

LEGAL INSTRUMENTS USED TO COMBAT DOMESTIC VIOLENCE IN ROMANIA

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Abstract: *Currently, Romania is facing a quite widespread phenomenon regarding domestic violence, and in this regard all state institutions are making a sustained effort to prevent such violence. In prompt response to such attitudes, the legislation presently undergoes wide modifications and, at the same time, there have been created the legal instruments necessary for minimizing the exploitation phenomenon. In the current context, there has been established in charge of institutions with significant responsibilities in this field, the obligation to harmonize normative acts with the legislation of the European Union. Therefore, the main legal instruments that can be used by authorized institutions to combat the phenomena of domestic violence are the protection orders and, not least, the temporary protection order. Domestic violence is present in less developed countries, but also in economically, socially and politically developed countries, generally on the grounds that the phenomenon is generated not only by poverty, but also by other factors such as alcohol or banned substances consumption, lack of education and family disputes. Nor can we neglect that Romania has adhered to a high number of international treaties and conventions lately, and through these international mechanisms, the signatory states assume the obligation to take all appropriate legislative and administrative measures in order to stop the phenomenon of domestic violence.*

Keywords: *domestic violence; legal instrument; protection order; abuse.*

1. Introductory aspects

Civil society as well as intergovernmental organizations, including the United Nations Commission for the Elimination of Discrimination against Women and the Council of Europe, have made sustained efforts lately to highlight and signal the spreading of domestic violence, especially violence against women.

A notable definition of the notion in question is given by Eric Debarbieux, which considers that “violence is the brutal or continuous disorganization of a personal, collective or social system, which results in a loss of integrity, which can be physical, mental or material. This disorganization can operate through aggression, through the use of force, consciously or unconsciously, but violence can also exist only from the point of view of the

victim, without the aggressor having the intention of doing harm." (Debarbieux, 1996: 45-46)

In a similar way, according to the provisions of art. 3 of the law no. 174/2018 regarding the order of provisional protection, by domestic violence is understood, any inaction or action intended by physical, sexual, psychological, economic, social or spiritual violence that occurs in the family or domestic environment or between spouses or former spouses, as well as between current or former partners, whether the aggressor lives or has lived with the victim. (Law no. 174/2018 regarding the amendments and the completion of Law no. 217/2003 for the prevention and combating of domestic violence)

Considering the diversity of the violence exerted by the aggressor against the victim, the current regulation, respectively the law no. 217/2003 for the prevention and combating of violence in the family, establishes in art. 4 forms of manifestation of violence:

a) „verbal violence consists in addressing through offensive, brutal language, as well as the use of insults, threats, degrading or humiliating words and expressions;

b) psychological violence implies the imposition of will or personal control, provoking states of tension and psychological suffering in any way and by any means, demonstrative violence on objects and animals, through verbal threats, ostentatious display of weapons, neglect, control of personal life, acts of jealousy, constraints of any kind, as well as other actions with similar effect;

c) physical violence is manifested by bodily or health injury caused by striking, tearing, tugging, hair pulling, pricking, cutting, burning, strangling, biting, in any form and of any intensity, including disguised as the result of accidents, by poisoning, intoxication, and other actions with similar effect;

d) sexual violence involves sexual aggression, the imposition of degrading acts, harassment, intimidation, manipulation, brutality in order to maintain forced sexual relations, spousal rape;

e) economic violence consisted in the prohibition of the professional activity, deprivation of economic means, including lack of means of primary existence, such as food, medicines, first-aid items, the act of intentionally stealing the person's goods, the prohibition of the right to own, use and dispose of the common goods, inequitable control over the common goods and resources, the refusal to support the family, the imposition of heavy and harmful work to the detriment of health, including a minor family member, as well as other actions with similar effect;

f) social violence involves imposing the isolation from the family, community and friends, prohibiting the attendance of the educational institution, imposing isolation through detention, including in the family home, intentional deprivation of access to information, as well as other actions with similar effect;

g) spiritual violence refers to the underestimation or diminution of the importance of satisfying the moral-spiritual needs by prohibiting, limiting,

ridiculing, penalizing the aspirations of family members, access to cultural, ethnic, linguistic or religious values, imposing adherence to spiritual beliefs and practices and unacceptable religions, as well as other actions with similar effect or similar repercussions." (Law no. 217/2003 for the prevention and combating of domestic violence)

According to the latest data provided by the General Inspectorate of the Romanian Police (<https://violentaimpotrivaefemeilor.ro/violenta-in-familie-in-2017-conform-data-official-ale-politiei/>), a number of 20,531 acts of beatings and other violence committed among the family members were reported in 2017, and these acts of violence took place predominantly at home, less on the street or in other environments.

Considering the figures presented in 2016, when there were registered 18,531 cases of injuries and other domestic violence, we can only see that this phenomenon is booming and urgent and effective measures must be taken immediately in order to stop its escalation.

Therefore, given the fact that Romania is at the top of the ranking regarding the phenomenon of violence, we consider that there is a need for a more active involvement of the state institutions with pre-eminent powers in these areas, but also a much more energetic involvement from the society as a whole. We cannot ignore the impact that domestic violence has on the current society, but also the fact that many cases of violence do not reach public opinion, more precisely they are not reported to the authorized institutions and the official data in these cases, are not real.

This undeniable reality opens the way of the affirmation that "the effectiveness of current legislation, policy initiatives and practitioner interventions can be judged by tracking the evidence on the ground about the readiness of women to report abuse, as well as their degree of satisfaction with the service they receive. As reporting is insufficient in several EU Member States, reactions from more institutional actors towards violence against women are needed to respond to their needs and effectively defend their rights." (https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_ro.pdf)

2. The order of protection - legal instrument of protection

The order of protection is regulated in the legislation on combating domestic violence as a legal instrument through which the state of danger existent around the victim can be removed and, at the same time, the aggressor can be removed from its surroundings.

It is known that suffering caused by violence is always mental as well as physical. (Muntean & Muteanu, 2011: 13)

With the harmonization of the internal legislation with the legislation of the European Union, the new legislative provisions come to the aid of the victims of domestic violence who have at hand a legal instrument, called a

provisional protection order issued directly by the police, which is obtained in a much faster time than the order of protection itself issued by the court.

The mission of the protection order is to defend the victim against the aggressor's aggressive actions and, at the same time, it represents the signal that the authorities give to the aggressor, respectively on the one hand, the court, because the order constitutes a court decision, and on the other, the police, who have the imperative obligation to ensure that the obligations or prohibitions imposed through the legal instrument are strictly respected by the aggressor.

The state of danger generated by the aggressor on the victim is removed by the provisional protection order which provides the following prohibitions or obligations imposed under the conditions of art. 224 para. 1 of Law no. 174/2018:

„ a) the temporary evacuation of the aggressor from the common house, whether he is the holder of the property right;

b) reintegration of the victim and, as the case may be, of the children in the common home;

c) obliging the aggressor to keep a minimum distance determined to the victim, to his family members, or to the residence, workplace or educational unit of the protected person;

d) obliging the aggressor to permanently wear an electronic surveillance system;

e) obliging the aggressor to hand over the weapons to the police.”(Law no. 174/2018 regarding the amendments and the completion of Law no. 217/2003 for the prevention and combating of domestic violence)

"In order to prevent the aggressor from becoming a victim, in the situation when against the aggressor was taken, as a protection measure, the temporary evacuation from the common house, regardless of whether he is the holder of the property right, and the aggressor declares that he has no accommodation from another source guaranteed, the legislator provided that the policeman, who is the issuer of the provisional protection order, is obliged to inform him that he has the right to request accommodation in residential centers for the homeless or for the night shelters."(Nicolescu, 2019: 50)

It must be taken into account that there are circumstances in which the obligations or prohibitions imposed by the protection order are aimed against aggressors that are minor of age, so in these cases special protection measures must be taken immediately, considering that these aggressors are vulnerable and predisposed again to such violent behaviors.

The provisional protection order is issued by the police following the fact that the physical, mental integrity of a person is endangered by an intended action or inaction of domestic violence, and with the help of this instrument, such risk is diminished or canceled. If, following the finding fact that the conditions stipulated by the legislation in force for issuing the provisional protection order are not met, the legislator has imposed on the

police the obligation to guide its victims of the phenomenon, in connection with the formulation of an application for the issuance of the protection order by the court of law, following the usual procedure.

Instead, the order of protection itself is within the jurisdiction of the court from the territorial area in which the victim of physical or mental aggression has his or her residence. The victim of an act of violence should present to the court evidence, which first of all, consist of documents, so as to obtain a proper protection order. In order to prove the acts of violence to which the victim is subjected, it must present to the court at least one of the following evidences, such as: medical documents showing that the victim suffered physical traumas (forensic certificate, forensic expertise, others documents issued by health units), the evidence of the record of criminal complaints to the Police or the Prosecutor's Office near the Court where the victim has his/her residence or where the acts of violence occurred, notifications registered with the General Directorate of Social Assistance and Child Protection in order to signal abusive situations or neglect of minors. Last but not least, evidence with witnesses that can attest to the existence of acts of violence is important. These witnesses may be persons who were present when acts of physical, verbal abuse, threats occurred, or persons who knew the family situation, who supported the victim in solving the problems with the aggressor or who saw signs after the repeated abuse were exercised.

It should be emphasized that the violation of the measures ordered by the protection order constitutes the offense of non-observance of the court decision, and the criminal law stipulates the sentence of imprisonment from one month to one year, so the protection order is a real instrument of constraint and prevention of certain behaviors that are contrary to the order of law.

Even if the violation of a protection order constitutes an offense and the criminal law punishes this fact, not often, these legal instruments are violated by the aggressors.

In 2018, there were 1424 violations of these protection orders, a percentage of 30% -40% of those issued. The figures presented above, unfortunately, present a distorted reality of these cases, considering that these are only the figures recorded by the police, without taking into account the cases in which the victims of domestic violence do not detect such behaviors. (<https://www.dor.ro/solutii-impotriva-violentei-ordinul-de-protectie/>)

Also, in the judicial practice, there are few convictions for the violation of these legal instruments, and most of the offenses provided by the criminal legislation that enter the sphere of domestic violence have provided penalties under five years of imprisonment. For this reason, these violent acts are considered to have a low level of social danger and, as such, not often, few perpetrators are detained or preventively arrested, either for injuries or for violating the order of protection.

We consider that it is necessary to amend the current legislation by toughening the penalties for the unpleasant situations in which these protection orders are not taken into account.

It is easy to see that victims do not have easy access to psychological, legal or professional counseling to become financially independent. It must be known that the trauma suffered by the violence victims takes years to cure and, in addition to the measures that are urgently available to the authorities through the protection order, long term measures must also be taken, such as reintegration of the victim or counseling the aggressor.

Another problem, this time facing police officers and prosecutors, that is not related to the protection order, is that the victims withdraw their criminal complaints, mainly because of a false feeling of forgiveness. This procedural attitude further hinders the efforts made by the authorities to combat this phenomenon, and the attitude is generated by certain factors, such as the fact the aggressors put pressure on the victims, the fact that the latter do not have the money to cope with a lengthy criminal trial, or the fact that the reconciliation between the aggressor and the victim occurs.

With the new regulations, the legislature, in order to grant the possibility of the institutions involved in combating domestic violence to act much faster and easier, provided the possibility for the police to obtain evidence by entering the residence of a natural person, without his consent, and without it being necessary to obtain any warrant from the authorized bodies. The aggressor may ask the judge to revoke the protection order if a series of conditions are cumulatively fulfilled:

- the aggressor complied with the prohibitions or obligations imposed;
- the aggressor followed psychological counseling, psychotherapy, detoxification treatment or any other form of counseling or therapy that was established in his/her task or recommended or complied with safety measures, if such measures were taken, according to the law;
- if there are strong indications that the aggressor no longer presents a real danger to the victim of violence or his family.

"The duration of the measures ordered by the judge through the protection order is six months from the date of its issuance, and if the decision does not include any mention of the duration of the measures ordered, the measures will be taken against the aggressor for a period of 6 months from the date of issuing the protection order." (Nicolescu, 2019: 32-33)

As we mentioned before, in the fight against domestic violence, all the social actors are involved, and the institution that works in this field and which has significant attributions is the Ministry of Labor and Social Justice, which especially promotes the rights of victims of domestic violence and elaborates assistance social policies at the level of the institutions that are hierarchically subordinated. Under the subordination of the Ministry of Labor and Social Justice, carries out its activity the National Agency for Equal Opportunities between Women and Men, promoting a policy of equal opportunities and

treatment between women and men in order to eliminate completely the forms of discrimination, its mission being to harmonize the legislative framework with the regulations of the European Union and to monitor the application and compliance with the regulations in the field.

Domestic violence is also a common phenomenon in other states, such as Norway, which is working hard to take the best measures for its citizens. Thus, the victim of the aggression receives a panic button which can be used in urgent cases for a quick intervention of the police. It also invests significant amounts of money in shelters for victims, as well as for aggressors, and many associations organize different courses for anger management and redefinition of masculinity.

Conclusions

Statistics speak for themselves and it can be easily seen that domestic violence figures are worrying, that this phenomenon is a complex one and that it is on an upward trend, and only with the full involvement of all the social actors can we diminish the effects of this phenomenon which is quite harmful to the today society. The legal instruments used to combat domestic violence are considered in practice quite efficient, but a more energetic reaction is required by the authorized institutions in their use. Also, the institutions with significant attributions in this field must bear in mind that not all cases of violence are brought to their notice, that some victims indulge in a violent environment and get to live like this without taking attitude in this regard.

Regarding the factors that generate violence, transnational studies have highlighted the fact that domestic violence is determined by external factors such as poverty, unemployment, drug use, exclusion and marginalization.

At the same time, the figures show that violence is present in all social, ethnic and religious groups. (www.ipc/legal29117/html) It is not to be overlooked that most disciplines such as legal sociology, psychology, anthropology, criminology are interested in the phenomenon of domestic violence, its effects on the victim and the main measures to combat this phenomenon. The effects of domestic violence are harmful to children who have been victims of abuse or who have simply witnessed such acts of violence and, at the same time, they present a higher risk and probability of having a behavior contrary to the norms both in the family, as well as in society. Not too often, boys abused in childhood have a higher risk of exhibiting criminal behavior. Children who have suffered as a result of physical abuse, when becoming adults, manifest physical abuse in their turn. "The identification and reporting of child abuse has also been the subject of international comparative studies and analyzes. The abuse is usually translated by a series of external signs (different physical traces-wounds, bruises, wounds; psycho-behavioral changes, neurotic disturbances, atypical manifestations, changes in school performance, adaptation disorders, etc.)". (Balahaur, 2001: 304)

In conclusion, regarding the long-term psychological consequences of violence, victimization by partners or others has resulted in loss of self-esteem of victims, making them feel vulnerable and anxious. "Women are more likely to suffer various long-term psychological consequences as a result of partner violence, than as a result of violence perpetrated by another aggressor who was not their partner." (https://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_ro.pdf)

Violence against women affects the basic fundamental rights of women, such as dignity, access to justice, access to a normal life and equal opportunities between women and men. The victim, especially women have a sense of fear, inferiority, feeling controlled and dominated by the aggressor.

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