal's various interests. They are: illegal imprisonment or kidnapping (art. 146 of Criminal Code), taking hostages (art. 147 of Criminal Code), rape (art. 152 of Criminal Code), sexual intercourse with a person, who has not reached puberty (art. 155 of Criminal Code), enforcement to sexual intercourse (art. 154 of Criminal Code), theft (art. 185 of Criminal Code), robbery (art. 186 of Criminal Code), demand (art. 189 of Criminal Code), fraud (art. 190 of Criminal Code), doing property damage by means of deception or breach of confidence (art.192 of Criminal Code), property destruction or damage (art. 194, art. 196, art. 347, art. 352, art. 378, art. 399 of Criminal Code), threat of property destruction (art. 195 of Criminal Code), deception of buyers and customers (art. 225 of Criminal Code), import, production and distribution of goods, that imply the cult of violence and cruelty (art.300 of Criminal Code), pimping or involving a person into prostitution (art. 303 of Criminal Code), illegal insertion of drugs, psychotropic substances and their substitutes into the organism (art. 314 of Criminal Code), inclination to the use of drugs, psychotropic substances and their substitutes (art. 315 of Criminal Code), threat or violence against a worker of law enforcement agency (art. 345 of Criminal Code), state or public worker (art. 346 of Criminal Code), clerk or citizen who do civic duty (art. 350 of Criminal Code), judge, juryman or juror (art. 377 of Criminal Code), defender or person's representative (art. 398 of Criminal Code), infringement of their life (art. 348, art. 400, art. 443 of Criminal Code), a number of actions that imply enforcement (art. 280, art. 355 of Criminal Code).

We stress on the fact, that this typology suggests dividing violent crimes, committed without various complicating circumstances or a set of crimes. Furthermore, any illegal conscious influence is valued as violent one due to the danger of its consequences.

Minors' criminality has always been and is still a very urgent problem. Every year the statistics of Ministry of Internal Affairs of Ukraine register over 35 thousand of crimes, committed by minors, among which are murders, body damage, robberies, thefts, hooliganism, etc.

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**Гусак А. Криминологічні аспекти насильницької злочинності неповнолітніх правопорушників.** Злочинність неповнолітніх характеризується непропорційно швидким зростанням. При аналізі джерел кримінально-процесуального і кримінального права можна відзначити, що правопорушення неповнолітніх хоча і є складовим елементом злочинності в цілому, проте має свої специфічні особливості. Злочинність неповнолітніх розглядається автором як самостійний об'єкт вивчення криминології. Відомо, що між злочинністю неповнолітніх і злочинністю дорослих існує тісний зв'язок, проте, злочинності неповнолітніх властиві також свої особливі кількісні і якісні характеристики. У статті виділяється ряд особливостей, які властиві неповнолітнім, насильницька злочинність розглядається як одна із складових частин загальної структури злочинності, в яку входять діяння, пов'язані з фізичним і психічним насильством над особою або загрозою насильства. У статті представлена типологія розподілу насильницьких злочинів на вчинені в «чистому вигляді» і при наявності сукупності злочинів, а будь-який протиправний свідомий вплив оцінюється як насильницький саме через небезпеку його наслідків.

**Ключові слова:** насильницька злочинність, неповнолітні правопорушники, причини, динаміка, структура, кримінологія.

**Гусак А. Кримінологічні аспекти насильственої преступності невідолонетніх правонарушителей.** Преступність невідолонетніх характеризується непропорціонально швидким ростом. При аналізі істочників уголовно-процессуального і уголовного права можна отметить, что правонарушение невідолонетніх хотя і является составным элементом преступности в целом, однако имеет свои специфические особенности. Преступность невідолонетніх рассматривается автором как самостоятельный объект изучения кримінологии. Известно, что между преступностью невідолонетніх и преступностью взрослых существует тесная связь, однако, преступности невідолонетніх присущи также свои особые количественные и качественные характеристики. В статье выделяется ряд особенностей, которые свойственны невідолонетнім, насильственная преступность рассматривается как одна из составных частей общей структуры преступности, в которую входят деяния, связанные с физическим и психическим насилием над личностью или угрозой насилия. В статье представлена типология распределения насильственных преступлений на совершенные в «чистом виде» и при наличии совокупности преступлений, а любое противоправное сознательное воздействие оценивается как насильственное именно из-за опасности его последствий.

**Ключевые слова:** насильственная преступность, невідолонетние правонарушители, причини, динаміка, структура, кримінологія.