

THE PROTECTION OF DOMESTIC VIOLENCE VICTIMS IN THE PRESENT CONTEXT. ENFORCEMENT OF THE PROTECTION ORDER

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Abstract: *This article approaches issues pertaining to the protection of domestic violence victims by emphasizing the lawmaker's initiative to expand the enforcement of the protection order by Law no 26/2024. Enforcement of the protection order to protect all victims regardless of the relation between the victim and the assailant and the form of violence (physical or psychological) is an element of legislative novelty. The subject of this endeavour will be the rights of the victims of crimes which entail acts of violence, by describing both national law and international law.*

Key words: *domestic violence, protection order, victim, crime.*

1. Introduction

The contemporary criminal policy of most states is oriented towards promoting strategies for the strengthening and guaranteeing the rights of victims of acts committed with violence, a phenomenon which reached alarming numbers nowadays. (Nastas, 2024, p. 61-69). Thus, the protection of the victims of crimes, but especially the rehabilitation and compensation of prejudice caused because of criminal acts, is a constant preoccupation of state and non-governmental institutions, world and community organizations, foundations as well as of members of the community which are all actively involved in finding a solution.

On a national level, the lawmaker aimed to create a legislative background to ensure the commitment to the objectives of criminal legal proceedings, by obeying all principles of law which would guarantee, among others, the protection of the victims of crimes.

Surely, our endeavour is somewhat impaired by the few laws which are in force pertaining to the conditions in which the deed is committed, the person of the perpetrator, but also aspects regarding the victim. Another issue which emphasizes the complexity of violent crimes is the modest knowledge of the process by which certain risk factors converge toward a given situation and ultimately cause a violent crime. Of course, we must also acknowledge the fact that we never truly know the degree and severity of wounds, the hidden trauma of the surviving victim which ultimately affects

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the rest of their life; at the same time, we aim to prevent revictimization.

The high degree of subjectivity of the judge regarding the person of the criminal can represent a risk factor which, in relation to the clear establishing of the situation of the deed, would lead to a faulty legal qualification and wrong individualization of punishment.

I believe we should start by emphasizing the importance of respecting the fundamental rights of man, the moral values we hold and all principles of law. The right to life, to integrity and health is one of the most important values a community holds, and it should be protected by law. It is obvious that all victims of domestic violence are deprived of these rights guaranteed by constitution, criminal laws and other laws. The extent of this phenomenon is demonstrated by the increasing number of such crimes (I will come back to this issue later and I will provide examples by presenting statistics from the Romanian Police) which should worry us, but it should also draw the attention of the lawmaker to the legal texts which are in force. Across time, different communities and non-government organizations made efforts and attempts to protect human life and social order and I salute all these initiatives, as well the intervention of the lawmaker by changing the Criminal Code through Law no 286/2009, which, in article 199, regulates the crime of family violence, but also all other legal acts which protect the concept of “victim” (Law, 2009). Reality demonstrates that, although the provisions of the Criminal Code hold liable those who commit crimes, most times, the deeds which entail acts of violence suffer mutations, as the forms in which they are committed are diverse, thus making it all the more difficult for those who investigate such deeds to establish the context in which the deed was committed and the motives for such a criminal decision.

The legitimate question is: since contemporary society is constantly evolving, do the forms in which violent crimes are committed also evolve? Surprisingly, by considering all national and European legal texts, we notice that the number of such crimes is increasing from one year to the next. In other words, while some existing forms of violence are prevented, other new and unprecedented ones occur, thus violating the values protected by criminal laws. This causes a paradox for our current society – by constantly evolving, does society repeatedly terminate its own postulates of reason, the fundamental rights and the very progress caused by evolution? (Mihaiu, 2021, p. 17)

Violent crimes raise many questions. What is the individual and social meaning? Who are the people who are exposed to becoming victims or assailants? How can one prevent and sanction crimes which suppress human life or cause irreparable prejudice? To obtain conclusive answers, it is important that, in the process of analysing violent criminal acts, to place them in the microsocial and macrosocial context in which they are committed, as it represents an important reality of the assailant and the victim. In other words, we should *in concreto* identify the causes which lead to the crime, the reasons for such a decision, the factors which contribute to it as well as all other criteria. Doctrine (Hotcă, 2006, p.1) states that the passive subject of the act of justice is the person who suffered the effects of the illegal acts.

The primary beneficiary of the act of justice should be the person who was the victim of such crimes, but we notice that the effects can expand over all members of society.

Judicial practice offers the most serious examples, which draw public judgement, and which can negatively impact members of the community that the victim and the assailant were part of.

2. Materials and Methods

Of all the used methods, those which become complementary to the present work are the analysis of national and European legal texts, the comparative method, observation and generalization.

3. National Tools for ensuring the Protection of Victims of Crimes

On a national level, Law no 217 of May 22nd, 2003, for the prevention and fight against domestic violence, with subsequent changes, protects and promotes the rights of victims of domestic violence crimes. Law no 211/2004 for some measures for ensuring information, support and protection for the victims of crimes, defines the concept of victim and completes the Criminal Procedure Code by ensuring extensive protection for the victim. Also, the provisions of the Criminal Procedure Code ensure numerous rights granted to the victim, given the quality in which in they participate in the criminal trial. Law no 217/2023 for the change of Law no 286/2006 for the Criminal Code, aimed to ensure the best legal protection for the victim throughout the criminal trial. The most recent law to ensure a legal background and provide protection for the victims regardless of the relation between the victim and the assailant is Law no 26/2024 for the protection order.

4. European Instruments for ensuring the Protection of Victims of Crimes

On a European level, the notion of victim was largely acknowledged in Declaration A/RES/40/34 of 1985, which was a fundamental step for mankind. For the first time, the victim was considered with regard to the protection of human rights and benefited from acknowledgement and protection, (Flămânzeanu, 2013); The European Parliament Resolution of November 26th, 2009, for the elimination of violence against women; Decision 2001/220/JAI for the protection of victims in criminal proceedings; the Conclusions of the Council from 2011 for the European Pact on Gender Equality for the time period 2011-2020, which reaffirms the EU commitment to reduce gender inequality regarding the occupation of workforce, education, social protection, promoting better balance between the professional life and private life for men and women and fighting all forms of violence against women; the European Council Convention for the fight and prevention of violence against women and domestic violence, Istanbul, May 11th, 2011 (Istanbul Convention); Directive 2012/29/UE of the European Parliament and the Council of October 25th, 2012 for establishing minimal regulations for the rights and protection of victims of crimes and replacing the Council Decision 2001/220/JAI, published in the Official Bulletin 315/57; the European Parliament and Council Directive 2011/92/UE of December 13th, 2011 for fighting sexual abuse of children, sexual exploitation of children

and child pornography and the replacement of Decision 2004/68/JAI of the Council, published in the Official Bulletin no L 335/1; the European Parliament and Council Directive 2011/36/UE of April 5th, 2011, for the prevention of human trafficking and protection of victims of human traffic, as well as the replacement of Decision 2002/629/JAI of the Council, published in the Official Bulletin no JOL 100/2011; the European Parliament and Council Directive 2011/99/UE of December 13th, 2011 for the European Protection Order, published in the Official Bulletin no JOL338/2011.

The most recent act of the European Union in this matter is the European Parliament and Council Directive 2024/1385 of May 14th, 2024, for fighting violence against women and domestic violence and the fight against all forms of domestic violence.

Thus, the Istanbul Convention is the first international treaty which includes a specific obligation to protect against violence based on protection orders. EU Directive nr. 2011/99/UE on the European protection order and Regulation no 606/2013/UE on mutual recognition of protection measures in civil matters completes this obligation by forcing member states of the European Union to acknowledge protection orders issued in other member states, thus the enforcement of this protection tool reaches beyond the borders of one country. (Nastas, 2022)

In the long term, the European Union and member states elaborate policies and methods to prevent and fight domestic violence.

The introductory part of this legal tool shows that, in a common space of freedom, security and justice, international judicial cooperation on criminal matters should be based on the principle of mutual acknowledgement of court decisions and judicial decisions. By this legal tool, the European Union requests member states to identify the most efficient tools to improve internal laws, as well as the practical measures to support and protect victims.

5. Findings and Discussion

5.1. The protection order

We notice that both national and international legal tools, as well as jurisprudence grants an increasing attention to protection orders, in general and to temporary protection orders. The fight against violence is one of the main priorities of the EU Strategy for gender equality 2020-2025. Gender violence is usually the result of persistent inequalities, abuse of power and arbitrary practice and continues to remain one of the most notable violations of human rights of all times, regardless of the social, economic or political factor.

By analysing the extent of the phenomenon of domestic violence in Romania, the lawmaker intervened on the legal text, by amending Law no 217/2023 in order to provide appropriate background in accordance with the needs of society by creating an inclusive approach to fighting domestic violence.

At the time of its entry into force, the normative act was entitled "Law for preventing and fighting family violence". Subsequently, by Law no. 174/2018, published in the Official Gazette no. 618 of July 18, 2018, it was provided that the title will be amended and will have the following content "Law for the prevention and fighting of domestic

violence as well as that, in the normative acts in force, the phrase family violence is replaced by the phrase domestic violence, except for Law No. 286/2009 on the Criminal Code, with amendments and subsequent additions. (Law, 2012; Law, 2018).

The basic characteristics of this legal tool are the speedy proceedings and the prevention of family violence, governed by the principles of the right to live. The procedure which applies in case a request for the protection order is filed before the court of law is an urgent one and the consequences of infringing on the order by the assailant fall in line with criminal liability.

Violence against women remains one of the central themes of movements for the rights of women throughout the world, as this is an extensive phenomenon which is present under different forms. Law no 217/2003 for the prevention and fight against family violence is the main law, but as it was phrased in 2003, it did not regulate any safety measures for the victims, as is the protection order, and regulated mediation in cases of family violence, to the detriment of the rights of victims. Victims of violence, as they were in a state of fear, would not press charges against the assailant.

Law no 26/2024 for the protection order was published in the Official Bulletin no 172 of March 4th, 2024. The law for the extended protection order was initiated with the purpose of protecting all victims, regardless of the relation between the victim and the assailant. Until now, the protection order and the temporary protection order would protect the victims of domestic violence but, by the new law, the protection order is extended beyond family members as the protection it provides becomes general. Another important aspect pertaining to the new law is that it refers to all forms of physical and psychological violence.

The forms of physical violence are any type of striking or act of violence which causes physical suffering or any act of violence of sexual nature.

Among the acts of psychological violence is threatening a person with committing a crime or a deed which causes prejudice and is likely to cause fear to the victim; the repeated stalking of a person, surveilling his residence, workplace or other places the person goes to; making telephone calls of other types of long distance communication which, given its frequency, content or time, create fear; any act of online harassment, hate messages, online stalking, online threats, publishing intimate and graphic information without consent. Once this law came into force, the Ministry of Justice launched a campaign titled "A life lived in fear is not a life" dedicated to informing public opinion about the new legal endeavour and the victims about the measures they can take to be safe.

This law was consistently amended by Law no 5/2012 to correct certain deficiencies which appeared in practice. The legal background is represented by Law no 217 of May 22nd, 2023, for the prevention and fight against domestic violence with subsequent changes.

As a result of advocacy endeavours and with the wish to change current policies and practices, non-governmental organizations with experience in preventing and fighting violence against women, introduced the protection order in 2012, as a safety measure for victims of domestic violence. The changes entailed the following aspects: «express regulation of the principles which govern the protection and promotion of interests of family violence victims; expanding the concept of "family violence" so that it is aligned with defining standards regulated in international tools; extending the number of

situations in which a person is considered “a family member” in regard to the area of regulation; creating a protection tool which turned out to be useful in other laws and which is called, in Law no 217/2023, a “production order”».

What is urgently needed from a doctrinarian point of view as means of protecting the victims of domestic violence, is a complex tool which can be used with urgency to remove the victim from the aggressive environment. In fact, this is a tool to remove the imminent threat to the victim and which can generate the premises for serious crimes regarding the victim’s right to live.

In other words, given the present context, it was necessary to create a legal tool to protect the victims of family violence with immediate effect, given the danger to which these victims are exposed. This tool was created by Law no 25/2012, published in the Official Bulletin no 163 of March 13th, 2012, and called a “protection order”. The order will be executed at once by the police (when the police is competent – for example forcing the assailant to turn over the weapons he holds) or under the supervision of the police (in case of minor children). Specialty doctrine already pointed out the need to regulate such a tool, which ensures the protection of victims of violence when it is not possible to arrest the assailant. (Hotca, 2006, p. 23).

Article 31 third alignment of Law no 217/2023 regulates that, to execute the protection order, the policemen can enter the family home and any annex of it, with consent from the protected person or, in lack thereof, consent from any other member of the family. This entails the fact that consent can be provided by the person who requested the protection order. Article 23 of Law 26/2024 states, in the third alignment that *„In order to execute and enforce the protection order, the policeman can enter the assailant’s house and any annex of it or the home of the protected person and any annex of it with consent from the protected party or in lack thereof, of the people that the person lives with’*. Throughout the entire duration of the protection order, the police are held to supervise the way in which the decision is abided by and to report any violation. The Romanian Police announced in a press release on Saturday, that, in the first trimester of 2024, judges issued 2.960 protection orders; of these, 1.107 were violated. *„The large number of domestic violence crimes show the extent of the phenomenon and the need to intervene with all legal means to diminish it. At the same time, it is pointed out that the victims of domestic violence have an increasing degree of trust in the Romanian Police”. The most frequent crime is „striking or other type of violence” – 62 % (32.737 deeds), “threat” – 12% (6.408 deeds), “family abandonment” – 9% (4.703 deeds), “disobediance of the measures regulated by the protection order”– 7% (3.899 de deeds) and disobediance of the measures regulated by the temporary protection order” – 1% (789 deeds); all these represent a total of 95%. On a national level, in the first 11 months of 2023, the number of criminal deeds of domestic violence increased by 4,82%, as opposed to the first 11 months of 2022, from 50.531 deeds to 52.969 deeds. (<https://www.politiaromana.ro/ro/prevenire/violenta-domestica/ordinul-de-protectie-provizoriu>). The person against whom the protection order was issued for its maximum period is entitled to file for the rescind of the order or the replacement of this measure. The protection order is a relatively new and recent legal institution, regulated by the lawmaker with the purpose of stopping violent acts within families,*

regardless of their nature: physical, verbal, psychological, sexual, economic, social or spiritual (Gorunescu, 2012). In accordance with Romanian law, a protection order can be issued if the following conditions are met:

- a) there is an act of violence which, according to article 4 of Law no 217/2023 can be:
- **verbal violence**, i.e. insulting, brutal, offensive language, as well as the use of insults, threats, degrading words, humiliating expressions. Verbal violence, seen in many human interactions, is expressed by many words, spoken in a loud voice or changing the subject in the middle of a conversation. Usually, verbal violence is not criminal, except for some acts, as is verbal assault of a police officer; [article 4 letter a) of Law no. 217/2003]
 - **psychological violence**. Psychological violence refers to all actions which endanger the mental integrity of a person. This category includes diverse acts, among which is insult, unfounded criticism, intimidation, threat, [article 4 letter b) of Law no. 217/2003]; (Sofrone, M. 2009 p. 8; Rotaru, 2013, p. 38-40).
 - **physical violence**, Physical violence is frequently seen in all areas of social life, in the rural and urban environment, [article 4 letter c) of Law no. 217/2003]; (Stratulat, 2014, p. 41)
 - **sexual violence**, namely sexual aggression, degrading acts, harassment, intimidation, manipulation, brutality in order to have forced intercourse, conjugal rape. Sexual violence is a sexual act, attempt of a sexual act, sexual comments, [article 4 letter d) of law no 217/2003] (Boca, 2023, p. 101)
 - **economic violence**, Economic violence is exercised by control on the income and expenses of the victim, sabotaging professional activities, limiting the access to basic goods, food, clothing or medicine. All these acts can be of criminal nature to the extent to which they endanger the victim's life or create serious prejudice; [article 4 letter e) of Law no. 217/2003]; (Bravo, 2013, p. 39-81; Codeia, 2020, p. 692).
 - **social violence**, isolating the person from family, community, friends, depriving them of schooling, detention, including in the family home, intentional deprivation of information, as well as other actions with similar effects [article 4 letter f) of Law no. 217/2003]; (Marhan, 2012, p. 201).
 - **spiritual violence**, namely the underestimated or diminished importance of the moral-spiritual needs by limiting the access or forbidding, ridiculing spiritual aspirations of family members, restricting access to cultural, ethnic, linguistic, religious values, imposing a certain religion, faith, spiritual, religious practices as well as other actions with similar effects or similar repercussions [article 4 letter g) of law no 217/2003]; (Rotaru, 2013, p. 38-40).
 - **cybernetic violence**, namely online harassment, gender hate messages, online stalking, online threats, publishing intimate or graphic information without consent, illegal intercept of communication or private data or any other form of abusive use of technology, information, communication by the use of computers, smartphones or other similar devices which use telecommunication or are able to go online, transmit and use social platforms or email, in order to shame, humiliate, scare, threat or silence the victim. [article 4 letter. h) of Law no 217/2003]; (Cristea, 2021, p. 98; Gentimir, 2021, p.147).

b) The act of violence is **likely to endanger the life, integrity and freedom** of the victim;
c) The act is one of family violence (Law no 217/2003 considers the prevention and fight against family violence), namely that it is committed by a family member of the victim, in the extended meaning of article 5 of Law no 217/2003.

The superficial examination of the causes of family violence without analysing the severity, the number of aggressions on the victim, the danger of domestic violence, as well as the fact that the authorities were aware of the danger of domestic violence, but failed to take efficient measures against the assailant, including criminal prosecution, as a measure to prevent him from committing acts of violence, constitutes a violation of articles 3 and 8 of the European Convention for the protection of fundamental rights and liberties of man (Corsei & Băloi, 2022, p. 11-18).

6. Family violence – a crime regulated in the Criminal Code (article 199)

The Romanian lawmaker aimed to dedicate a distinctive chapter to crimes which sanction forms of violence between family members. Conceptually, these crimes are aggravated forms of murder, manslaughter, striking or other acts of violence, bodily harm or striking and other types of violence which result in the death of the victim. (Bogdan & Șerban, 2020, p. 175; Ionaș, 2015, p. 334). Qualifying the deed as violence on a family member is established in relation with the special quality of the active subject. In regard to the situation in which the deed was committed, in one lawful appeal, the Supreme Court established that” *in regard to the crime of striking and other types of violence perpetrated on a family member, when the criminal action is set in motion as a result of charges pressed by the injured party, the desist from a criminal trial can only be decided as a result of withdrawing the charges and not as a result of reconciliation.* (Decision, 2019).

7. Conclusions

The purpose of this article was not to discuss the protection of victims of crime, but to bring to the attention of the reader the fact that, although the lawmaker was preoccupied to regulate special protection for the witnesses and increase the limits of punishment for those who commit criminal deeds, the laws which regulate special protection for the victims of crimes are still limited (Mareș, 2024, p. 340).

By the detailed mention of European and national laws, my intent was to point out the preoccupation of the lawmaker to grant special protection for the victims of crimes.

At the same time, we believe the increasing number of cases of domestic violence to be worrisome, this is why we hope to identify the factors and mechanisms which generate and favour such antisocial deeds.

Also, special measures are needed, in accordance with the evolution of human society. Independent from the context in which it occurs, crime has irreparable consequences over the direct victim and collateral victims. Violence all over the world seems to be developing along with the evolution of society, by causing major prejudice on the individual and community levels.

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