

ROLE OF THE HEALTH SYSTEM AND FORENSIC MEDICAL INVESTIGATIONS IN PROVING DOMESTIC VIOLENCE

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Abstract: Domestic violence is one of the most frequent crimes committed in any society and country all over the world, reaching epidemic proportions. The need for a comprehensive and multi-disciplinary approach has been recognized to combat this phenomenon internationally. Both, the health system and the medico-legal investigation have a crucial role in proving domestic violence. Their task is to identify domestic violence victims, evaluate their needs, provide necessary care, properly document the consequences of violent acts, report and refer them to other specialized services. Additionally, the purpose of medico-legal investigations is to collect all kinds of evidence that could prove the circumstances alleged by the victim, thus allowing the incrimination of the perpetrator's actions. The authors present a detailed analysis of a clinical case and highlight the consequences of an inadequate intervention of medical staff in managing a domestic violence case. The gaps admitted by medical staff and identified in this case show that without a proper response from the health system, it becomes difficult or even impossible to prove the crime of domestic violence.

Keywords: domestic violence, forensic medical investigation, medico-legal examination, violent act.

INTRODUCTION

Violence against women and domestic violence are among the most severe and widespread offenses modern societies deal with, infringing the rights and dignity of their members [11]. This phenomenon is a ubiquitous problem in all countries all over the world, with severe physical, emotional, financial, and social consequences for victims, families and society as a whole [7]. Violence endangers family stability and hurts all family members, including children who are victims or witness violence. They grow up in a conflictual, unhappy environment, their behavior is associated with high risks which increase over time. Although domestic violence has been recognized as a social problem for several decades, the extent of this phenomenon continues to have a significant prevalence today [5]. According to statistics compiled by the World Health Organization [WHO] [4], 35% of women have been subjected to physical or sexual violence by their intimate partner at least once. Council of Europe [13] reflects that 45% of women have suffered from some form of violence during their lifetime, and between

12% and 15% of women in Europe over the age of 16 are victims of domestic violence. In the Republic of Moldova, 73% of women have been subjected to at least one form of violence by an intimate partner at some point in their lives, physical violence being attested in 33%, which is much higher than the average rate in EU [10]. According to the Ministry of Internal Affairs of the Republic of Moldova, in 2021, 2,609 domestic violence cases were detected, 91.90% of the victims were women and 2.58% were children [9]. The dynamics of victims' reporting to the police can also reflect the extent of domestic violence. Thus, according to the Ministry of Internal Affairs data, there is a constant increase in the reporting of cases from 6,569 in 2012 to 14,728 in 2021. It is important to note that in the Republic of Moldova, domestic violence generates about 30 homicides and 5 cases of suicide annually [9].

In recent years, the Republic of Moldova has carried out several actions aimed to reduce the proportion of domestic violence and implement international commitments in order to respect human rights, some of the most important being the Law on preventing and combating domestic violence [6] and other subsequent

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legal norms, and the ratification [14.10.2021] of the Council of Europe Convention on preventing and combating violence against women and domestic violence [2011], also known as the Istanbul Convention [3]. One of the basic principles of the Istanbul Convention is focused on ensuring the efficiency of investigating and prosecuting acts of violence against women and domestic violence. This principle is also underlined by the National Strategy for the Prevention and Combating of Violence against women and domestic violence for the 2018-2023 period [5]. Its purpose is to ensure that investigations and legal proceedings related to acts of violence are carried out correctly and without unjustified delay. This contributes to securing vital evidence, increases conviction rates, and eliminates impunity. At the same time, an essential aspect of this objective is to ensure the respect of the victim's rights to fair justice. To achieve this goal, the need for a comprehensive and multi-disciplinary approach to solving this social problem has been internationally recognized, and the health system plays a crucial role in this regard. Thus, the health sector's task is to identify domestic violence victims, evaluate their needs, provide necessary care, properly document the consequences of violent acts, report and refer them to other specialized services, including the medico-legal one. For many victims, visiting a doctor is the first and, often, the only step for accessing the necessary medical care. Surveys [13] indicate that women trust mostly healthcare providers and consider it acceptable for doctors to ask about acts of violence if they suspect or find injuries on the patients' bodies. In this sense, medical professionals are uniquely positioned to intervene in critical situations for women and children constantly subjected to acts of violence. The forensic medical examination is one of the most important pieces of evidence recognized by the Criminal Procedure Code (Article 93) [1] in investigating different offenses regarding the citizen's health, bodily integrity and life, including those concerning the family environment. The purpose of medico-legal investigations is to document the consequences of violent acts and collect biological evidence, which will be used as evidence, that could prove or disprove the circumstances alleged by the victim, thus allowing the incrimination of the perpetrator's actions.

DISCUSSION

The forensic medical investigation of domestic violence victims is carried out based on the examination of the person, as well as the analysis of medical records. It is important to highlight that the medico-legal

report is the core of the legal actions. Forensic medical intervention regarding living victims is based on several guiding principles, one of them is the principle of promptness, which states that any unjustified delay compromises the obtaining of medical and biological evidence, especially in cases of sexual violence. The following case can serve as an eloquent example of this principle violation:

"The police ordinance states that Ms. X was assaulted at home by her cohabitant. He forced the home door, hit her on the head with a rolling pin, and she lost consciousness. It should be noted that the cohabitant had restricted access to the house by a protection order. Afterwards, when she recovered she was several times hit with a saw over different parts of her body and threatened with death. Later, the cohabitant forced her to have unprotected oral and vaginal intercourse with ejaculation and attempted to have anal intercourse which failed. The victim tried to leave the house, but was caught in the yard, knocked to the ground, forcibly dragged into the house, and continuously hit with the same rolling pin until she lost consciousness again. After the act of violence, the victim was admitted to the regional hospital for the following ten days. Only after hospital discharge, the victim reported the case to the police, who ordered a forensic medical examination. During the medico-legal examination, multiple bruises and abrasions on the hairy part of the head, face, neck, chest, abdomen, and upper and lower limbs were found. The morphological aspect of some of the injuries reflected the saw teeth pattern (Figs 1-5). According to the medical records, the victim was diagnosed with closed craniocerebral trauma with a concussion, a laceration on the hairy part of the head, and a cut wound in the right temporal region. The forensic doctor assessed the injuries as slight damage to bodily integrity. To confirm the rape, biological samples with vaginal contents were collected, and no spermatozoa were detected".

In the present case, the medical staff admitted professional misconduct with an unfavorable impact on the capacity of forensic medical investigation to solve the legal questions and decisions. The Law on prevention and combating domestic violence stipulates that medical staff has the duty to inform the territorial police forces about providing medical care to victims of domestic violence [6]. Thus, contrary to this provision, the medical personnel did not notify the competent authorities about this case in order to start a criminal investigation as soon as possible. This fact generated a delayed start of the criminal case and late identification

of the perpetrator. It means that even after being admitted to the hospital, the victim was at the risk to be assaulted again at any moment.

Another essential mistake is the superficial and insufficient recording of the patient's objective data. In cases of medico-legal investigation carried out based on medical documents, the correct and complete description of the bodily injuries and the diagnosis's argumentation are of particular importance. On the contrary, the incomplete description of the morphological features of the bodily injuries will not

allow the forensic doctor to solve the forensic medical examination aims such as the trauma mechanisms, the moment of its infliction, the used vulnerable object etc. All this will affect the possibility to prove the victim's allegations about the trauma and conditions of its infliction based on science. Also, the clinical diagnosis regarding head trauma did not contain any objective data and was not qualified as an injury. Due to these omissions, the perpetrator could not be put in charge for this prejudice. As result, law enforcement and the court were not able to take measures against the



Figure 1. Bruise and multiple abrasions on the left side of the thorax.

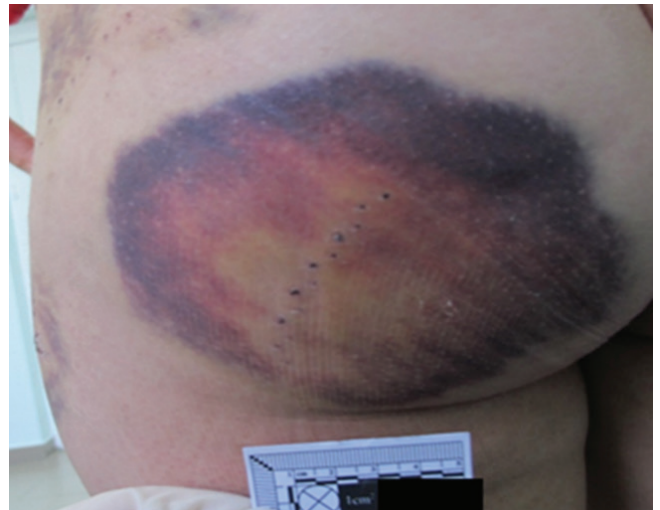


Figure 2. Bruise and multiple abrasions on the left buttock.



Figure 3. Multiple bruises and abrasions on the left side of the abdomen, thigh, and buttock.



Figure 4. Multiple abrasions on the anterolateral side of the left calf (saw teeth pattern).



Figure 5. Multiple abrasions on the plantar surface of the right foot

perpetrator. Besides, the physician omitted the genito-anal examination and biological sample collection, which affected the capacity to prove the rape. According to the medico-legal literature [8,12], the sperm can be detected morphologically in the vaginal content only the first five days after intercourse, and the genetic material up to 7-10 days. The spermatozoa can be identified in the rectal content by the first defecation, and in the oral cavity - up to only few hours. Given that the medico-legal investigation was ordered only on the 11th day after the intercourse and, in the hospital, the victim was not sampled, the biological research of the cavities contents was negative. Thus, the rape could not be proven.

Criminal Code of the Republic of Moldova [2] punishes both domestic violence and rape of a family member. According to article 201¹ violent actions resulting in slight damage to bodily integrity are punished with 1 to 6 years of imprisonment, but in accordance with article 171 which incriminates rape, the punishment is much more severe with a deprivation of liberty for 5 to 12 years. Thus, due to medical professional misconduct, the perpetrator's actions were partially incriminated based on the art. 201¹ of the Criminal Code for domestic violence and not for rape.

CONCLUSION

The health system and the medico-legal examination have a crucial role in proving domestic violence, including its severe form – rape. Thus, without an adequate response, it becomes difficult or even impossible to prove this crime. Due to professional misconduct, state agencies fail in protecting citizens' right to fair justice.

Conflict of interest

The authors declare that they have no conflict of interest.

Ethical statement

During the medico-legal investigation, the examined person signed an informed consent giving her agreement to use the pictures for scientific purposes.

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