

AMENDMENTS AND COMPLETIONS TO LAW NO. 2017/2003 TO PREVENT AND COMBAT DOMESTIC VIOLENCE

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Abstract: *The article focuses on the new amendments and additions to the Law No. 217/2003 on the prevention and combating of domestic violence. Within the article I have tried to identify the gaps existing in the current law, but also the pluses and minuses brought by the new law. Since 2003, when the law no.217 entered into force, the authorities had difficulties in its application, all to the detriment of the victims of domestic violence. Statistics in this period were not at all gratifying, and the effects were visible from year to year. The need to change legislation in the field of domestic violence has been increasingly pressing. It is desirable to change procedures, improve working tools, and involve more social actors in protecting victims of domestic violence.*

Key words: *victims of domestic violence; protection order; provisional protection order; social services; intervention*

The article focuses on the new amendments and additions to the Law No. 217/2003 on the prevention and combating of domestic violence. Within the article I have tried to identify the gaps existing in the current law, but also the pluses and minuses brought by the new law. Since 2003, when the law no.217 entered into force, the authorities had difficulties in its application, all to the detriment of the victims of domestic violence. Statistics in this period were not at all gratifying, and the effects were visible from year to year. The need to change legislation in the field of domestic violence has been increasingly pressing. It is desirable to change procedures, improve working tools, and involve more social actors in protecting victims of domestic violence.

The necessity of promulgating a new law on preventing and combating domestic violence was based on the statistical data provided by the IGPR, according to which in 2016 (according to the data from <http://www.mmuncii.ro/j33/index.php/ro/comunicare/comunicate-de-presa/5073-cp-ordin-protectie-provizorie-08022018>) a number of 2574 protection orders were issued, of which 743 were violated, and in the year 2017 (according to the data from <http://www.mmuncii.ro/j33/index.php/ro/comunicare/comunicate-de-presa/5073-cp-ordin-protectie-provizorie-08022018>) more than 3,000 protection orders were issued and 1011 were violated. So an increasing number of offenders who are likely to violate a protection order issued by the

authorities. According to the Law no.217 / 2003, this order of protection could be provisionally one or more measures-obligations or additions:

- a) Temporary evacuation of the aggressor from the family home, regardless of whether he is the owner of the property right;
- b) The victim reintegration and, as the case may be, of the children into the family home;
- c) limiting the aggressor's right to use only on part of the common dwelling when it can be so shared and the aggressor does not come into contact with the victim;
- d) To obligate the aggressor to keep a minimum distance from the victim, to his / her children or to other relatives of the victim or to the place of work or educational establishment of the protected person;
- e) prohibition for the aggressor to move to certain localities or designated areas that the protected person frequent or regularly visits;
- f) prohibiting any contact, including by telephone, by correspondence or in any other way, with the victim;
- g) To obligate the aggressor to hand over his weapons to the police;
- h) to entrust minor children or to establish their residence.

(2) By the same decision, the court may also order the aggressor to pay the rent and / or maintenance for the temporary home where the victim, minor children or other family members live or will live because of the impossibility of staying in the family home.

(3) Besides any of the measures ordered according to par. (1), the court may also order the aggressor to follow psychological counseling, psychotherapy or may recommend taking control measures, treatment or forms of care, especially for detoxification purposes (Law 217/2003, art. 23).

The first impediment to the application of Law no. 2017/2003 was the impossibility of police representatives to enter into the home where there is suspicion of a domestic violence act. This was because they could easily be accused of homeowning violation by the owner of the home, who sometimes was the aggressor. The new law introduces a new instrument for preventing and combating domestic violence, namely ~the provisional protection order (Chapter III2, Law 2017/2003). By comparison with the provisions Law no.217 / 2003 the new regulations are ~ (3) (...) the policeman has the right of access to the area where the aggression was reported, including in the premises or workspaces of a legal person, without the consent of the victim or of any person living with it, the owner of the space (Chapter III2, art 22, par.3, law 217/2003).

Although the cop will be able to enter the home or in another place where it is presumed that a domestic violence is being consumed, it is necessary that he or she be teamed with another policeman or witness. Most of the time in the rural area we meet only one police officer. According to this,

when he gets notified, he must immediately identify a witness with whom to go and check the reported ones. The police officer will find it difficult to persuade a person to become a witness, to sacrifice his time or to witness a violent event with a high emotional burden and a high personal security risk. In a small community, the aggressor can avenge the witness, which can be exposed any time. At the same time, a witness who is recorded in the police report, will have to get involved throughout the criminal trial if the act is to be described as a crime, and this involves spending time and money on travel. I believe that in order to stimulate a citizen's interest in providing police assistance in these cases, it would be appropriate to give him some tax incentives or even financial compensation from local authorities.

We observe that the Article 22 paragraph 3 of the new law, grants the policeman access to enter into any space / home, where the case of violence has been reported, but isn't said anything about the witness who, in order to support the verbally process document, must be physically present in the home and not stop at the door of the building.

The statistics for the next period will demonstrate the efficiency or inefficiency of this instrument, the provisional protection order.

The new law also introduces a new electronic system for monitoring the protection orders ordered in cases of domestic violence - National Register of Protection Order (Chapter III1). What is actually RNOP :

~ (2) RNOP is an electronic, public register, set up and administered by the Ministry of Justice, which includes the records of the persons against whom judicial decisions have been issued regarding the establishment of a protection order and those regarding the establishment of provisional protection orders, as well as the evidence of the persons against whom judicial decisions have been issued regarding the prohibition of the exercise of parental rights and / or court decisions on the deprivation of parental rights.

(3) In order to verify with speedyness the domestic violence history of an aggressor, the courts and the prosecutor's offices with registered cases of domestic violence acts, as well as the police officers that have been notified about the offense of domestic violence facts and investigating such facts have direct and unobstructed access to information from the RNOP (Chapter III1, art 22).

An extremely important article, modified by the new Law, is that (3) Reconciliation does not remove criminal liability (art 32, par. 3).

In many cases victims of domestic violence crimes chose to withdraw their complaint against the aggressor, generating the close case and, implicitly, removing the criminal responsibility. The reasons why the victims chose to withdraw their complaint were different from case to case, for example:

- Poor information on the rights of victims of domestic violence;

- Incapacity of the victim to find viable solutions to segregate from the aggressor (home, financial power, etc.)
- Poor development of services for protection and support of victims of domestic violence;
- Psychological pressure induced by threats by the aggressor;
- The long period of time between the moment when the violence was reported and the culprit was sanctioned Etc.

The duty to inform the victim about the rights he has, was and is the responsibility of the central and local public administration authorities as provided by art. 7 paragraph 2 of the Law no.217 / 2003:

(2) The authorities of the central and local public administration have the obligation to ensure the exercise of the right to inform the victims of domestic violence, according to their competencies, regarding:

- a) non-governmental institutions and organizations providing psychological counseling or any other forms of assistance and protection of the victim, according to their needs;
- b) the criminal prosecution where they can make a complaint;
- c) the right to legal assistance and the institution where they can address the exercise of this right;
- d) the conditions and procedure for granting free legal aid;
- e) the procedural rights of the injured part, the injured part and the civil part;
- f) the conditions and the procedure for granting the financial compensations by the state, according to the law~.

Imagine a person, the victim of domestic violence, extremely disturbed and emotionally affected by the violent event he was subjected to, trying to obtain his only right to receive legal assistance (this after considering whether he or she is in the conditions imposed for the application of the free legal assistance procedure) or the right to receive financial compensation from the state, seeking a suitable place to take refuge with children etc. The association of these victims in the immediate aftermath of the violent event is imperative. The victim needs to feel really sustained so that in interaction with the authorities he is confident that in the procedures he has to follow is not the only one, and the authorities will be with him.

There were cases in which the victim needed medical assistance, and because she was not insured with the Health Insurance House, she was not insured, she was hospitalized in the hospital units for a maximum of 3 days, for the emergency medical intervention . So, Law no. 217/2003 was completed and in the new law a new provision is introduced in Article 13, paragraph 1: "i) to benefit from the local budget, in the cases of domestic violence ascertained, after the victim's record by the public social assistance services, medical expenses of the victims of domestic violence that are not insured (Art.13,

par.1). "The newly introduced article does not specify the way of payment of these services, leaving the institutions to appreciate how they work .

Regarding to the hosting of victims of domestic violence, we mention that there are quite a few such centers at the level of the country, most of them under the subordination of the General Directorates of Social Assistance. The maximum period of residence of the victim in such a center is limited to 60 days, insufficient in relation to the real need and the period in which a criminal trial takes place. Most often, after these 60 days, the victim chose to return to the home of the aggressor, hoping that after that period the tension in the family had diminished. But the statistics show us that as they return to the aggressor's home, the tensions increase, and the risk of relapse is huge.

Another important change brought by the new law is the fact that ~ (2) The Ministry of National Education establishes within 90 days from the date of entry into force of this law, the procedure applicable by the county school inspectorates for the temporary transfer, child victims or witnesses of domestic violence at the school unit recommended by institutions providing social services to prevent and combat domestic violence (art. 10, par. 2). When the victim chose to leave home with the children, the way the child was transferred from an educational unit to another was rather cumbersome. However, there was a great deal of disponibility from educational units to integrate such children from families with a violent past, just as minors are not educationally affected.

Next, the new law talks about the electronic bracelet, a monitoring system for the aggressor who:

- has been obliged to keep a minimum distance from the victim, his or her relatives or relatives, or the place of work or educational establishment of the protected person;
- it was forbidden to travel to certain localities or designated areas where the protected person frequented or visited them periodically.

Unfortunately, this system is far from being implemented due to the high cost of bracelets, the creation of a centralized monitoring system for bracelets users (alert system generated by the violation of restrictions) and even the staff wages that will be monitoring 24/24, 7/7 and the costs of continuing vocational training.

In the new law, it is put a great deal of pressure on the budgets of local authorities, which will have to develop more social services in the field of domestic violence, but also to pay the costs of hospitalizing the victims:

~ Art. 13

(1) The local public administration authorities have the obligation to take the following specific measures:

a) to include the issue of preventing and combating domestic violence in regional, county and local development strategies and programs;

b) to provide the logistic, informational and material support of the departments with attributions in the prevention and combating of domestic violence;

c) to establish, directly or in partnership, units for preventing and combating domestic violence and to support their functioning;

d) develop programs to prevent and combat domestic violence;

e) to support the access of family aggressors to psychological counseling, psychotherapy, psychiatric treatment, detoxification and de-alcoholism;

f) to develop and implement projects in the field of preventing and combating domestic violence;

g) to provide in the annual budget for the support of social services and other social assistance measures for the prevention and combating of domestic violence;

h) to support, from the local budget, in the serious social cases, the expenditures for drawing up the legal documents, as well as obtaining the forensic certificates for the victims of the domestic violence;

i) to support from the local budget, in the cases of domestic violence, ascertained after the victim's social welfare has been recorded by the public social services, the costs of medical care for the victims of non-medical domestic violence (art. 13, par. 1).

All costs of maintaining centers for victims or aggressors, whether day or residential, should be entirely supported by the local budget, which is not sustainable, and most Territorial Administrative Units have chosen not to open such services, although they are compulsory according to the law. By comparison, the operating costs of services for victims or domestic violence aggressors that are opened and subordinated to the General Directorates for Social Assistance are subsidized from the state budget according to the cost standards provided by the Government Decision no. 978/2015.