

*Martinková Milada, Macháčková Radka:*

## **Selected criminological and legal aspects of domestic violence**

### **(Two contributions regarding the problem of domestic violence in the Czech Republic (empirical findings and analysis of selected legal issues))<sup>1</sup>**

2000 – 2001

ISBN 80-86008-98-3

#### **Extended summary**

This publication, focused on the problem of domestic violence, comprises two parts. The first is devoted to empirical findings on cases of physical domestic violence which have been discovered in three field investigations carried out by the author (M. Martinková: Physical domestic violence in Prague in 1999 – criminological aspects).

The second part is devoted to selected legal issues relating to domestic violence and provides inter alia a summary of Czech legal norms governing and providing sanctions for violent conduct within the family (specifically between adult heterosexual partners /or spouses/) (R. Macháčková: Domestic violence – some legal aspects).

Both parts of the publication react to a number of problems relating to the issue of violent behaviour between members of the family in the Czech Republic, on the one hand to the lack of information on the occurrence of cases of domestic violence in the population and on the other hand to the hitherto inadequate summary overview of possibilities for resolving cases of domestic violence by means of the Czech legal norms in force.

#### **Physical domestic violence in the capital of Prague in 1999 – criminological aspects.**

Three empirical surveys in the capital city of the Czech Republic, Prague, in 1999 had the aim of ascertaining the occurrence of physical violence between members of the family and some features of this at three different levels:

- 1 at the level of official files kept by administrative authorities on behaviour constituting a misdemeanour<sup>2</sup> (violence between adult persons in the family - § 49 para. 1 (c) of Act No. 200/1990 Coll.)

---

<sup>1</sup> Martinková, M., Macháčková, R. Selected criminological and legal aspects of domestic violence. Prague: ICSP, 2001. 193 pages, Summary.

<sup>2</sup> The term misdemeanour: a misdemeanour is culpable behaviour which breaches or threatens the interests of the community and is expressly designated as a misdemeanour in this or another Act, unless it is another administrative offence indictable under separate legal regulations or a criminal offence... (Act No. 200/1990 Coll.)

Misdemeanours against civil coexistence: (§ 49 of Act. No. 200/1990 Coll.): 1. An offence is committed by one who (a) hurts the feelings of another by insulting or ridiculing him/her, (b) causes bodily harm to another by negligence, (c) deliberately breaches civil coexistence by threatening bodily harm, petty assault, wrongful accusation of an offence, acts of spitefulness or other abusive behaviour.

- 2 at the level of findings of services for the legal protection of children in society (violence by adults in the family against children and young persons between the ages of 0 and 18 and violence by adolescents against other members of the family)
- 3 at the self-report level – pupils at vocational training centres and secondary schools (violence by adults in the family against children and adolescents and violence by children and young persons aged between 0 and 18 against members of the family)

### Methodology of individual surveys

On point 1: Cases of physical domestic violence between adult members of a family – behaviour constituting a misdemeanour

The aim of the survey was to collect findings for a period of one year (1999) on officially recorded cases in Prague of physical violence between adult members of a family which were classified as offences against civil co-existence (§ 49 para. 1(c) of Act No. 200/1990 Coll.). Physical violence in the family between adults (sexual assaults were not included) was investigated by using a questionnaire, which was specially compiled for the purposes of this survey. The questionnaire was completed by selected staff of individual area and district local authorities in all administrative areas of Prague which dealt with resolving misdemeanours. The staff concerned examined recorded cases of behaviour constituting a misdemeanour for one year retrospectively.

In the handling of misdemeanours by area and district local authorities (in Prague for 1999) we ascertained, where these were domestic physical violence between adult members of a family:

- 1 the total number of cases of domestic physical violence which had been officially recorded
- 2 the number of cases of domestic physical violence which these local authorities had investigated and resolved in the defined one year period
- 3 data available on selected resolved cases of domestic physical violence (namely from those not terminated in which violence had been proved), broken down as follows: (a) physical violence between partners (married couples /or previously married couples/, male and female partner) (b) between adult members of the immediate family (between children and parents, siblings, grandparents and grandchildren) and (c) between adult members of the wider family (eg between mother-in-law and son-in-law, a woman's former husband and current husband and so on).

In total we obtained data from 56 of the 57 area and district local authorities in Prague which dealt with resolving misdemeanours during the period of our field investigation. (The questionnaire was completed by 44 women and 12 men.)

On point 2: Cases of physical violence by adult persons against children and juveniles in the family – findings of services for the legal protection of children in society

The aim of this survey was to identify cases of physical violence by adult persons against children and young people in the family aged between 0 and 18 over a period of one year (1999) in Prague by means of the findings provided by services for the legal protection of

children in society which are specially concerned in the Czech Republic with family and child care. This concerned both assaults proved in court and assaults being dealt with by the courts or the police during the period investigated by the questionnaire, and also concerned reasonable suspicion of such assaults against children and juveniles in the family (suspicion voiced by a doctor, psychologist etc).

On the other hand we were also interested in this survey in physical violence by children and juveniles against other members of the family encountered by services for the legal protection of children in society.

The investigation was performed by means of a questionnaire specially compiled for the purposes of the survey. The questionnaire was designed to obtain data of a statistical nature on cases of violence against children in a family encountered by staff of these departments.

We ascertained the following specifically (for 1999 in Prague) in the questionnaire:

- 1 Data on the numbers of adult originators of physical violence against children and juveniles in the family and other data available on these perpetrators of violence
- 2 We ascertained the number of 0 – 18 year old victims of these aggressors and selected characteristics of these victims
- 3 We monitored data on the originators of physical violence in the family from children and juveniles and took an interest in the victims of their violence

The questionnaire was completed by staff (N=15) of all area and district local authority offices in Prague which dealt with family and child care during the period of our investigation – there were 15 of these (Prague 1 – 15).

### On point 3: Physical violence in Prague families – self-report of pupils of vocational training centres and secondary schools (results of survey)

The aim of the survey was to ascertain, on the basis of self-reports by pupils of Prague vocational training centres and secondary schools, data on physical violence and some forms of this in the families they were growing up in. A total of 231 juveniles were surveyed (65.4% boys, 34.6% girls: 54.1% pupils of vocational training centres, 45.9% pupils of secondary schools: 72.3% of these were 17 – 18 year old adolescents).

In the survey we used a questionnaire specially designed for it. This questionnaire was drafted in such a way that it would not be clear to the persons surveyed that it was primarily to obtain information on physical violence in the family. The questionnaire was directed to the respondents' experience of the use of physical force by other persons against them in the wider spectrum of various social environments in which the young person moved (school, gangs, the streets, sport, homes, discos etc).

The questionnaire specifically monitored the following aspects of domestic violence:

- 1 whether the family was an environment in which the respondent was afraid that one of the members of the family could really harm him/her physically there
- 2 whether the respondent experienced physical violence against him/her at home from parents and what forms this violence took (forms of corporal punishment and any other manifestations of physical violence)

- 3 whether at any time physical violence was used deliberately in the family against respondents to such an extent that evident injury or bruising was caused (originators of violence could be all members of the family)
- 4 whether respondents and their siblings used physical violence against their parents at any time
- 5 whether respondents witnessed physical violence in their family at home between their father and mother

### *Some findings from these three surveys*

Summaries of the main findings and conclusions are stated in detail in the publication for individual surveys separately – here we give only some important findings of a more general nature and under points.

- From the data obtained from our three empirical surveys it was clear that even though the originators of cases of physical violence in Prague in 1999 were predominantly men, women too showed physical violence to members of their family, though to a much lesser extent.

In the case of all resolved /and not terminated/ misdemeanours which we examined more closely, men were the originators of the violence in at least 77.9% of cases (180 offences), women in at least 15.2% of cases (35 offences). In the rest of the cases it was a question of mutual violence by a man and a woman.

At least 63.7% of physically violent behaviour by originators of violence against children and juveniles in the family was by men (44 persons) and 36.2% by women (25 persons). In addition, for example among children and adolescents who were recorded by staff of services for the legal protection of children in society as physically violent against members of the family, at least 29.4% were girls (10 persons), ie more than a quarter. A similar pattern was shown among pupils of vocational training centres and secondary schools who gave evidence themselves concerning physical violence against their parents. Here girls formed more than a fifth of physically aggressive young people in the family (22%, ie 9 people).

- In physical acts of attack against members of the family there were frequently also cases in which victims of violence were *physically injured*. 63.2% of all cases of misdemeanours resolved /and not terminated/ relating to physical domestic violence between adults (146 offences) were accompanied by physical injury to the victim. The majority of these cases of domestic physical violence which were characterised as misdemeanours and in which there was physical injury to the victim were caused by men: so men were the originators of physical violence in at least 84.2% of these offences (123 cases), and women in at least 11.6% of these offences (17 cases).

*If treatment of a physical injury by a doctor can be considered as a certain sign of fairly serious injury, then violence with more serious consequences has been caused to the victim in the cases of the resolved /and not terminated/ misdemeanours stated above by adult men much more often than women (at least 87.6% of the misdemeanours in which the victim was injured and which were treated by a doctor were committed by a man (78 cases) and at least 7.9% of these misdemeanours (7 cases) were committed by women.*

- In cases resolved /and not terminated/ of misdemeanours relating to physical violence between adult members of the family, *it was not a matter only of violence between people of the opposite sex* (except in cases of violence between partners). For example, in physical violence in the extended family /a total of 18 resolved and not terminated cases/ the majority of the male originators of physical violence physically attacked a man (10 offences) and the majority of women attacked females (5 offences). There was a similar pattern in cases of violence by adults against children in the family, where mothers and fathers were physically violent against offspring of both sexes.
- Physical violence by adults in the family against other members of the family in the cases we looked into were more often a matter of what are called *persons of otherwise unblemished conduct* in everyday life. Only a minor proportion of cases of physical violence by adults in the family, in resolved and not terminated misdemeanours and in cases of bodily violence by adults in the family against a child, were committed by persons who had developed some other form of more serious undesirable or troublesome activity, including criminal activity. For instance, in violence against a child, roughly a quarter of the aggressors legally convicted or reasonably suspected of physical violence /24.6%, 17 persons/ behaved in such an improper manner, and in misdemeanours we recorded even fewer of them.
- From our questionnaire survey among vocational training centre and secondary school juveniles (N=231) it could also be seen that today probably not all individuals feel that *the family is always a place of complete physical safety*. Some of these respondents felt physically threatened sometimes in the family (34 of the juveniles surveyed /14.7%/ stated that at least at some time they were afraid that some member of the family could really harm them physically at home). Physical injury or bruising, which could indicate a greater intensity of deliberately inflicted physical violence against the respondent in the family, the originator of which could have been any member of the family – ie not only a parent, was stated by about a fifth of all the young persons we surveyed (19%, ie 44 persons, in nine cases repeatedly).
- Only a quarter of vocational training centre and secondary school pupils were, according to what they said, never punished physically at home. Sometimes even *forms of physical violence* (not only in corporal punishment) which could injure them physically were used against some individuals at home by parents.

30.3% of all those we surveyed (70 respondents, 20 of them more often than just occasionally) had received beatings (lashing out wildly), 6.5% of the respondents (15 persons) had been kicked by a parent, and 4.3% of the respondents (10 persons) had been punched by a parent. Other impermissible forms of violence had occurred too, but respondents admitted to these only in a few isolated cases, for example deliberate burning by a cigarette, throttling or choking, tearing out hair when pulling at it, beating his/her head against the floor, throwing things at the respondent which wounded him/her etc.

- It is also clear from our data that gross forms of corporal punishment were not inflicted in the family only on boys, but that girls surveyed also encountered it (8 girls stated they had been kicked in punishment by a parent, 3 girls said they had been punched, 30 girls admitted to beatings (lashing out wildly), which in the case of beatings was nearly half of the girls surveyed who had received corporal punishment. Girls also formed more than

half of those respondents who were afraid at home that someone could actually injure them physically there (55.9%, 19 persons).

- It was also shown that *children and juveniles also behave in a physically violent manner at home to other members of the family, including parents*. Nearly a fifth of respondents from vocational training centres and secondary schools (17.7%, 41 persons) admitted to being physically violent against a parent (even though the majority of them stated as one of the reasons that this was defence against corporal punishment /29 persons, 70.7%/). This statement of physical violence by children in the family is also illustrated by data from staff of services for the legal protection of children in society, who reported that about a quarter of the 34 violent young persons at home recorded by them for violent behaviour in the family attracted the attention of the police and the misdemeanours commission.

The replies of respondents from vocational training centres and secondary schools also showed that there are cases where not only one child but also his/her sibling(s) behave in a physically violent manner to a parent, and so the parent is victimised by more than one child (4.5%, ie 9 families out of the 199 in which our respondents had siblings).

- More than half (56.5%) of the staff of services for the legal protection of children in society surveyed (from the Central Bohemia Region and from Prague, N=23) expressed the opinion that *the level of violence* of children aged between 0 and 15 against parents in the family *has risen* in recent years in the CR. Among adolescents, roughly three quarters of those surveyed /73.9%/ expressed a similar opinion. Some respondents also spoke of the *increasing brutality* of this violence.
- More than three quarters of our respondents (78.3%) think development of the level of violence of adults against children in the family remains at roughly the same level as in previous years.
- We noted, though only in a few isolated cases, that girls surveyed from secondary schools and vocational training centres experienced physical *violence* in their love affairs with boys they had been going out with (eg in the form of a slap on the face). So it is possible that use of physically violent behaviour between couples in a partnership may be formed in individual couples before they actually enter into long-term marital relations.
- Physical violence by adults against children in the family may be produced, as can be seen from the findings of services for the legal protection of children in society, not only by persons with a lower level of education, as is commonly assumed, but also by persons with a *higher level of education*, ie those who have attended secondary school and university (these constitute at least 21.7% of adults recorded (15 persons) who have been violent towards children aged between 0 and 18 in the family or have been reasonably suspected of this violence.
- According to the findings of the local authority department staff concerned, it was evident that *families with varied standards of living* were prosecuted for physical violence between members of the family in Prague in 1999, ie not only those with a lower standard of living but also those with a higher standard of living and primarily families with an average standard of living. For instance, roughly 70% of resolved /and not terminated/

misdemeanours relating to physical violence between adult members of a family occurred in families with an average standard of living. Also roughly half of the families in which physical violence occurred against children between the ages of 0 and 18 could also be classified as having an average standard of living.

- It was evident that among the originators of physical violence in the family that we looked at in the three empirical investigations carried out were *people of various ages*. Among them were individuals in relatively high age categories (in a few isolated cases even over 70) and also in very low ones, ie still children.
- It was also evident that there was physical violence between persons *related to each other in very different relationships*, not only as man and wife or partners, though these relationships were the most frequent in the offences we looked at. Cases of violence between partners formed 69.1% of officially dealt with and closed cases of behaviour constituting a misdemeanour relating to domestic physical violence in Prague in 1999 (ie 279 offences). We also came across data on cases of physical violence between partners through the responses of secondary school and vocational training centre pupils. More than a fifth of these (21.3%, ie 42 persons) stated that they had at least at some time witnessed physical violence by one parent against the other at home. So it is clear that it is violence between partners that can in the CR too significantly affect the lives of a wider circle of family members, not only the direct participants and the victims. For this reason too the second part of this publication, dealing with legal issues of domestic violence, has been devoted mainly to the problem of violence between partners.

Some information is also contained in an annex to the first part of the work on clients, including their numbers, of three non-profit organisations which are involved in helping adult victims of domestic violence in the Czech Republic (ROSA, Bílý kruh bezpečí /White Circle of Safety/, Elektra).

### **Domestic violence – some legal aspects**

The second part of this publication is devoted to selected legal issues relating to domestic violence:

- a) it gives a summary of Czech legal norms governing and providing for prosecution of violent conduct within the family (specifically between adult heterosexual partners /or husbands and wives/) and
- b) it also outlines some proposals for amendment or additions to existing legislation
- c) it also outlines how cases of domestic violence are dealt with in legal terms in certain other countries (eg Austria, Ireland, Sweden)

In the introduction to this part of the publication attention is devoted to definition of domestic violence and also to myths in connection with domestic violence. In an annex, attention is then directed to domestic violence from the point of view of family law in force in the CR and to information on some research abroad relating to violence between members of the family. The chapter on Czech legal norms is illustrated by cases from current jurisprudence.