

DOMESTIC VIOLENCE - SERIOUS DAMAGE TO HUMAN DIGNITY. ROMANIA VERSUS SPAIN

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Abstract: *Despite legislative and institutional efforts initiated both at national and European level, the phenomenon of domestic violence continues to affect many people, regardless of age, gender, race or social status. Comparing the regulations in Romanian and Spanish criminal law offers a complex perspective on how different legal systems try to protect victims and prevent the commission of such crimes. The analysis has as its starting point the recent changes in Romanian criminal law and the permanent concern of European institutions for the protection of victims of domestic violence. We aimed to comparatively analyze the regulations in Romania and Spain, to identify the strengths and vulnerabilities of each system. This research also aims to evaluate the legislative measures adopted in Romania and Spain and to what extent they manage to ensure the effective protection of victims, as well as the efficiency of the sanctions applied to the aggressors.*

Key words: *domestic violence, victim, crime, sanction*

1. Introduction

Aggressors in cases of domestic violence do not constitute a homogeneous group, but research in the fields of psychology and criminology has identified certain recurring behavioral patterns. According to studies conducted by Neil Jacobson and John Gottman in *When Men Batter Women*, aggressors can be classified into two main categories: "occasional violent aggressors," who react to specific frustration-triggering situations, and "terroristic aggressors", who exert systematic and coercive control over their partner (Gottman, 2007). The latter are the most dangerous, as their violence is premeditated and aimed at the total domination of the victim.

Most aggressors exhibit a psychological profile characterized by a need for control, manifested through possessive behaviors, excessive jealousy, and tendencies to isolate the victim from friends and family. In *Why Does He Do That? Inside the Minds of Angry and Controlling Men*, Lundy Bancroft describes aggressors as "having an exaggerated

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sense of entitlement over the victim”, believing that she must comply with their desires, and showing a diminished capacity for empathy (Bancroft, 2003). Some aggressors minimize their violent behavior or justify it by blaming the victim. Risk factors such as alcohol and drug abuse, a history of domestic violence, childhood trauma, or mental health disorders like antisocial personality disorder or borderline personality disorder, can contribute to violent behavior. Psychologist Donald Dutton, in his book *The Abusive Personality: Violence and Control in Intimate Relationships*, emphasizes that “many aggressors were exposed to domestic violence in their childhood and internalized this relational model” (Dutton, 1998). Although the majority of aggressors are men, domestic violence can also be perpetrated by women, although at much lower rates. Studies show that female aggressors are more likely to display psychological violence and emotional manipulation, but they may also resort to physical violence, especially in relationships marked by mutual conflict. Like the aggressors, victims of domestic violence are highly diverse, but statistics indicate that women represent a significantly higher percentage of those affected, primarily due to societal pressures to keep the family intact despite the violence. Factors that contribute to a victim's prolonged stay in an abusive relationship include economic dependence, fear of social stigmatization, lack of family support, and feelings of shame or guilt. Repeated trauma can lead to a form of “learned helplessness”, where the victim no longer believes she can escape the abusive relationship (Bancroft, 2003). Additionally, the normalization of violence within the family or community can cause the victim to perceive abuse as inevitable and normal. A study published by the Friedrich-Ebert-Stiftung (Youth Study Romania 2024, FES) Foundation in October 2024 on young people in Romania highlights a series of concerns related to relationships, particularly domestic violence. According to the analyzed data, fear of becoming a victim of violence (physical, sexual, or domestic) is one of the greatest concerns expressed by young Romanians. Specifically, women show a significantly higher level of anxiety compared to men, with the percentage being about 50% higher regarding the fear of becoming victims of domestic violence. Moreover, risk factors associated with these fears include previous experiences of violence, general perceptions of safety in society, and the lack of effective protective mechanisms. The study also emphasizes that this fear is integrated into a broader context of insecurity, which includes other aspects such as the risk of being robbed or becoming a victim of a terrorist attack. The analysis further highlights that these fears are influenced by socio-economic and cultural factors. In particular, the normalization of violence within relationships and societal pressures contribute to the internalization of fear by women, which may hinder the reporting of abuse or seeking necessary support. At the same time, the study shows that Romania is among the countries where young people exhibit the highest levels of anxiety concerning physical and domestic violence, with levels comparable to Bosnia and Turkey (Youth Study Romania 2024, Fundația Friedrich-Ebert-Stiftung (FES)).

At the same time, the Spanish National Institute of Statistics (INE) published on May 17, 2024, a statistical report on cases of domestic violence recorded in 2023. According to the report, the number of female victims of gender-based violence in 2023 was 36,582, representing an increase of 12.1% compared to 2022 (Estadística de Violencia Doméstica y Violencia de Género (EVDVG)2023). This substantial rise may indicate either

a genuine increase in the number of cases or a higher level of trust in institutions among victims, leading them to report abuse more frequently. Likewise, the number of men reported for gender-based violence reached 36,434, also reflecting a 9.7% increase from the previous year. This near numerical parity between victims and aggressors confirms that gender-based violence is a systemic phenomenon, disproportionately affecting women, with the majority of aggressors being men. It is important to note that in Spain, gender-based violence is defined primarily as violence perpetrated by men against women within intimate or former relationships, unlike other legal systems that encompass broader forms of violence. This legal framework is based on the understanding that violence against women represents an expression of structural gender inequality. Regarding domestic violence, the report indicates 9,126 victims in cases involving protection orders or precautionary measures, of whom 61.1% were women and 38.9% men. These figures suggest that, while women remain the majority of victims, a significant proportion of men also experience domestic violence, likely within broader family conflicts not necessarily associated with gender-based violence. The INE statistics for 2023 confirm that gender-based and domestic violence remain major social issues in Spain, and the rising number of reported cases points to a worrying trend. However, this increase may also be interpreted as a positive sign, reflecting greater confidence in the justice system and victim protection mechanisms (*Estadística de Violencia Doméstica y Violencia de Género* (EVDVG), 2023, Spanish National Institute of Statistics)

2. Regulation of Domestic Violence in Romanian Criminal Law

Romanian criminal law has undergone a significant evolution in the regulation of domestic violence, reflecting a growing concern for victim protection and the punishment of aggressors. In the past, this issue was addressed in a fragmented manner, with legislation lacking clear intervention mechanisms. A major turning point came with the adoption of Law no. 217/2003 on Preventing and Combating Domestic Violence, which introduced precise definitions and protective measures for victims. The first article of Law no. 217/2003 states: "The protection and support of the family, the development and strengthening of family solidarity, based on friendship, affection, and mutual moral and material assistance among family members, constitute an objective of national interest." (L. 217/2003). This article has a declarative character, setting forth the general principles that guide the entire normative act. Its purpose is to emphasize the importance of the family as a social institution and to promote values such as solidarity, affection, and mutual support among family members. By declaring that family protection is an 'objective of national interest', the legislator underscores that the state bears the responsibility to protect and assist the family, while also intervening when this institution is affected by conflict or violence. Over time, this law has been amended multiple times to align with international standards and respond to evolving social needs. For instance, Law no. 174/2018 expanded the definition of domestic violence to include less visible forms such as psychological, economic, and social violence: "For the purposes of this law, domestic violence means any inaction or intentional act of physical, sexual, psychological, economic, social, or spiritual violence

occurring within the family or domestic environment, or between spouses or former spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim.”(L 174/2028)

Considering the growing impact of technology-facilitated abuse, the definition was further amended by Law no. 106/2020, to include cyber violence: “For the purposes of this law, domestic violence means any inaction or intentional act of physical, sexual, psychological, economic, social, spiritual, or cyber violence occurring within the family or domestic environment, or between spouses or former spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim”. (L 106/2020)

More recently, Law no. 1/2025 (amending and supplementing Law no. 217/2003) strengthened victims’ rights by introducing clear obligations for local authorities and social assistance institutions, ensuring that victims have access to effective and accessible support services. (L 1/2025) From a criminal law perspective, the Romanian Criminal Code explicitly sanctions domestic violence under Article 199, which provides that acts of violence committed against a family member constitute an aggravating circumstance: “If the acts provided in Articles 188, 189, and 193–195 are committed against a family member, the special maximum of the penalty provided by law shall be increased by one quarter”. (Penal Code). This provision is essential in differentiating domestic violence from other violent crimes, highlighting the particular social gravity and the disruptive impact such acts have on interpersonal relationships and social harmony. Furthermore, paragraph 2 of the same article introduces the default prosecution of certain domestic violence offenses: “In the case of offenses provided for in Articles 193 and 196 committed against a family member, criminal proceedings may also be initiated by default. Reconciliation removes criminal liability”. These refer to assault or other acts of violence and bodily injury by negligence. This legal framework reflects the legislator’s clear intent to grant differentiated legal treatment to offenses committed against family members, placing them within the category of crimes against life and physical integrity, but with an essential qualifying element — the family context of the act. This qualification establishes an aggravated form of common-law offenses, justified by the specific relationship between aggressor and victim (Manea, 2024).

In addition to the provisions of the Criminal Code, Law no. 217/2003 also identifies and sanctions various forms of domestic violence, acknowledging the complexity of this phenomenon. Physical violence is the most visible form of abuse; however, the law also recognizes other types of violence that can have equally severe consequences for victims. Psychological violence, for example, may include threats, emotional manipulation, or social isolation of the victim, while economic violence manifests through control over financial resources, restriction of access to employment, or deprivation of the means necessary for a decent living. Furthermore, the law acknowledges spiritual violence, defined as the imposition of religious or cultural beliefs that restrict the victim’s freedom, as well as social violence, which consists of limiting the victim’s contact with family or friends. The introduction of the concept of cyber violence reflects a contemporary reality, as many victims are harassed online or subjected to various forms of abuse through digital technologies.

3. Regulation of Domestic Violence in Spanish Criminal Law

Over the past decades, the issue of domestic violence has gained increasing importance within European criminal law, and Spanish criminal law is no exception. The regulation of this phenomenon has undergone a profound transformation, shifting from a fragmented and subsidiary approach to a comprehensive legal framework focused on the effective protection of victims and the recognition of the specific nature of violence occurring within family or intimate relationships. Contemporary Spanish criminal law reflects this change both normatively, through the introduction of specific offenses and aggravating circumstances, and institutionally, through the creation of specialized courts and an integrated protection mechanism. The Organic Law 1/2004 on Comprehensive Protection Measures against Gender Violence was adopted by the Spanish legislature at the end of 2004 in response to an urgent social need — to combat violence committed by men against women within affective relationships. This act was described as a “comprehensive” law, meaning that it goes beyond the criminal dimension to include civil, educational, institutional, and social measures, serving as a central instrument in Spain’s fight against gender-based violence. From a legal standpoint, the law’s cross-sectoral character represents a significant innovation. The legislator did not limit itself to punishing aggressors but instead established a complete system of prevention and protection for victims, including psychological support, legal counseling, financial assistance, and immediate intervention through protection orders. However, this broad approach also produces certain challenges. The overlap between criminal and administrative norms, as well as the parallel involvement of civil and criminal courts, raises questions about the coherence and practical effectiveness of the law. From the perspective of the principle of legality, it is essential to clearly delineate the boundaries between criminal liability and protective measures to ensure predictability and proportionality in the application of the law. Another sensitive issue lies in the concept of “gender-based violence” as defined by the law. The text restricts protection exclusively to cases in which the aggressor is a man and the victim is a woman, within a current or former intimate relationship. This narrow definition has been criticized in legal doctrine as potentially discriminatory and contrary to the constitutional principle of equality before the law. Critics argue that treating identical acts differently depending on the sex of the perpetrator and the victim introduces a form of unequal treatment that may undermine the coherence of criminal law. In its Preliminary Title, the legislator establishes the general framework and purpose of the law. Article 1 declares that the objective of the law is to “prevent, punish, and eradicate gender-based violence and to ensure comprehensive protection for its victims”. It is important to note the expressive nature of this definition: the protection of the victim is not merely a by-product of punishment, but a goal in itself. The scope of the law is explicitly limited to cases of violence perpetrated against women by men who are or have been linked to them through an affective relationship, thus confirming the legislator’s choice for a differentiated approach, which remains debatable in light of the principle of equality before the law. The law also introduces significant limitations regarding the suspension or substitution of sentences in cases of gender-based violence. Amendments to Articles

83, 84, and 88 of the Criminal Code make the suspension of a sentence conditional upon specific obligations, such as participation in rehabilitation programs, psychological treatment, or the prohibition of approaching the victim. Article 33 provides that, in cases of gender-based violence, “the judge or court shall in all cases condition the suspension on compliance with the obligations set out in paragraphs 1, 2, and 5,” meaning that these conditions are not optional but mandatory. This legislative solution restricts judicial discretion and reinforces the preventive and educational function of punishment. Failure to comply with these obligations during the suspension period automatically leads to its revocation, strengthening the conditional and punitive character of state clemency. Similarly, Article 35 limits the possibility of substituting imprisonment in cases of conviction for gender-based violence. The prison sentence may only be replaced with community service, excluding other more lenient alternatives. In addition, participation in psychological and re-education programs is made mandatory, turning sentence substitution into a genuine form of penal treatment. This approach reaffirms the teleological nature of the law: punishment serves not only a retributive function but also a reformative one, emphasizing rehabilitation and social reintegration. Articles 36 and 37 amend the legal regime of bodily harm and mistreatment, establishing harsher penalties for offenses committed against certain categories of victims. Crucially, the scope of these aggravated provisions is extended to include “a woman who is or has been linked to the perpetrator through a relationship of affection, even without cohabitation” (Article 153 of the Criminal Code), thereby acknowledging the diversity of modern intimate relationships. This formulation has been praised as progress in victim protection, since it no longer conditions punishment on marriage or cohabitation. Nonetheless, by explicitly referring to female victims, the text keeps open the debate over legal asymmetry, as violence committed by a woman against a man in a similar relationship does not automatically receive the same aggravated treatment. Article 153 details the offense of minor physical or psychological violence, establishing an autonomous incrimination that may result in imprisonment or alternative penalties, even when the act does not reach the level of injury defined in Article 147 of the Criminal Code. Thus, even minor acts of aggression — such as hitting or insulting in a context of gender violence — are criminally punishable. The legislator further provides aggravating circumstances when the offense is committed in the presence of minors, with weapons, or in the victim’s home, highlighting both the social danger and the traumatic nature of such acts. Articles 38 and 39 complement the Criminal Code with offenses addressing minor threats and coercion within intimate relationships or against vulnerable persons. The law applies the same penalties as for mistreatment — imprisonment from six months to one year or community service — emphasizing the repetitive, subtle, and escalating nature of this type of abuse. Interestingly, both articles introduce an objective aggravating framework: penalties are imposed at the upper limit if the act is committed in the presence of minors, in the victim’s home, or in violation of a protection order. At the same time, the court retains limited flexibility to impose a lower penalty depending on the offender’s personal circumstances and the factual context, allowing for individualized sentencing. The Organic Law 1/2004 thus represents a comprehensive criminal reform, shaping a specific sanctioning regime for gender-

based violence, focused not only on repression, but also on education, prevention, and protection. The expansion of criminal liability and the restriction of penal leniency reflect a firm legislative response to a systemic social phenomenon. Nonetheless, from the perspective of legal balance, it remains essential to assess how these norms interact with the classical principles of criminal law — namely proportionality, impartiality, and equality before the law.

4. Protection of Victims and Prevention of Violence. Spain vs. Romania

Domestic violence, although a social phenomenon present since ancient times, has only recently entered the focus of legislators and society as a serious issue with direct implications for fundamental human rights. In recent decades, it has been recognized not only as a form of physical abuse but also as an expression of power inequality within family relationships, profoundly affecting the life, freedom, and dignity of victims. In this context, the protection order has emerged as an indispensable legislative measure for preventing the escalation of violence and safeguarding vulnerable individuals. The European Union has consistently promoted the fundamental values of human dignity, equality, solidarity, and the rule of law, emphasizing the need to protect individuals from all forms of abuse. In line with these principles, Romania adopted Law No. 217/2003 on the prevention and combating of domestic violence, thereby aligning with European standards. This law provides a solid legal foundation for the swift intervention of authorities, serving as the main legal basis for the issuance of protection orders. One of the key innovations of Romanian legislation is the broad interpretation of the concept of “family member.” Unlike the traditional definitions found in the Civil Code, Law No. 217/2003 also recognizes *de facto* relationships—such as cohabitation or stable emotional bonds—as having legal relevance in matters of protection against violence. Thus, not only spouses or biological relatives may benefit from protection, but also cohabiting partners, former spouses, guardians, or individuals caring for vulnerable persons outside of any professional obligation. For a court to issue a protection order, three essential conditions must be met cumulatively:

- the existence of a real and imminent danger;
- the existence of an act of violence (physical, verbal, psychological, sexual, economic, social, or spiritual);
- a relationship between victim and aggressor that falls within the extended notion of a family member.

Violence may take many forms—from verbal abuse and financial control to sexual assault or forced social isolation. The law thus enables a comprehensive intervention, adapted to the diverse manifestations of domestic abuse. The protection order, issued by the district court under emergency procedure, may include a wide range of restrictive measures against the aggressor, such as:

- eviction from the family home;
- prohibition of any contact with the victim;
- maintaining a minimum distance from the victim and the places they frequent;
- prohibition of access to certain areas;
- mandatory psychological counseling or medical treatment;
- determination of the child’s residence and payment of housing expenses for the victim.

These measures are valid for a maximum of six months, with the possibility of extension, and the decision is enforceable by law. The issuance process is governed by special procedural rules designed to ensure promptness and immediate protection. The request is heard in chambers, on an emergency basis, with the mandatory participation of the public prosecutor. Nevertheless, practitioners have frequently reported delays caused by overburdened courts, inefficient case management, or inconsistent interpretation of procedural rules. The 2014 thematic review conducted by the Judicial Inspectorate revealed a lack of coherence in scheduling and in communicating court decisions, which negatively impacted the effective implementation of ordered measures. In some cases, significant delays of up to one year occurred between the filing of a petition and the resolution of the case. The protection order represents an essential legal institution within the legislative framework for combating domestic violence. Through its flexibility and provisional nature, this mechanism enables effective intervention in crisis situations, helping to prevent particularly serious offenses. However, its effectiveness depends on the consistent application of legal provisions and the assumption of greater responsibility by the judicial system. It is therefore necessary to establish mandatory maximum time limits for the adjudication of petitions, to simplify procedures for the regularization and communication of judgments, and to ensure the continuous specialization of judges, prosecutors, and other stakeholders. Only through a clear and consistently applied legal framework can the protection order become a genuine legal shield for victims of domestic violence. A landmark moment in Spanish jurisprudence occurred in 1995, when the Supreme Court recognized for the first time that marital rape constitutes a criminal offense. In this legal context, prosecution may be initiated without a formal complaint from the victim. The judge has the authority to impose protective measures and to determine who shall remain in the family residence, but only when a separation or divorce proceeding has been initiated. Family courts occupy a central position within Spain's judicial system, being among the most important specialized courts. They handle a large number of cases, particularly in major cities, and were created to streamline the resolution of family law matters such as divorces, child custody, and alimony obligations. Their role is to examine and resolve disputes relating to family law, an area characterized by sensitivity and distinct rules from other branches of law. These courts operate at the first-instance level, meaning they represent citizens' first contact with the justice system in family-related issues. The main function of family courts is to resolve legal conflicts arising within family relationships. The most frequent cases involve marriage, filiation, guardianship, and custody. In matrimonial matters, family courts are competent at every stage—from the recognition of marriage and its legal effects to annulment, separation, or divorce. Another important function concerns guardianship, providing legal protection for minors or people lacking capacity. In cases of separation or divorce, family courts decide on child custody. The law provides that joint custody shall be granted if both parents request it by mutual agreement, in the best interests of the child. Even during proceedings, if the parents reach an agreement, the court must take the necessary measures to ensure its implementation. Victims who, due to assault, are unable to work for at least six months or who lack social protection receive financial assistance from the Spanish state. In the event of the victim's death, such benefits may be transferred to

dependents, typically the children. These benefits are granted only based on a final court decision, and their value is calculated according to the victim's income and the national minimum wage. If warranted by economic circumstances, victims may receive temporary aid pending the final decision; however, if the court subsequently determines that no crime was committed or the victim receives compensation from other sources, the state may recover the funds granted. Victim support is coordinated by the Ministry of the Interior through specialized offices. Within police departments, especially in major urban centers, there are dedicated units for domestic violence cases. Furthermore, in large cities, there are shelters for women who have left their homes due to family abuse. Domestic violence remains one of the most complex and persistent forms of violence affecting contemporary society, both in Romania and Spain. Despite each country's distinct cultural and legal frameworks, the phenomenon displays common characteristics, being deeply rooted in social, economic, and psychological dynamics that manifest within family or intimate relationships. A comparative analysis of the Romanian and Spanish legal systems shows that both countries have made significant progress in developing coherent and effective legislative frameworks for combating domestic violence. However, conceptual and operational differences remain, reflecting distinct levels of institutional maturity and integration of public policies. In Romania, the legal framework is built around Law No. 217/2003, supplemented by the Criminal Code and other related regulations. Romanian legislation has gradually adapted to international requirements, including new forms of violence such as psychological, economic, and, more recently, cyber violence. Nonetheless, practical implementation still suffers from shortcomings—particularly in the speed of proceedings, the effective protection of victims, and the efficiency of sanctions. Spain, by contrast, has developed a more integrated system with innovative legislation centered on the concept of “gender-based violence,” enshrined in Organic Law 1/2004. This law not only regulates in detail the punishment of offenses but also establishes a comprehensive system of protection and multidisciplinary support for victims, encompassing specialized courts as well as economic, psychological, and educational measures. Although this model has sparked debates regarding its alleged lack of legal neutrality, its practical effectiveness is demonstrated by the increased reporting of cases and the expansion of protective measures. A key strength of the Spanish system lies in its emphasis on prevention and education, through school programs on gender equality, nationwide awareness campaigns, and proactive measures for the re-education of offenders. Romania, although it has begun implementing similar policies, remains in a transitional phase, facing shortages in resources and infrastructure needed to develop an effective intervention and prevention network. Another area of interest is the protection order. Although both countries regulate it as a provisional measure for victim protection, in Romania its application is often delayed by administrative bottlenecks and the lack of judicial specialization. In Spain, the protection order operates within a rapid and coordinated response system, where collaboration between courts, police, and social services is essential. In terms of procedural protection for victims, Spain offers a model of good practice by providing free legal aid, psychological support, and specialized shelters. Romania has made progress in this regard, but the availability and quality of such services vary significantly across counties due to the absence of a unified strategy

and an efficient monitoring and evaluation system.

In conclusion, the comparative study shows that Spain provides a valuable example of an integrated and proactive approach to combating domestic violence, while Romania is still in the process of legislative and institutional consolidation. Despite notable progress, significant challenges remain in ensuring effective law enforcement, professionalization of stakeholders, and adequate resource allocation. Continuous engagement by the state, civil society, and the educational sector is essential to build a culture of zero tolerance toward domestic violence. Only through a collective, systemic, and sustainable effort can true protection for victims and the eradication of this phenomenon be achieved.

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